

WSR 06-01-024
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed December 13, 2005, 11:39 a.m., effective January 13, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The division of developmental disabilities has received initial approval from the federal Centers for Medicare and Medicaid Services (CMS) to implement four home and community based service (HCBS) waivers, which replaced the community alternatives program (CAP) waiver. These rules will clarify eligibility, service array, utilization, provider qualifications, client appeal rights and access to services. This filing includes a new chapter 388-845 WAC. When effective, these rules replace the emergency rules filed as WSR 05-19-044.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.12 [71A.12.120].

Other Authority: Chapter 71A.12 RCW.

Adopted under notice filed as WSR 05-17-055 on August 9, 2005.

Changes Other than Editing from Proposed to Adopted Version: The wording in WAC 388-845-0035, 388-845-0040 and 388-845-0045 has been changed to read "enrolled in a waiver."

WAC 388-845-0050 has been changed to reflect that all requests for enrollment in a waiver are documented in a DDD database.

WAC 388-845-0051 has been expanded to clarify that notice will be sent for a denial of a request to be enrolled in a waiver.

WAC 388-845-0050(2) has been changed to read: "When there is capacity to enroll additional people in a waiver, WAC 388-845-0045 describes how DDD will determine who will be enrolled."

WAC 388-845-0065(2) has been changed to read: "Your eligibility for nonwaiver state-only funded DDD services..."

A cross-reference to WAC 388-845-1500 has been added to WAC 388-845-0710.

Cross-reference to WAC 388-845-1505 and 388-845-1510 have been added to WAC 388-845-0750.

WAC 388-845-3080 (1)(a) and 388-845-3085 (1)(a) have been changed to read: "Identify more available natural supports."

WAC 388-845-3080(4) and 388-845-3085(3) have been changed to read: "... you will remain eligible for nonwaiver DDD services but access to state-only funded DDD services is limited by the availability of funding ..."

A final cost-benefit analysis is available by contacting Steve Brink, P.O. Box 5310, Olympia, WA 98507-5310, phone (360) 725-3416, fax (360) 407-0955, e-mail brinksc@dshs.wa.gov. There are no changes to the preliminary cost-benefit analysis.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 131, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 131, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 9, 2005.

Andy Fernando, Manager
 Rules and Policies Assistance Unit

Chapter 388-845 WAC

**DDD HOME AND COMMUNITY BASED SERVICES
 WAIVERS**

NEW SECTION

WAC 388-845-0001 Definitions. "ADSA" means the aging and disability services administration, an administration within the department of social and health services.

"Aggregate Services" means a combination of services subject to the dollar limitations in the Basic and Basic Plus waivers.

"CAP waiver" means the Community Alternatives Program waiver.

"CARE" means the Comprehensive Assessment and Reporting Evaluation.

"DDD" means the division of developmental disabilities, a division within the aging and disability services administration of the department of social and health services.

"Department" means the department of social and health services.

"Employment/Day Program Services" means community access, person-to-person, prevocational services or supported employment services subject to the dollar limitations in the Basic and Basic Plus waivers.

"HCBS Waivers" means home and community based services waivers.

"ICF/MR" means an Intermediate Care Facility for the Mentally Retarded.

"Plan of Care (POC)" means the primary tool DDD uses to determine and document your needs and to identify services to meet those needs.

"Providers" means an individual or agency who is licensed, certified and/or contracted to provide services to you.

"Respite Assessment" means a series of questions about you and your caregiver used to determine the amount of respite care available to you.

"SSI" means Supplemental Security Income, an assistance program administered by the federal Social Security Administration for blind, disabled and aged individuals.

"SSP" means State Supplementary Payment, a benefit administered by the department intended to augment an individual's SSI.

"State Funded Services" means services that are funded entirely with state dollars.

NEW SECTION

WAC 388-845-0005 What are home and community based services (HCBS) waivers? (1) Home and community based services (HCBS) waivers are services approved by the Centers For Medicare and Medicaid Services (CMS) under section 1915 (c) of the Social Security Act as an alternative to intermediate care facility for the mentally retarded (ICF/MR) care.

(2) Certain federal regulations are "waived" enabling the provision of services in the home and community to individuals who would otherwise require the services provided in an ICF/MR as defined in chapters 388-835 and 388-837 WAC.

NEW SECTION

WAC 388-845-0010 What is the purpose of HCBS waivers? The purpose of HCBS waivers is to provide services in the community to individuals with ICF/MR level of need to prevent their placement in an ICF/MR.

NEW SECTION

WAC 388-845-0015 What HCBS waivers are provided by the division of developmental disabilities (DDD)? DDD has replaced its community alternatives program (CAP) waiver with four HCBS waivers:

- (1) Basic waiver;
- (2) Basic Plus waiver;
- (3) CORE waiver; and
- (4) Community Protection waiver.

NEW SECTION

WAC 388-845-0020 When were these four HCBS waivers effective? The four DDD HCBS waivers were effective April 1, 2004.

NEW SECTION

WAC 388-845-0025 Does this change in waivers affect the waiver services I am currently receiving? Your services will not be disrupted with this transfer to new waivers.

NEW SECTION

WAC 388-845-0030 Do I meet criteria for HCBS waiver-funded services? You meet criteria for DDD HCBS waiver-funded services if you meet all of the following:

- (1) You have been determined eligible for DDD services per RCW 71A.10.020(3).
- (2) You have been determined to meet ICF/MR level of care per WAC 388-845-0070 through 388-845-0090.
- (3) You meet disability criteria established in the Social Security Act.
- (4) You meet financial eligibility requirements as defined in WAC 388-515-1510.

(5) You choose to receive services in the community rather than in an ICF/MR facility.

(6) You have a need for waiver services as identified in your plan of care.

(7) You are not residing in hospital, jail, prison, nursing facility, ICF/MR, or other institution.

NEW SECTION

WAC 388-845-0035 Am I guaranteed placement on a waiver if I meet waiver criteria? If you are not currently enrolled in a waiver, meeting criteria for the waiver does not guarantee access to or receipt of waiver services.

NEW SECTION

WAC 388-845-0040 Is there a limit to the number of people who can be enrolled in each HCBS waiver? Each waiver has a limit on the number of people who can be served in a waiver year. In addition, DDD has the authority to limit enrollment into the waivers based on availability of funding for new waiver participants.

NEW SECTION

WAC 388-845-0041 What is DDD's responsibility to provide my services under the waivers administered by DDD? If you are enrolled in an HCBS waiver administered by DDD, DDD must meet your assessed needs for health and welfare.

(1) DDD must address your assessed health and welfare needs in your plan of care, as specified in WAC 388-845-3055.

(2) You have access to DDD paid services that are provided within the scope of your waiver, subject to the limitations in WAC 388-845-0110 and WAC 388-845-0115.

(3) DDD will provide waiver services you need and qualify for within your waiver.

(4) DDD will not deny or limit your waiver services based on a lack of funding.

NEW SECTION

WAC 388-845-0045 When there is capacity to add people to a waiver, how does DDD determine who will be enrolled? When there is capacity on a waiver and available funding for new waiver participants, DDD may enroll people in a waiver based on the following priority considerations:

(1) First priority will be given to current waiver participants assessed to require a different waiver because their needs have increased and these needs cannot be met within the scope of their current waiver.

(2) DDD may also consider any of the following populations in any order:

(a) Priority populations as identified and funded by the legislature.

(b) Persons DDD has determined to be in immediate risk of ICF/MR admission due to unmet health and safety needs.

(c) Persons identified as a risk to the safety of the community.

(d) Persons currently receiving services through state-only funds.

(e) Persons on an HCBS waiver that provides services in excess of what is needed to meet their identified health and welfare needs.

(f) Persons who were previously on an HCBS waiver since April 2004 and lost waiver eligibility per WAC 388-845-0060(9).

(3) For the Basic waiver only, DDD may consider persons who need the waiver services available in the Basic waiver to maintain them in their family's home.

NEW SECTION

WAC 388-845-0050 How do I request to be enrolled in a waiver? You can contact DDD and request to be enrolled in a waiver at any time.

(1) Your request for waiver enrollment will be documented by DDD in a statewide database.

(2) When there is capacity available to enroll additional people in a waiver, WAC 388-845-0045 describes how DDD will determine who will be enrolled.

NEW SECTION

WAC 388-845-0051 How will I be notified of the decision by DDD to enroll me in a waiver? DDD will notify you in writing of its decision to enroll you in a waiver or its decision to deny your request to be enrolled in a waiver.

NEW SECTION

WAC 388-845-0055 How do I remain eligible for the waiver? If you are already on a HCBS waiver, you must continue to meet eligibility criteria.

(1) DDD completes a reassessment at least every twelve months to determine if you continue to meet all of the eligibility requirements in WAC 388-845-0030.

(2) You must receive a waiver service at least once in every thirty consecutive days, as specified in WAC 388-513-1320 (3)(b).

(3) Your plan of care, CARE assessment/reassessment and respite assessment/reassessment must be done in person.

NEW SECTION

WAC 388-845-0060 Can my waiver eligibility be terminated? DDD may terminate your waiver eligibility if DDD determines that your health and safety needs cannot be met in your current waiver or for one of the following reasons:

(1) You no longer meet one of the requirements listed in WAC 388-845-0030;

(2) You no longer need waiver services;

(3) You do not use a waiver service at least once in every thirty consecutive days;

(4) You are on the Community Protection waiver and choose not to be served by a certified residential community protection provider-intensive supported living services (CP-ISLS);

(5) You choose to disenroll from the waiver;

(6) You reside out of state;

(7) You cannot be located or do not make yourself available for the annual waiver reassessment of eligibility;

(8) You refuse to participate with DDD in:

(a) Service planning;

(b) Required quality assurance and program monitoring activities; or

(c) Accepting services agreed to in your plan of care as necessary to meet your health and safety needs.

(9) You are residing in a hospital, jail, prison, nursing facility, ICF/MR, or other institution and remain in residence at least one full calendar month, and are still in residence:

(a) At the end of the twelfth month following the effective date of your current plan of care, as described in WAC 388-845-3060; or

(b) On March 31st, the end of the waiver fiscal year, whichever date occurs first.

(10) Your needs exceed the maximum funding level or scope of services under the Basic or Basic Plus waiver as specified in WAC 388-845-3080; or

(11) Your needs exceed what can be provided under the CORE or Community Protection waiver as specified in WAC 388-845-3085.

NEW SECTION

WAC 388-845-0065 What happens if I am terminated or choose to disenroll from a waiver? If you are terminated from a waiver or choose to disenroll from a waiver, DDD will notify you.

(1) DDD cannot guarantee continuation of your current services, including Medicaid eligibility.

(2) Your eligibility for nonwaiver state-only funded DDD services is based upon availability of funding and program eligibility for a particular service.

NEW SECTION

WAC 388-845-0070 What determines if I need ICF/MR level of care? DDD determines if you need ICF/MR level of care based on your need for waiver services. To reach this decision, DDD uses its department-approved assessment and/or other information specified in WAC 388-845-0085.

NEW SECTION

WAC 388-845-0075 How is a child age twelve or younger assessed for ICF/MR level of care? If you are age twelve or younger, DDD assesses you for ICF/MR level of care using the "child's assessment of ICF/MR level of care—current support needs" form. You must have support needs exceeding what is expected of others of the same age.

NEW SECTION

WAC 388-845-0080 What score indicates ICF/MR level of care if I am age twelve or younger? (1) If you are age five or younger you need major or moderate support in five of nine tasks.

(2) If you are age six through twelve, you need major or moderate support in seven of nine of the tasks in (3) below.

(3) The form indicates certain tasks that require major support and which require moderate or major support.

(a) Major support for:

- (i) Dressing and grooming self;
- (ii) Toileting self.

(b) Major or moderate support for:

- (i) Eating;
- (ii) Mobility;
- (iii) Communication;
- (iv) Making choices and taking responsibility;
- (v) Exploring one's environment;
- (vi) Supports needed to meet therapy and health needs;

or

(vii) Family/caregiver support required to maintain the child at home.

NEW SECTION

WAC 388-845-0085 If I am age twelve or younger, what if my score on the current needs assessment does not indicate ICF/MR level of care? For children age twelve or younger:

(1) If you do not have a qualifying score for determining ICF/MR level of care using the department approved assessment, you may provide DDD other current information that provides evidence of your need for waiver services.

(2) This additional information may include occupational therapy (OT), physical therapy (PT), psychological, nursing, social work, speech and hearing, or other professional evaluations that reflect current needs.

NEW SECTION

WAC 388-845-0090 How is a person age thirteen or older assessed for ICF/MR level of care? If you are age thirteen or older, DDD assesses you for ICF/MR level of care using the "assessment of ICF/MR level of care—current support needs" form.

NEW SECTION

WAC 388-845-0095 What score indicates ICF/MR level of care if I am age thirteen or older? If you are age thirteen or older, you must have a qualifying score of at least forty in responses to twenty questions assessing your residential, school or employment, and social support needs.

NEW SECTION

WAC 388-845-0096 If I am age thirteen or older, what if my score on the current needs assessment does not indicate the need for ICF/MR level of care? If you are age thirteen or older and your current needs assessment does not indicate the need for ICF/MR level of care, you are not eligible for an HCBS waiver.

NEW SECTION

WAC 388-845-0100 What determines which waiver I am assigned to? DDD will assign you to a waiver based on the following criteria:

(1) If you were on the CAP waiver as of March 2004, your initial assignment to the Basic, Basic Plus, CORE, or Community Protection waiver was based on:

(a) Services you received from DDD in October 2002 through September 2003; and

(b) Services you were authorized to receive in October, November and December 2003.

(2) If you are new to a waiver since April 1, 2004, assignment is based on your assessment and service plan.

(3) Additional criteria apply to the assignment to the Community Protection waiver.

NEW SECTION

WAC 388-845-0105 What criteria determine assignment to the community protection waiver? DDD may assign you to the Community Protection waiver only if you are at least eighteen years of age, not currently residing in a hospital, jail or other institution, and meet the following criteria:

(1) You have been identified by DDD as a person who meets one or more of the following:

(a) You have been convicted of or charged with a crime of sexual violence as defined in chapter 71.09 RCW;

(b) You have been convicted of or charged with acts directed towards strangers or individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or persons of casual acquaintance with whom no substantial personal relationship exists;

(c) You have been convicted of or charged with a sexually violent offense and/or predatory act, and may constitute a future danger as determined by a qualified professional;

(d) You have not been convicted and/or charged, but you have a history of stalking, sexually violent, predatory and/or opportunistic behavior which demonstrates a likelihood to commit a sexually violent and/or predatory act based on current behaviors that may escalate to violence, as determined by a qualified professional; or

(e) You have committed one or more violent crimes.

(2) You receive or agree to receive residential services from certified residential community protection provider-intensive supported living services (CP-ISLS); and

(3) You comply with the specialized supports and restrictions in your:

(a) Plan of care (POC);

(b) Individual instruction and support plan (IISP); and/or

(c) Treatment plan provided by DDD approved certified individuals and agencies.

NEW SECTION

WAC 388-845-0110 Are there limitations to the waiver services I can receive? There are limitations to waiver services. In addition to the limitations to your access to nonwaiver services cited for specific services in WAC 388-845-0115, the following limitations apply:

(1) A service must be offered in your waiver and authorized in your plan of care.

(2) Mental health stabilization services may be added to your plan of care after the services are provided.

(3) Waiver services are limited to services required to prevent ICF/MR placement.

(4) The cost of your waiver services cannot exceed the average daily cost of care in an ICF/MR.

(5) Waiver services cannot replace or duplicate other available paid or unpaid supports or services.

(6) Waiver funding cannot be authorized for treatments determined by DSHS to be experimental.

(7) The Basic and Basic Plus waivers have yearly limits on some services and combinations of services. The combination of services is referred to as aggregate services or employment/day program services.

(8) Your choice of qualified providers and services is limited to the most cost effective option that meets your assessed needs.

(9) Services provided out-of-state, other than in recognized bordering cities, are limited to respite care and personal care during vacations.

(a) You may receive services in a recognized out-of-state bordering city on the same basis as in-state services.

(b) The only recognized bordering cities are:

(i) Coeur d'Alene, Moscow, Sandpoint, Priest River and Lewiston, Idaho; and

(ii) Portland, The Dalles, Hermiston, Hood River, Rainier, Milton-Freewater and Astoria, Oregon.

(10) Other out-of-state waiver services require an approved exception to rule before DDD can authorize payment.

NEW SECTION

WAC 388-845-0115 Does my waiver eligibility limit my access to DDD nonwaiver services? If you are enrolled in a DDD HCBS waiver:

(1) You are not eligible for state-only funding for DDD services; and

(2) You are not eligible for Medicaid personal care.

NEW SECTION

WAC 388-845-0120 Will I continue to receive state supplementary payments (SSP) if I am on the waiver? Your participation in the new waivers does not affect your continued receipt of State Supplemental Payment from DDD.

NEW SECTION

WAC 388-845-0200 What waiver services are available to me? Each of the four HCBS waivers has a different scope of service and your service plan defines the waiver services available to you.

NEW SECTION

WAC 388-845-0205 Basic waiver services.

BASIC WAIVER	SERVICES	YEARLY LIMIT
	AGGREGATE SERVICES: Behavior management and consultation Community guide Physical therapy Specialized medical equipment/ supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	May not exceed \$1425 per year on any combination of these services
	EMPLOYMENT/DAY PROGRAM SERVICES: Community access Person-to-person Prevocational services Supported employment	May not exceed \$6500 per year
	Sexual Deviancy Evaluation	Limits are determined by DDD
	Respite care	Limits are determined respite assessment
	Personal care	Limits are determined by CARE assessment
	MENTAL HEALTH STABILIZATION SERVICES: Behavior management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits are determined by a mental health professional or DDD
	Emergency assistance is only for services contained in the Basic waiver	\$6000 per year; Preauthorization required

NEW SECTION

WAC 388-845-0210 Basic Plus waiver services.

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	AGGREGATE SERVICES: Behavior management and consultation Community guide Environmental accessibility adaptations Occupational therapy Physical therapy Skilled nursing Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	May not exceed \$6070 per year on any combination of these services
	EMPLOYMENT/DAY PROGRAM SERVICES: Community access Person-to-person Prevocational services Supported employment	May not exceed \$9500 per year
	Adult foster care (adult family home) Adult residential care (boarding home)	Determined per department rate structure
	MENTAL HEALTH STABILIZATION SERVICES: Behavior management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits determined by a mental health professional or DDD
	Personal care	Limits determined by the CARE assessment
	Respite care	Limits are determined by respite assessment
	Sexual Deviancy Evaluation	Limits are determined by DDD

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	Emergency assistance in only for services contained in the Basic Plus waiver	\$6000 per year; Preauthorization required

NEW SECTION

WAC 388-845-0215 CORE waiver services.

CORE WAIVER	SERVICES	YEARLY LIMIT
	Behavior management and consultation Community guide Community transition Environmental accessibility adaptations Occupational therapy Respite care Sexual deviancy evaluation Skilled nursing Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation Residential habilitation	Determined by the Plan of Care, not to exceed the average cost of an ICF/MR for any combination of services
	Community access Person-to-person Prevocational services Supported employment	
	MENTAL HEALTH STABILIZATION SERVICES: Behavior management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits determined by a mental health professional or DDD
	Personal care	Limited by CARE assessment

NEW SECTION

WAC 388-845-0220 Community Protection waiver services.

COMMUNITY PROTECTION WAIVER	SERVICES	YEARLY LIMIT
	Behavior management and consultation Community transition Environmental accessibility adaptations Occupational therapy Physical therapy Sexual deviancy evaluation Skilled nursing Specialized medical equipment and supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation Residential habilitation Person-to-person Prevocational services Supported employment	Determined by the Plan of Care, not to exceed the average cost of an ICF/MR for any combination of services
	MENTAL HEALTH STABILIZATION SERVICES: Behavioral management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits determined by a mental health professional or DDD

WAIVER SERVICES DEFINITIONS

NEW SECTION

WAC 388-845-0300 What are adult family home (AFH) services? Per RCW 70.128.010 an adult family home (AFH) is a regular family abode in which a person or persons provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the service. Adult family homes (AFH) may provide residential care to adults in the Basic Plus waiver.

NEW SECTION

WAC 388-845-0305 Who is a qualified provider of AFH services? The provider of AFH services must be licensed and contracted with ADSA as an AFH who has successfully completed the DDD specialty training provided by the department.

NEW SECTION

WAC 388-845-0310 Are there limits to the AFH services I can receive? Adult family homes services are limited by the following:

- (1) AFH services are defined and limited per chapter 388-106 WAC and chapter 388-71 WAC governing Medicaid personal care and the comprehensive assessment and reporting evaluation (CARE).
- (2) Rates are determined by and limited to department published rates for the level of care generated by CARE.
- (3) AFH reimbursement cannot be supplemented by other department funding.

NEW SECTION

WAC 388-845-0400 What are adult residential care (ARC) services? Adult residential care (ARC) facilities may provide residential care to adults. This service is available in the Basic Plus waiver.

- (1) An ARC is a licensed boarding home for seven or more unrelated adults.
- (2) Services include, but are not limited to, individual and group activities; assistance with arranging transportation; assistance with obtaining and maintaining functional aids and equipment; housework; laundry; self-administration of medications and treatments; therapeutic diets; cuing and providing physical assistance with bathing, eating, dressing, locomotion and toileting; stand-by one person assistance for transferring.

NEW SECTION

WAC 388-845-0405 Who is a qualified provider of ARC services? The provider of ARC services must:

- (1) Be a licensed boarding home;
- (2) Be contracted with ADSA to provide ARC services; and
- (3) Have completed the required and approved DDD specialty training.

NEW SECTION

WAC 388-845-0410 Are there limits to the ARC services I can receive? ARC services are limited by the following:

- (1) ARC services are defined and limited by boarding home licensure and rules in chapter 388-78A WAC, and chapter 388-106 WAC and chapter 388-71 WAC governing Medicaid personal care and the comprehensive assessment and reporting evaluation (CARE).
- (2) Rates are determined and limited to department published rates for the level of care generated by CARE.

(3) ARC reimbursement cannot be supplemented by other department funding.

NEW SECTION

WAC 388-845-0500 What is behavior management and consultation? (1) Behavior management and consultation may be provided to persons on any of the four HCBS waivers and include the development and implementation of programs designed to support waiver participants using:

(a) Strategies for effectively relating to caregivers and other people in the waiver participant's life; and

(b) Direct interventions with the person to decrease aggressive, destructive, and sexually inappropriate or other behaviors that compromise their ability to remain in the community (i.e., training, specialized cognitive counseling).

(2) Behavior management and consultation may also be provided as a mental health stabilization service in accordance with WAC 388-845-1150 through 388-845-1160.

NEW SECTION

WAC 388-845-0505 Who is a qualified provider of behavior management and consultation? The provider of behavior management and consultation must be one of the following professionals contracted with DDD and duly licensed, registered or certified to provide this service:

- (1) Marriage and family therapist;
- (2) Mental health counselor;
- (3) Psychologist;
- (4) Sex offender treatment provider;
- (5) Social worker;
- (6) Registered nurse (RN) or licensed practical nurse (LPN);
- (7) Psychiatrist;
- (8) Psychiatric advanced registered nurse practitioner (ARNP);
- (9) Physician assistant working under the supervision of a psychiatrist;
- (10) Registered counselor; or
- (11) Polygrapher.

NEW SECTION

WAC 388-845-0510 Are there limits to the behavior management and consultation I can receive? The following limits apply to your receipt of behavior management and consultation:

(1) DDD and the treating professional will determine the need and amount of service you will receive, subject to the limitations in subsection (2) below.

(2) The dollar limitations for aggregate services in your Basic and Basic Plus waiver limit the amount of service unless provided as a mental health stabilization service.

(3) DDD reserves the right to require a second opinion from a department-selected provider.

(4) Behavior management and consultation not provided as a mental health stabilization service requires prior approval by DDD.

NEW SECTION

WAC 388-845-0600 What is community access? Community access is a service provided in the community to enhance or maintain the person's competence, integration, physical or mental skills.

(1) If you are age sixty-two or older, this service is available to assist you to participate in activities, events and organizations in the community in ways similar to others of retirement age.

(2) This service is available to adults in the Basic, Basic Plus, and CORE waiver.

NEW SECTION

WAC 388-845-0605 Who is a qualified provider of community access? The provider of community access must be a county or an individual or agency contracted with a county or DDD.

NEW SECTION

WAC 388-845-0610 Are there limits to community access I can receive? The following limits apply to your receipt of community access:

- (1) You must be age sixty-two or older.
- (2) You cannot be authorized to receive community access services if you receive pre-vocational services or supported employment services.
- (3) The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of service you may receive.

NEW SECTION

WAC 388-845-0700 What is a community guide service? Community guide service increases access to informal community supports. Services are short-term and designed to develop creative, flexible and supportive community resources for individuals with developmental disabilities. This service is available in Basic, Basic Plus and CORE waivers.

NEW SECTION

WAC 388-845-0705 Who is a qualified community guide? Any individual or agency contracted with DDD as a "community guide" is qualified to provide this service.

NEW SECTION

WAC 388-845-0710 Are there limitations to the community guide services I can receive? (1) You may not receive community guide services if you are receiving residential habilitation services as defined in WAC 388-845-1500 because your residential provider can meet this need.

(2) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

NEW SECTION

WAC 388-845-0750 What are community transition services? (1) Community transition services are reasonable costs (necessary expenses in the judgment of the state for an individual to establish his or her basic living arrangement) associated with moving from an institutional setting to a community setting and receiving services from a DDD certified residential habilitation services provider as defined in WAC 388-845-1505 and WAC 388-845-1510.

(2) Community transition services include:

(a) Security deposits (not to exceed the equivalent of two month's rent) that are required to obtain a lease on an apartment or home;

(b) Essential furnishings such as a bed, a table, chairs, window blinds, eating utensils and food preparation items;

(c) Moving expenses required to occupy and use a community domicile;

(d) Set-up fees or deposits for utility or service access (e.g., telephone, electricity, heating); and

(e) Health and safety assurances, such as pest eradication, allergen control or one-time cleaning prior to occupancy.

(3) Community transition services are available in the CORE and Community Protection waivers.

NEW SECTION

WAC 388-845-0755 Who are qualified providers of community transition services? (1) Providers of community transition services for individuals in the CORE waiver must meet the requirements as a provider of residential habilitation services contained in WAC 388-845-1505.

(2) Providers of community transition services for individuals in the Community Protection waiver must meet the requirements as a provider of residential habilitation services contained in WAC 388-845-1510.

NEW SECTION

WAC 388-845-0760 Are there limitations to community transition services I can receive? (1) Community transition services do not include:

(a) Diversional or recreational items such as televisions, cable TV access, VCRs, MP3, CD or DVD players; and

(b) Computers whose use is primarily diversional or recreational.

(2) Community transition services are available only to individuals that are moving from an institution to a community setting and are enrolled in either the CORE or Community Protection waiver.

NEW SECTION

WAC 388-845-0800 What is emergency assistance? Emergency assistance is a temporary increase to the yearly dollar limit specified in the Basic and Basic Plus waiver when additional waiver services are required to prevent ICF/MR placement. These additional services are limited to the services provided in your waiver.

NEW SECTION

WAC 388-845-0805 Who is a qualified provider of emergency assistance? The provider of the service you need to meet your emergency must meet the provider qualifications for that service.

NEW SECTION

WAC 388-845-0810 How do I qualify for emergency assistance? You qualify for emergency assistance only if you have used all of your waiver funding and your current situation meets one of the following criteria:

(1) You involuntarily lose your present residence for any reason either temporary or permanent;

(2) You lose your present caregiver for any reason, including death;

(3) There are changes in your caregiver's mental or physical status resulting in the caregiver's inability to perform effectively for the individual; or

(4) There are significant changes in your emotional or physical condition that requires a temporary increase in the amount of a waiver service.

NEW SECTION

WAC 388-845-0820 Are there limits to my use of emergency assistance? All of the following limitations apply to your use of emergency assistance:

(1) Prior authorization is required based on a reassessment of your plan of care to determine the need for emergency services;

(2) Payment authorizations are reviewed every thirty days and cannot exceed six thousand dollars per twelve months based on the effective date of your current plan of care (POC);

(3) Emergency services are limited to the scope of services in your waiver;

(4) Emergency Assistance may be used for interim services until:

(a) The emergency situation has been resolved; or

(b) You are transferred to alternative supports that meet your assessed needs; or

(c) You are transferred to an alternate waiver that provides the service you need.

NEW SECTION

WAC 388-845-0900 What are environmental accessibility adaptations? (1) Environmental accessibility adaptations are available in all of the HCBS waivers and provide the physical adaptations to the home required by the individual's plan of care needed to:

(a) Ensure the health, welfare and safety of the individual; or

(b) Enable the individual who would otherwise require institutionalization to function with greater independence in the home.

(2) Environmental accessibility adaptations may include the installation of ramps and grab bars, widening of doorways, modification of bathroom facilities, or installing spe-

cialized electrical and/or plumbing systems necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the individual.

NEW SECTION

WAC 388-845-0905 Who is a qualified provider for building these environmental accessibility adaptations?

The provider making these environmental accessibility adaptations must be a registered contractor per chapter 18.27 RCW and contracted with DDD.

NEW SECTION

WAC 388-845-0910 What limitations apply to environmental accessibility adaptations? The following service limitations apply to environmental accessibility adaptations:

- (1) Prior approval by DDD is required.
- (2) Environmental accessibility adaptations or improvements to the home are excluded if they are of general utility without direct medical or remedial benefit to the individual, such as carpeting, roof repair, central air conditioning, etc.
- (3) Environmental accessibility adaptations cannot add to the total square footage of the home.
- (4) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

NEW SECTION

WAC 388-845-1000 What are extended state plan services? Extended state plan services refer to physical therapy; occupational therapy; and speech, hearing and language services available to you under Medicaid without regard to your waiver status. They are "extended" services when the waiver pays for more services than is provided under the state Medicaid plan. These services are available under all four HCBS waivers.

NEW SECTION

WAC 388-845-1010 Who is a qualified provider of extended state plan services? Providers of extended state plan services must be certified, registered or licensed therapists as required by law and contracted with DDD for the therapy they are providing.

NEW SECTION

WAC 388-845-1015 Are there limits to the extended state plan services I can receive? (1) Additional therapy may be authorized as a waiver service only after you have accessed what is available to you under Medicaid and any other private health insurance plan;

- (2) The department does not pay for treatment determined by DSHS to be experimental;
- (3) The department and the treating professional determine the need for and amount of service you can receive:
 - (a) The department reserves the right to require a second opinion from a department-selected provider.

(b) The department will require evidence that you have accessed your full benefits through Medicaid and private insurance before authorizing this waiver service.

(4) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

NEW SECTION

WAC 388-845-1100 What are mental health crisis diversion bed services? Mental health crisis diversion bed services are temporary residential and behavioral services that may be provided in a client's home or licensed or certified setting. These services are available to eligible clients who are at risk of serious decline of mental functioning and who have been determined to be at risk of psychiatric hospitalization. These services are available in all four HCBS waivers administered by DDD as mental health stabilization services in accordance with WAC 388-845-1150 through 388-845-1160

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NEW SECTION

WAC 388-845-1105 Who is a qualified provider of mental health crisis diversion bed services? Providers of mental health crisis diversion bed services must be:

- (1) DDD certified residential agencies per Chapter 388-101 WAC; or
- (2) Other department licensed or certified agencies.

NEW SECTION

WAC 388-845-1110 What are the limits of mental health crisis diversion bed services? (1) Mental health crisis diversion bed services are intermittent and temporary. The duration and amount of services you need to stabilize your crisis is determined by a mental health professional and/or DDD.

(2) These services are available in all four HCBS waivers administered by DDD as mental health stabilization services in accordance with WAC 388-845-1150 through 388-845-1160.

(3) The costs of mental health crisis diversion bed services do not count toward the dollar limits for aggregate services in the Basic and Basic Plus waivers.

NEW SECTION

WAC 388-845-1150 What are mental health stabilization services? Mental health stabilization services assist persons who are experiencing a mental health crisis. These services are available in all four waivers to adults determined by mental health professionals or DDD to be at risk of institutionalization in a psychiatric hospital without one of more of the following services:

- (1) Behavior management and consultation;
- (2) Skilled nursing services;
- (3) Specialized psychiatric services; or
- (4) Mental health crisis diversion bed services.

NEW SECTION

WAC 388-845-1155 Who are qualified providers of mental health stabilization services? Providers of these mental health stabilization services are listed in the rules in this chapter governing the specific services listed in WAC 388-845-1150.

NEW SECTION

WAC 388-845-1160 Are there limitations to the mental health stabilization services that I can receive? (1) Mental health stabilization services are intermittent and temporary. The duration and amount of services you need to stabilize your crisis is determined by a mental health professional and/or DDD.

(2) The costs of mental health stabilization services do not count toward the dollar limitations for aggregate services in the Basic and Basic Plus waiver.

(3) Mental health stabilization services require prior approval by DDD or its designee.

NEW SECTION

WAC 388-845-1200 What is a "person-to-person" service? "Person-to-person" is a day program service intended to assist participants to progress toward employment goals through individualized planning, skill instruction, information and referral, and one to one relationship building. This service may be provided in addition to community access, prevocational services, or supported employment. This service is available to adults in all four HCBS waivers.

NEW SECTION

WAC 388-845-1205 Who is a qualified provider of person-to-person services? The provider of "person-to-person" services must be a county or an individual or agency contracted with a county or DDD.

NEW SECTION

WAC 388-845-1210 Are there limits to the person-to-person service I can receive? (1) You must be age twenty-one and graduated from high school or age twenty-two or older to receive person-to-person services.

(2) The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of service you may receive.

NEW SECTION

WAC 388-845-1300 What are personal care services? Personal care services are the provision of assistance with personal care tasks as defined in WAC 388-106-0010, personal care services. These services are available in the Basic, Basic Plus, and CORE waivers.

NEW SECTION

WAC 388-845-1305 Who are the qualified providers of personal care services? (1) Qualified providers of per-

sonal care services may be individuals or licensed homecare agencies contracted with DDD.

(2) All individual providers and homecare agency providers must meet provider qualifications for in-home caregivers in WAC 388-71-0500 through 388-71-0556.

(3) Providers of personal care services for adults must comply with the training requirements in these rules governing Medicaid personal care providers in WAC 388-71-05670 through 388-71-05799.

(4) Natural, step, or adoptive parents can be the personal care provider of their adult child age eighteen or older.

NEW SECTION

WAC 388-845-1310 Are there limits to the personal care services I can receive? (1) You must meet the programmatic eligibility for Medicaid personal care in chapter 388-106 WAC and chapter 388-71 WAC governing Medicaid personal care (MPC) using the current department approved assessment form: Comprehensive assessment reporting evaluation (CARE) or children's comprehensive assessment.

(2) The maximum hours of personal care you may receive are determined by the approved department assessment for Medicaid personal care services.

(a) Provider rates are limited to the department established hourly rates for in-home Medicaid personal care.

(b) Homecare agencies must be licensed through the department of health and contracted with DDD.

NEW SECTION

WAC 388-845-1400 What are prevocational services? Prevocational services prepare an adult for paid or unpaid employment through the teaching of such concepts as compliance, attendance, task completion, problem solving and safety. These services are available in all four HCBS waivers.

NEW SECTION

WAC 388-845-1405 Who are the qualified providers of prevocational services? Providers of prevocational services must be a county or an individual or agency contracted with a county or DDD.

NEW SECTION

WAC 388-845-1410 Are there limits to the prevocational services I can receive? The following limitations apply to your receipt of prevocational services:

(1) You must be age twenty-one and graduated from high school or age twenty-two or older.

(2) You are not expected to be competitively employed within one year (excluding supported employment programs).

(3) You cannot be authorized to receive prevocational services if you receive community access services or supported employment services.

(4) The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of service you may receive.

NEW SECTION

WAC 388-845-1500 What are residential habilitation services? Residential habilitation services (RHS) are available in the CORE and Community Protection waivers.

- (1) Residential habilitation services include assistance:
 - (a) With personal care and supervision; and
 - (b) To learn, improve or retain social and adaptive skills necessary for living in the community.
- (2) Residential habilitation services may provide instruction and support addressing one or more of the following outcomes:
 - (a) Health and safety;
 - (b) Personal power and choice;
 - (c) Competence and self-reliance;
 - (d) Positive recognition by self and others;
 - (e) Positive relationships; and
 - (f) Integration into the physical and social life of the community.

NEW SECTION

WAC 388-845-1505 Who are qualified providers of residential habilitation services for the CORE waiver? Providers of residential habilitation services for participants in the CORE waiver must be one of the following:

- (1) Individuals contracted with DDD to provide residential support as a "companion home" provider;
- (2) Individuals contracted with DDD to provide training as an "alternative living provider";
- (3) Agencies contracted with DDD and certified per chapter 388-101 WAC;
- (4) State-operated living alternatives (SOLA);
- (5) Licensed and contracted group care homes, group training homes, foster homes, child placing agencies, staffed residential homes or adult residential rehabilitation centers per WAC 246-325-0012.

NEW SECTION

WAC 388-845-1510 Who are qualified providers of residential habilitation services for the Community Protection waiver? Providers of residential habilitation services for participants of the Community Protection waiver are limited to state-operated living alternatives (SOLA) and supported living providers who are contracted with DDD and certified under chapter 388-101 WAC as a residential community protection provider-intensive supported living services (CP-ISLS).

NEW SECTION

WAC 388-845-1515 Are there limits to the residential habilitation services I can receive? (1) You may only receive one type of residential habilitation service at a time.

- (2) None of the following can be paid for under the CORE or Community Protection waiver:
 - (a) Room and board;
 - (b) The cost of building maintenance, upkeep, improvement, modifications or adaptations required to assure the

health and safety of residents, or to meet the requirements of the applicable life safety code;

(c) Activities or supervision already being paid for by another source;

(d) Services provided in your parent's home unless you are receiving alternative living services for a maximum of six months to transition you from your parent's home into your own home.

(3) The following persons cannot be paid providers for your service:

- (a) Your spouse;
- (b) Your natural, step, or adoptive parents if you are a child age seventeen or younger;
- (c) Your natural, step, or adoptive parent unless your parent is certified as a residential agency per chapter 388-101 WAC or is employed by a certified or licensed agency qualified to provide residential habilitation services.

NEW SECTION

WAC 388-845-1600 What is respite care? Respite care is intended to provide short-term intermittent relief for persons normally providing care for waiver individuals. This service is available in the Basic, Basic Plus, and CORE waivers.

NEW SECTION

WAC 388-845-1605 Who is eligible to receive respite care? The person providing your care is eligible to receive respite care if you are in the Basic, Basic Plus or CORE waiver and:

- (1) You live in a private home with an unpaid caregiver;
- or
- (2) You live with a paid caregiver who is:
 - (a) A natural, step or adoptive parent;
 - (b) A contracted companion home provider; or
 - (c) A licensed children's foster home provider.

NEW SECTION

WAC 388-845-1606 Can DDD approve an exception to the requirements in WAC 388-845-1605? DDD may approve an exception to WAC 388-845-1605 above only through June 30, 2006 if all of the following conditions exist:

- (1) Your live-in caregiver is a relative as defined in WAC 388-825-345(2);
- (2) You were living with this caregiver in January 2005;
- (3) Your relative caregiver was receiving payment from the department as your caregiver in January 2005; and
- (4) You were enrolled in the Basic, Basic Plus, or CORE Waiver in January 2005.

NEW SECTION

WAC 388-845-1610 Where can respite care be provided? Respite care can be provided in the following location(s):

- (1) Individual's home or place of residence;
- (2) Relative's home;
- (3) Licensed children's foster home;

- (4) Licensed, contracted and DDD certified group home;
- (5) State operated living alternative (SOLA) and other DDD certified supported living settings;
- (6) Licensed boarding home contracted as an adult residential center;
- (7) Adult residential rehabilitation center;
- (8) Licensed and contracted adult family home;
- (9) Children's licensed group home, licensed staffed residential home, or licensed childcare center;
- (10) Other community settings such as camp, senior center, or adult day care center.

NEW SECTION

WAC 388-845-1615 Who are qualified providers of respite care? Providers of respite care can be any of the following individuals or agencies contracted with DDD for respite care:

- (1) Individuals meeting the provider qualifications under chapter 388-825 WAC;
- (2) Homecare/home health agencies, licensed under chapter 246-335 WAC, Part 1;
- (3) Licensed and contracted group homes, foster homes, child placing agencies, staffed residential homes and foster group care homes;
- (4) Licensed and contracted adult family home;
- (5) Licensed and contracted adult residential care facility;
- (6) Licensed and contracted adult residential rehabilitation center under WAC 246-325-012;
- (7) Licensed childcare center under chapter 388-295 WAC;
- (8) Licensed child daycare center under chapter 388-295 WAC;
- (9) Adult daycare centers contracted with DDD;
- (10) Certified provider per chapter 388-101 WAC when respite is provided within the DDD contract for certified residential services; or
- (11) Other DDD contracted providers such as community center, senior center, parks and recreation, summer programs, adult day care.

NEW SECTION

WAC 388-845-1620 Are there limits to the respite care I can receive? The following limitations apply to the respite care you can receive:

- (1) If you are in the Basic or Basic Plus waiver, a respite care assessment will determine how much respite you can receive per WAC 388-845-3005 through WAC 388-845-3050.
- (2) If you are in the CORE waiver, the plan of care (POC), not the respite assessment, will determine the amount of respite care you can receive.
- (3) Prior approval by DDD is required to exceed fourteen days per month.
- (4) Respite cannot replace:
 - (a) Daycare while a parent or guardian is at work; and/or
 - (b) Personal care hours available to you. When determining your unmet need, DDD will first consider the personal care hours available to you.

(5) Respite providers have the following limitations and requirements:

(a) If respite is provided in a private home, the home must be licensed unless it is the client's home or the home of a relative of specified degree per WAC 388-825-345;

(b) The respite provider cannot be the spouse of the caregiver receiving respite if the spouse and the caregiver reside in the same residence; and

(c) If you receive respite from a provider who requires licensure, the respite services are limited to those age-specific services contained in the provider's license.

(6) Your caregiver cannot provide paid respite services for you or other persons during your respite care hours.

(7) If you require respite from a licensed practical nurse (LPN) or a registered nurse (RN), services may be authorized as skilled nursing services per WAC 388-845-1700 using an LPN or RN. If you are in the Basic Plus waiver, skilled nursing services are limited to the dollar limits of your aggregate services per WAC 388-845-0210. The dollar limit governing aggregate services does not apply to skilled nursing services provided as part of mental health stabilization services per WAC 388-845-1100(2).

NEW SECTION

WAC 388-845-1650 What are sexual deviation evaluations? Sexual deviation evaluations are professional evaluations of sexual deviancy to determine the need for psychological, medical or therapeutic services. Sexual deviancy evaluations are available in all four waivers.

NEW SECTION

WAC 388-845-1655 Who is a qualified provider of sexual deviation evaluations? The provider of sexual deviancy evaluations must:

- (1) Be a certified sexual offender treatment provider (SOTP); and
- (2) Meet the standards contained in WAC 246-930-030 (education required prior to examination) and WAC 246-930-040 (professional experience required prior to examination).

NEW SECTION

WAC 388-845-1660 Are there limitations to the sexual deviation evaluations I can receive? (1) The evaluations must meet the standards contained in WAC 246-930-320.

(2) The costs of sexual deviation evaluations do not count toward the dollar limits for aggregate services in the Basic or Basic Plus waivers.

NEW SECTION

WAC 388-845-1700 What is skilled nursing? (1) Skilled nursing is continuous, intermittent, or part time nursing services. These services are available in the Basic Plus, CORE, and Community Protection waivers.

(2) Services include nurse delegation services provided by a registered nurse, including the initial visit, follow-up instruction, and/or supervisory visits.

(3) These services are available in all four HCBS waivers administered by DDD as mental health stabilization services in accordance with WAC 388-845-1150 through 388-845-1160.

NEW SECTION

WAC 388-845-1705 Who is a qualified provider of skilled nursing services? The provider of skilled nursing services must be a licensed practical nurse (LPN) or registered nurse (RN) acting within the scope of the Nurse Practice Act chapter 246-845 WAC and contracted with DDD to provide this service.

NEW SECTION

WAC 388-845-1710 Are there limitations to the skilled nursing services I can receive? The following limitations apply to your receipt of skilled nursing services:

(1) Skilled nursing services require prior approval by DDD.

(2) The department and the treating professional determine the need for and amount of service.

(3) The department reserves the right to require a second opinion by a department-selected provider.

(4) Skilled nursing services provided as a mental health stabilization service require prior approval by DDD or its designee.

(5) The dollar limitation for aggregate services in your Basic Plus waiver limit the amount of skilled nursing services unless provided as a mental health stabilization service.

NEW SECTION

WAC 388-845-1800 What are specialized medical equipment and supplies? (1) Specialized medical equipment and supplies are services to help individuals with their activities of daily living or to better participate in their environment. These services are available in all four HCBS waivers.

(2) Included are devices, controls, appliances, and items necessary for life support; ancillary supplies and equipment necessary to the proper functioning of such items; and durable and nondurable medical equipment not available through Medicaid under the Medicaid state plan.

NEW SECTION

WAC 388-845-1805 Who are the qualified providers of specialized medical equipment and supplies? The provider of specialized medical equipment and supplies must be a medical equipment supplier contracted with DDD.

NEW SECTION

WAC 388-845-1810 Are there limitations to my receipt of specialized medical equipment and supplies? The following limitations apply to your receipt of specialized medical equipment and supplies:

(1) Prior approval by the department is required for each authorization.

(2) The department reserves the right to require a second opinion by a department-selected provider.

(3) Items reimbursed with waiver funds shall be in addition to any medical equipment and supplies furnished under the Medicaid state plan.

(4) Items must be of direct medical or remedial benefit to the individual and necessary as a result of the individual's disability.

(5) Medications, prescribed or nonprescribed, and vitamins are excluded.

(6) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

NEW SECTION

WAC 388-845-1900 What are specialized psychiatric services? (1) Specialized psychiatric services are specific to the individual needs of persons with developmental disabilities who are experiencing mental health symptoms. These services are available in all four HCBS waivers.

(2) Service may be any of the following:

(a) Psychiatric evaluation,

(b) Medication evaluation and monitoring,

(c) Psychiatric consultation.

(3) These services are also available as a mental health stabilization service in accordance with WAC 388-845-1150 through 388-845-1160.

NEW SECTION

WAC 388-845-1905 Who are qualified providers of specialized psychiatric services? Providers of specialized psychiatric services must be one of the following licensed or registered, and contracted healthcare professionals:

(1) Psychiatrist;

(2) Psychiatric advanced registered nurse practitioner (ARNP); or

(3) Physician assistant working under the supervision of a psychiatrist.

NEW SECTION

WAC 388-845-1910 Are there limitations to the specialized psychiatric services I can receive? (1) Specialized psychiatric services are excluded if they are available through other Medicaid programs.

(2) The dollar limitations for aggregate service in your Basic and Basic Plus waiver limit the amount of specialized psychiatric services unless provided as a mental health stabilization service.

(3) Specialized psychiatric services provided as a mental health stabilization service require prior approval by DDD or its designee.

NEW SECTION

WAC 388-845-2000 What is staff/family consultation and training? (1) Staff/family consultation and training is professional assistance to families or direct service providers to help them better meet the needs of the waiver person. This service is available in all four HCBS waivers.

(2) Consultation and training is provided to families, direct staff, or personal care providers to meet the specific needs of the waiver participant as outlined in the individual's plan of care, including:

- (a) Health and medication monitoring;
- (b) Positioning and transfer;
- (c) Basic and advanced instructional techniques;
- (d) Positive behavior support; and
- (e) Augmentative communication systems.

NEW SECTION

WAC 388-845-2005 Who is a qualified provider of staff/family consultation and training? To provide staff/family consultation and training, a provider must be one of the following licensed, registered or certified professionals and be contracted with DDD:

- (1) Audiologist;
- (2) Licensed practical nurse;
- (3) Marriage and family therapist;
- (4) Mental health counselor;
- (5) Occupational therapist;
- (6) Physical therapist;
- (7) Registered nurse;
- (8) Sex offender treatment provider;
- (9) Speech/language pathologist;
- (10) Social worker;
- (11) Psychologist;
- (12) Certified American Sign Language instructor;
- (13) Nutritionist;
- (14) Registered counselor; or
- (15) Certified dietician.

NEW SECTION

WAC 388-845-2010 Are there limitations to the staff/family consultation and training I can receive? (1) Expenses to the family or provider for room and board or attendance, including registration, at conferences are excluded as a service under staff/family consultation and training.

(2) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

NEW SECTION

WAC 388-845-2100 What is supported employment? Supported employment provides intensive ongoing individual or group support in a work setting to adults with develop-

mental disabilities. This service is available in all four HCBS waivers.

(1) Supported employment includes activities needed to sustain paid work by individuals receiving waiver services, including supervision and training.

(2) Supported employment is conducted in a variety of settings; particularly work sites in which persons without disabilities are employed.

NEW SECTION

WAC 388-845-2105 Who is a qualified provider of supported employment? A supported employment provider must be a county, or agencies or individuals contracted with a county or DDD.

NEW SECTION

WAC 388-845-2110 Are there limits to the supported employment I can receive? The following limitations apply to your receipt of supported employment:

(1) You must be age twenty-one and graduated from high school or age twenty-two or older.

(2) Payment will be made only for the adaptations, supervision, training, and support with the activities of daily living you require as a result of your disabilities.

(3) Payment is excluded for the supervisory activities rendered as a normal part of the business setting.

(4) You cannot be authorized to receive supported employment services if you receive community access services or prevocational services.

(5) The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of service you may receive.

NEW SECTION

WAC 388-845-2200 What are transportation services? Transportation services provide reimbursement to a provider when the transportation is required and specified in the waiver plan of care. This service is available in all four HCBS waivers.

(1) Transportation provides the person access to waiver services, specified by the plan of care.

(2) Whenever possible, the person must use family, neighbors, friends, or community agencies that can provide this service without charge.

NEW SECTION

WAC 388-845-2205 Who is qualified to provide transportation services? The provider of transportation services can be an individual or agency contracted with DDD.

NEW SECTION

WAC 388-845-2210 Are there limitations to the transportation services I can receive? The following limitations apply to transportation services:

(1) Transportation to/from medical or medically related appointments is a Medicaid transportation service and is to be considered and used first.

(2) Transportation is offered in addition to medical transportation but cannot replace Medicaid transportation services.

(3) Transportation is limited to travel to and from a waiver service.

(4) Transportation does not include the purchase of a bus pass.

(5) Reimbursement for provider mileage requires prior approval by DDD and is paid according to contract.

(6) This service does not cover the purchase or lease of vehicles.

(7) Reimbursement for provider travel time is not included in this service.

(8) Reimbursement to the provider is limited to transportation that occurs when you are with the provider.

(9) You are not eligible for transportation services if the cost and responsibility for transportation is already included in your waiver provider's contract and payment.

(10) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

ASSESSMENT AND PLAN OF CARE

NEW SECTION

WAC 388-845-3000 What is the process for determining the services I need? Your service needs are determined through the ICF-MR level of care assessment and the service planning process.

(1) You receive an initial and annual assessment of your needs using a department-approved form.

(a) The ICF-MR level of care assessment identifies your need for waiver services.

(b) The "comprehensive assessment reporting evaluation (CARE)" will determine your eligibility and amount of personal care services.

(c) If you are in the Basic or Basic Plus waiver, a DDD respite assessment will determine the amount of respite care available to you.

(2) From the assessment, DDD develops your waiver plan of care (POC) with you and/or your legal representative and others who are involved in your life such as your parent or guardian, advocate and service providers.

NEW SECTION

WAC 388-845-3005 What is the waiver respite assessment? The waiver respite assessment is a series of questions about you and your primary caregiver that will determine the amount of respite care available to you.

NEW SECTION

WAC 388-845-3010 Who must have a waiver respite assessment? (1) If you are in the Basic or Basic Plus waiver and are interested in receiving respite care, and are eligible

for respite care per WAC 388-845-1605, your personal care needs must first be assessed by CARE.

(2) A respite assessment will then determine the amount of respite care available to you.

NEW SECTION

WAC 388-845-3015 How is the waiver respite assessment administered? The waiver respite assessment is administered by department staff during an in-person interview with you if you choose to be present, and at least one other person with knowledge of you, such as your primary caregiver.

NEW SECTION

WAC 388-845-3020 Who can be the respondent for the waiver respite assessment? The respondent for your waiver respite assessment must be an adult who is well acquainted with you and can provide the information needed to complete the assessment, such as your primary caregiver.

(1) You cannot be the respondent for your own respite assessment.

(2) The department may select and interview additional respondents as needed to get complete and accurate information.

NEW SECTION

WAC 388-845-3025 How often is this waiver respite assessment completed? Your waiver respite assessment must be completed at the time of your CARE assessment/reassessment.

NEW SECTION

WAC 388-845-3030 What items are assessed to determine my respite allocation? The waiver respite assessment documents information about you and your caregiver. Information must reflect what is currently happening, not what may occur in the future or what has occurred more than thirty days ago. The information documented includes:

(1) The level of monitoring you require, above and beyond what is typically required for persons of similar age;

(2) Circumstances in your primary caregiver's life that may impact his/her care giving ability;

(3) The effect of your disability on other household members;

(4) Your primary caregiver's care giving responsibilities for others;

(5) How many parents, legal representatives and/or primary caregivers live in the same household as you;

(6) Availability of others to provide your care; and

(7) Your disability related emotional or behavior issues and how that affects your caregiver; the frequency and severity of these issues; and what a caregiver does to help you manage these behaviors.

NEW SECTION

WAC 388-845-3035 How is the waiver respite assessment scored? The responses to the waiver respite assessment are converted to a respite lid.

(1) The respite lid represents the maximum number of respite hours you are authorized to receive in a twelve-month period.

(2) You may use as many respite hours as you need, up to your assessed respite lid.

NEW SECTION

WAC 388-845-3040 When will the new respite assessment go into effect? The new respite assessment will be effective at the time of your next CARE assessment/reassessment.

NEW SECTION

WAC 388-845-3045 How will I know the results of my respite assessment? Your respite care allocation will be written into your plan of care as a separate, authorized service.

NEW SECTION

WAC 388-845-3050 What is the effective date of my respite allocation? Your respite care allocation is effective when your respite assessment is completed and authorized in your annual or amended POC.

NEW SECTION

WAC 388-845-3055 What is a waiver plan of care (POC)? (1) The plan of care is the primary tool DDD uses to determine and document your needs and to identify the services to meet those needs.

(2) Your plan must include:

(a) The services that you and DDD have agreed are necessary for you to receive in order to address your health and welfare needs as specified in WAC 388-845-3000;

(b) Both paid and unpaid services you receive or need;

(c) How often you will receive each waiver service; how long you will need it; and who will provide it; and

(d) Your signature on the plan indicating your agreement.

(3) You may choose any qualified provider for the service, who meets all of the following:

(a) Is able to meet your needs within the scope of their contract, licensure and certification;

(b) Is reasonably available;

(c) Meets provider qualifications in chapters 388-845 and 388-825 WAC for contracting; and

(d) Agrees to provide the service at department rates.

NEW SECTION

WAC 388-845-3060 When is my plan of care effective? Your plan of care is effective the date DDD signs and approves it.

NEW SECTION

WAC 388-845-3065 How long is my plan effective? Your plan of care is effective through the last day of the twelfth month following the effective date.

NEW SECTION

WAC 388-845-3070 What happens if I do not sign my plan of care? If DDD is unable to obtain the necessary signature on the plan of care from you or your legal representative, DDD will take one or more of the following actions:

(1) DDD will continue providing services as identified in your most current POC for up to thirty days from the date you were notified of the plan to implement your most current POC.

(2) After thirty days, unless you file an appeal, DDD will assume consent and implement the new POC without your signature or the signature of your legal representative.

(3) You will be provided written notification and appeal rights to this action to implement the new POC.

(4) Your appeal rights are in WAC 388-825-120 through 388-825-165.

NEW SECTION

WAC 388-845-3075 What if my needs change? You may request a review of your plan of care at any time by calling your case manager. If there is a significant change in your condition or circumstances, DDD must reassess your plan of care with you and amend the plan to reflect any significant changes. This reassessment does not affect the end date of your annual plan of care.

NEW SECTION

WAC 388-845-3080 What if my needs exceed the maximum yearly funding limit or the scope of services under the Basic or Basic Plus waiver? (1) If you are on the Basic or Basic Plus waiver and your assessed need for services exceeds the maximum permitted, DDD will make the following efforts to meet your health and welfare needs:

(a) Identify more available natural supports;

(b) Initiate an exception to rule to access available non-waiver services not included in the Basic or Basic Plus waiver other than natural supports;

(c) Authorize emergency services up to six thousand dollars per year if your needs meet the definition of emergency services in WAC 388-845-0800.

(2) If emergency services and other efforts are not sufficient to meet your needs, you will be offered:

(a) An opportunity to apply for an alternate waiver that has the services you need;

(b) Priority for placement on the alternative waiver when there is capacity to add people to that waiver;

(c) Placement in an ICF/MR.

(3) If none of the options in subsections (1) and (2) above is successful in meeting your health and welfare needs, DDD may terminate your waiver eligibility.

(4) If you are terminated from a waiver, you will remain eligible for nonwaiver DDD services but access to state-only funded DDD services is limited by availability of funding.

NEW SECTION

WAC 388-845-3085 What if my needs exceed what can be provided under the CORE or Community Protection waiver? (1) If you are on the CORE or Community Protection waiver and your assessed need for services exceeds the scope of services provided under your waiver, DDD will make the following efforts to meet your health and welfare needs:

- (a) Identify more available natural supports;
 - (b) Initiate an exception to rule to access available non-waiver services not included in the CORE or Community Protection waiver other than natural supports;
 - (c) Offer you the opportunity to apply for an alternate waiver that has the services you need, subject to WAC 388-845-0045;
 - (d) Offer you placement in an ICF/MR.
- (2) If none of the above options is successful in meeting your health and welfare needs, DDD may terminate your waiver eligibility.
- (3) If you are terminated from a waiver, you will remain eligible for nonwaiver DDD services but access to state-only funded DDD services is limited by availability of funding.

NEW SECTION

WAC 388-845-3090 What if my identified health and welfare needs are less than what is provided in my current waiver? If your identified health and welfare needs are less than what is provided in your current waiver, DDD may terminate you from your current waiver and enroll you in a waiver that meets but does not exceed your assessed need for waiver services.

NEW SECTION

WAC 388-845-3095 Will I have to pay toward the cost of waiver services? (1) Depending on your SSI status, Medicaid status, income and resources, you may be required to participate towards the cost of your care. DDD determines what amount, if any, you pay.

(2) If you live in a licensed facility, you participate from your earned and unearned income per rules in WAC 388-515-1510:

- (a) If you have nonexempt income that exceeds the cost of your waiver services, you may keep the difference.
- (b) If you are eligible for SSI, you pay only for room and board.
- (c) If you are not eligible for SSI, you may be required to participate towards the cost of your waiver services in addition to your facility room and board rate.

NEW SECTION

WAC 388-845-4000 What are my appeal rights under the waiver? You have appeal rights under WAC 388-825-120 to the following decisions:

- (1) Any denial, reductions, or termination of a service.
- (2) A denial or termination of your choice of a qualified provider.
- (3) Your termination from waiver eligibility.
- (4) Denial of your request to receive ICF/MR services instead of waiver services.

NEW SECTION

WAC 388-845-4005 Can I appeal a denial of my request to be enrolled in a waiver? You do not have an appeal right to a denial to be enrolled in a waiver.

NEW SECTION

WAC 388-845-4010 How do I appeal a department action? (1) Your rights to appeal a department decision are in RCW 71A.10.050 and WAC 388-825-120 and are limited to an applicant, recipient, or former recipient of services from the division of developmental disabilities.

(2) If you want to appeal a department action, you must request an appeal within ninety days from receipt of the department notice of the action you are disputing.

NEW SECTION

WAC 388-845-4015 Will my services continue during an appeal? Services may continue according to the provisions contained in WAC 388-825-145.

WSR 06-01-047

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed December 15, 2005, 4:40 p.m., effective January 15, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Chapter 388-78A WAC was amended to make the rule clearer; to eliminate redundancies and inconsistencies with other rules and statutes; to expand options for boarding homes to provide adult day services and thereby create more options for consumers; to respond in part to chapter 505, Laws of 2005, and to create more training options for boarding home administrators.

Citation of Existing Rules Affected by this Order: Amending WAC 388-78A-2020, 388-78A-2050, 388-78A-2100, 388-78A-2120, 388-78A-2270, 388-78A-2280, 388-78A-2300, 388-78A-2305, 388-78A-2360, 388-78A-2380, 388-78A-2470, 388-78A-2480, 388-78A-2500, 388-78A-2510, 388-78A-2520, 388-78A-2660, 388-78A-2700, 388-78A-2910, 388-78A-2920, 388-78A-2930, 388-78A-2940, 388-78A-2960, 388-78A-2990, 388-78A-3010, 388-78A-3030, 388-78A-3040, 388-78A-3090, 388-78A-3190, and 388-78A-3220.

Statutory Authority for Adoption: RCW 18.20.090.

Adopted under notice filed as WSR 05-20-079 on October 4, 2005.

Changes Other than Editing from Proposed to Adopted Version: "Resident" was deleted from WAC 388-78A-2360 (2)(i). The final rule for WAC 388-78A-2360 (2)(i) reads: "Maintain a record for each adult day services client."

"Or resident" was deleted from the proposed wording of WAC 388-78A-2660(7). The final rule for WAC 388-78A-2660(7) reads: The boarding home must: (7) "Not allow any staff person to abuse or neglect any resident."

A final cost-benefit analysis is available by contacting Denny McKee, ADSA Residential Care Services, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2590, fax (360) 438-7903, e-mail mckeedd@dshs.wa.gov. There are no changes to the preliminary cost-benefit analysis.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 29, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 29, Repealed 0.

Date Adopted: December 12, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2020 Definitions. "Abandonment" means action or inaction by a person with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a resident. In instances of abuse of a resident who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a resident, which have the following meanings:

(1) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a resident from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing;

(2) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints;

(3) **"Sexual abuse"** means any form of nonconsensual sexual contact, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person and a resident, whether or not it is consensual;

(4) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a resident causing the resident to act in a way that is inconsistent with relevant past behavior, or causing the resident to perform services for the benefit of another;

(5) **"Financial exploitation"** means the illegal or improper use of the property, income, resources, or trust funds of the (~~resident~~) **vulnerable adult** by any person for any person's profit or advantage.

"Activities of daily living" means the following tasks related to basic personal care: Bathing; toileting; dressing; personal hygiene; mobility; transferring; and eating.

"Adult day (~~care~~) services" means care and services provided to individuals on the boarding home premises for a period of less than twenty-four continuous hours and does not involve an overnight stay.

"Ambulatory" means capable of walking or traversing a normal path to safety without the physical assistance of another individual:

(1) **"Nonambulatory"** means unable to walk or traverse a normal path to safety without the physical assistance of another individual;

(2) **"Semiambulatory"** means physically and mentally capable of traversing a normal path to safety with the use of mobility aids, but unable to ascend or descend stairs without the physical assistance of another individual.

"Applicant" means the person, as defined in this section, that has submitted, or is in the process of submitting, an application for a boarding home license.

"Basic services" means housekeeping services, meals, nutritious snacks, laundry, and activities.

"Bathing fixture" means a bathtub, shower or sit-down shower.

"Bathroom" means a room containing at least one bathing fixture.

"Boarding home" means any home or other institution, however named, which is advertised, announced, or maintained for the express or implied purpose of providing housing, basic services, and assuming general responsibility for the safety and well-being of the residents, and may also provide domiciliary care, consistent with this chapter to seven or more residents after July 1, 2000. However, a boarding home that is licensed for three to six residents prior to or on July 1, 2000, may maintain its boarding home license as long as it is continually licensed as a boarding home. "Boarding home" does not include facilities certified as group training homes pursuant to RCW 71A.22.040, nor any home, institution or section thereof which is otherwise licensed and regulated under the provisions of state law providing specifically for the licensing and regulation of such home, institution or section thereof. Nor shall it include any independent senior housing, independent living units in continuing care retirement communities, or other similar living situations including those subsidized by the Department of Housing and

Urban Development. "Boarding home" may also include persons associated with the boarding home to carry out its duties under this chapter.

"Building code" means the building codes and standards adopted by the Washington state building code council.

"Caregiver" means anyone providing hands-on personal care to another person including, but not limited to: Cuing, reminding or supervision of residents, on behalf of a boarding home, except volunteers who are directly supervised. Direct supervision means oversight by a person who has demonstrated competency in the basic training (and specialty training if required), or who has been exempted from the basic training requirements, is on the premises, and is quickly and easily available to the caregiver.

"Construction review services" means the office of construction review services within the Washington state department of health.

"Continuing care contract" means, as stated in RCW 70.38.025, a contract providing a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services, which is conditioned upon the transfer of property, the payment of an entrance fee to the provider of such services, or the payment of periodic charges for the care and services involved. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

"Continuing care retirement community" means, as stated in RCW 70.38.025, an entity which provides shelter and services under continuing care contracts with its members and which sponsors or includes a health care facility or a health service.

"Contractor" means an agency or person who contracts with a licensee to provide resident care, services or equipment.

"Crimes relating to financial exploitation" means the same as "crimes relating to financial exploitation" as defined in RCW 43.43.830 or 43.43.842.

"Department" means the Washington state department of social and health services.

"Dietitian" means an individual certified under chapter 18.138 RCW.

"Document" means to record, with signature, title, date and time:

(1) Information about medication administration, medication assistance or disposal, a nursing care procedure, accident, occurrence or change in resident condition that may affect the care or needs of a resident; and

(2) Processes, events or activities that are required by law, rule or policy.

"Domiciliary care" means:

(1) Assistance with activities of daily living provided by the boarding home either directly or indirectly; or

(2) Health support services, if provided directly or indirectly by the boarding home; or

(3) Intermittent nursing services, if provided directly or indirectly by the boarding home.

"Enforcement remedy" means one or more of the department's responses to a boarding home's noncompliance

with chapter 18.20 RCW and this chapter, as authorized by RCW 18.20.190.

"Food service worker" means according to chapter 246-217 WAC an individual who works (or intends to work) with or without pay in a food service establishment and handles unwrapped or unpackaged food or who may contribute to the transmission of infectious diseases through the nature of his/her contact with food products and/or equipment and facilities. This does not include persons who simply assist residents with meals.

"General responsibility for the safety and well-being of the resident" means the provision of the following:

(1) Prescribed general low sodium diets;

(2) Prescribed general diabetic diets;

(3) Prescribed mechanical soft foods;

(4) Emergency assistance;

(5) Monitoring of the resident;

(6) Arranging health care appointments with outside health care providers and reminding residents of such appointments as necessary;

(7) Coordinating health care services with outside health care providers consistent with WAC 388-78A-2350;

(8) Assisting the resident to obtain and maintain glasses, hearing aids, dentures, canes, crutches, walkers, wheelchairs, and assistive communication devices;

(9) Observation of the resident for changes in overall functioning;

(10) Blood pressure checks as scheduled;

(11) Responding appropriately when there are observable or reported changes in the resident's physical, mental, or emotional functioning; or

(12) Medication assistance as permitted under RCW 69.41.085 and as described in RCW 69.41.010 and chapter 246-888 WAC.

"Harm" means a physical or mental or emotional injury or damage to a resident including those resulting from neglect or violations of a resident's rights.

"Health support services" means any of the following optional services:

(1) Blood glucose testing;

(2) Puree diets;

(3) Calorie controlled diabetic diets;

(4) Dementia care;

(5) Mental health care; or

(6) Developmental disabilities care.

"Independent living unit" means:

(1) Independent senior housing;

(2) Independent living unit in a continuing care retirement community or other similar living environments;

(3) Boarding home unit where domiciliary services are not provided; or

(4) Boarding home unit where one or more items listed under "general responsibilities" are not provided.

"Independent senior housing" means an independent living unit occupied by an individual or individuals sixty or more years of age.

"Infectious" means capable of causing infection or disease by entrance of organisms into the body, which grow and multiply there, including, but not limited to, bacteria, viruses, protozoans, and fungi.

"Licensee" means the person, as defined in this chapter, to whom the department issues the boarding home license.

"Licensed resident bed capacity" means the resident occupancy level requested by the licensee and approved by the department. All residents receiving domiciliary care or the items or services listed under general responsibility for the safety and well-being of the resident as defined in this section count towards the licensed resident bed capacity. Adult day ~~((care))~~ services clients do not count towards the licensed resident bed capacity.

"Majority owner" means any person that owns:

- (1) More than fifty percent interest; or
- (2) If no one person owns more than fifty percent interest, the largest interest portion; or
- (3) If more than one person owns equal largest interest portions, then all persons owning those equal largest interest portions.

"Manager" means the person defined in this chapter, providing management services on behalf of the licensee.

"Management agreement" means a written, executed agreement between the licensee and the manager regarding the provision of certain services on behalf of the licensee.

"Maximum facility capacity" means the maximum number of individuals that the boarding home may serve at any one time, as determined by the department.

(1) The maximum facility capacity includes all residents and respite care residents and adult day ~~((care))~~ services clients.

(2) The maximum facility capacity is equal to the lesser of:

(a) The sum of the number of approved bed spaces for all resident rooms (total number of approved bed spaces), except as specified in subsection (3); or

(b) Twice the seating capacity of the dining area(s) consistent with WAC 388-78A-2300 (1)(h); or

(c) The number of residents permitted by calculating the ratios of toilets, sinks, and bathing fixtures to residents consistent with WAC 388-78A-3030; or

(d) For boarding homes licensed on or before December 31, 1988, the total day room area in square feet divided by ten square feet, consistent with WAC 388-78A-3050; or

(e) For boarding homes licensed after December 31, 1988, the total day room area in square feet divided by twenty square feet, consistent with WAC 388-78A-3050.

(3) For the purposes of providing adult day services consistent with WAC 388-78A-2360, one additional adult day services client may be served, beyond the total number of approved bed spaces, for each additional sixty square feet of day room area greater than the area produced by multiplying the total number of approved bed spaces by twenty square feet, provided that:

(a) There is a least one toilet and one hand washing sink accessible to adult day services clients for every eight adult day services clients or fraction thereof;

(b) The total number of residents and adult day services clients does not exceed twice the seating capacity of the dining area(s) consistent with WAC 388-78A-2300 (1)(h); and

(c) The adult day services program area(s) and building do not exceed the occupancy load as determined by the local building official or state fire marshal.

"Medication administration" means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the body of the resident by an individual legally authorized to do so.

"Medication assistance" means assistance with self-administration of medication rendered by a nonpractitioner to a resident of a boarding home in accordance with chapter 246-888 WAC.

"Medication organizer" means a container with separate compartments for storing oral medications organized in daily doses.

"Medication service" means any service provided either directly or indirectly by a boarding home related to medication administration, medication administration provided through nurse delegation, medication assistance, or resident self-administration of medication.

"Neglect" means:

(1) A pattern of conduct or inaction resulting in the failure to provide the goods and services that maintain physical or mental health of a resident, or that fails to avoid or prevent physical or mental harm or pain to a resident; or

(2) An act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the resident's health, welfare, or safety.

"Nonresident individual" means an individual who resides in independent senior housing, independent living units in continuing care retirement communities, or in other similar living environments or in a boarding home and may receive one or more of the services listed in WAC 388-78A-2030 (2)(a) through (g), but may not receive domiciliary care as defined in this section, directly or indirectly by the facility, and may not receive the items or services listed under general responsibility for the safety and well-being of the resident as defined in this section.

"Nonpractitioner" means any individual who is not a practitioner as defined in WAC 388-78A-2020 and chapter 69.41 RCW.

"Nurse" means an individual currently licensed under chapter 18.79 RCW as either a:

- (1) **"Licensed practical nurse"** (LPN); or
- (2) **"Registered nurse"** (RN).

"Over-the-counter (OTC) medication" means any medication that may be legally purchased without a prescriptive order, including, but not limited to, aspirin, antacids, vitamins, minerals, or herbal preparations.

"Person" means any individual, firm, partnership, corporation, company, association, joint stock association or any other legal or commercial entity.

"Physician" means an individual licensed under chapter 18.57 or 18.71 RCW.

"Practitioner" includes a licensed physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant. Refer to chapter 69.41 RCW for a complete listing of practitioners.

"Prescribed medication" means any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

"Prescriber" means a health care practitioner authorized by Washington state law to prescribe drugs.

"Problem" means a violation of any WAC or RCW applicable to the operation of a boarding home:

(1) **"Recurring problem"** means, for all purposes other than those described in RCW 18.20.400, that the department has cited the boarding home for a violation of WAC or RCW and the circumstances of (a) or (b) of this subsection are present:

(a) The department previously imposed an enforcement remedy for a violation of the same section of WAC or RCW for substantially the same problem following any type of inspection within the preceding thirty-six months; or

(b) The department previously cited a violation under the same section of WAC or RCW for substantially the same problem following any type of inspection on two occasions within the preceding thirty-six months.

(c) If the previous violation in (a) or (b) of this subsection was pursuant to WAC or RCW that has changed at the time of the new violation, citation to the equivalent current WAC or RCW section is sufficient.

(d) When there is a change in licensees between the first and the second or third citations, the new licensee must accept, and the department will consider, the prior licensee's compliance and enforcement record as part of the new licensee's compliance record at that boarding home if any person affiliated with the new licensee was affiliated with the prior licensee at the same boarding home. A person is considered affiliated with the licensee if the person is an applicant for the boarding home license, or is listed on the license application as a partner, officer, director, or majority owner of the applicant.

(2) **"Serious problem"** means:

(a) There has been a violation of a WAC or RCW; and

(b) Significant harm has actually occurred to a resident;

or

(c) It is likely that significant harm or death will occur to a resident.

(3) **"Uncorrected problem"** means the department has cited a violation of WAC or RCW following any type of inspection and the violation remains uncorrected at the time the department makes a subsequent inspection for the specific purpose of verifying whether such violation has been corrected. When a change in licensees occurs, the new licensee is responsible for correcting any remaining violations that may exist, including complying with any plan of correction in effect immediately prior to the change in licensees.

"Prospective resident" means an individual who is seeking admission to a licensed boarding home and who has completed and signed an application for admission, or such application for admission has been completed and signed in their behalf by their legal representative if any, and if not, then the designated representative if any.

"Reasonable accommodation" and **"reasonably accommodate"** have the meaning given in federal and state antidiscrimination laws and regulations which include, but are not limited to, the following:

(1) Reasonable accommodation means that the boarding home must:

(a) Not impose admission criteria that excludes individuals unless the criteria is necessary for the provision of boarding home services;

(b) Make reasonable modification to its policies, practices or procedures if the modifications are necessary to accommodate the needs of the resident;

(c) Provide additional aids and services to the resident.

(2) Reasonable accommodations are not required if:

(a) The resident or individual applying for admission presents a significant risk to the health or safety of others that cannot be eliminated by the reasonable accommodation;

(b) The reasonable accommodations would fundamentally alter the nature of the services provided by the boarding home; or

(c) The reasonable accommodations would cause an undue burden, meaning a significant financial or administrative burden.

"RCW" means Revised Code of Washington.

"Records" means:

(1) **"Active records"** means the current, relevant documentation regarding residents necessary to provide care and services to residents; or

(2) **"Inactive records"** means historical documentation regarding the provision of care and services to residents that is no longer relevant to the current delivery of services and has been thinned from the active record.

"Resident" means an individual who:

(1) Chooses to reside in a boarding home, including an individual receiving respite care;

(2) Is not related by blood or marriage to the operator of the boarding home;

(3) Receives basic services; and

(4) Receives one or more of the services listed under general responsibility for the safety and well-being of the resident, and may receive domiciliary care or respite care provided directly, or indirectly, by the boarding home.

"Resident's representative" means:

(1) The legal representative who is the person or persons identified in RCW 7.70.065 and who may act on behalf of the resident pursuant to the scope of their legal authority. The legal representative shall not be affiliated with the licensee, boarding home, or management company, unless the affiliated person is a family member of the resident; or

(2) If there is no legal representative, a person designated voluntarily by a competent resident in writing, to act in the resident's behalf concerning the care and services provided by the boarding home and to receive information from the boarding home if there is no legal representative. The resident's representative may not be affiliated with the licensee, boarding home, or management company, unless the affiliated person is a family member of the resident. The resident's representative under this subsection shall not have authority to act on behalf of the resident once the resident is no longer competent. The resident's competence shall be determined using the criteria in RCW 11.88.010 (1)(e).

"Respite care" means short-term care for any period in excess of twenty-four continuous hours for a resident to temporarily relieve the family or other caregiver of providing that care.

"Restraint" means any method or device used to prevent or limit free body movement, including, but not limited to:

(1) Confinement, unless agreed to as provided in WAC 388-78A-2370;

(2) **"Chemical restraint"** which means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms; and

(3) **"Physical restraint"** which means a manual method, obstacle, or physical or mechanical device, material, or equipment attached to the resident's body that restricts freedom of movement or access to his or her body, is used for discipline or convenience, and not required to treat the resident's medical symptoms.

"Room" means a space set apart by floor to ceiling partitions on all sides with all openings provided with doors or windows.

(1) **"Sleeping room"** means a room where a resident is customarily expected to sleep and contains a resident's bed.

(2) **"Resident living room"** means the common space in a resident unit that is not a sleeping room, bathroom or closet.

"Significant change" means a change in the resident's physical, mental, or psychosocial status that causes either life-threatening conditions or clinical complications.

"Special needs" means a developmental disability, mental illness, or dementia.

"Staff person" means any boarding home employee or temporary employee or contractor, whether employed or retained by the licensee or any management company, or volunteer.

"State fire marshal" means the director of fire protection under the direction of the chief of the Washington state patrol.

"Toilet" means a disposal apparatus used for urination and defecation, fitted with a seat and flushing device.

"Volunteer" means an individual who interacts with residents without reimbursement.

"Vulnerable adult" means "vulnerable adult" as defined in chapter 74.34 RCW. For the purposes of requesting and receiving background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

"WAC" means Washington Administrative Code.

"WISHA" means the Washington Industrial Safety and Health Act, chapter 49.17 RCW administered by the Washington state department of labor and industries.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2050 Resident characteristics. The boarding home may admit and retain an individual as a resident in a boarding home only if:

(1) The boarding home can safely and appropriately serve the individual with appropriate available staff providing:

(a) The scope of care and services described in the boarding home's disclosure information, except if the boarding home chooses to provide additional services consistent with RCW 18.20.300(4); and

(b) The reasonable accommodations required by state or federal law, including providing any specialized training to caregivers that may be required according to WAC 388-78A-2490 through 388-78A-2510;

(2) The individual does not require the frequent presence and frequent evaluation of a registered nurse, excluding those individuals who are receiving hospice care or individuals who have a short-term illness that is expected to be resolved within fourteen days as long as the boarding home has the capacity to meet the individual's identified needs; and

(3) The individual is ambulatory, unless the boarding home is approved by the Washington state director of fire protection to care for semiambulatory or nonambulatory residents.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2100 On-going assessments. The boarding home must:

(1) Complete a full assessment addressing the elements set forth in WAC 388-78A-2090 for each resident at least annually;

(2) Complete an assessment specifically focused on a resident's identified problems and related issues:

(a) Consistent with the resident's change of condition as specified in WAC 388-78A-2120; ~~((\emptyset))~~

(b) When the resident's negotiated service agreement no longer addresses the resident's current needs and preferences;

(c) When the resident has an injury requiring the intervention of a practitioner.

(3) Ensure the staff person performing the on-going assessments is qualified to perform them.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2120 Monitoring residents' well-being. The boarding home must:

(1) Observe each resident consistent with his or her assessed needs and negotiated service agreement;

(2) Identify any changes in the resident's physical, emotional, and mental functioning that are a:

(a) Departure from the resident's customary range of functioning; or

(b) Recurring condition in a resident's physical, emotional, or mental functioning that has previously required intervention by others.

(3) Evaluate ~~((the change identified in the resident per subsection (2) of this section)), in order to determine if there is a need for further action((, including, but not limited to, assessment));~~

(a) The changes identified in the resident per subsection (2) of this section; and

(b) Each resident when an accident or incident that is likely to adversely affect the resident's well-being, is observed by or reported to staff persons.

(4) ~~((Ensure that changes that may require further action by the boarding home are documented in the resident's record, including dates, times, and facts;~~

~~(5) Assess a resident consistent with WAC 388-78A-2100 if assessment is identified as needed;~~

~~(6) Update the negotiated service agreement as needed; and~~

~~(7)) Take appropriate action in response to each resident's changing needs.~~

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2270 Resident controlled medications. (1) The boarding home must ensure all medications are stored in a manner that prevents each resident from gaining access to another resident's medications.

(2) The boarding home must allow a resident ~~((s who are assessed to be capable of self-administration or self-administration with assistance))~~ to control and secure the medications ~~((they))~~ that he or she self-administers or self-administers with assistance if the boarding home assesses the resident to be capable of safely and appropriately storing his or her own medications and the resident desires to do so.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2280 Medication organizers. (1) The boarding home must ensure no staff person other than a nurse or licensed pharmacist fills medication organizers for residents.

(2) ~~((A))~~ The boarding home must ensure that any nurse ((may)) who fills a medication organizer for a resident ((only when)) labels the medication organizer with:

~~(a) ((The resident understands the use of the medications that have been prescribed for him or her; and~~

~~(b) The resident is totally independent with self-administration of medications when using a medication organizer, except for the physical assistance required to fill the medication organizer, or the resident can safely direct others to administer his or her medications; and~~

~~(c) Staff persons have no further responsibility for:~~

~~(i) Storing the resident's medication; or~~

~~(ii) Providing any additional medication assistance to the resident beyond filling the medication organizer; or~~

~~(iii) Providing medication administration services to the resident.~~

~~(d) The medication organizer carries a label that clearly identifies:~~

~~(i)) The name of the resident;~~

~~((i))~~ (b) The name of the medications in the organizer; and

~~((iii))~~ (c) The frequency of the dosage.

~~((3))~~ The boarding home must ensure a licensed pharmacy has filled the medication organizer any time the boarding home is:

~~(a) Involved in storing the resident's medications;~~

~~(b) Providing medication assistance to the resident; or~~

~~(c) Providing medication administration services to the resident.)~~

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2300 Food and nutrition services. (1)

The boarding home must:

(a) Provide a minimum of three meals a day:

(i) At regular intervals;

(ii) With no more than fourteen hours between the evening meal and breakfast, unless the boarding home provides a nutritious snack after the evening meal and before breakfast.

(b) Provide sufficient time and staff support for residents to consume meals;

(c) Ensure all menus:

(i) Are written at least one week in advance and delivered to residents' rooms or posted where residents can see them, except as specified in (f) of this subsection;

(ii) Indicate the date, day of week, month and year;

(iii) Include all food and snacks served that contribute to nutritional requirements;

(iv) Are ~~((retained))~~ kept at least six months;

(v) Provide a variety of foods; and

(vi) Are not repeated for at least three weeks, except that breakfast menus in boarding homes that provide a variety of daily choices of hot and cold foods are not required to have a minimum three-week cycle.

(d) Prepare on-site, or provide through a contract with a food service establishment located in the vicinity and that meets the requirements of chapter 246-215 WAC, palatable, attractively served meals and nourishments that meet the current recommended dietary allowances established by the Food and Nutrition Board, National Research Council, adjusted for:

(i) Age, gender and activities, unless medically contraindicated; and

(ii) Individual preferences to the extent reasonably possible.

(e) Substitute foods, when changes in the current day's menu are necessary, of equal nutrient value and record changes on the original menu;

(f) Make available and known to residents alternate choices in entrees for midday and evening meals that are of comparable quality and nutritional value. The boarding home is not required to post alternate choices in entrees on the menu one week in advance, but must record on the menus the alternate choices in entrees that are served;

(g) Develop, make known to residents, and implement a process for residents to express their views and comment on the food services; and

(h) Maintain a dining area or areas approved by the department with a seating capacity for fifty percent or more of the residents per meal setting, or ten square feet times the licensed resident bed capacity, whichever is greater.

(2) The boarding home must plan in writing, prepare on-site or provide through a contract with a food service establishment located in the vicinity that meets the requirements of chapter 246-215 WAC, and serve to each resident as ordered:

(a) Prescribed general low sodium, general diabetic, and mechanical soft food diets according to a diet manual. The boarding home must ensure the diet manual is:

(i) Available to and used by staff persons responsible for food preparation;

(ii) Approved by a dietitian; and

(iii) Reviewed and updated as necessary or at least every five years.

(b) Prescribed nutrient concentrates and supplements when prescribed in writing by a health care practitioner.

(3) The boarding home may provide to a resident at his or her request and as agreed upon in the resident's negotiated service agreement, nonprescribed:

(a) Modified or therapeutic diets;

(b) Nutritional concentrates or supplements.

~~((4) The boarding home must manage food, and maintain any on-site food service facilities in compliance with chapter 246-215 WAC, Food service sanitation, except that boarding homes licensed for sixteen or fewer beds may use domestic or home-type kitchen appliances, provided that:~~

~~(a) If a home-type mechanical dishwasher was installed before September 1, 2004, the boarding home must:~~

~~(i) Operate it according to manufacturer directions; and~~

~~(ii) Ensure the dishwasher is supplied with water heated to 155°F or more.~~

~~(b) If a home-type mechanical dishwasher is installed after September 1, 2004, the boarding home must ensure the dishwasher has:~~

~~(i) A high temperature final rinse water at a minimum of 180°F measured by the gauge;~~

~~(ii) A high temperature final rinse resulting in a minimum of 160°F measured at the surface of the utensil;~~

~~(iii) A continuous supply of water heated to 155°F throughout its operating cycle; or~~

~~(iv) An automatically dispensed approved concentration of chemical sanitizer as described in 21 C.F.R. Part 178.~~

~~(5) The boarding home must ensure employees working as food service workers obtain a food worker card according to chapter 246-217 WAC.~~

~~(6) The boarding home must ensure a resident obtains a food worker card according to chapter 246-217 WAC whenever:~~

~~(a) The resident is routinely or regularly involved in the preparation of food to be served to other residents;~~

~~(b) The resident is paid for helping to prepare food; or~~

~~(c) The resident is preparing food to be served to other residents as part of an employment training program.))~~

NEW SECTION

WAC 388-78A-2305 Food sanitation. The boarding home must:

(1) Manage food, and maintain any on-site food service facilities in compliance with chapter 246-215 WAC, Food service;

(2) Ensure employees working as food service workers obtain a food worker card according to chapter 246-217 WAC; and

(3) Ensure a resident obtains a food worker card according to chapter 246-217 WAC whenever:

(a) The resident is routinely or regularly involved in the preparation of food to be served to other residents;

(b) The resident is paid for helping to prepare food; or

(c) The resident is preparing food to be served to other residents as part of an employment-training program.

Adult Day ((Care) Services

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2360 Adult day ((eare) services. (1) The boarding home may, but is not required to, provide an adult day ((eare) services program for nonresidents.

(2) If adult day ((eare-is) services are provided, the boarding home must:

(a) Ensure each adult day ((eare) services client receives appropriate supervision and agreed upon care and services during the time spent in the day ((eare) services program;

(b) Ensure the care and services provided to adult day ((eare) services clients do not compromise the care and services provided to boarding home residents;

(c) Ensure the total number of residents plus adult day ((eare) services clients does not exceed the boarding home's maximum facility capacity;

(d) Only accept adult day ((eare) services clients who are appropriate for boarding home care and services, consistent with WAC 388-78A-2050;

(e) Provide sufficient furniture for the comfort of day ((eare-adults) services clients, in addition to furniture provided for residents;

(f) Notify appropriate individuals specified in the client's record and consistent with WAC 388-78A-2640 when there is a significant change in the condition of an adult day ((eare) services client;

(g) Investigate and document incidents and accidents involving adult day ((eare) services clients consistent with WAC 388-78A-2700;

(h) Maintain a separate register of adult day ((eare) services clients; and

(i) Maintain a ((resident)) record for each adult day ((eare) services client.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2380 Restricted egress. A boarding home must ensure all of the following conditions are present before moving residents into units or buildings with exits that may restrict a resident's egress:

(1) Each resident, or a person authorized under RCW 7.70.065 to provide consent on behalf of the resident, consents to living in such unit or building.

(2) Each resident assessed as being cognitively and physically able to safely leave the boarding home is able to do so independently without restriction.

(3) Each resident, assessed as being cognitively able to safely leave the boarding home and who has physical challenges that make exiting difficult, is able to leave the boarding home when the resident desires and in a manner consistent with the resident's negotiated service agreement.

(4) Each resident who is assessed as being unsafe to leave the boarding home unescorted is able to leave the

boarding home consistent with his or her negotiated service agreement.

(5) Areas from which egress is restricted are equipped throughout with an approved automatic fire detection system and automatic fire sprinkler system electrically interconnected with a fire alarm system that transmits an alarm off site to a twenty-four hour monitoring station.

(6) Installation of special egress control devices in all proposed construction issued a project number by construction review services on or after September 1, 2004 for construction related to this section, must conform to standards adopted by the state building code council.

(7) Installation of special egress control devices in all construction issued a project number by construction review services (~~(prior to)~~ before September 1, 2004 for construction related to this section, must conform to the following:

(a) The egress control device must automatically deactivate upon activation of either the sprinkler system or the smoke detection system.

(b) The egress control device must automatically deactivate upon loss of electrical power to any one of the following:

- (i) The egress control device itself;
- (ii) The smoke detection system; or
- (iii) The means of egress illumination.

(c) The egress control device must be capable of being deactivated by a signal from a switch located in an approved location.

(d) An irreversible process which will deactivate the egress control device must be initiated whenever a manual force of not more than fifteen pounds is applied for two seconds to the panic bar or other door-latching hardware. The egress control device must deactivate within an approved time period not to exceed a total of fifteen seconds. The time delay must not be field adjustable.

(e) Actuation of the panic bar or other door-latching hardware must activate an audible signal at the door.

(f) The unlatching must not require more than one operation.

(g) A sign must be provided on the door located above and within twelve inches of the panic bar or other door-latching hardware reading:

"Keep pushing. The door will open in fifteen seconds. Alarm will sound."

The sign lettering must be at least one inch in height and must have a stroke of not less than one-eighth inch.

(h) Regardless of the means of deactivation, relocking of the egress control device must be by manual means only at the door.

(8) The boarding home must have a system in place to inform and permit visitors, staff persons and appropriate residents how they can exit without sounding the alarm.

(9) Units or buildings from which egress is restricted are equipped with a secured outdoor space for walking which:

- (a) Is accessible to residents without staff assistance;
- (b) Is surrounded by walls or fences at least seventy-two inches high;
- (c) Has areas protected from direct sunshine and rain throughout the day;

(d) Has walking surfaces that are firm, stable, slip-resistant and free from abrupt changes and are suitable for individuals using wheelchairs and walkers; and

(e) Has suitable outdoor furniture.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2470 Criminal history background checks. (1) This section applies to any individual associated with the licensee or boarding home who may have unsupervised access to residents, including but not limited to:

(a) Employees;

(b) Managers;

(c) Volunteers who are not residents;

(d) Contractors; and

(e) Students.

(2) The boarding home must:

(a) Ensure any individual associated with the licensee or boarding home who may have unsupervised access to residents has had a background check of conviction records, pending charges and disciplinary board decisions completed within the past two years, and is repeated every two years thereafter, and that individual has not been:

(i) Convicted of a crime against children or other persons as defined in RCW 43.43.830 or 43.43.842;

(ii) Convicted of ~~((a))~~ crimes relating to financial exploitation as defined in RCW 43.43.830 or 43.43.842;

(iii) Found in any disciplinary board final decision to have abused a vulnerable adult as defined in RCW 43.43.830;

(iv) The subject in a protective proceeding under chapter 74.34 RCW;

(v) Convicted of criminal mistreatment; or

(vi) Found by the department to have abused, neglected, or exploited a minor or vulnerable person, provided the individual was offered an administrative hearing to contest the finding, and the finding was upheld, or the individual failed to timely appeal the finding.

(b) Not hire or retain, directly or by contract, or accept as a volunteer, any individual prohibited from having unsupervised access to residents ~~((c))~~ under (a) of this subsection, except as provided in subsection (6) of this section and RCW 43.43.842.

~~(((e)) Not hire, directly or by contract, or accept as a volunteer, any individual who may have unsupervised access to residents, prior to receiving favorable results of the background check except as specified in subsection (2) of this section.~~

~~((d))~~ (3) Prior to first starting his or her duties, the boarding home must:

(a) Require each prospective employee, manager, volunteer, contractor and student associated with the licensee or boarding home who may have unsupervised access to residents to disclose, consistent with RCW 43.43.834(2), whether he or she:

(i) Has been convicted of a crime, including any of the following as defined in RCW 43.43.830:

(A) All crimes against children or other persons;

(B) All crimes relating to financial exploitation; and

(C) All crimes relating to drugs;

(ii) Has had findings made against him or her in any civil adjudicative proceeding as defined in RCW 43.43.830; or

(iii) Has both convictions for (i) and findings made against him or her under (ii).

(b) Require each individual making the disclosures required in subsection (3)(a) of this section:

(i) To make the disclosures in writing;

(ii) To swear under penalty of perjury that the contents of the disclosure are accurate; and

(iii) To sign the disclosure statement.

(4) Prior to first starting his or her duties, the boarding home must take one or more of the following three actions for each prospective employee, manager, volunteer, contractor and student associated with the licensee or boarding home who may have unsupervised access to residents:

(a) Initiate a background check on the individual through the department, which includes taking the following actions:

(i) Informing ~~((every))~~ the individual ~~((who is associated with the boarding home and who will have unsupervised access to residents in the boarding home,))~~ that a background check is required. ~~((This requirement includes, but is not limited to, the following:~~

~~(i) Employees;~~

~~(ii) Managers;~~

~~(iii) Volunteers who are not residents;~~

~~(iv) Contractors; and~~

~~(v) Students.~~

~~(e) Require~~ (ii) Requiring the individual ~~((s identified in (d) of this subsection))~~ to complete and sign a DSHS background authorization form prior to the individual having unsupervised access to residents;

~~((f))~~ (iii) Submitting all background check authorization forms to the department's:

~~((g))~~ (A) Aging and disability services administration with the initial application for licensure; and

~~((h))~~ (B) Background check central unit ~~((every two years for each individual identified in (d) of this subsection. A background check result is only valid for two years from the date it is conducted))~~ for currently licensed boarding homes.

~~((i))~~ (iv) Verbally informing the named individual of his/her individual background check results and offering to provide him or her a copy of the background check results within ten days of receipt~~((;))~~.

(b) Obtain from the individual's prior employer a copy of the completed criminal background inquiry information for the individual, subject to the following conditions:

(i) The prior employer was a nursing home licensed under chapter 18.51 RCW, a boarding home licensed under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW;

(ii) The nursing home, boarding home or adult family home providing completed criminal background inquiry information for the individual is reasonably known to be the individual's most recent employer;

(iii) No more than twelve months has elapsed from the date the individual was employed by the nursing home, boarding home or adult family home and the date of the individual's current application;

(iv) The background inquiry for the individual is no more than two years old; and

(v) The boarding home has no reason to believe the individual has or may have a disqualifying conviction or finding as described in RCW 43.43.842.

(c) When using staff persons from a home health, hospice, or home care agency licensed under chapter 70.127 RCW, or a nursing pool registered under chapter 18.52C RCW, the boarding home must establish, maintain and follow a written agreement with the agency or pool to ensure the requirements of subsection (2) of this section are met for the agency or pool staff who may work in the boarding home.

~~((h))~~ (5) The boarding home must ensure that all disclosure statements, and background check results obtained by the boarding home, are:

~~((i))~~ (a) Maintained on-site in a confidential and secure manner;

~~((ii))~~ (b) Used for employment purposes only;

~~((iii))~~ (c) Not disclosed to any individual except:

~~((A))~~ (i) The individual named on the background check result;

~~((B))~~ (ii) Authorized state and federal employees;

~~((C))~~ (iii) The Washington state patrol auditor; and

~~((D))~~ (iv) As otherwise authorized in chapter 43.43 RCW.

~~((iv))~~ (d) Retained and available for department review:

~~((A))~~ (i) During the individual's employment or association with a facility; and

~~((B))~~ (ii) At least two years following termination of employment or association with a facility.

~~((2))~~ (6) The boarding home may conditionally hire, directly or by contract, an individual having unsupervised access to residents pending a background inquiry, provided the boarding home:

(a) Obtains a criminal history background check authorization form from the individual prior to the individual beginning work;

(b) Submits the criminal history background check authorization form to the department no later than one business day after the individual started working; and

(c) Has received three positive references for the individual.

~~((3))~~ (7) The department may require the boarding home or any other individual associated with the boarding home who has unsupervised access to residents to complete additional disclosure statements or background inquiries if the department has reason to believe that offenses specified under RCW 43.43.830 have occurred since completion of the previous disclosure statement or background inquiry.

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

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2480 TB tests. (1) The boarding home must ensure each staff person, except for volunteers and contractors, is screened for tuberculosis, as follows:

(a) Except when a staff person provided the boarding home with documentation of a previous positive Mantoux skin test, a staff person hired before September 1, 2004 must have had:

(i) A tuberculin skin test by the Mantoux method within six months preceding the date of employment in the boarding home; and

(ii) A second tuberculin skin test within one to three weeks after a negative Mantoux test if the staff person was thirty-five years of age or older at the time of hiring.

(b) A staff person hired on or after September 1, 2004 must have a baseline two-step skin test initiated within three days of being hired unless the staff person meets the requirements in ~~((b))~~ (c) or ~~((e))~~ (d) of this subsection. The skin tests must be:

(i) Given no less than one and no more than three weeks apart;

(ii) By intradermal (Mantoux) administration of purified protein derivative (PPD);

(iii) Read between forty-eight and seventy-two hours following administration, by trained personnel; and

(iv) Recorded in millimeters of induration.

~~((b))~~ (c) A staff person needs to have only a one-step skin test within three days of being hired if:

(i) There is documented history of a negative result from previous two-step testing; or

(ii) There was a documented negative result from one-step skin testing in the previous twelve months.

~~((e))~~ (d) A staff person does not need to be skin tested for tuberculosis if he/she has:

(i) Documented history of a previous positive skin test consisting of ten or more millimeters of induration; or

(ii) Documented evidence of adequate therapy for active disease; or

(iii) Documented evidence of adequate preventive therapy for infection.

(d) If a skin test results in a positive reaction, the boarding home must:

(i) Ensure that the staff person has a chest X ray within seven days;

(ii) Report positive chest X rays to the appropriate public health authority; and

(iii) Follow precautions ordered by a physician or public health authority.

(2) The boarding home must:

(a) ~~((Retain))~~ Keep in the boarding home for the duration of the staff person's employment, and at least two years following termination of employment, records of:

(i) Tuberculin test results;

(ii) Reports of X-ray findings; and

(iii) Physician or public health official orders.

(b) Provide staff persons with a copy of the records specified in (a) of this subsection:

(i) During the time the staff person is employed in the boarding home, limited to one copy per report; and

(ii) When requested by the staff person.

(3) The boarding home must ensure that caregivers caring for a resident with suspected tuberculosis comply with the WISHA standard for respiratory protection.

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

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2490 Specialized training for developmental disabilities. (1) The boarding home must provide caregivers with specialized training, consistent with chapter 388-112 WAC, to serve residents with developmental disabilities, whenever at least one of the residents in the boarding home ((is-

~~(1) A person who meets the eligibility criteria for services defined in chapter 388-825 WAC; or~~

~~(2) A person with a severe, chronic disability which is attributable to cerebral palsy or epilepsy, or any other condition, other than mental illness, found to be closely related to mental retardation which results in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation, and requires treatment or services similar to those required for these persons (i.e., autism), and:~~

~~(a) The condition was manifested before the person reached eighteen;~~

~~(b) The condition is likely to continue indefinitely; and~~

~~(c) The condition results in substantial functional limitations in three or more of the following areas of major life activities:~~

~~(i) Self care;~~

~~(ii) Understanding and use of language;~~

~~(iii) Learning;~~

~~(iv) Mobility;~~

~~(v) Self direction; and~~

~~(vi) Capacity for independent living)) has a developmental disability as defined in WAC 388-823-0040, that is the resident's primary special need.~~

(2) Nothing in this section is intended to require additional specialty training beyond that required by WAC 388-112-0115.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2500 Specialized training for mental illness. (1) The boarding home must provide caregivers with specialized training, consistent with chapter 388-112 WAC, to serve residents with mental illness, whenever at least one of the residents in the boarding home has a mental illness that is the resident's primary special need and is a person who has been diagnosed with or treated for an Axis I or Axis II diagnosis, as described in the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision*, and:

~~((+))~~ (a) Who has received the diagnosis or treatment within the previous two years; and

~~((=))~~ (b) Whose diagnosis was made by, or treatment provided by, one of the following:

~~((+))~~ (i) A licensed physician;

~~((b))~~ (ii) A mental health professional;

~~((e))~~ (iii) A psychiatric advanced registered nurse practitioner; or

~~((C))~~ (iv) A licensed psychologist.

(2) Nothing in this section is intended to require additional specialty training beyond that required by WAC 388-112-0115.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2510 Specialized training for dementia. (1) The boarding home must provide caregivers with specialized training, consistent with chapter 388-112 WAC, to serve residents with dementia, whenever at least one of the residents in the boarding home has a dementia that is the resident's primary special need and has symptoms consistent with dementia as assessed per WAC 388-78A-2090(7).

(2) Nothing in this section is intended to require additional specialty training beyond that required by WAC 388-112-0115.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2520 Administrator qualifications.

(1) The licensee must appoint an administrator who is at least twenty-one years old and who is not a resident, and is qualified to perform the administrator's duties specified in WAC 388-78A-2560.

(2) The licensee must only appoint as a boarding home administrator an individual who meets at least one of the following qualifications listed in (a) through (f) of this subsection:

(a) The individual was actively employed as a boarding home administrator and met existing qualifications on September 1, 2004;

(b) The individual holds a current Washington state nursing home administrator license in good standing;

(c) Prior to assuming duties as a boarding home administrator, the individual has met the qualifications listed in both (c)(i) and (ii) of this subsection:

(i) Obtained certification of completing a recognized administrator training course consisting of a minimum of twenty-four hours of instruction or equivalent on-line training or certification of passing an administrator examination, from or endorsed by a department-recognized national accreditation health or personal care organization such as:

(A) The American Association of Homes and Services for the Aging; or

(B) The American College of Health Care Administrators; or

~~(C)~~ The American Health Care Association; or

~~((C))~~ (D) The Assisted Living Federation of America; or

~~((D))~~ (E) The National Association of Board of Examiners of Long Term Care Administrators.

(ii) Three years paid experience:

(A) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(B) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.

(d) The individual holds an associate degree in a related field of study such as health, social work, or business administration and meets the qualifications listed in either (d)(i), (ii) or (iii) of this subsection:

(i) Obtains certification of completing a recognized administrator training course consisting of a minimum of twenty-four hours of instruction or equivalent on-line training, or certification of passing an administrator examination, within six months of beginning duties as the administrator, from or endorsed by a department-recognized national accreditation health or personal care organization such as:

(A) The American Association of Homes and Services for the Aging; or

(B) The American College of Health Care Administrators; or

~~(C)~~ The American Health Care Association; or

~~((C))~~ (D) The Assisted Living Federation of America; or

~~((D))~~ (E) The National Association of Board of Examiners of Long Term Care Administrators.

(ii) Has two years paid experience:

(A) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(B) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.

(iii) Has completed a qualifying administrator training program supervised by a qualified administrator according to WAC 388-78A-2530.

(e) The individual holds a bachelor's degree in a related field of study such as health, social work, or business administration and meets the qualifications listed in either (e)(i), (ii) or (iii) of this subsection:

(i) Obtains certification of completing a recognized administrator training course consisting of a minimum of twenty-four hours of instruction or equivalent on-line training, or certification of passing an administrator examination, within six months of beginning duties as the administrator, from or endorsed by a department-recognized national accreditation health or personal care organization such as:

(A) The American Association of Homes and Services for the Aging; or

(B) The American College of Health Care Administrators; or

~~(C)~~ The American Health Care Association; or

~~((C))~~ (D) The Assisted Living Federation of America; or

or

~~((D))~~ (E) The National Association of Board of Examiners of Long Term Care Administrators.

(ii) Has one year paid experience:

(A) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(B) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.

(iii) Has completed a qualifying administrator training program supervised by a qualified administrator according to WAC 388-78A-2530.

(f) ~~((Prior to))~~ Before assuming duties as an administrator, the individual has five years of paid experience:

(i) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(ii) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2660 Resident rights. The boarding home must:

(1) Comply with chapter 70.129 RCW, Long-term care resident rights;

(2) Ensure all staff persons provide care and services to each resident consistent with chapter 70.129 RCW;

(3) Not use restraints on any resident;

(4) Promote and protect the residents' exercise of all rights granted under chapter 70.129 RCW;

(5) Provide care and services to each resident in compliance with applicable state statutes related to substitute health care decision making, including chapters 7.70, 70.122, 11.88, 11.92, and 11.94 RCW; ~~((and))~~

(6) Reasonably accommodate residents consistent with applicable state and/or federal law; and

(7) Not allow any staff person to abuse or neglect any resident.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2700 Safety measures and disaster preparedness. (1) The boarding home must take necessary action to promote the safety of each resident whenever the resident is on the boarding home premises or under the super-

vision of staff persons, consistent with the resident's negotiated service agreement.

(2) The boarding home must:

(a) Maintain the premises free of hazards;

(b) Maintain any vehicles used for transporting residents in a safe condition;

(c) Investigate and document investigative actions and findings for any alleged or suspected neglect or abuse or exploitation, accident or incident jeopardizing or affecting a resident's health or life. The boarding home must:

(i) Determine the circumstances of the event;

(ii) When necessary, institute and document appropriate measures to prevent similar future situations if the alleged incident is substantiated; and

(iii) Protect other residents during the course of the investigation.

(d) Provide appropriate hardware on doors of storage rooms, closets and other rooms to prevent residents from being accidentally locked in;

(e) Provide, and ~~((advise))~~ tell staff persons of, a means of emergency access to resident-occupied bedrooms, toilet rooms, bathing rooms, and other rooms;

(f) Provide emergency lighting or flashlights in all areas of the boarding home. For all boarding homes first issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the boarding home must provide emergency lighting in all areas of the boarding home;

(g) Make sure first-aid supplies are:

(i) Readily available and not locked;

(ii) Clearly marked;

(iii) Able to be moved to the location where needed; and

(iv) Stored in containers that protect them from damage, deterioration, or contamination.

(h) Make sure first-aid supplies are appropriate for:

(i) The size of the boarding home;

(ii) The services provided;

(iii) The residents served; and

(iv) The response time of emergency medical services.

(i) Develop and maintain a current disaster plan describing measures to take in the event of internal or external disasters, including, but not limited to:

(i) On-duty staff persons' responsibilities;

(ii) Provisions for summoning emergency assistance;

(iii) Plans for evacuating residents from area or building;

(iv) Alternative resident accommodations;

(v) Provisions for essential resident needs, supplies and equipment including water, food, and medications; and

(vi) Emergency communication plan.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2910 Applicable building codes. (1) Newly licensed boarding homes and construction in existing boarding homes must meet the requirements of all the current building codes and applicable sections of this chapter.

(2) Existing licensed boarding homes must continue to meet the building codes in force at the time of their initial licensing.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2920 Area for nursing supplies and equipment. (1) If the boarding home provides intermittent nursing services, the boarding home must provide on the boarding home premises for the safe and sanitary:

(a) Storage and handling of clean and sterile nursing equipment and supplies; and

(b) Cleaning and disinfecting of soiled nursing equipment.

(2) For all boarding homes first issued a project number by construction review services on or after September 1, 2004 for construction related to this section, in which intermittent nursing services are provided, or upon initiating intermittent nursing services within an existing boarding home, the boarding home must provide the following two separate rooms in each boarding home building, accessible only by staff persons:

(a) A "clean" utility room for the purposes of storing and preparing clean and sterile nursing supplies, equipped with:

(i) A work counter or table;

(ii) A handwashing sink, with soap and paper towels or other approved hand-drying device; and

(iii) Locked medication storage, if medications are stored in this area, that is separate from all other stored items consistent with WAC 388-78A-2260.

(b) A "soiled" utility room for the purposes of storing soiled linen, cleaning and disinfecting soiled nursing care equipment, and disposing of refuse and infectious waste, equipped with:

(i) A work counter or table;

(ii) A two-compartment sink for handwashing and equipment cleaning and sanitizing;

(iii) A clinical service sink or equivalent for rinsing and disposing of waste material;

(iv) Soap and paper towels or other approved hand-drying device; and

(v) Locked storage for cleaning supplies, if stored in the area.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2930 Communication system. (1) The boarding home must:

(a) Provide residents and staff persons with the means to summon on-duty staff assistance (~~from~~):

(i) From resident units;

(ii) From common areas accessible to residents;

(iii) From corridors accessible to residents; and

(iv) For boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, all bathrooms (~~and~~), all toilet rooms (~~in boarding homes issued a project number by construction review services on or after September 1, 2004~~), resident living rooms and sleeping rooms.

(b) Provide residents, families, and other visitors with a means to contact a staff person inside the building from outside the building after hours.

(2) The boarding home must provide one or more non-pay telephones:

(a) In each building located for ready access by staff persons; and

(b) On the premises (~~for~~) with reasonable access and privacy by residents.

(3) In boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the boarding home must equip each resident room with(~~(-~~

~~(a) An~~) two telephone lines.

(4) If a boarding home that is issued a project number by construction services on or after September 1, 2004 chooses to install an intercom system, the intercom system must be equipped with a mechanism that allows a resident to control:

~~((+))~~ (a) Whether or not announcements are broadcast into the resident's room; and

~~((+))~~ (b) Whether or not voices or conversations within the resident's room can be monitored or listened to by persons outside the resident's room.

~~((b) Two telephone lines.))~~

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2940 Two-way intercom systems. The boarding home may use a two-way intercom system between staff persons and residents in other rooms only when:

(1) A resident initiates the contact; or

(2) Staff persons announce to the resident that the intercom has been activated at the time it is activated, and:

(a) The resident and any others in the room agree to continue the contact;

(b) ~~((A visible signal is activated in the resident's room at all times the intercom is in operation; and~~

~~(e)))~~ The boarding home deactivates the intercom when the conversation is complete; and

(c) The boarding home ensures each resident is aware the intercom is operating at all times the intercom is in use in the resident's room.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2960 Sewage and liquid waste disposal. The boarding home must:

(1) Ensure that all sewage and waste water drain into a municipal sewage disposal system (~~in accordance with~~) according to chapter 246-271 WAC, if available; or

(2) Provide on-site sewage disposal systems designed, constructed, and maintained as required by chapters 246-272 and 173-240 WAC, and local ordinances(~~;~~ and

~~(3) Provide a grease interceptor when the boarding home has an on-site commercial kitchen or septic system in accordance with chapter 246-272 WAC)).~~

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2990 Heating-cooling—Temperature. The boarding home must:

(1) Equip each resident-occupied building with an approved heating system capable of maintaining a minimum temperature of 70°F per the building code. The boarding home must:

(a) Maintain the boarding home at a minimum temperature of 60°F during sleeping hours; and

(b) Maintain the boarding home at a minimum of 68°F during waking hours, except in rooms:

(i) Designated for activities requiring physical exertion; or

(ii) Where residents can individually control the temperature in their own living units, independent from other areas.

(2) Equip each resident-occupied building with a mechanical air cooling system or equivalent capable of maintaining a temperature of 75°F in communities where the design dry bulb temperature exceeds 85°F for one hundred seventy-five hours per year or two percent of the time, as specified in the latest edition of "*Recommended Outdoor Design Temperatures—Washington State*," published by the Puget Sound chapter of the American Society of Heating, Refrigeration, and Air-Conditioning Engineers;

(3) Equip each boarding home issued a project number by construction review services on or after September 1, 2004 for construction related to this section, with a backup source of heat in enough common areas to keep all residents adequately warm during interruptions of normal heating operations;

(4) Prohibit the use of portable space heaters unless approved in writing by the Washington state director of fire protection; and

(5) Equip each resident sleeping room and resident living room in boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, with individual temperature controls located between thirty and forty-eight inches above the floor capable of maintaining room temperature plus or minus 3°F from setting, within a range of minimum 60°F to maximum 85°F.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3010 Resident room—Room furnishings-storage. (1) The boarding home must ensure each resident has a sleeping room that has:

(a) Eighty or more square feet of usable floor space in a one-person sleeping room;

(b) Seventy or more square feet of usable floor space per individual in a sleeping room occupied by two or more individuals, except:

(i) When a resident sleeping room is located within a private apartment; and

(ii) The private apartment includes a resident sleeping room, a resident living room, and a private bathroom; and

(iii) The total square footage in the private apartment equals or exceeds two hundred twenty square feet excluding the bathroom; and

(iv) There are no more than two residents living in the apartment; and

(v) Both residents mutually agree to share the resident sleeping room; and

(vi) All other requirements of this section are met, then the two residents may share a sleeping room with less than one hundred forty square feet.

(c) A maximum sleeping room occupancy of:

(i) Four individuals if the boarding home was licensed before July 1, 1989, and licensed continuously thereafter; and

(ii) Two individuals if the boarding home, after June 30, 1989:

(A) Applied for initial licensure; or

(B) Applied to increase the number of resident sleeping rooms; or

(C) Applied to change the use of rooms into sleeping rooms.

(d) Unrestricted direct access to a hallway, living room, outside, or other common-use area;

(e) One or more outside windows with:

(i) Window sills at or above grade, with grade extending horizontally ten or more feet from the building; and

(ii) Adjustable curtains, shades, blinds, or equivalent for visual privacy.

(f) One or more duplex electrical outlets per bed if the boarding home was initially licensed after July 1, 1983;

(g) A light control switch located by the entrance for a light fixture in the room;

(h) An individual towel and washcloth rack or equivalent, except when there is a private bathroom attached to the resident sleeping or living room, the individual towel and washcloth rack may be located in the attached private bathroom;

(i) In all boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, and when requested by a resident in a boarding home licensed on or ~~(prior to)~~ before September 1, 2004, provide a lockable drawer, cupboard or other secure space measuring at least one-half cubic foot with a minimum dimension of four inches;

(j) Separate storage facilities for each resident in or immediately adjacent to the resident's sleeping room to adequately store a reasonable quantity of clothing and personal possessions;

(k) A configuration to permit all beds in the resident sleeping room to be spaced at least three feet from other beds unless otherwise requested by all affected residents.

(2) The boarding home must ensure each resident sleeping room contains:

(a) A comfortable bed for each resident, except when two residents mutually agree to share a bed. The bed must be thirty-six or more inches wide for a single resident and fifty-four or more inches wide for two residents, appropriate for size, age and physical condition of the resident and room dimensions, including, but not limited to:

(i) Standard household bed;

(ii) Studio couch;

(iii) Hide-a-bed;

(iv) Day bed; or

(v) Water bed, if structurally and electrically safe.

(b) A mattress for each bed which:

(i) Fits the bed frame;

- (ii) Is in good condition; and
 - (iii) Is at least four inches thick unless otherwise requested or necessary for resident health or safety.
 - (c) One or more comfortable pillows for each resident;
 - (d) Bedding for each bed, in good repair; and
 - (e) Lighting at the resident's bedside when requested by the resident.
- (3) The boarding home must not allow a resident sleeping room to be used as a passageway or corridor.
- (4) The boarding home may use or allow use of carpets and other floor coverings only when the carpet is:
- (a) Securely fastened to the floor or provided with non-skid backing; and
 - (b) Kept clean and free of hazards, such as curling edges or tattered sections.
- (5) The boarding home must ensure each resident has either a sleeping room or resident living room that contains a sturdy, comfortable chair appropriate for the age and physical condition of the resident. This requirement does not mean a boarding home is responsible for supplying specially designed orthotic or therapeutic chairs, including those with mechanical lifts or adjustments.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3030 Toilet rooms and bathrooms. (1)

The boarding home must provide private or common-use toilet rooms and bathrooms to meet the needs of each resident.

(2) The boarding home must provide each toilet room and bathroom with:

- (a) Water resistant, smooth, low gloss, nonslip and easily cleanable materials;
- (b) Washable walls to the height of splash or spray;
- (c) Grab bars installed and located to minimize accidental falls including one or more grab bars at each:
 - (i) Bathing fixture; and
 - (ii) Toilet.
- (d) Plumbing fixtures designed for easy use and cleaning and kept in good repair; and

(e) Adequate ventilation to the outside of the boarding home. For boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, must provide mechanical ventilation to the outside.

(3) The boarding home must provide each toilet room with a:

- (a) Toilet with a clean, nonabsorbent seat free of cracks;
 - (b) Handwashing sink in or adjacent to the toilet room.
- For boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the handwashing sink must be in the toilet room or in an adjacent private area that is not part of a common use area of the boarding home; and
- (c) Suitable mirror with adequate lighting for general illumination.

(4) For boarding homes approved for construction or initially licensed after August 1, 1994, the boarding home must provide a toilet and handwashing sink in, or adjoining, each bathroom.

(5) When providing common-use toilet rooms and bathrooms, the boarding home must provide toilets and handwashing sinks for residents in the ratios of one toilet and one handwashing sink for every eight residents or fraction as listed in the following table:

Number of Residents	Number of Toilets*	Number of Handwashing Sinks
1-8	1	1
9-16	2	2
17-24	3	3
25-32	4	4
33-40	5	5
41-48	6	6
49-56	7	7
57-64	8	8
65-72	9	9
73-80	10	10
81-88	11	11
89-96	12	12
97-104	13	13
105-112	14	14
113-120	15	15
121-128	16	16
129-136	17	17
137-144	18	18
145-152	19	19
153-160	20	20
161-168	21	21
169-176	22	22
177-184	23	23

*When two or more toilets are contained in a single bathroom, they are counted as one toilet.

(6) When providing common-use toilet rooms and bathrooms, the boarding home must provide bathing fixtures for residents in the ratio of one bathing fixture for every twelve residents or fraction thereof as listed in the following table:

Number of Residents	Number of Bathing Fixtures
1-12	1
13-24	2
25-36	3
37-48	4
49-60	5
61-72	6
73-84	7
85-96	8
97-108	9
109-120	10
121-132	11

Number of Residents	Number of Bathing Fixtures
133-144	12
145-160	13
161-172	14
173-184	15
185-196	16

(7) When providing common-use toilet rooms and bathrooms, the boarding home must:

- (a) Designate toilet rooms containing more than one toilet for use by men or women;
- (b) Designate bathrooms containing more than one bathing fixture for use by men or women;
- (c) Equip each toilet room and bathroom designed for use by, or used by, more than one person at a time, in a manner to ensure visual privacy for each person using the room. The boarding home is not required to provide additional privacy features in private bathrooms with a single toilet and a single bathing fixture located within a private apartment;
- (d) Provide a handwashing sink with soap and single use or disposable towels, blower or equivalent hand-drying device in each toilet room, except that single-use or disposable towels or blowers are not required in toilet rooms or bathrooms that are located within a private apartment;
- (e) Provide reasonable access to bathrooms and toilet rooms for each resident by:
 - (i) Locating a toilet room on the same floor or level as the sleeping room of the resident served;
 - (ii) Locating a bathroom on the same floor or level, or adjacent floor or level, as the sleeping room of the resident served; ~~(and)~~
 - (iii) Providing access without passage through any kitchen, pantry, food preparation, food storage, or dishwashing area, or from one bedroom through another bedroom; and

(f) Provide and ensure toilet paper is available at each common-use toilet.

(8) In boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the boarding home must ensure fifty percent of all the bathing fixtures in the boarding home are roll-in type showers that have:

- (a) One-half inch or less threshold;
- (b) A minimum size of thirty-six inches by forty-eight inches; and
- (c) Single lever faucets located within thirty-six inches of the seat so the faucets are within reach of persons seated in the shower.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3040 Laundry. (1) The boarding home must provide laundry and linen services on the premises, or by commercial laundry.

(2) The boarding home must handle, clean, and store linen according to acceptable methods of infection control. The boarding home must:

- (a) Provide separate areas for handling clean laundry and soiled laundry;
- (b) Ensure clean laundry is not processed in, and does not pass through, areas where soiled laundry is handled;
- (c) Ensure areas where clean laundry is stored are not exposed to contamination from other sources; and
- (d) Ensure all staff persons wear((s)) gloves and uses other appropriate infection control practices when handling soiled laundry.

(3) The boarding home must use washing machines that have a continuous supply of hot water with a temperature of 140°F measured at the washing machine intake, or that automatically dispense a chemical sanitizer as specified by the manufacturer, whenever the boarding home washes:

- (a) Boarding home laundry;
- (b) Boarding home laundry combined with residents' laundry into a single load; or
- (c) More than one resident's laundry combined into a single load.

(4) The boarding home or a resident washing an individual resident's personal laundry, separate from other laundry, may wash the laundry at temperatures below 140°F and without the use of a chemical sanitizer.

(5) The boarding home must ventilate laundry rooms and areas to the outside of the boarding home, including areas or rooms where soiled laundry is held for processing by off site commercial laundry services.

(6) The boarding home must locate laundry equipment in rooms other than those used for open food storage, food preparation or food service.

(7) For all boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the boarding home must provide a laundry area where residents' may do their personal laundry that is:

- (a) Equipped with:
 - (i) A utility sink;
 - (ii) A table or counter for folding clean laundry;
 - (iii) At least one washing machine and one clothes dryer; and
- (iv) Mechanical ventilation to the outside of the boarding home.

(b) Is arranged to reduce the chances of soiled laundry contaminating clean laundry.

(8) The boarding home may combine areas for soiled laundry with other areas when consistent with WAC 388-78A-3110.

(9) The boarding home may combine areas for handling and storing clean laundry with other areas when consistent with WAC 388-78A-3120.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3090 Maintenance and housekeeping. (1) The boarding home must:

- (a) Provide a safe, sanitary and well-maintained environment for residents;
- (b) Keep exterior grounds, boarding home structure, and component parts safe, sanitary and in good repair;

(c) Keep facilities, equipment and furnishings clean and in good repair;

(d) Ensure each resident or staff person maintains the resident's quarters in a safe and sanitary condition; and

(e) Equip a housekeeping supply area on the premises with:

(i) A utility sink or equivalent means of obtaining and disposing of mop water, separate from food preparation and service areas;

(ii) Storage for wet mops, ventilated to the outside of the boarding home; and

(iii) Locked storage for cleaning supplies.

(2) For boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the boarding home must provide housekeeping supply room(s):

(a) Located on each floor of the boarding home, except only one housekeeping supply room is required for boarding homes licensed for sixteen or fewer beds when there is a means other than using a stairway, for transporting mop buckets between floors;

(b) In proximity to laundry and kitchen areas; and

(c) Equipped with:

(i) A utility sink or equivalent means of obtaining and disposing of mop water, away from food preparation and service areas;

(ii) Storage for wet mops;

(iii) Locked storage for cleaning supplies; and

(iv) Mechanical ventilation to the outside of the boarding home.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3190 Denial, suspension, revocation, or nonrenewal of license statutorily required. (1) The department must deny, suspend, revoke or refuse to renew a boarding home license if any person described in subsection (2) of this section who has unsupervised access to residents, is:

(a) Convicted of a crime against ~~((a))~~ children or other persons or ~~((a))~~ crimes ~~((related))~~ relating to financial exploitation as defined under RCW 43.43.830 or 43.43.842; or

(b) 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; or

(c) Found in any dependency action under chapter 13.34 RCW to have sexually assaulted, neglected, exploited, or physically abused any minor; or

(d) Found by a court in a domestic relations proceeding under Title 26 RCW to have sexually abused, exploited, or physically abused any minor; or

(e) Found in any final decision issued by a disciplinary board to have sexually or physically abused or neglected or exploited any minor or any vulnerable adult, or has a stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority, a court of law, or entered into a state registry finding him or her guilty of abuse, neglect, exploita-

tion, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW.

(2) This section applies to any boarding home:

(a) Applicant;

(b) Partner, officer or director;

(c) Manager or managerial employee; or

(d) Owner of five percent or more of the applicant:

(i) Who is involved in the operation of the boarding home; or

(ii) Who may have direct access to the boarding home residents; or

(iii) Who controls or supervises the provision of care or services to the boarding home residents; or

(iv) Who exercises control over daily operations.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3220 Appeal rights. (1) An applicant or boarding home:

(a) May contest an enforcement remedy imposed by the department pursuant to RCW 18.20.190 according to the provisions of chapter 34.05 RCW and chapters 10-08 and 388-02 WAC;

(b) Must file any request for an adjudicative proceeding with the Office of Administrative Hearings at the mailing address specified in the notice of imposition of an enforcement remedy within twenty-eight days of receiving the notice.

(2) Orders of the department imposing licensing suspension, stop-placement, or conditions for continuation of a license are effective immediately upon notice and shall continue pending any hearing.

WSR 06-03-001

PERMANENT RULES

UTILITIES AND TRANSPORTATION

COMMISSION

[Docket Nos. UE-030311 and UG-030312, General Order No. R-526—
Filed January 4, 2006, 1:11 p.m., effective February 4, 2006]

In the matter of amending WAC 480-90-238 and 480-100-238, relating to least cost planning for gas and electric companies.

1 STATUTORY OR OTHER AUTHORITY: The Washington utilities and transportation commission takes this action under Notice No. WSR 05-18-088, filed with the code reviser on September 7, 2005. The commission brings this proceeding pursuant to RCW 80.01.040 and 80.04.160.

2 STATEMENT OF COMPLIANCE: This proceeding complies with the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

3 DATE OF ADOPTION: The commission adopts this rule on the date that this order is entered.

4 CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE: RCW 34.05.325(6) requires that the commission prepare and provide to commenters a concise explanatory

statement about an adopted rule. The statement must include the identification of the commission's reasons for adopting the rule, a description of the difference between the version of the proposed rules published in the register and the rules as adopted (other than editing changes), a summary of the comments received regarding the proposed rule changes, and the commission's responses to the comments, reflecting the commission's consideration of them.

5 The commission often includes a discussion of those matters in its rule adoption order. In addition, most rule-making proceedings involve extensive work by commission staff that includes summaries in memoranda of stakeholder comments, commission decisions, and staff recommendations in each of those areas.

6 In this docket, to avoid unnecessary duplication, the commission designates the discussion in this order as its concise explanatory statement, supplemented where not inconsistent by the staff memoranda presented at the adoption hearing and at the open meetings where the commission considered whether to begin a rule making and whether to propose adoption of specific language. Together, the documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.

7 **REFERENCE TO AFFECTED RULES:** This order amends the following sections of the Washington Administrative Code: Amending WAC 480-90-238 Least cost planning and 480-100-238 Least cost planning.

8 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:** The commission filed preproposal statements of inquiry (CR-101) on April 15, 2003, at WSR 03-09-068 and 03-09-069. The statement advised interested persons that the commission was considering entering a rule making to review WAC 480-90-238 and 480-100-238, least cost planning rules for gas and electric companies, for content and readability consistent with Executive Order 97-02.

9 **ADDITIONAL NOTICE AND ACTIVITY PURSUANT TO PREPROPOSAL STATEMENT:** The commission also informed persons of the inquiry into this matter by providing notice of the subject and the CR-101 to all persons on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and the commission's lists of all registered electric and gas companies, persons interested in electric and gas issues, as well as to attorneys representing these companies.

10 Pursuant to the notice, the commission received comments from the following companies, organizations, and interested persons: Avista Utilities, Cogeneration Coalition of Washington, Department of Community, Trade and Economic Development, The Energy Project, Industrial Customers of Northwest Utilities, Natural Resources Defense Council, Northwest CHP Advocates, Northwest Energy Coalition, Northwest Independent Power Producers Coalition, Northwest Natural Gas, Northwest Industrial Gas Users, PacifiCorp, Puget Sound Energy, Public Counsel, Renewable Northwest Project, Climate Solutions, BP West Cost Products, LLC and Andy Silber.

11 The commission engaged in two stakeholder workshops in June 2003 and June 2005 to address stakeholder comments and discuss a variety of changes to the least cost planning rules. The following companies and organizations participated in the stakeholder workshops: Avista Utilities,

Cogeneration Coalition of Washington, Cascade Natural Gas, Department of Community, Trade and Economic Development, The Energy Project, Energy Advocates LLP, Industrial Customers of Northwest Utilities, Natural Resources Defense Council, Northwest CHP Advocates, Northwest Energy Coalition, Northwest Independent Power Producers Coalition, Northwest Natural Gas, Northwest Industrial Gas Users, PacifiCorp, Puget Sound Energy, Public Counsel, Renewable Northwest Project, Citizens Utility Alliance, and UCONS, LLC.

12 **NOTICE OF PROPOSED RULE MAKING:** The commission filed a notice of proposed rule making (CR-102) on September 7, 2005, at WSR 05-18-088, scheduling the matter for oral comment and adoption at 9:30 a.m., Wednesday, November 9, 2005, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. The notice provided interested persons the opportunity to submit written comments to the commission.

13 **COMMENTERS (WRITTEN COMMENTS):** The commission received written comments from Bruce Folsom, representing Avista Utilities; Barry Pfundt, representing Climate Solutions; Elizabeth Klumpp, representing the Department of Community, Trade and Economic Development (CTED); Irion Singer, representing Industrial Customers of Northwest Utilities (ICNU); Ralph Cavanagh, representing the Natural Resources Defense Council (NRDC); Nancy Hirsh, representing the Northwest Energy Coalition (NVEC); Joseph M. Ross, representing Northwest Natural Gas (NWN); D. Douglas Larson, representing PacifiCorp; Karl Karzmar, representing Puget Sound Energy (PSE); Simon ffitich, representing Public Counsel; Ann Gravatt, representing the Renewable Northwest Project (RNP); and Mr. Andy Silber, an interested citizen. Several stakeholders provided comments common to the electric and gas least cost planning rules. Other comments were specific to either the electric or the gas planning rule.

14 **RULE-MAKING HEARING:** The rule proposal was considered for adoption, pursuant to the notice in WSR 05-18-088, at a rule-making hearing scheduled during the commission's regularly scheduled open public meeting on November 9, 2005, before Chairman Mark H. Sidran, Commissioner Patrick J. Oshie, and Commissioner Philip B. Jones. No interested person made oral comments.

15 **SUGGESTIONS FOR CHANGE THAT ARE REJECTED:** The Northwest Energy Coalition and Public Counsel commented on the topic of risk in the selection of resources. The NVEC believes that the portfolio selected by the utility should balance the costs and risks of various options. Public Counsel focused on the need to consider ratepayers' risk. Public Counsel recommended a clearer distinction between risk and "lowest reasonable cost," since cost is a scalar describing economic, social or environmental price, while risk is a probability distribution describing chances of multiple future scenarios. Both stakeholders provided specific language suggestions on the topic of risk.

16 The Northwest Energy Coalition suggested a modification of the definition in proposed WAC 480-100-238 (1) or (2)(b) to explicitly state the need to include the notion of risk, and to require that each electric utility meet its system

demand with a mix of generating resources and conservation that most effectively balances costs and risks to best protect ratepayers. The NWEAC also proposed alternative language for WAC 480-100-238(1) on balancing cost and risk. Public Counsel suggests adding the concept of risk in the definition of integrated resource plan in WAC 480-90-238 (2)(a) and 480-100-238 (2)(a). The commission agrees that a measure of risk should be weighed with the cost. However, since such a measure has always been weighed, there is no need to add special language to the proposed rules. Accordingly, the commission does not accept the changes proposed by NWEAC and Public Counsel.

17 Also on the topic of risk, Public Counsel suggested adding a new paragraph to subsection (3) of WAC 480-90-238 and 480-100-238 that refers to the content of integrated resource plans. Public Counsel proposes that plans include evaluations of acceptable levels of the risk of price escalation and service interruption to ratepayers, and of sensitivity of the integrated resource plan to variations in the levels of risk. The commission does not accept Public Counsel's proposal. Public Counsel's suggestion amounts to a new requirement that would greatly increase the scope of the plan. The commission believes that the notion of risk evaluation clearly encompasses the concepts of cost variation and adequate service. The commission further finds that the requirement for a plan utilizing these elements presupposes analysis of a tradeoff between the two. More elaboration in the specific requirements is unnecessary.

18 The Natural Resources Defense Council suggested that the assessment of commercially available conservation prescribed by sections WAC 480-90-238 (3)(b) and 480-100-238 (3)(b) be conducted for each customer class. The commission does not agree. Such a study would be arduous and the potential benefits of such an assessment do not justify the costs of the task.

19 The NWEAC, the RNP, Public Counsel, and Mr. Silber provided comments on the topic of externalities. The NWEAC and the RNP requested the commission to open an investigation at the conclusion of this rule making to examine the range of appropriate values for carbon dioxide (CO₂) that utilities should use in their integrated resource plans to provide consistency in the estimates used by the companies.

20 Public Counsel commented that the rule language should be more specific on cost risks of CO₂ mitigation. Public Counsel stated that ratepayers should not be held liable for future CO₂ mitigation costs that were well-recognized in the market, but were not incorporated into a utility's decision making in the integrated resource planning (IRP) process. Public Counsel also stated that it will contest prudence and request disallowance of future CO₂ mitigation costs in rates if IRP evaluations fail to consider cost risks of CO₂ mitigation.

21 Mr. Silber proposed that the state should publish a cost for emission of CO₂ and other pollutants, a natural gas price model over the horizon of planning, and other inputs to the planning process. In Mr. Silber's opinion, the state should set the cost of emissions based on the true cost derived from the best available science and should include the cost of habitat and human health degradation. Mr. Silber suggested that the full cost of CO₂ mitigation or the cost set by the market in Europe or Japan could be used instead of estimates. Utilities

would be responsible for the things that varied from utility to utility, like load growth and transmission constraints, and for putting together the lowest cost plan under the assumptions outlined by the state.

22 The commission does not have jurisdiction to assign value or costs to CO₂ emissions (or any other externality). In the case of CO₂, chapter 80.70 RCW assigns jurisdiction to the energy facility site evaluation council (EFSEC) for reviewing CO₂ mitigation requirements for fossil-fueled thermal electric facilities that apply for site certification. Presently, no estimates that have been endorsed by all concerned parties, and the federal and state governments. The value and remediation price of CO₂ emissions will certainly vary over time due to changing estimates of probable damage and market prices of green tags, for example. Further, the controversy surrounding the estimation of these costs is tainted with political, as much as scientific analysis. Deeming a value by fiat will not make decisions more economic nor will it demonstrably increase the welfare of society. Using the best knowledge available to energy company decision makers at the time of the planning or the acquisition will optimize the quality of information.

23 With respect to the planning cycle, Northwest Natural Gas stated that a strict two-year cycle may lead to a misallocation of companies' and the commission's resources. NWN also recommended adopting the date of plan acceptance as the anniversary date for the IRP planning cycle and allowing for a one year waiver accompanied by an annual action plan update on the first and subsequent anniversaries of the acknowledgment of the previous plan. The commission does not accept NWN's recommendations. The commission's experience is that a definite planning cycle will produce more filed plans that beneficially inform the commission. Moreover, NWN's suggestion to alter the planning cycle could make IRPs less reflective of the dynamics in the energy markets. Waiver for special circumstances is always available.

24 Public Counsel proposed that the short-term and long-term components of the plan should be defined as having two- and twenty-year horizons with exceptions available on a case-by-case basis, and with the option, at the utility's discretion, of having additional timelines. The two-year horizon would allow the utility's IRP to overlap the typical timeframe of utility trading floor short-term contract purchases. The twenty-year horizon is most similar to standard long-term power purchase agreements (PPA), the expected life of a combined combustion gas turbine, coal plant, wind plant, or transmission upgrades and expansions. Thus, it best encompasses most resources in the candidate portfolio of the IRP. Public Counsel observes that the ability to lengthen and shorten the time horizon may lead to time horizons being chosen to include or exclude a significant resource event, skewing the resource-load balance.

25 On the other hand, the use of specific uniform planning horizons commits each utility to a significant and clearly stated plan objective avoiding any of the above irregularities. Public Counsel provided specific language suggestions on this topic.

26 The commission does not accept Public Counsel's proposal. The planning horizons suggested by Public Counsel are in the current rules and may be elected under the

amended rules. The amended rules add more flexibility for planning purposes, and recognize that in today's environment circumstances may change more quickly than within a twenty-year horizon. Many forward contracts are three-year deals. Trading floors change their strategies. Connecting the sections of the plan to a fixed time horizon does not necessarily improve the plan. The horizon should be long enough to accommodate the capital budget position each company faces. Thus, a flexible term is best. There is no real evidence that the ability to lengthen and shorten the time horizon could lead to time horizons being chosen to include or exclude a significant resource event.

27 On the topic of enforcement, Public Counsel requested that the commission adopt at least one of the following enforcement strategies: (1) A \$1,000 fine per day late, in accordance with RCW 80.04.380, (2) refuse to consider petitions for power cost adjustments until the petitioning company files the IRP, (3) refuse to consider any company's petition until the IRP is filed, or (4) provide that any resource acquisition that occurs when a utility does not have an acknowledged plan in effect carry a rebuttable presumption of imprudence.

28 The commission does not accept Public Counsel's proposed strategies. The commission believes that the first suggested strategy is unnecessary. The commission can always assess a penalty under RCW 80.04.380 for violation of the IRP rule. The second and third suggested strategies would limit the commission's and companies' discretion to consider petitions and PCAs when circumstances otherwise warrant. The commission may also not have legal authority to limit a company's options that otherwise exist to insure that rates remain just and reasonable and service safe and adequate. The fourth strategy is inconsistent with prior commission practice that an IRP is only one consideration in a prudence review. Public Counsel's proposal is not supported by RCW 80.04.130 which states only that a company bears the burden to prove that proposed rates are just and reasonable. Finally, these suggestions may eliminate a useful collaborative opportunity for utilities.

29 With respect to alternative generating technologies, the Renewable Northwest Project recommended more specific language requiring all alternatives be evaluated on a consistent and comparable basis. Climate Solutions requests that WAC 480-100-238 be more clear and explicit in requiring a thorough examination of nonwires and smart energy alternatives to traditional infrastructure improvements. The commission believes that the rule is clear and allows for examination of other alternatives. Technically optimal non-wire alternatives will appear in the IRPs when merited.

30 PacifiCorp requested that the commission keep the rule flexible and consistent with those of other states to facilitate the work of multi-state companies. The commission believes that the Washington rule is and should be flexible but it should not be driven by other jurisdictions without concomitant agreement with those states.

31 Finally, commenting on WAC 480-90-238, NWN stated that changes in gas procurement strategies should be addressed in gas cost tracking filings, not in an IRP. The commission disagrees. All costs that can be analyzed in a forecast have a place in the IRP.

32 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the commission finds and concludes that it should amend the rules in the CR-102 notice at WSR 05-18-088 with the changes described below.

33 **CHANGES FROM PROPOSAL:** The commission adopts the proposal noticed at WSR 05-18-088 with the following changes:

34 The NVEC, Avista, and PSE provided comments to WAC 480-100-238 (3)(d) that would require electric companies to include an assessment of transmission system capability and reliability in their IRPs. The NVEC believes that the language in the subsection should be more explicit. On the other hand, Avista and PSE are concerned that the proposed language raises the possibility of conflict with the FERC's standard of conduct (SOC) rules. These rules limit marketing and energy affiliate employees' access to information about the transmission system, information that is available to all customers on open access same-time information system (OASIS). Employees of the transmission provider are similarly prohibited from disclosing information off-OASIS to marketing and energy affiliate employees. According to the companies, without access to a free exchange of transmission information, a utility cannot meaningfully assess the viability of transmission enhancements for IRPs.

35 The commission believes that the language in WAC 480-100-238 (3)(d) should acknowledge that the information requested is limited to that which can be provided within the boundaries of FERC's standard of conduct rules. In general, this means that the level of detail available will be less than is ordinarily expected in an IRP. In some circumstances, the utility may only be able to provide a rough estimate of transmission impacts, but at least some acknowledgment of possible transmission issues needs to be addressed in order to cover this important aspect of resource development. The commission adds clarifying language to WAC 480-100-238 (3)(d) to reflect this understanding. Subsection (3)(d) now reads as follows:

(d) An assessment of transmission system capability and reliability, to the extent such information can be provided consistent with applicable laws.

36 Some typographical and language changes identified by staff or suggested by stakeholders were also incorporated into the rules.

37 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the commission determines that WAC 480-90-238 and 480-100-238 should be amended to read as set forth in Appendix A, as rules of the Washington utilities and transportation commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

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

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

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

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

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

ORDER

38 THE COMMISSION ORDERS:

39 The commission amends and adopts WAC 480-90-238 and 480-100-238 to read as set forth in Appendix A, as rules of the Washington utilities and transportation commission, to take effect on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

40 This order and the rules set out below, after being recorded in the register of the Washington utilities and transportation commission, shall be forwarded to the code reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, this 3rd day of January 2006.

Washington utilities and transportation commission.

Mark H. Sidran, Chairman

Patrick J. Oshie, Commissioner

Philip B. Jones, Commissioner

AMENDATORY SECTION (Amending Docket No. UG-990294, General Order No. R-484, filed 5/3/01, effective 6/3/01)

WAC 480-90-238 ((Least cost)) Integrated resource planning. (1) Purpose ~~((and process))~~. Each natural gas utility regulated by the commission has the responsibility to meet system demand ((at the least cost to the utility and its ratepayers. Therefore, a "least cost plan" must be developed by each gas utility in consultation with commission staff. Provision for involvement in the preparation of the plan by the public is required. Each planning cycle will begin with a letter to the company from the commission secretary. The content and timing of and reporting for the least cost plan and the public involvement strategy must be outlined in a work plan developed by the utility after consulting with commission staff.)) with the least cost mix of natural gas supply and conservation. In furtherance of that responsibility, each natural gas utility must develop an "integrated resource plan."

(2) Definitions.

~~((("Least cost plan")))~~ (a) "Integrated resource plan" or "plan" means a plan describing the ((strategies for purchasing)) mix of natural gas supply and ((improving the efficiencies of gas use that will)) conservation designated to meet current and future needs at the lowest reasonable cost to the utility and its ratepayers ((consistent with needs for security of supply)).

(b) "Lowest reasonable cost" means the lowest cost mix of resources determined through a detailed and consistent analysis of a wide range of commercially available sources. At a minimum, this analysis must consider resource costs, market-volatility risks, demand-side resource uncertainties, the risks imposed on ratepayers, resource effect on system

operations, public policies regarding resource preference adopted by Washington state or the federal government, the cost of risks associated with environmental effects including emissions of carbon dioxide, and the need for security of supply.

(c) "Conservation" means any reduction in natural gas consumption that results from increases in the efficiency of energy use or distribution.

~~(3) ((Each gas utility must submit to the commission on a biennial basis a least cost plan that))~~ Content. At a minimum, integrated resource plans must include:

(a) A range of forecasts of future natural gas demand in firm and interruptible markets for each customer class ((for one, five, and twenty years using methods)) that examine the ~~((impact))~~ effect of economic forces on the consumption of natural gas and that address changes in the number, type((:)) and efficiency of natural gas end-uses.

(b) An assessment ~~((for each customer class))~~ of ~~((the technically feasible improvements in the efficient use of gas.))~~ commercially available conservation, including load management, as well as ((the)) an assessment of currently employed and new policies and programs needed to obtain the ((efficiency)) conservation improvements.

(c) An ~~((analysis for each customer class of gas supply options, including:~~

(i) ~~A projection of spot market versus long term purchases for both firm and interruptible markets;~~

~~((ii))~~ assessment of conventional and commercially available nonconventional gas supplies.

~~((d))~~ An ((evaluation)) assessment of ((the)) opportunities for using company-owned or contracted storage ((or production.))

~~((iii))~~ An analysis of prospects for company participation in a gas futures market; and

~~((iv))~~ (e) An assessment of ((opportunities for access to multiple)) pipeline ((suppliers or direct purchases from producers)) transmission capability and reliability and opportunities for additional pipeline transmission resources.

~~((f))~~ (f) A comparative evaluation of the cost of natural gas purchasing strategies, storage options, delivery resources, and improvements in ((the efficient use of gas based on)) conservation using a consistent method((, developed in consultation with commission staff, for calculating)) to calculate cost-effectiveness.

~~((g))~~ (g) The integration of the demand forecasts and resource evaluations into a long-range (e.g., ((twenty-year least cost)) at least ten years; longer if appropriate to the life of the resources considered) integrated resource plan describing the ((strategies designed to)) mix of resources that is designated to meet current and future needs at the lowest reasonable cost to the utility and its ratepayers.

~~((h))~~ (h) A short-term ((e.g., two-year)) plan outlining the specific actions to be taken by the utility in implementing the long-range ((least cost)) integrated resource plan during the two years following submission.

(i) A report on the utility's progress towards implementing the recommendations contained in its previously filed plan.

(4) ~~((All plans subsequent to the initial least cost plan must include a progress report that relates the new plan to the previously filed plan.~~

~~(5))~~ Timing. Unless otherwise ordered by the commission, each natural gas utility must submit a plan within two years after the date on which the previous plan was filed with the commission. Not later than twelve months prior to the due date of a plan, the utility must provide a work plan for informal commission review. The work plan must outline the content of the integrated resource plan to be developed by the utility and the method for assessing potential resources.

(5) Public participation. Consultations with commission staff and public participation are essential to the development of an effective plan. The work plan must outline the timing and extent of public participation. In addition, the commission will hear comment on the plan at a public hearing scheduled after the utility submits its plan for commission review.

(6) The ((least cost)) commission will consider the information reported in the integrated resource plan, ((considered with other available information, will be used to)) when it evaluates the performance of the utility in rate and other proceedings ((before the commission)).

AMENDATORY SECTION (Amending Docket No. UE-990473, General Order No. R-482, filed 5/3/01, effective 6/3/01)

WAC 480-100-238 ((Least cost)) Integrated resource planning. (1) Purpose ~~((and process))~~. Each electric utility regulated by the commission has the responsibility to meet its ~~((head))~~ system demand with a least cost mix of ~~((generating))~~ energy supply resources and ~~((improvements in the efficient use of electricity. Therefore, a "least cost plan" must be developed by each electric utility in consultation with commission staff. Provision for involvement in the preparation of the plan by the public will be required. Each planning cycle must begin with a letter to the utility from the commission secretary. The content and timing of and reporting for the least cost plan and the public involvement strategy must be outlined in a work plan developed by the utility after consulting with commission staff.))~~ conservation. In furtherance of that responsibility, each electric utility must develop an "integrated resource plan."

(2) Definitions.

~~((("Least cost plan")))~~ (a) "Integrated resource plan" or "plan" means a plan describing the mix of ~~((generating))~~ energy supply resources and ~~((improvements in the efficient use of electricity))~~ conservation that will meet current and future needs at the lowest reasonable cost to the utility and its ratepayers.

(b) "Lowest reasonable cost" means the lowest cost mix of resources determined through a detailed and consistent analysis of a wide range of commercially available sources. At a minimum, this analysis must consider resource cost, market-volatility risks, demand-side resource uncertainties, resource dispatchability, resource effect on system operation, the risks imposed on ratepayers, public policies regarding resource preference adopted by Washington state or the federal government and the cost of risks associated with environmental effects including emissions of carbon dioxide.

(c) "Conservation" means any reduction in electric power consumption that results from increases in the efficiency of energy use, production, or distribution.

~~((Each electric utility must submit to the commission on a biennial basis a least cost plan that))~~ Content. At a minimum, integrated resource plans must include:

(a) A range of forecasts of future demand using methods that examine the ~~((impact))~~ effect of economic forces on the consumption of electricity and that address changes in the number, type~~(s))~~ and efficiency of electrical end-uses.

(b) An assessment of ~~((technically feasible improvements in the efficient use of electricity,))~~ commercially available conservation, including load management, as well as an assessment of currently employed and new policies and programs needed to obtain the ~~((efficiency))~~ conservation improvements.

(c) An assessment of ~~((technically feasible))~~ a wide range of conventional and commercially available nonconventional generating technologies ~~((including renewable resources, cogeneration, power purchases from other utilities, and thermal resources (including the use of combustion turbines to utilize better the existing hydro system)))~~.

(d) An assessment of transmission system capability and reliability, to the extent such information can be provided consistent with applicable laws.

(e) A comparative evaluation of ~~((generating))~~ energy supply resources (including transmission and distribution) and improvements in ~~((the efficient use of electricity based on a consistent method, developed in consultation with commission staff, for calculating cost-effectiveness))~~ conservation using the criteria specified in WAC 480-100-238 (2)(b). Lowest reasonable cost.

~~((e) The))~~ (f) Integration of the demand forecasts and resource evaluations into a long-range (e.g., ~~((twenty-year least cost))~~ at least ten years; longer if appropriate to the life of the resources considered) integrated resource plan describing the mix of resources that ~~((will))~~ is designated to meet current and projected future needs at the lowest reasonable cost to the utility and its ratepayers.

~~((f))~~ (g) A short-term ~~((e.g., two-year))~~ plan outlining the specific actions to be taken by the utility in implementing the long-range ~~((least cost plan))~~ integrated resource plan during the two years following submission.

(h) A report on the utility's progress towards implementing the recommendations contained in its previously filed plan.

(4) ~~((All plans subsequent to the initial least cost plan must include a progress report that relates the new plan to the previously filed plan.~~

~~(5))~~ Timing. Unless otherwise ordered by the commission, each electric utility must submit a plan within two years after the date on which the previous plan was filed with the commission. Not later than twelve months prior to the due date of a plan, the utility must provide a work plan for informal commission review. The work plan must outline the content of the integrated resource plan to be developed by the utility and the method for assessing potential resources.

(5) Public participation. Consultations with commission staff and public participation are essential to the development of an effective plan. The work plan must outline the timing

and extent of public participation. In addition, the commission will hear comment on the plan at a public hearing scheduled after the utility submits its plan for commission review.

(6) The ~~((least cost))~~ commission will consider the information reported in the integrated resource plan ~~((, considered with other available information, will be used to))~~ when it evaluates the performance of the utility in rate and other proceedings ~~((, including the review of avoided cost determinations, before the commission))~~.

WSR 06-03-002

PERMANENT RULES

POTATO COMMISSION

[Filed January 4, 2006, 1:29 p.m., effective February 4, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of this rule making is to amend and repeal sections within the rules of the Washington state potato commission. Proposed amendments will update "hosting" language and will remove language referring to prepayment of assessments through the purchase of stamps.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-516-140; and amending WAC 16-516-100, 16-516-110, 16-516-150, and 16-516-170.

Statutory Authority for Adoption: Chapters 15.66 and 34.05 RCW, specifically RCW 15.66.140(2).

Adopted under notice filed as WSR 05-14-120 on July 1, 2005.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 4, Repealed 1.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 1.

Date Adopted: January 4, 2006.

Chris Voigt
Executive Director

AMENDATORY SECTION (Amending WSR 01-09-028, filed 4/10/01, effective 5/11/01)

WAC 16-516-100 Definitions. The following definitions apply to rules in this chapter adopted by the Washington Potato Commission unless otherwise provided:

"Hosting" may include providing meals, refreshments, lodging, transportation, gifts of nominal value, reasonable and customary entertainment, and normal incidental expenses at meetings or gatherings.

"~~((Promotional)) Trade relations hosting~~" means the hosting of individuals and groups of individuals at meetings, meals, and gatherings for the purpose of cultivating trade relations ~~((and promoting sales of))~~ for Washington state potatoes and potato products.

AMENDATORY SECTION (Amending Rule XII, filed 6/25/62)

WAC 16-516-110 Commission rules—Reporting and paying assessments. Effective with the growing season of 1962, the following procedure is established for the reporting and paying assessments levied pursuant to RCW 15.66.150 and WAC 16-516-040:

(1) The commission shall have the discretion to determine which one or more of the methods hereinafter set forth shall be respectively followed by each respective affected producer and or handler in reporting and paying assessments.

(2) Assessments shall be paid in accordance with one or more of the following methods as prescribed by the commission, in its discretion, for each respective affected producer and or handler:

~~((a))~~ By means of the purchase of stamps, to be known as "Washington potato commission stamps," from the Washington state potato commission

(i) The said stamps shall be in denominations of 1¢, 2¢, 10¢, 50¢, \$1.00, \$2.00, \$4.00, \$6.00, and \$8.00 respectively and shall be in such form as may from time to time be determined by the commission.

(ii) ~~The stamps shall be printed in serially numbered sheets of ten stamps of like denomination per sheet, the individual stamps on each sheet to bear the same number as the sheet of which they are a part.~~

(iii) Such stamps shall be purchased from the Washington state potato commission by handlers, including producers who handle their own potatoes, and shall be affixed, in an amount equal to 2¢ per hundred weight of potatoes listed on the document, to such shipping or other document as the commission may from time to time designate, at or prior to the time the shipping permit for such potatoes is issued by the inspector of the horticultural division of the Washington state department of agriculture. ~~Provided, however, That nothing herein contained shall prevent the handler from paying the amount of assessment due upon such potatoes in cash or by check at or prior to the issuance of the shipping permit in lieu of affixing such stamps to such document. Such document shall, however, in either event, be prepared by the inspector issuing the shipping permit and shall be forwarded by him, together with stamps affixed or accompanying payment in lieu of stamps, to the office of the commission at such intervals as the manager of the commission may from time to time designate for each respective handler. Stamps shall be deemed cancelled when affixed to such document.~~

(iv) In order to pay for such stamps, or to provide funds for the payment made in lieu thereof, handlers, including warehousemen and processors, receiving potatoes from a producer, shall collect the assessment of 2¢ per hundred weight of potatoes handled from the respective producer thereof at the time the potatoes are first handled. Producers handling their own potatoes shall pay the assessment either

through the purchase of stamps directly from the commission or through payment in lieu of stamps as provided in subsection (b) below.

~~(v) In providing stamps, the commission may extend credit to the handler ordering them for a period not to exceed 30 days from date stamps are forwarded from the office of the commission to the handler, or may require payment for the stamps prior to forwarding. The commission shall provide no additional stamps to any handler until all stamps previously provided have been paid for. All stamps shall remain the property of the commission until paid for and the commission may at any time reclaim any stamps not paid for, from the handler in possession thereof.~~

~~(vi) If stamps are issued on credit, the handler to whom issued shall be invoiced for the amount thereof, at the time of issue, which invoice will be considered as a statement, and the handler's account charged with the amount of stamps issued. Payments for stamps will be credited as received. Unused stamps may be returned for credit or, if the account has been paid in full, for cash refund.~~

~~(vii) The party to whom stamps are issued shall be primarily liable for payment for them; if stamps are used by a party other than to whom issued, both parties shall be jointly and severally liable for payment therefor.~~

~~(viii) If stamps are issued on credit and not paid for within the period for which credit was extended by the commission, a penalty of 10% of the unpaid balance of the account for such stamps shall be added thereto.~~

~~(b)) (a) By means of collection from producers by handlers (~~including warehousemen and processors receiving potatoes from producers~~), at the time the potatoes are first handled, and payment by said handlers to the commission of the assessments so collected.~~

(i) The commission shall bill each handler at such intervals, not less frequently than monthly, as the commission may from time to time determine, for the assessments due upon potatoes handled in the preceding period for which billing has not previously been made, and upon which assessments have not been paid, computed on the basis of the quantity of potatoes so handled as recorded on potato shipping records pertaining to each handler prepared by the state of Washington department of agriculture in behalf of the commission, and filed with the commission, or, with respect to handlers who are packers or processors, on the basis of the quantity of potatoes so handled as recorded on potato shipping records pertaining to such packer or processor prepared by such packer or processor and filed with the commission.

~~(ii) ((As used in subsection (b)(i) immediately preceding, the term "handler" shall be deemed to be the person, firm, or corporation designated as "shipper" on the potato shipping record form.~~

~~(iii))~~ In the event potatoes subject to assessment are handled by processors or other handlers under circumstances in which no potato shipping record is filed with the commission with respect to the potatoes so handled the handler shall, at the time of submitting the report required by subsection ~~((b)(iv))~~ (a)(iii) immediately following, pay in full the assessment on the potatoes so reported.

~~((iv))~~ (iii) Each handler shall, in any event, file a monthly report, under oath, on forms provided by the com-

mission, showing the name and address of the handler making the report, the quantity of potatoes handled during the preceding calendar month, the name, address, handler's lot number, and quantity of potatoes handled, for each respective producer, and the representative district as defined in WAC 16-516-020, within which the potatoes were grown. The report shall be filed with the commission not later than the 20th day of the month following that in which the potatoes were handled.

~~((e))~~ (b) By means of payment in cash by the producer, or handler, as determined by the commission in each respective instance, prior to the time the potatoes are shipped in either interstate or intrastate commerce.

AMENDATORY SECTION (Amending Order XII, filed 7/2/73)

WAC 16-516-150 Notice to director. The commission shall notify the director in writing of any handler who has not established a record of prompt payment (~~as set forth in WAC 16-516-140~~), and such handler shall be subject to the provisions of WAC 16-516-040 (2) ~~((e))~~ (c) which states as follows: No affected units of potatoes shall be transported, carried, shipped, sold, stored or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid and the receipt issued (~~or stamp cancelled~~), but no liability hereunder shall attach to common carriers in the regular course of their business. When any potatoes for which exemption as provided in subsection (1) of this section is claimed are shipped either by railroad or truck, there shall be plainly noted on the bill of lading, shipping document, container or invoice, the reasons for such exemptions.

AMENDATORY SECTION (Amending WSR 01-09-028, filed 4/10/01, effective 5/11/01)

WAC 16-516-170 Rules for implementation of ~~((promotional))~~ hosting by the Washington state potato commission. The laws of section 1, chapter 26, Laws of 1985 (RCW 15.04.200) provide that agricultural commodity commission shall adopt rules governing ~~((promotional))~~ hosting expenditures by agricultural commodity commission employees, agents, or commissioners. The rules governing ~~((promotional))~~ agricultural development or trade relations hosting expenditures for the Washington state potato commission shall be as follows:

(1) Budget approval: Commission expenditures for agricultural development or trade ~~((promotion and promotional))~~ relations hosting shall be pursuant to specific budget items as approved by the commission at annual public hearings on the commission budget.

(2) Officials and agents authorized to make expenditures ~~((The following officials and agents are authorized to make expenditures for agricultural development or trade promotion and promotional hosting in accordance with the provisions of these rules:~~

~~Commissioner/Commission employees—)~~; Individual commissioners and commission staff shall make ~~((promotional))~~ agricultural development or trade relations hosting expenditures, or seek reimbursements for those expenditures,

only in those instances where the expenditures have been approved by the commission.

(3) Payment and reimbursement. All payments and reimbursements shall be as identified and supported by vouchers to which receipts are attached. Voucher forms will be supplied by the commission, and shall require the following information:

(a) Name and position of each person hosted, provided that in case of a group of twenty-five or more persons, then only the name of the group hosting shall be required;

(b) General purpose of the hosting;

(c) Date of hosting;

(d) To whom payment was or will be made;

(e) Signature of person seeking payment or reimbursement;

(4) The chairman of the commission and/or the executive director or assistant executive director are authorized to approve direct payment or reimbursements submitted in accordance with these rules.

(5) The following persons may be hosted when it is reasonably believed such hosting will cultivate trade relations ~~((and promote sales of))~~ for the Washington state ((potatoes and)) potato ((products)) industry, provided that such hosting shall not violate federal or state conflict of interest laws:

(a) Individuals from private business and accompanying interpreter or interpreters;

(b) Foreign government officials and accompanying interpreter or interpreters;

(c) Federal, state, and local officials, provided lodging, meals, and transportation will not be provided when such officials may obtain reimbursement for these expenses from their government employer;

(d) The general public, at meetings and gatherings open to the general public;

(e) Commissioners and employees of the commission when their attendance at meetings, meals, and gatherings at which the persons described in (a) through (d) of this subsection are being hosted will cultivate ~~((and promote sales of))~~ trade relations for the Washington state ((potatoes and)) potato ((products)) industry.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-516-140	Conditions for prepayment of assessments and maximum payable.
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WSR 06-03-003

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed January 4, 2006, 1:32 p.m., effective February 4, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: During past legislative sessions, significant amendments were made to the Washington state potato commission's enabling statute, chapter 15.66 RCW. These statu-

tory changes prompted amendments to its marketing order, chapter 16-516 WAC. Proposed amendments expand the commission's policy and purpose statements, update the definitions, add additional power and duties to benefit the industry, update meeting and administrative procedures, and expand the commission's information and education role. In addition, the proposed amendments also eliminate the commission's authority to engage in promotion and advertising activities, increase the board membership from fourteen to fifteen members, decrease the representative districts from five to three and redefine them with county designations, clarify the nomination and election process, and remove language referring to payment of assessments through the purchase of stamps.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-516-002, 16-516-030 and 16-516-070; and amending WAC 16-516-005, 16-516-010, 16-516-020, 16-516-040, and 16-516-050.

Statutory Authority for Adoption: RCW 15.66.030, 15.66.053, 15.66.055, and chapter 34.05 RCW.

Adopted under notice filed as WSR 05-14-119 on July 1, 2005.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 5, Repealed 3.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 5, Repealed 3.

Date Adopted: January 4, 2006.

Valoria H. Loveland
Director

AMENDATORY SECTION (Amending Marketing Order for Washington Potatoes, effective 7/23/56)

WAC 16-516-005 Marketing order for Washington potatoes—Policy ~~((and purpose))~~ statement. ~~((The marketing of agricultural products within this state is affected with a public interest. It is declared to be the policy and purpose of the "act" and of this "potato marketing order" to promote the general welfare of the state by enabling potato producers to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing and labeling of the potatoes they produce, and in promoting and increasing the sale of such potatoes.))~~ (1) The production of potatoes within this state is in the public interest. It is vital to the continued economic well-being of the citizens of this state and their general welfare that its potatoes be properly encouraged by enabling producers of potatoes to help themselves in establishing orderly,

fair, sound, efficient, and unhampered marketing, grading, and standardizing of the potatoes they produce.

(2) It is in the overriding public interest that support for the potato industry be clearly expressed and that adequate protection be given to the industry and its activities and operations as part of a comprehensive agricultural industry to:

(a) Eliminate or limit impediments affecting the sale and use of Washington state's potatoes in local, domestic, and foreign markets;

(b) Respond to public requests for information regarding the quality, care, and methods used in the production of Washington state's potatoes;

(c) Respond to public requests for information regarding the nutritional, health-giving qualities and dietetic value of Washington state's potatoes and products; and

(d) Support and engage in programs or activities that benefit the planting, production, harvesting, handling, processing, transportation and utilization of potatoes produced in Washington state.

(3) The director is authorized to implement and administer chapter 15.66 RCW through this marketing order.

(4) The Washington state potato commission exists primarily for the benefit of the people of the state of Washington and its economy.

NEW SECTION

WAC 16-516-006 Marketing order purposes. The purpose of this marketing order is to promote the general welfare of the state and to maintain and protect existing markets, increase production efficiency, and ensure a fair regulatory environment for potatoes produced in Washington. The commission is designated by the director to conduct the following programs in accordance with chapter 15.66 RCW:

(1) Unfair trade practices and foreign regulatory barriers.

(a) The commission, subject to the provisions of the act, may investigate alleged unfair trade practices and foreign regulatory barriers that hinder the sale, production, transport, or export of Washington-produced potatoes or potato products.

(b) If the commission finds as a result of an investigation that trade or foreign regulatory barriers are restricting the free flow of potatoes produced in this state, the commission may institute appropriate action before any agency or body deemed necessary to correct the situation.

(c) If the commission finds as a result of an investigation that transportation rates and service costs are restricting the free flow of potatoes produced in this state, the commission may institute proper action before the interstate commerce commission or such other agency or body deemed necessary to correct the situation.

(d) Information and records acquired in any such investigation are exempt from public disclosure to the extent provided in RCW 15.66.105 and 42.17.31907 or any other applicable statute, except that such information may be released, to the extent necessary to effectuate the purposes of the act, in the presentation of facts to and negotiations with state, federal, or foreign governmental agencies on matters which affect the production, irrigation, transport, use, consumption,

export, or sale of potatoes grown in this state, as authorized in RCW 15.66.105.

(2) Research.

(a) The commission, subject to the provisions of the act, may carry on or cause to be carried on any necessary and proper production, irrigation, processing, transportation or handling research relating to potatoes and to expend moneys for those purposes.

(b) The commission, subject to the provisions of the act, may engage in research that may include, but shall not necessarily be limited to, the following:

(i) Production problems, such as soil, seed, fertilizers, irrigation, insecticides, fungicides, herbicides and the like;

(ii) Developing and testing new potato cultivars with improved disease resistance, processing, nutritional, or horticultural characteristics;

(iii) Improving techniques and methods of harvesting potatoes;

(iv) Developing and improving methods of processing potatoes and potato by-products for the purpose of increasing and expanding their use for food and industrial purposes;

(v) Improving packing and handling techniques which promote more efficient operation in the marketing and distribution of potatoes;

(vi) Determining any special nutritive, nutraceutical or pharmaceutical qualities of potatoes produced in Washington;

(vii) Improving production practices, resource requirements and availability, and similar issues or matters that may impact the continued production of potatoes in Washington.

(c) The commission may, in addition to the activities enumerated above, carry on any other proper and necessary research programs and activities consistent with and subject to the limitations of the act. Such research may include the collection of data and information relating to potatoes; the analysis of such data and information; and the dissemination of such data, information and analysis to potato producers and handlers and in response to public requests.

(d) The commission, subject to the provisions of the act, is authorized to coordinate potato producers' potato crop protection chemical registrations and integrated pest management (IPM) implementation.

(3) Standards and grades.

(a) The potato commission, subject to the provisions of the act and chapter 34.05 RCW, may adopt rules to define, establish and provide labeling requirements for improving standards and grades for potatoes, as provided in the act, not inconsistent with the horticultural laws of this state with respect to the same, and to expend moneys for such purposes.

(b) The commission shall give reasonable written notice to all producers, handlers and persons directly affected by the labeling requirements issued pursuant to this section in accordance with rule-making proceedings conducted under chapter 34.05 RCW.

(c) The commission may cooperate with state and federal agencies or departments responsible for revising and modernizing grades and standards and labeling of potatoes.

(d) Nothing in this section shall be construed as authorizing the commission to set minimum grades, sizes or maturity of potatoes which a producer may sell, offer for sale or ship.

(4) Public education. The commission may respond to requests from the public for information regarding:

(a) The economic, environmental and nutritional value and benefits of potatoes and the Washington potato industry;

(b) The quality, care and methods used in the production of Washington potatoes;

(c) The handling, preparation and utilization of Washington potatoes and potato products;

(d) The effects of trade, transportation and regulatory barriers on the Washington potato industry.

(5) Grower and industry education. The commission, subject to the provisions of the act, may conduct programs to provide information and education to the Washington state potato industry including:

(a) Public opinion or awareness research information for producers of potatoes;

(b) Industry-related education and training;

(c) Information and services enabling producers to meet resource conservation objectives and keep current with issues impacting their business.

AMENDATORY SECTION (Amending WSR 00-11-180, filed 5/24/00, effective 6/24/00)

WAC 16-516-010 Definitions. ((As used in this marketing order, the following terms shall have the following meanings:

(1) "Director" means the director of agriculture of the state of Washington or his duly appointed representative;

(2) "Act" means the Washington Agricultural Enabling Act, being chapter 15.66 RCW;

(3) "Person" includes any individual, firm, corporation, trust, association, partnership, society or any other organization of individuals;

(4) "Producer" means any person who is engaged in the business of producing or causing to be produced for market in commercial quantities potatoes as herein defined grown in the state of Washington;

(5) "Commercial quantities" shall mean and include five hundredweight or more;

(6) "Hundredweight" or "affected unit" are synonymous and mean and include each one hundred pound unit or any combination of packages making a one hundred pound unit of potatoes;

(7) "Potatoes" means and includes all kinds and varieties of Irish potatoes grown in the state of Washington and marketed, sold or intended for use for human consumption;

(8) "Potato commission" or "commission" are synonymous and mean the commission established pursuant to the provisions of WAC 16-516-020;

(9) "Marketing season" or "fiscal year" are synonymous and mean the twelve month period beginning July 1 of any year and ending upon the last day of June, both dates inclusive;

(10) "Handler" means any person engaged in the business of handling, selling, processing, storing, shipping, or distributing potatoes which he has purchased or acquired from a producer, or which he is shipping for or on behalf of a producer, and shall include any lending agencies for commodity credit corporation loan to producers, but shall not

include a producer engaged in transporting potatoes produced by him for grading, washing, sorting, sacking, or otherwise preparing for marketing or market;

(11) "Sale" means a transaction wherein the property in or to potatoes is transferred from the producer to a purchaser for consideration. "Sale" shall also include an agreement to acquire such property for a consideration;

(12) "Affected area" or "area of production" are synonymous and mean and include all of the state of Washington.

(13) "District" means the geographical divisions of the area of potato production established pursuant to the provisions of WAC 16-516-020.)) The following terms shall have the meanings given in RCW 15.66.010, supplemented by the following additional definitions:

(1) "Act" means the Washington state agricultural commodity commissions statute, chapter 15.66 RCW;

(2) "Affected area" or "area of production" are synonymous and mean all of the state of Washington;

(3) "Affected commodity" means potatoes as defined in this section;

(4) "Affected handler" means any handler of potatoes;

(5) "Affected producer" means any producer who is subject to this marketing order;

(6) "Agricultural development" means activities intended to increase the efficiency, productivity, or fair market access of Washington potatoes and potato products;

(7) "Commercial quantities" shall mean and include five hundredweight or more per growing season;

(8) "Director" means the director of agriculture of the state of Washington or any qualified person or persons designated by the director of agriculture to act for him or her concerning some matter under this chapter;

(9) "District" means the geographical divisions of the area of potato production established pursuant to the provisions of WAC 16-516-020;

(10) "Handler" means any person who acts, either as principal, agent, or otherwise, in the processing, packing, shipping, selling, marketing, or distributing of potatoes that are not produced by the handler. "Handler" does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler;

(11) "Hundredweight" or "affected unit" are synonymous and mean and include each one hundred pound unit or any combination of packages making a one hundred pound unit of potatoes;

(12) "Marketing season" or "fiscal year" are synonymous and mean the twelve month period beginning July 1 of any year and ending upon the last day of June, both dates inclusive;

(13) "Person" includes any individual, firm, corporation, limited liability company, trust, association, partnership, society or any other organization of individuals or any unit or agency of local or state government;

(14) "Potato commission" or "commission" are synonymous and mean the commission established pursuant to the provisions of WAC 16-516-020;

(15) "Potatoes" means and includes all kinds and varieties of Irish potatoes grown in the state of Washington and marketed, sold or intended for use for human consumption;

(16) "Producer" means any person engaged in the production of potatoes grown in Washington for market in commercial quantities, and it includes a landowner, landlord, tenant or other person that participates in the growing or producing of the affected commodity and who has a proprietary interest in the potatoes so produced. "To produce" means to act as a producer;

(17) "Research" means scientific research conducted by a university or other accredited researcher on pest and disease surveys; pest and disease control tools or techniques; planting, harvesting, handling and other production or processing tools or techniques; health or nutritional qualities or benefits of potatoes or potato products; and environmental issues including, but not limited to, water use, water quality, water quantity, and erosion control related to production of potatoes or potato products. Results of agricultural research conducted under the provisions of this marketing order shall be public information;

(18) "Sale" means a transaction wherein the property in or to potatoes is transferred from the producer to a purchaser for consideration. "Sale" shall also include an agreement to acquire such property for a consideration;

(19) "Unfair trade practice" means any practice that is unlawful or prohibited under the laws of the state of Washington including but not limited to Titles 15, 16, and 69 RCW and chapters 9.16, 19.77, 19.80, 19.84, and 19.83 RCW, or any practice, whether concerning interstate or intrastate commerce that is unlawful under the Federal Trade Commission Act of 1914, as amended (38 Stat. 719; 15 U.S.C. Sec. 41 et seq.) or the violation of or failure to accurately label as to grades and standards in accordance with any lawfully established grades or standards or labels.

AMENDATORY SECTION (Amending WSR 00-11-180, filed 5/24/00, effective 6/24/00)

WAC 16-516-020 Potato commission. (1) Establishment and membership. A potato commission is hereby established to administer this marketing order which shall be composed of nine members who shall be producers elected from districts as provided in subsections (2) and (3) of this section and ~~((four))~~ five members who shall be appointed by the elected producer members as provided in subsection (4) of this section. In addition, the director shall ~~((be an ex officio))~~ appoint one member ~~((of))~~ to the commission to represent the director as a voting member of the commission.

(2) Representative districts. For the purpose of nomination and selection of producer members of the commission, the affected area of the state of Washington shall be divided into ~~((five))~~ three representative districts as follows:

(a) "District No. 1" shall be ~~((the east irrigation district of the Columbia project, plus the area of Grant County not included in either the Quincy or south irrigation districts and lies east of R27E, plus the area of Adams County not included in either the south or Quincy irrigation districts, plus))~~ and include the counties of Douglas, Chelan, Okanogan, Grant, Adams, Ferry, Stevens, Pend Oreille, Spokane, Whitman and Lincoln.

(b) "District No. 2" shall be ~~((the Quincy irrigation district of the Columbia Basin project, plus the area of Grant~~

County not included in the east or south irrigation districts and lies west of R28E,)) and include the counties of Kittitas, ~~((Douglas, Chelan and Okanogan))~~ Yakima, Klickitat, Benton, Franklin, Walla Walla, Columbia, Garfield, and Asotin.

(c) "District No. 3" shall be and include the counties of ~~((Benton, Yakima and Klickitat~~

~~((District No. 4" shall be the south irrigation district of the Columbia Basin project, plus the areas of Franklin County not included in the south district, plus the counties of Walla Walla, Columbia, Garfield and Asotin.~~

~~((District No. 5" shall be and include))~~ Skagit and all other counties in the state of Washington.

(3) Elected membership. Producer members shall be elected from the districts as follows:

(a) ~~((Two of the producer members, being))~~ Positions 1, 2, 3, and ~~((2))~~ 4 shall be elected from District No. 1.

(b) ~~((Two of the producer members, being positions 3 and 4,))~~ Positions 5, 6, 7, and 8 shall be elected from District No. 2.

~~((Two of the producer members, being positions 5 and 6, shall be elected from District No. 3.~~

~~((Two of the producer members, being positions 7 and 8, shall be elected from District No. 4.~~

~~((One of the producer members, being))~~ Position 9~~((;))~~ shall be elected from District No. ~~((5))~~ 3.

~~((Members))~~ (4) Appointed membership.

(a) Positions 10, 11, 12, 13, and 14 shall be appointed by the elected producers ~~((shall be appointed for positions 10, 11, 12 and 13))~~ as provided in subsections (1) and (5)(b) of this section.

~~((4))~~ (b) Position 15 shall be appointed by the director as provided in subsection (1) of this section.

(5) Membership qualifications. Commission members shall be citizens and residents of this state, over the age of ~~((twenty-five))~~ eighteen years.

(a) Producer members of the commission shall be producers of potatoes in the district in and for which they are nominated and elected. The producer members shall be and have been actively engaged in producing potatoes for a period of at least three years, and shall derive a substantial proportion of their incomes from the sale of potatoes. A producer member of the commission must have paid an assessment to the commission on potatoes in each of the preceding three calendar years. The qualifications of producer members of the commission as herein set forth must continue during their term of office.

(b) Members of the commission appointed by the elected producers to positions 10, 11, 12, 13, and 14 shall be ~~((either))~~ potato producers~~((;))~~ or handlers or others active in matters directly relating to Washington state potatoes ~~((or persons not so related))~~ and have a demonstrated record of service in the potato industry in Washington state.

~~((5))~~ (6) Term of office. The term of office of the elected and appointed producer members of the commission ~~((members))~~ shall be three years from the date of their election or appointment and until their successors are elected or appointed and qualified. Commencing on July 1, ~~((2000))~~ 2005, the term of office for members of the commission shall be as follows: Positions 1, 5 and 7 shall terminate June 30, ~~((2002))~~ 2008; positions 3, 4 and 6 shall terminate June 30,

~~((2003))~~ 2006; ~~((and))~~ positions 2, 8 and 9 shall terminate June 30, ~~((2001. Appointed members for))~~ 2007; positions 10 and 11 shall terminate ~~((their terms))~~ June 30, ~~((2002))~~ 2008; positions 12 and 14 shall terminate June 30, ~~((2003))~~ 2006; and position 13 shall terminate June 30, ~~((2004))~~ 2007. ~~((The appointed members of the commission shall be elected by a majority of the elected commissioners.~~

~~((6))~~ (7) Nomination and election of commission members. Nomination and election of commission members shall be as set forth in the act and specified by the director. Dates will be set as follows:

(a) Not earlier than ~~((February 16))~~ March 18 and not later than ~~((March))~~ April 2 of each year, the director shall give notice by mail to all producers~~((, in a))~~ in each district ~~((wherein a vacancy))~~ in which one or more open positions will occur in the commission ~~((of such vacancy or such vacancies))~~ and call for nominations. Nominating petitions shall be signed by five persons qualified to vote for such candidates. Such notice shall state the final date for filing said petitions which shall be not earlier than ~~((March))~~ April 7 and not later ~~((then March))~~ than April 12 of each year.

(b) Not earlier than April 17 and not later than May 2 of each year, the director shall ~~((submit))~~ mail ballots ~~((by mail))~~ to all affected producers in ~~((the))~~ each district ~~((wherein the vacancy))~~ in which one or more open positions will occur ~~((not earlier than March 17 and not later than April 1 of each year))~~. Ballots ~~((shall be returned))~~ must be received by the director not later than ~~((May))~~ June 1 of such year. Such mailed ballot shall be conducted in a manner so that it shall be a secret ballot in accordance with rules ~~((and regulations to be promulgated))~~ adopted by the director. An affected producer is entitled to one vote.

(c) ~~((With respect to the initial potato commission, the director shall call for nominations in the notice of his decision following the hearing designated in the act. The ballot specified herein shall be forwarded to the producer at the time the director's proposed marketing order is mailed to the producers for their referendum assent.~~

~~((d) Except with respect to the initial potato commission, the members of the commission not elected by the producers shall be elected by a majority of the commission))~~ Each appointed producer member of the commission shall be elected by majority vote of the elected commissioners in a public vote at a public meeting held within ninety days prior to the expiration of the appointed member's term.

~~((7))~~ (8) Vacancies.

~~((a) To fill any vacancy occasioned by the failure to qualify of any person elected by the producers as a member of the commission, or in the event of the death, removal, resignation or disqualification of any member, the director shall call for nominations and conduct such election within the district wherein the vacancy occurred in the manner provided in subsection (6) of this section.~~

~~((b) To fill nonelective vacancies caused by other reasons than the expiration of the term, the new members shall be elected by the commission at its first meeting after the occurrence of the vacancy.~~

~~((8))~~ In the event of a vacancy on the board in an elected or commission-appointed position, the remaining members shall select a qualified person to fill the unexpired term. The

appointment shall be made at the board's first or second meeting after the position becomes vacant. Any member so appointed shall serve until the normal expiration of his or her term.

(9) Powers and duties of commission. The commission shall have the following powers and duties:

(a) To administer, enforce, direct and control the provisions of this marketing order and of the act relating thereto;

(b) To elect a chairman and such other officers as the commission may deem advisable; and to select subcommittees of commission members;

(c) To adopt, rescind, and amend rules ~~((and regulations))~~ reasonably necessary for the administration and operation of the commission and the enforcement of its duties under this marketing order;

(d) To employ and discharge at its discretion such administrators and additional personnel, attorneys, ~~((advertising and))~~ research agencies and other persons and firms that it may deem appropriate and pay compensation to the same;

(e) To acquire personal property and lease office space and other necessary real property and transfer and convey the same;

(f) To institute and maintain in its own name any and all legal actions, including actions by injunction, mandatory injunction or civil recovery, or proceedings before administrative tribunals or other governmental authorities necessary to carry out the provisions of the act and of this marketing order;

(g) To keep accurate records of all its receipts and disbursements, which records shall be open to inspection and audit by the department and other legal agencies of the state and make annual reports therefrom to the state auditor;

(h) To borrow money and incur indebtedness;

(i) To make necessary disbursements for routine operating expenses;

(j) To collect the assessments of producers as provided in this marketing order and to expend the same in accordance with and to effectuate the purposes of the act and this marketing order;

(k) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of this marketing order during each fiscal year. The commission, at least forty-five days prior to the beginning of its fiscal year, shall prepare and submit to the director its budget, research plan, and its commodity-related education and training plan;

(l) To accept and receive gifts and grants from private persons or private and public agencies and expend the same to effectuate the purposes of the act and this order;

(m) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes set forth in this marketing order;

(n) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local, to carry out the purposes set forth in this marketing order. Personal service contracts must comply with chapter 39.29 RCW;

(o) To enter into contracts or agreements for research in the production, irrigation, processing, transportation, use,

distribution and trade barriers impacting potatoes and potato products;

(p) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review by the office of the attorney general;

(q) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale or use of potatoes as requested by any elected official or officer or employee of any agency and as authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission;

(r) To assist and cooperate with the department or any other local, state, or federal government agency in the investigation and control of exotic pests and diseases that could damage or affect trade of the affected commodity;

(s) To acquire or own intellectual property rights, licenses, or patents and to collect royalties resulting from commission-funded research related to the affected commodity;

(t) To engage in appropriate fund-raising activities for the purpose of supporting activities of the commission authorized by this marketing order;

(u) To establish a foundation using commission funds as grant money for the purposes established in this marketing order;

(v) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the provisions of this marketing order and data on the value of each producer's production for a minimum three-year period pursuant to RCW 15.66.140(18);

(w) To maintain a list of the names and addresses of persons who handle potatoes within the affected area and data on the amount and value of the potatoes handled by each person pursuant to RCW 15.66.140(19) for a minimum three-year period;

(x) To maintain a list of names and addresses of all affected persons who produce potatoes and the amount, by unit, of potatoes produced during the past three years pursuant to RCW 15.66.143(1);

(y) To maintain a list of all persons who handle potatoes and the amount of potatoes handled by each person during the past three years pursuant to RCW 15.66.143(2);

(z) To check records of producers or handlers of the affected commodity during normal business hours to determine whether the appropriate assessment has been paid; and

(aa) To exercise such other powers and perform such other duties as are necessary and proper to effectuate the purposes of the act and of this order.

~~((9))~~ (10) Procedure for commission.

(a) The commission shall by resolution establish a headquarters which shall continue as such unless and until so changed by the commission, at which headquarters shall be kept the books, records and minutes of the commission meetings.

(b) The commission shall hold regular meetings at least quarterly, with the time and date thereof to be fixed by the resolution of the commission. Notice of the meetings shall be

published in the potato commission newsletter and sent to the appropriate general and agricultural media outlets.

(c) The commission may hold such special meetings as it may deem advisable and shall establish by resolution the time, place and manner of calling such special meetings with reasonable notice ~~((to the members: Provided, That the notice of any special meeting may be waived by a waiver thereof signed by not less than a quorum of the membership))~~ as required in RCW 42.30.080.

(d) Any action taken by the commission shall require the majority vote of the members present, provided a quorum is present.

(e) A quorum of the commission shall consist of at least ~~((eight))~~ nine members.

(f) No members of the commission shall receive any salary or other compensation from the commission, except that each member shall be paid a specified sum to be determined by resolution of the commission, which ~~((rate))~~ shall not exceed ~~((per day))~~ the compensation rate set by ~~((chapter 15.66))~~ RCW 43.03.230 or state travel expense rates in accordance with RCW 43.03.050 and 43.03.060 for each day spent in actual attendance at or traveling to and from meetings of the commission or on special assignments for the commission, ~~((together with subsistence and travel expense of the rate allowed by law to state employees))~~ except the commission may adopt by resolution provisions for reimbursement of actual travel expenses incurred by members of the commission in carrying out the provisions of this marketing order pursuant to RCW 15.66.130.

~~((10))~~ (11) Limitation of liability of commission members and employees. Obligations incurred by the commission and any other liabilities or claims against the commission shall be enforced only against the assets of the commission in the same manner as if it were a corporation and no liability for the debts or actions of the commission shall exist against either the state of Washington or any subdivision or instrumentality thereof or against any other commission established pursuant to the act or the assets thereof or against any member officer, employee or agent of the commission in his individual capacity. The members of the commission, including employees thereof, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal agent, person, or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the commission. The liability of the members of the commission shall be several and not joint and no member shall be liable for the default of any other member.

AMENDATORY SECTION (Amending WSR 90-09-068, filed 4/18/90, effective 7/1/90)

WAC 16-516-040 Assessments and assessment funds.

(1) Assessments levied.

(a) On and after the effective date of this order, there is hereby levied and there shall be collected by the commission, as provided in the act, upon all potatoes grown in the state an annual assessment of four cents per hundredweight which

shall be paid by the producer thereof upon each and every hundredweight of potatoes sold, processed, delivered for sale or processing by him or her or stored or delivered for storage when ~~((such))~~ storage or delivery for storage shall be outside the boundaries of this state: Provided, That no assessment shall be collected on the following:

(i) Potatoes grown and sold for seed under an established seed certification program;

(ii) Potatoes sold for livestock feed, regardless of grade;

(iii) Potatoes sold for nonfood products, such as industrial starch;

(iv) Potatoes of a producer's own production used by him or her on his or her own premises for seed, feed or personal consumption;

(v) Potatoes donated or shipped for relief or charitable purposes; or

(vi) Sales on a producer's premises by a producer direct to a consumer of five hundred pounds or less of potatoes from a producer's own production.

(b) The commission ~~((is authorized to))~~ may provide by rule ~~((and regulation))~~ for an assessment discount not to exceed twenty-five percent of the total hundredweight on field run or ungraded potatoes to allow for cull potatoes not used or intended for use for human consumption.

(c) No assessment levied or made collectable by the act under this order shall exceed three percent of the total market value of all ~~((such))~~ potatoes sold, processed or delivered for sale or processing by all producers of potatoes for the fiscal year to which the assessment applies.

(2) Collection of assessment.

(a) All assessments made and levied pursuant to the provisions of the act under this marketing order shall apply to the respective producer who shall be primarily liable therefore. ~~((To collect such assessments, the commission may require:~~

~~(i) Stamps to be known as "Washington potato commission stamps" to be purchased from the commission and fixed or attached to the containers, invoices, shipping documents, inspection certificates, releases or receiving receipts or tickets. Any such stamps shall be canceled immediately upon being attached or fixed and the date of such cancellation shall be placed thereon;~~

~~((ii))~~ (b) Handlers receiving potatoes from the producer, including warehousemen and processors ~~((to))~~ shall collect producer assessments from producers whose production they handle, and all moneys so collected shall be paid to the commission on or before the twentieth day of the succeeding month for the previous month's collections. Each handler shall at ~~((such))~~ times ~~((as))~~ required by rule ~~((and regulation required,))~~ file with the commission a return under oath on forms to be furnished by the commission, stating the quantity of potatoes handled, processed, delivered and/or shipped during the period prescribed by the commission~~((:))~~.

~~((iii) Payment of)~~ (c) Producer assessments may be paid before the potatoes are shipped off the farm or ~~((payments of assessments))~~ at different or later times ~~((and in such event))~~. If assessments are paid after the potatoes are shipped off the farm, any person subject to the assessment shall give ~~((such))~~ adequate assurance or security for its payments as the commission shall require by rule.

~~((b))~~ (d) The commission ~~((is authorized to make reasonable))~~ may adopt rules ~~((and regulations))~~ in accordance and conformity with the act and with this section to effectuate the collection of assessments. On or before the beginning of each marketing season, the commission shall give reasonable notice to all producers, handlers and other affected persons of the method or methods of collection to be used for that marketing season and of the assessment discount, if any, allowable on field run or ungraded potatoes.

~~((e))~~ (e) No affected units of potatoes shall be transported, carried, shipped, sold, stored or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid and the receipt issued ~~((or stamp canceled))~~, but no liability hereunder shall attach to common carriers in the regular course of their business. When any potatoes for which exemption as provided in subsection (1) of this section is claimed are shipped either by railroad or truck, there shall be plainly noted on the bill of lading, shipping document, container or invoice, the reasons for ~~((such))~~ the exemptions.

~~((d))~~ (f) Any producer or handler who fails to comply with the provisions of this subsection as herein provided shall be guilty of a violation of this order.

(3) Funds.

(a) Moneys collected by the potato commission pursuant to the act and this marketing order as assessments shall be used by the commission only for the purposes of paying for the costs or expenses arising in connection with carrying out the purposes and provisions of the act and this marketing order.

(b) At the end of each fiscal year the commission shall credit each producer with any amount paid by ~~((such))~~ the producer in excess of three percent of the total market value of all potatoes sold, processed, delivered for sale or processing during that period. Refund may be made only upon satisfactory proof given by the producer ~~((in accordance with reasonable rules and regulations prescribed by the director))~~, which may include bills of lading, bills of sale, or receipts.

AMENDATORY SECTION (Amending Marketing Order, Article V, effective 7/23/56)

WAC 16-516-050 Information reports. All persons subject to the provisions of this marketing order shall make and render ~~((such))~~ reports and furnish ~~((such))~~ information to the director or the commission as ~~((may be necessary or))~~ required under the act or this order ~~((to effectuate the purposes thereof))~~. ~~((Any))~~ Information and records obtained by ~~((any person pursuant to the provisions of this article shall be confidential and shall not be by him disclosed to any other person save to a person with like right to obtain the same or any attorney employed by the director of the commission to give legal advice thereon or by court order))~~ the director or commission are exempt from public disclosure to the extent provided in RCW 15.66.105 and 42.17.31907 or any other applicable statute.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 16-516-002	Director's findings and decision approving a marketing order.
WAC 16-516-030	Marketing order purposes.
WAC 16-516-070	Effective time.

WSR 06-03-005**PERMANENT RULES****DEPARTMENT OF TRANSPORTATION**

[Filed January 4, 2006, 3:25 p.m., effective February 4, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Revise and update chapter 468-66 WAC aka the Highway Advertising Control Act, to add fundamental definitions, revise fee schedule and facilitate ease of understanding.

Citation of Existing Rules Affected by this Order: Amending chapter 468-66 WAC.

Statutory Authority for Adoption: Chapter 47.42 RCW.

Other Authority: Title 23 Code of Federal Regulations part 750.

Adopted under notice filed as WSR 05-23-067 on November 15, 2005.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 1, Repealed 11; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 3, 2006.

John L. Conrad
Assistant Secretary

AMENDATORY SECTION (Amending Order 170, filed 8/7/97, effective 9/7/97)

WAC 468-66-010 Definitions. The following terms when used in this chapter shall have the following meanings:

(1) "Abandoned(-)" means a sign for which neither sign owner nor land owner claim any responsibility.

(2) "Act" (~~shall~~) means the Highway Advertising Act of 1961, as amended and embodied in chapter 47.42 RCW.

(3) "Centerline of the highway" means a line equidistant from the edges of the median separating the main-traveled ways of a divided highway, or the centerline of the main-traveled way of a nondivided highway.

(4) "Commercial and industrial areas" means any area zoned commercial or industrial by a county or municipal code(-); or, if unzoned or zoned for general uses by a county or municipal code, that area occupied by three or more separate and distinct commercial and/or industrial activities within a space of five hundred feet and the area within five hundred feet of such activities on both sides of the highway. The area shall be measured from the outer edges of the regularly used buildings, parking lots, storage or processing areas of the commercial or industrial activity and not from the property lines of the parcels upon which such activities are located. Measurements shall be along or parallel to the edge of the main-traveled way of the highway. The following shall not be considered commercial or industrial activities:

(a) Agricultural, forestry, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands;

(b) Transient or temporary activities;

(c) Railroad tracks and minor sidings;

(d) Signs;

(e) Activities more than six hundred and sixty feet from the nearest edge of the right of way;

(f) Activities conducted in a building principally used as a residence. Residences are buildings used as homes, located in areas where individuals and families typically reside. Residence buildings no longer used as homes may be considered commercial or industrial activities, if used for commercial or industrial purposes and located in areas having either mixed or primarily commercial and industrial development.

~~((Should any commercial or industrial activity, which has been used in defining or delineating an unzoned area, cease to operate for a period of six continuous months, any signs located within the former unzoned area shall become nonconforming and shall not be maintained by any person after May 10, 1974.))~~ If any commercial or industrial activity that has been used in defining or delineating an unzoned commercial or industrial area ceases to operate for a period of six continuous months resulting in fewer than three commercial or industrial activities remaining within that area, the unzoned area is deemed to no longer exist. Any signs located within the former unzoned area are declared nonconforming.

(5) ~~("Commission" means the Washington state transportation commission.)~~ "Department" means the Washington state department of transportation.

(6) "Destroyed" means a nonconforming sign shall be considered destroyed if more than fifty percent of the sign structure components are dislocated or damaged to the extent that the sign face has fallen to the ground.

(7) "Discontinued(-)" means a sign shall be considered discontinued if, after receiving notice from the department of absence of advertising content for ((three months)) ninety days, the permit holder fails to put advertising content on the sign within ((three months)) ninety days of the notice. The department may extend the ninety-day compliance time to a maximum of one year, if the sign owner provides documentation of unique circumstances creating involuntary discon-

tinuance and preventing the sign owner from placing advertising content on the sign.

~~((7))~~ (8) "Electronic sign" means an on-premise advertising sign having a signboard display that can be changed by an electrical, electronic, or computerized process.

(9) "Entrance roadway" means any public road or turning roadway including acceleration lanes, by which traffic may enter the main-traveled way of a ~~((controlled))~~ limited access highway from the general road system within the state, including rest areas, view points, and sites used by the general public, irrespective of whether traffic may also leave the main-traveled way by such road or turning roadway.

~~((8))~~ (10) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

~~((9))~~ (11) "Exit roadway" means any public road or turning roadway including deceleration lanes, by which traffic may leave the main-traveled way of a ~~((controlled))~~ limited access highway to reach the general road system within the state, including rest areas, view points, and sites used by the general public, irrespective of whether traffic may also enter the main-traveled way by such road or turning roadway.

~~((10))~~ (12) "Interstate system" means any state highway ~~((which))~~ that is or ~~((does))~~ becomes part of the national system of interstate and defense highways as described in section 103(e) of Title 23, United States Code.

~~((11))~~ (13) "Legible" means capable of being read without visual aid by a person of normal visual acuity.

~~((12))~~ (14) "Limited access highway" means a state highway, or a portion of a state highway, along which the department has acquired access rights as provided by chapter 47.52 RCW. A state highway, or a portion of a state highway, along which the department has not acquired access rights as provided by chapter 47.52 RCW is termed herein as a "nonlimited access highway."

(15) "Maintain" means to allow to exist. ~~((A sign loses its right to remain as a nonconforming sign if its size is increased more than fifteen percent over its size on the effective date of the Scenic Vistas Act on May 10, 1971, or the effective date of control of a given route, whichever is applicable. The sign may continue as long as it is not destroyed, abandoned, or discontinued. Such signs may be reerected in kind if destroyed due to vandalism, and other eriminal or tortious acts.~~

~~((13))~~ (16) "Main-traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, entrance roadways, exit roadways, or parking areas.

~~((14))~~ (17) "National scenic byway" means any state highway designated as part of the national scenic byway system authorized by the 1991 Intermodal Surface Transportation Efficiency Act.

(18) "Person" means this state or any public or private corporation, firm, partnership, association, as well as any individual, or individuals.

~~((15))~~ (19) "Primary system" means any state highway which is part of the federal-aid primary system as described

in section 103(b) of Title 23, United States Code, in existence on June 1, 1991, as enacted in the 1991 Intermodal Surface Transportation Efficiency Act, and any highway which is not on such system but which is on the National Highway System.

~~((16))~~ (20) "Public service information" means a message on an electronic sign that provides the time, date, temperature, weather, or information about nonprofit activities sponsored by civic or charitable organizations.

(21) "Scenic system" means:

(a) Any state highway within any public park, federal forest area, public beach, public recreation area, or national monument;

(b) Any state highway or portion thereof outside the boundaries of any incorporated city or town designated in RCW 47.42.140 by the legislature as a part of the scenic system; or

(c) Any national scenic byway~~((, state scenic byway,))~~ or state highway or portion thereof, outside the boundaries of any incorporated city or town, designated by the legislature in chapter 47.39 RCW as a part of the scenic and recreational highway system except for the sections of highways specifically excluded in RCW 47.42.025 or located within areas zoned by the governing county for predominantly commercial and industrial uses, and having development visible to the highway as determined by the department.

~~((17))~~ (22) "Sign" means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main-traveled way of the interstate system or other state highway. The term includes the sign face(s), and the sign structure unless the sign is painted on a building, and applies to portable, temporary, and permanent installations. Signs are further defined by the provisions following:

~~((18))~~ (a) A single-faced sign may display only one advertised business activity or other activity that may be of interest to motorists.

(b) A double-faced (flanking or side-by-side) sign may only be patterned so that not more than two single-faced signs on one sign structure are visible to traffic approaching from one direction of travel.

(c) A V-type and back-to-back sign displays messages to opposing directions of travel from one sign structure. A V-type and back-to-back sign may only be patterned so that not more than one single-faced sign or double-faced (flanking or side-by-side) sign is visible to traffic approaching from each of the opposing directions of travel.

(d) A nonconforming sign means a sign that was lawfully erected but does not comply with provisions of state law or state regulations passed at a later date, or later fail to comply with the state law or state regulations due to changed conditions.

(e) Illegal signs are those erected or maintained in violation of state law or local law or ordinance.

(f) Pursuant to RCW 47.42.020(8) and 47.36.030(3), the term "sign" does not include signs, banners, or decorations that are devoid of commercial advertising and installed over a state highway to promote a local agency sponsored event.

(23) "Trade name" shall include brand name, trademark, distinctive symbol, or other similar device or thing used to identify particular products or services.

~~((19))~~ (24) "Traveled way" means the portion of a roadway for the movement of vehicles, exclusive of shoulders.

~~((20))~~ (25) "Tri-vision sign" means a sign having a series of three-sided rotating slats arranged side by side, either horizontally or vertically, which are rotated by an electric-mechanical process, capable of displaying a total of three separate and distinct messages, one message at a time.

(26) "Turning roadway" means a connecting roadway for traffic turning between two intersection legs of an interchange.

~~((21))~~ (27) "Visible" means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

~~((22) "Electronic sign" means an outdoor advertising sign, display, or device whose message may be changed by electrical or electronic process, and includes the device known as the electronically changeable message center for advertising on-premise activities (WAC 468-66-070).~~

(23) "Public service information" means a message on an electronic sign which provides the time, date, temperature, weather, or information about nonprofit activities sponsored by civic or charitable organizations.

(24) "Temporary agricultural directional sign" means a sign on private property adjacent to state highway right of way to provide directional information to places of business offering for sale seasonal agricultural products.

(25) "National scenic byway" means any state highway designated as part of the national scenic byway system authorized by the 1991 Intermodal Surface Transportation Efficiency Act.

(26) "State scenic byway" means any scenic and recreational highway established by chapter 47.39 RCW.

~~(27) "Visible development" means those areas determined by the department to have development, both in type and location, that meet the requirements for unzoned commercial and industrial areas prescribed by RCW 47.42.020(9) and such development is not visually obstructed by vegetation or other natural features. It is prohibited to remove vegetation or other natural features, located within the state highway right of way, that may act as visual obstructions.)~~

(28) ~~("Tri-vision sign" means a sign having a series of three-sided rotating slats arranged side by side, either horizontally or vertically, which are rotated by an electric-mechanical process, capable of displaying a total of three separate and distinct messages, one message at a time.)~~ "Visible development area" means a five hundred-foot area along a scenic system state highway, that is zoned for predominantly commercial or industrial uses by the governing county, having three or more commercial or industrial activities within the five hundred-foot area that are visible to traffic in both directions. The consideration of commercial or industrial activities, and measurements that establish the area shall conform with RCW 47.42.020(9).

AMENDATORY SECTION (Amending DOT Order 10 and Comm. Order 1, Resolution No. 13, filed 12/20/78)

WAC 468-66-020 Restrictions on signs. (1) Except as permitted by the act and these regulations, no person shall erect or maintain a sign which is visible from the main-traveled way of the interstate system, the primary system, or the scenic system. Signs visible to other types of state highways are not restricted by the Scenic Vistas Act or these regulations, but are subject to local ordinances.

(2) In case a highway or a section of highway is ~~(both)~~ a part of both the primary system and the scenic system, only those signs permitted along the scenic system ~~(shall)~~ may be erected or maintained.

AMENDATORY SECTION (Amending Order 195, filed 11/30/99, effective 12/31/99)

WAC 468-66-030 General provisions. (1) Notwithstanding any other provision of the act or these regulations, no signs visible from the main-traveled way of the interstate system, primary system, or scenic system which have any of the following characteristics shall be erected or maintained:

~~((1))~~ (a) Signs advertising activities that are illegal under state or federal laws or regulations in effect at the location of such signs or at the location of such activities.

~~((2))~~ (b) Illegal, destroyed, abandoned, or discontinued ~~(or obsolete)~~ signs.

~~((3))~~ (c) Signs that are not clean and in good repair.

~~((4))~~ (d) Signs that are not securely affixed to a substantial structure.

~~((5))~~ (e) Signs which attempt or appear to attempt to direct the movement of traffic or which interfere with, imitate, or resemble any official traffic sign, signal or device.

~~((6))~~ (f) Signs which prevent the driver of a vehicle from having a clear and unobstructed view of ~~(official signs and)~~ at-grade intersections, approaching or merging traffic, official traffic control signs, or other traffic control devices.

~~((7))~~ (g)(i) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights, ~~((f))except ((those signs giving))~~ public service information ~~((h))~~ signs, Type 3 on-premise signs along a primary system highway within an incorporated city or town or commercial or industrial area, or electronic on-premise signs operating in compliance with WAC 468-66-050.

~~((8))~~ (ii) Signs which have lights that change intensity or color, lasers, strobe lights, or other lights with stroboscopic effect.

(h) Signs which use any lighting in any way unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled ways of the highway or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.

~~((9))~~ (i) Signs which move or have any animated or moving parts, ~~((f))except revolving ((signs giving))~~ public service information ~~((h))~~ signs, Type 3 on-premise signs along a primary system highway within an incorporated city or town or commercial or industrial area, or tri-vision signs operating in compliance with WAC 468-66-030(2).

~~((10))~~ (j) Signs which are erected or maintained upon trees, power poles or painted or drawn upon rocks or other natural features.

~~((11))~~ Signs which exceed twenty feet in length, width or height, or one hundred fifty square feet in area, including border and trim but excluding supports, except:

(a) ~~Larger signs as permitted within commercial and industrial areas adjacent to the primary system pursuant to RCW 47.42.062; and~~

(b) ~~Type 3 signs not more than fifty feet from the advertised activity; and~~

(c) ~~Single on-premise signs advertising shopping centers, malls, and business combinations as described in WAC 468-66-070(3); and~~

(d) ~~Type 8 signs shall not exceed thirty-two square feet in area, unless they qualify as Type 3 (on-premise) signs.~~

(12) Electronic signs may be used only to advertise activities conducted or goods and services available on the property on which the signs are located or to present public service information.

(a) Advertising messages may contain words, phrases, sentences, symbols, trade marks, and logos. A single message or a segment of a message must have a display time of at least two seconds including the time to move onto the sign board, with all segments of the total message to be displayed within ten seconds. A message consisting of only one segment may remain on the sign board as long as desired.

(b) Electronic signs requiring more than four seconds to change from one single message display to another shall be turned off during the change interval.

(c) Displays traveling horizontally across the sign board must move between sixteen and thirty-two light columns per second. Displays can scroll onto the sign board but must hold for two seconds including scrolling.

(d) Sign displays shall not include any art animations or graphics that portray motion, except for movement of graphics onto or off of the sign board as previously described.

(e) No electronic sign lamp may be illuminated to a degree of brightness that is greater than necessary for adequate visibility. Signs found to be too bright shall be adjusted in accordance with the instructions of the department.

(f) As on-premise signs, electronic signs are subject to the provisions of RCW 47.42.045 and 47.42.062.

~~(13))~~ (2) Tri-vision signs may be used as Type 3, Type 4, or Type 5 signs, with the provisions following (~~provisions~~):

(a) Visible to Interstate highways, tri-vision signs may only be used as Type 3 signs.

(b) Rotation of one sign face to another sign face is no more frequent than every eight seconds and the actual rotation process shall be accomplished in four seconds or less.

(c) Tri-vision signs shall contain a default mechanism that will stop the sign in one position should a malfunction occur.

(d) Maximum size limitations shall independently apply to each sign face, including framework and border.

(e) Tri-vision signs are subject to all other applicable provisions of chapter 47.42 RCW and chapter 468-66 WAC.

AMENDATORY SECTION (Amending Order 195, filed 11/30/99, effective 12/31/99)

WAC 468-66-050 Sign classifications (~~of signs~~) and specific provisions. Signs shall be classified (~~as follows~~) and restricted to the provisions following:

(1) Type 1—Directional or other official signs (~~of~~) and notices. Directional or other official signs and notices may be erected and maintained on private property or public property, other than state highway right of way, for the purposes of carrying out an official duty or responsibility. The signs may only be installed by public offices or public agencies within their territorial or zoning jurisdiction and shall follow federal, state, or local law.

~~((a))~~ Signs and notices erected and maintained by public offices or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction or authorization contained in federal, state, or local law for the purposes of carrying out an official duty or responsibility. Historical markers authorized by state law and erected by state or local government agencies or nonprofit historical societies may be considered official signs.

~~(b) Service club and religious notices, whose message shall contain only the name of a nonprofit service club or religious organization, its address and the time of its meeting or service.)~~ (a) Type 1(a) - Directional sign. A directional sign may only be installed in accordance with the provisions following:

(i) Publicly or privately owned places - Directional signs for publicly or privately owned places that feature natural phenomena: historical, cultural, scientific, or educational opportunities; areas of scenic beauty, or outdoor recreation areas:

• Publicly owned places - Directional signs for public places owned or operated by federal, state, or local government, or their agencies;

• Privately owned places - Directional signs for nonprofit privately owned places that feature scenic attractions. The attractions must be nationally or regionally known, or of outstanding interest to travelers.

(ii) A sign message shall be limited to identification of the activity or attraction and directional information. Directional information is limited to that which helps the motorist locate the activity, such as providing mileage to the activity, highway route or exit numbers.

(iii) Descriptive words, phrases, and photographic or pictorial representations of the activity or attraction are prohibited.

(iv) Type 1(a) signs shall not exceed twenty feet in length, width, or height, or one hundred fifty square feet in area, including border and trim but excluding supports.

(v) The department must approve the proposed installation location.

(vi) Along the interstate system and other limited access highways having grade separations (interchanges), a sign shall not be located within two thousand feet of an interchange or rest area, measured from the ramp physical gore, or within two thousand feet of a parkland or scenic area.

(vii) Type 1(a) signs shall not be spaced closer than one mile apart.

(viii) Visible to a state route approaching an activity or attraction, a maximum of three signs per direction of travel are allowed for each activity or attraction.

(ix) Type 1(a) signs located along the interstate system shall be within seventy-five air miles of the activity or attraction.

(x) Type 1(a) signs located along the primary and scenic systems shall be within fifty air miles of the activity or attraction.

(b) Type 1(b) - Official sign. An official sign may be installed subject to the provisions following:

(i) Type 1(b) signs may only be erected and maintained by public offices or public agencies.

(ii) Type 1(b) signs may only be located within the governing jurisdiction of the public office or public agency.

(iii) Type 1(b) signs shall follow federal, state, or local law.

(iv) Type 1(b) signs have no restrictions on message content, provided the activity being described furthers an official duty or responsibility.

(v) Type 1(b) signs shall not exceed twenty feet in length, width, or height, or one hundred fifty square feet in area, including border and trim but excluding supports.

(vi) Type 1(b) signs may be historical markers authorized by federal, state, and local law.

(vii) Type 1(b) signs are not regulated by the act with regard to visibility to highways, zoning requirements, number of signs, or spacing.

(c) Type 1(c) - Service activity sign. A service activity sign may be installed subject to the provisions following:

(i) Type 1(c) signs shall contain only the name of a non-profit organization, its address, and the time of its meeting or service.

(ii) Type 1(c) signs shall not exceed eight square feet in area.

(iii) Type 1(c) signs are not regulated by the act with regard to visibility to highways, zoning requirements, number of signs, or spacing.

(2) Type 2—For sale or lease sign. A Type 2 sign (~~not prohibited by state law which is consistent with the applicable provisions of these regulations and which~~) may only advertise(~~s~~) the sale or lease of the parcel of real property upon which the sign is located. The name of the owner of the property offered for sale or lease, or the owner's agent and phone number shall not be displayed more conspicuously than the words "for sale" or "for lease." No other message may be displayed on the sign. (~~Not more than one such sign advertising the sale or lease of a parcel of property shall be visible to traffic proceeding in any one direction on an interstate system, primary system or scenic system highway.~~)

(a) Type 2 signs shall not exceed twenty feet in length, width, or height, or one hundred fifty square feet in area, including border and trim but excluding supports.

(b) Not more than one Type 2 sign may be installed that is visible to traffic proceeding in any one direction on an interstate, primary, or scenic system highway.

(c) The act does not regulate Type 2 signs with regard to zoning requirements or spacing.

(3) Type 3—On-premise signs.

~~((a) A sign advertising an activity conducted on the property on which the sign is located. The sign, except as provided under (b) of this subsection, shall be limited to identifying the establishment or the principal or accessory products or services offered on the property. A sign consisting principally of a brand name, trade name, product, or service incidental to the principal products or services offered on the property, or bringing rental income to the property owner, is not considered an on-premise sign. Not more than one such sign, visible to traffic proceeding in any one direction on an interstate system, primary system, or scenic system highway may be permitted more than fifty feet from the advertised activity.~~

~~(b) Temporary political campaign signs are a Type 3 on-premise sign, on which the property owner expresses endorsement of a political candidate or ballot issue, with the following restrictions:~~

~~(i) Temporary political campaign signs are limited to a maximum size of thirty-two square feet in area.~~

~~(ii) Temporary political campaign signs must be removed within ten days after the election.~~

~~(iii) Except as provided in (b)(i) and (ii) of this subsection, temporary political campaign signs are subject to all other applicable provisions of chapter 47.42 RCW and chapter 468-66 WAC that pertain to Type 3 on-premise signs.~~

~~(c) Signs reading "future site of" or similar wording will be allowed as an on-premise sign without any activity being apparent on the site for one year from date of installation provided the following conditions have been met:~~

~~(i) The department of transportation has received a letter of notification of intent from the owner of the proposed advertised activity.~~

~~(ii) The sign shall not inform of activities conducted elsewhere.~~

~~(iii) The maximum size of a future site sign shall not be greater than one hundred fifty square feet.~~

~~The sign must be removed at the end of the one year time period if the advertised activity has not become operational.~~

~~(4) Type 4—Signs within twelve air miles of advertised activities. Signs not prohibited by state law which are consistent with the applicable provisions of these regulations and which advertise activities conducted within twelve air miles of such signs.~~

~~(5) Type 5—Signs in the specific interest of the traveling public. Signs authorized to be erected or maintained by state law which are consistent with these regulations and which are designed to give information in the specific interest of the traveling public.)~~

(a) Type 3(a) - On-premise sign. A Type 3(a) on-premise sign may only advertise an activity conducted on the property upon which the sign is located.

(i) A Type 3(a) on-premise sign shall be limited to advertising the business or the owner, or the products or services offered on the property. A sign consisting mainly of a brand name, trade name, product or service incidental to the main products or services offered on the property, or a sign bringing rental income to the property, is not an on-premise sign.

(ii) A Type 3(a) on-premise sign more than fifty feet from the advertised activity may not exceed twenty feet in length, width, or height, or one hundred fifty square feet in area, including border and trim but excluding supports. The

act does not regulate the size of Type 3(a) on-premise signs located within fifty feet of the advertised activity.

(iii) A Type 3(a) on-premise sign located at a shopping center, mall, or business combination is not authorized more than fifty feet from the individual activity it advertises, unless it is installed together with a Type 3(b) business complex on-premise sign as described in (b)(i) of this subsection.

(iv) For the purpose of measuring from the advertised activity, the distance shall be measured from the sign to the nearest portion of that building, storage, or other structure or processing area, which is the most regularly used and essential to the conduct of the advertised activity as determined solely by the department.

(b) Type 3(b) - Business complex on-premise sign. A Type 3(b) business complex on-premise sign may display the name of a shopping center, mall, or business combination.

(i) Where a business complex erects a Type 3(b) on-premise sign, the sign structure may display additional individual business signs identifying each of the businesses conducted on the premises. A Type 3(b) on-premise sign structure may also have attached a display area, such as a manually changeable copy panel, reader board, or electronically changeable message center, for advertising on-premise activities and/or presenting public service information.

(ii) Type 3(b) on-premise signs are not regulated by the act with regard to size. Any Type 3(a) on-premise sign and any display area, installed together with a Type 3(b) on-premise sign, may not exceed twenty feet in length, width, or height, or one hundred fifty square feet in area, including border and trim.

(c) Type 3(c) - Future site on-premise sign. A Type 3(c) future site on-premise sign may only display the name of a business activity, or other activity of interest to motorists, planned for the property upon which the sign is located and the anticipated opening date of such activity.

(i) The owner, or owner's representative, shall by letter notify the department at least thirty days prior to the installation of the proposed Type 3(c) future site on-premise sign. Said notice shall include the location, sign message, and installation date.

(ii) Type 3(c) future site on-premise signs may remain until the business activity is operational, but shall not exceed one year from the planned installation date. The sign must be removed at the end of one year after the planned installation date if the business activity is not yet operational.

(iii) Type 3(c) future site on-premise signs shall not exceed twenty feet in length, width, or height, or one hundred fifty square feet in area.

(d) Type 3(d) - Temporary political campaign sign. A Type 3(d) temporary political campaign sign may express a property owner's endorsement of a political candidate or ballot issue.

(i) Type 3(d) temporary political campaign signs are limited to a maximum size of thirty-two square feet.

(ii) Type 3(d) temporary political campaign signs must be removed within ten days after an election. After primary elections, temporary political campaign signs endorsing a successful candidate may remain up to ten days after the succeeding general election.

(e) Not more than one Type 3(a) or 3(b) sign, visible to traffic proceeding in any one direction on an interstate system highway; on a primary system highway outside an incorporated city or town or commercial or industrial area; or on a scenic system highway, may be permitted more than fifty feet from the advertised activity. Not more than one Type 3(c) sign may be installed visible to traffic proceeding in any one direction on an interstate system highway; on a primary system highway outside an incorporated city or town or commercial or industrial area; or on a scenic system highway. The act does not regulate Type 3(d) signs with regard to the number of signs installed, visibility from highways, zoning requirements, or spacing.

(i) For Type 3(a) on-premise signs, the fifty-foot distance from the advertised activity shall be measured from the sign to the nearest portion of that building, storage, or other structure or processing area, which is the most regularly used and essential to the conduct of the advertised activity as determined solely by the department.

(ii) For Type 3(b) on-premise signs, the fifty-foot distance from the advertised activity may be measured in the same manner as for Type 3(a) on-premise signs, or may be measured fifty feet from the nearest portion of a combined parking area.

(f) A Type 3(a) or 3(b) on-premise sign more than fifty feet from the advertised activity shall not be erected or maintained at a greater distance from the advertised activity than one of the options following, as applicable, selected by the owner of the business being advertised:

(i) One hundred fifty feet measured along the edge of the protected highway from the nearest edge of the main entrance to the activity advertised;

(ii) One hundred fifty feet from any outside wall of the main building of the advertised activity; or

(iii) Fifty feet from any outside edge of a regularly used parking lot maintained by, and contiguous to, the advertised activity.

(g) Electronic signs may be used only as Type 3 on-premise signs and/or to present public service information, as follows:

(i) Advertising messages on electronic signboards may contain words, phrases, sentences, symbols, trademarks, and logos. A single message or a message segment must have a static display time of at least two seconds after moving onto the signboard, with all segments of the total message to be displayed within ten seconds. A one-segment message may remain static on the signboard with no duration limit.

(ii) Displays may travel horizontally or scroll vertically onto electronic signboards, but must hold in a static position for two seconds after completing the travel or scroll.

(iii) Displays shall not appear to flash, undulate, or pulse or portray explosions, fireworks, flashes of light, or blinking or chasing lights. Displays shall not appear to move toward or away from the viewer, expand or contract, bounce, rotate, spin, twist, or otherwise portray graphics or animation as it moves onto, is displayed on, or leaves the signboard.

(iv) Electronic signs requiring more than four seconds to change from one single message display to another shall be turned off during the change interval.

(v) No electronic sign lamp may be illuminated to a degree of brightness that is greater than necessary for adequate visibility. In no case may the brightness exceed 8,000 nits or equivalent candelas during daylight hours, or 1,000 nits or equivalent candelas between dusk and dawn. Signs found to be too bright shall be adjusted as directed by the department.

(h) The act does not regulate Type 3(a), 3(b), 3(c), and 3(d) on-premise signs located along primary system highways inside an incorporated city or town or a commercial or industrial area.

(4) Type 4—Off-premise signs; and

(5) Type 5—Off-premise signs. Type 4 off-premise signs are distinguishable from Type 5 off-premise signs only by message content. Type 4 off-premise sign messages are those that do not qualify as Type 5 sign messages described in (b) of this subsection.

(a) A Type 4 sign shall be located within twelve air miles of the advertised activity. A Type 4 sign that displays any trade name which refers to or identifies any service rendered or product sold, used, or otherwise handled more than twelve air miles from such sign shall not be permitted unless the name of the advertised activity, which is within twelve air miles of such sign, is displayed as conspicuously as such trade name.

(b) A Type 5 sign displays a message of specific interest to the traveling public. On Type 5 signs, only information about public places operated by federal, state, or local governments, natural phenomena, historic sites, areas of natural scenic beauty or outdoor recreation, and places for lodging, camping, eating, and vehicle service and repair is deemed to be in the specific interest of the traveling public. A trade name is authorized on a Type 5 sign only if it identifies or represents a place of specific interest to the traveling public; or identifies vehicle service, equipment, parts, accessories, fuels, oils, or lubricants being offered for sale at such place. The display of any other trade name is not permitted on Type 5 signs.

(c) Type 4 and Type 5 signs are restricted in size to the following:

(i) Visible to interstate highways, signs may not exceed twenty feet in length, width, or height, or one hundred fifty square feet in area including border and trim but excluding supports.

(ii) Visible to primary highways, the maximum area for any one sign, except as provided in (c)(iii) of this subsection, shall be six hundred seventy-two square feet with a twenty-five-foot maximum height and a fifty-foot maximum length, including the border and trim but excluding the base or apron, supports, and structural members. Cut-outs and extensions may add up to twenty percent of additional sign area.

(iii) Each sign face of a double-faced (flanking and side-by-side) sign may not exceed three hundred twenty-five square feet.

(d) The spacing of Type 4 and Type 5 signs along interstate highways and visible to traffic traveling in one direction shall be restricted as follows:

(i) Type 4 and Type 5 signs visible to traffic approaching an intersection of the main-traveled way of an interstate high-

way and an exit roadway may not exceed the number following:

<u>Distance from intersection</u>	<u>Number of signs</u>
<u>0 - 2 miles</u>	<u>0</u>
<u>2 - 5 miles</u>	<u>6</u>
<u>More than 5 miles</u>	<u>Average of one sign per mile</u>

The specified distances shall be measured to the nearest point of intersection of the traveled way of the exit roadway and the main-traveled way of the interstate highway.

(ii) Not more than two such signs may be permitted within any mile distance and no such signs may be permitted less than one thousand feet apart.

(iii) Type 1, 2, and 3 signs shall not be considered in determining compliance with the above spacing requirements.

(iv) Type 4 and Type 5 signs may not be permitted adjacent to interstate highway right of way within the limits of an interchange, including its entrance or exit roadways.

(v) Type 4 and Type 5 signs visible to interstate highway traffic, which has passed an entrance roadway, may not be permitted within one thousand feet of the point where the entrance roadway intersects with the interstate highway. The distance shall be measured from the intersection point farthest from the preceding interchange.

(vi) Not more than one Type 4 or Type 5 sign, advertising activities conducted as a single enterprise or giving information about a single place, may be erected or maintained in such manner as to be visible to traffic moving in any one direction on any one interstate highway.

(e) The spacing of Type 4 and Type 5 signs visible to primary highways shall be restricted as follows:

(i) On limited access highways, no two signs may be spaced less than one thousand feet apart, and no sign may be located within three thousand feet of the center of a grade separated interchange, a safety rest area, or an information center, or within one thousand feet of an at-grade intersection. Not more than a total of five sign structures may be permitted per mile, including both sides of the highway. Double-faced (flanking or side-by-side) signs are prohibited.

(ii) On nonlimited access highways inside the boundaries of incorporated cities or towns, not more than a total of four sign structures, including both sides of the highway, may be permitted within a space of six hundred sixty feet or between platted intersecting streets or highways. There shall also be a minimum of one hundred feet between sign structures, including both sides of the highway.

(iii) On nonlimited access highways outside the boundaries of incorporated cities or towns, the minimum spacing between sign structures on each side of the highway shall be five hundred feet.

(iv) Back-to-back signs and V-type signs shall be considered one sign structure.

(f) The minimum space between sign structures located on the same side of the highway shall be measured between two points along the nearest edge of pavement. The measurement points are established at the origin of lines extending

perpendicular from the edge of pavement to the apparent centers of the sign structures.

(g) The minimum space between sign structures located on opposite sides of the highway shall be measured in the applicable manner following:

(i) Along tangent sections, sign spacing is measured between two points along the edge of pavement in the increasing milepost direction of travel. One measurement point is established at the origin of a line extending perpendicular from the edge of pavement to the apparent center of the sign structure located in the increasing direction of travel. The second measurement point is established at the origin of a line extending perpendicular from the edge of pavement to the apparent center of the sign structure located in the decreasing direction of travel.

(ii) Along horizontal curve sections, sign spacing is measured between two points on the edge of pavement along the arc on the inside of the curve. One measurement point is established at the origin of a line extending perpendicular from the edge of pavement to the apparent center of the sign structure located along the highway in the increasing milepost direction of travel. The second measurement point is established at the origin of a line extending perpendicular from the edge of pavement to the apparent center of the sign structure located along the highway in the decreasing milepost direction of travel.

(h) Type 1, 2, 3, 7, and 8 signs shall not be considered in determining compliance with the above spacing requirements.

(i) Type 4 and Type 5 signs may be permitted within commercial and industrial areas adjacent to interstate and primary highways, provided that spacing is available as specified in (d) and (e) of this subsection.

(j) Type 4 and Type 5 signs are not permitted visible to the scenic system.

(k) Pursuant to the 1991 Intermodal Surface Transportation Efficiency Act, a National Scenic Byway Demonstration Project is established on State Route 101, from the Astoria/Megler Bridge to Fowler Street in Raymond and from the junction with State Route 109 near Queets to the junction with State Route 5 near Olympia. No new Type 4 or Type 5 signs may be permitted within the limits of this project. Type 4 or Type 5 signs installed prior to July 25, 1993, may remain as nonconforming signs.

(6) Type 6—((Signs lawfully in existence on October 22, 1965, determined by the department of transportation, subject to the approval of the United States Secretary of Transportation, to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance the preservation of which would be consistent with the purposes of chapter 47.42 RCW.))Landmark signs.

(a) Type 6 signs shall have been lawfully in existence on October 22, 1965, and have historic or artistic significance, including signs on farm structures or natural surfaces.

(b) Historic or artistic significance shall be determined by the department and approved by the Federal Highway Administration.

(c) Within the limits of the National Scenic Byway Demonstration Project identified in (5)(h) of this subsection, Type 6 signs may remain as nonconforming signs.

(7) Type 7—Public service signs located on school bus stop shelters(~~;~~ which:

(a) Identify the donor, sponsor or contributor of said shelters;

(b) Contain safety slogans or messages which do not pertain to the donor and occupy not less than sixty percent of the area of the signs. In addition to this area limitation the donor identification portion of the sign may not appear more prominently than the safety slogan message;

(c) Contain no other message;

(d) Are located on school bus shelters which are authorized or approved by city, county, or state law, regulation or ordinance, off the state highway right of way. School bus shelters shall not exceed 10 feet in length, 10 feet in width or 8 feet in height and shall be constructed with the upper 4 feet of the sides perpendicular to the roadway being occupied by the sign. The remainder is to be constructed of a see through nature. No school bus shelter shall be located along fully controlled access highways as specifically referenced in WAC 468-58-030;

(e) Do not exceed 32 square feet in area. Not more than one sign on each shelter may face in any one direction. The sign shall not protrude above the roof line or beyond the sides of the shelter;

(f) Signs erected pursuant to a permit issued by the department of transportation as provided in RCW 47.42.120 and 47.42.130 and the regulations issued thereunder. A permit shall be required for each individual sign face)). Type 7 signs may display safety slogans or messages, and identify the donor, sponsor, or contributor of a school bus stop shelter. No other message(s) may be displayed.

(a) Safety slogans or messages must occupy at least sixty percent of the sign area, and appear more predominant than the name of the donor, sponsor, or contributor.

(b) Type 7 signs may be located on school bus stop shelters only as authorized or approved by state law or regulation, or city or county ordinance or resolution, and may be installed visible to primary and scenic system highways.

(c) Type 7 signs may not exceed thirty-two square feet. A sign shall not protrude above the roofline or beyond the sides of the school bus stop shelter.

(d) Not more than one sign on each shelter may face in any one direction.

(e) The act does not regulate Type 7 signs with regard to zoning requirements or spacing between Type 7 signs and other types of signs.

(8) Type 8—Temporary agricultural directional signs(~~;~~ with the following restrictions:

(a) Signs shall be posted only during the period of time the seasonal agricultural product is being sold;

(b) Signs shall not be placed adjacent to the interstate highway system unless the sign qualifies as an on-premise (Type 3) sign;

(c) Signs shall not be placed within an incorporated city or town, but may be placed in unzoned areas and areas zoned for agricultural, commercial, and industrial activities;

(d) Premises on which the seasonal agricultural products are sold must be within fifteen miles of the state highway, and necessary supplemental signing on local roads must be provided before the installation of the signs on the state highway;

~~(e) Signs must be located so as not to restrict sight distances on approaches to intersections, or restrict the visibility of other authorized signs;~~

~~(f) The minimum spacing between sign structures shall be three hundred feet. For the purposes of this subsection, a back-to-back sign and a V-type sign shall be considered one sign structure (spacing is independent of off-premise (Type 4 and Type 5) signs)). Type 8 signs provide directional information to places of business having seasonal agricultural products for sale.~~

~~(a) Type 8 signs may display the business name, product(s) for sale, travel direction, and travel distance to the nearest mile from the state highway to the business.~~

~~(b) Type 8 signs may not exceed thirty-two square feet.~~

~~(c) There shall be at least three hundred feet spacing between Type 8 signs.~~

~~(d) Not more than two signs advertising a place of temporary agricultural business may be installed visible to traffic proceeding in one direction of travel on any one state route.~~

~~(e) Premises on which the seasonal agricultural products are sold must be within fifteen air miles of the state highway.~~

~~(f) Type 8 signs may be posted only during the period of time the seasonal agricultural product(s) is being sold.~~

~~(g) Any necessary supplemental follow-through signs along city streets or county roads must be installed before the Type 8 signs may be installed visible to the state highway.~~

~~(h) The signs may be installed visible to primary system highways outside incorporated cities or towns, and scenic system highways.~~

~~(i) Type 8 signs may not be installed visible to interstate highways, including interstate highways that are also part of the scenic system, or visible to primary system highways within incorporated cities or towns.~~

~~(j) The act does not regulate Type 8 signs with regard to zoning requirements or spacing between Type 8 signs and other types of signs.~~

NEW SECTION

WAC 468-66-200 Nonconforming signs. (1) Nonconforming signs may be maintained, except as provided in subsection (3) of this section, unless otherwise removed pursuant to chapter 47.42 RCW.

(2) A nonconforming sign may be sold or leased, or otherwise transferred without affecting its status, but its location may not be changed. A nonconforming sign removed as a result of a right of way taking or for any other reason may be relocated to a conforming location but cannot be reestablished at another nonconforming location.

(3) A nonconforming sign may not be maintained if:

(a) The sign face size is increased more than fifteen percent over the original sign face size as of May 10, 1971 (the effective date of the Scenic Vistas Act), or as of the effective date of Scenic Vistas Act control over a given route, whichever applies;

(b) There are substantial changes to the sign structure's original construction materials, such as upgrades from wooden to steel signposts; or

(c) It is abandoned, destroyed, discontinued, or relocated, except as provided under subsection (2) of this section.

(4) Nonconforming signs shall be considered for sign spacing requirements pursuant to WAC 468-66-050.

(5) Destroyed nonconforming signs may only be reerected, and only in kind, if destroyed due to vandalism or other criminal or tortious acts.

NEW SECTION

WAC 468-66-210 Permit issuance and maintenance.

(1) No signs except Type 1, Type 2, or Type 3 signs, shall be erected or maintained adjacent and visible to interstate system, primary system, or scenic system highways without a permit issued by the department. A permit to erect and maintain a sign that complies with the requirements of this chapter and is adjacent and visible to an interstate system, primary system, or scenic system highway will be issued by the department in accordance with this section. Subsections (2) through (8) of this section pertain to permits for Types 4, 5, 6, and 7 signs; subsection (9) of this section pertains to permits for Type 8 signs; subsection (10) of this section pertains to permits for Types 4, 5, and 8 signs; and subsections (11) and (12) of this section pertain to permits for Types 4, 5, 6, 7, and 8 signs.

(2) Permit applications for Types 4, 5, 6, and 7 signs will be accepted only at the department's headquarters located in Olympia, Washington. Applications transmitted by mail shall be considered received as of the date delivered to the department, rather than the postmarked date of mailing.

(3) Application forms, titled Application - Outdoor Advertising Sign Permit, shall be certified by the sign owner under penalty of perjury under the laws of the state of Washington and contain the information following:

(a) The name and address of the sign owner, with a signed statement that says "I, the undersigned applicant, declare under penalty of perjury under the laws of the state of Washington that the information provided herein, concerning the location of sign, sign description, and property owner/lessee, is accurate and true. I also acknowledge that any discrepancy in such information discovered hereafter is cause for the department of transportation to revoke this sign permit; and further declare that, after permit revocation, I shall remove without compensation any sign erected under such permit." The signature block shall also contain space for the sign owner to list the location, city, county, and state, where the sign owner signs the application.

(b) The statement and signature of the owner of the property on which the sign is to be erected and maintained, which states that the property owner consents to the sign installation and maintenance. A complete and valid lease between the sign owner and the property owner may be accepted in lieu of the property owner's statement and signature.

(c) A statement or site map that describes or shows both the precise location of the proposed sign site and a readily identifiable stake or other marker placed in the ground at the site.

(d) A description of the proposed sign's size, shape, and directional orientation to an identified state route.

(e) A description of the advertising copy or message to be placed on the sign, if the sign is intended to be visible to the interstate system.

(f) Other information that the department may require.

(4) Applications shall be accompanied by a nonrefundable fee of three hundred dollars for each sign structure, except Type 7 signs for which the fee is three hundred dollars for each sign face.

(5) Permits shall be for the remainder of the calendar year in which they are issued; accompanying fees shall not be prorated for fractions of the year. Permits are renewed annually through the certification process following:

(a) Prior to January 1 of each year the department shall require, through the use of a permit renewal certification form, permit renewal certification from each permit holder.

(i) To renew a permit, the permit holder or the permit holder's representative shall recertify by signature under penalty of perjury under the laws of the state of Washington that all information on the permit is accurate and that the permit holder desires to retain the permit in good standing for the upcoming calendar year.

(ii) The completed permit renewal certification shall be returned to the department not later than December 31.

(b) If the department does not receive the required permit renewal certification by December 31, the permit will automatically terminate, the sign will become an illegal sign, and the department will initiate proceedings as authorized by RCW 47.42.080 to remove the illegal sign. The department shall cause the permit renewal certification form to contain this information.

(6) Changes in size, shape, or position of a permitted sign shall be reported to the department in Olympia at least ten days before a change is to be made. In the case of Type 4 and Type 5 signs permitted along the interstate system, changes in copy shall be reported to the department in Olympia at least ten days before a change is to be made to assure compliance with WAC 468-66-050 (5)(d)(vi).

(7) The department shall be notified when permits in good standing are assigned to another sign owner.

(8) If a permitted sign is intended for relocation, the sign owner must submit a new permit application.

(9)(a) Pursuant to RCW 47.42.130, for every permit issued the department shall also issue an aluminum tag that has the department-assigned permit number stamped on its face. The maximum size of the tag is sixteen square inches.

(b) The permittee shall fasten the aluminum tag to the sign so it is plainly visible to the highway.

(c) The department will replace a lost or otherwise missing aluminum tag after the sign owner pays a replacement fee of thirty dollars.

(10) For Type 8 signs, permit application forms, titled Permit Application - Temporary Agricultural Directional Sign, accompanied by a fee of fifty dollars for each sign face must be submitted to the appropriate region office of the department. Submittals must include the same information required by subsection (3)(a) through (f) of this section for Types 4, 5, 6, and 7 signs, and:

(a) An exact description of the location of the temporary agricultural business activity;

(b) A description of the proposed sign copy;

(c) Identification of the products sold;

(d) Expected weeks/months of sales; and

(e) The Uniform Business Identifier number assigned by the Washington state department of licensing.

After the department's region office approves the application, the permit becomes valid. The sign may be erected at the beginning of the sale season and shall be removed at the end of the sale season. The permit shall be valid for five consecutive years from the date of application approval. A new permit application must be submitted and approved by the department's region office prior to erecting a sign at a location where the five-year permit has expired.

(11) Where the number of applications for available Types 4, 5, 6, and 7 sign sites exceeds the number of available sites, permits shall be awarded on the basis of first received by date and time at the department's headquarters office in Olympia. Where the number of applications for available Type 8 sign sites exceeds the number of available sites, permits shall be awarded on the basis of first received by date and time at the department's regional office having jurisdiction over the sites. In the case of a tie between applicants, and upon notification thereof by the department, the department shall determine by lot which applicant shall receive the permit.

(12) A permit issued under this chapter does not relieve the permittee from the duty to comply with all local ordinances or resolutions pertaining to signs and sign structures.

(13) In the event the department has initiated permit revocation proceedings under WAC 468-66-220, the department shall not accept new permit applications for the sign location at issue until such proceedings are concluded and any required signs removed.

NEW SECTION

WAC 468-66-220 Permit revocation, remaining signs illegal. (1) Pursuant to RCW 47.42.120, after hearing the department may revoke a permit without refund for any of the reasons following:

(a) For making any false or misleading statement on an application for a new permit or during the annual permit renewal certification process, whether or not the statement is material to or relied upon by the department in issuing or renewing the permit; and when such false or misleading statement remains uncorrected after the expiration of thirty days following written notice thereof.

(b) For allowing a sign to remain in a condition of disrepair or unreasonable state of repair after the expiration of thirty days following written notification thereof.

(c) For maintaining a sign, for which a permit has been issued, in violation of any provision of the act or these regulations after the expiration of thirty days following written notice thereof.

(d) For any convictions of a violation of the act or any of these regulations, any permit held by the convicted person may be revoked after the expiration of thirty days following written notice thereof whether or not such violation is related to the sign for which the permit is revoked.

(e) For allowing a sign to remain after it has become abandoned, destroyed or discontinued, as defined in WAC

468-66-010, following written notice thereof. For abandoned or destroyed signs, the department will revoke the permit after the expiration of thirty days following written notice thereof. For discontinued signs, the department will cease permit revocation proceedings if the sign owner places advertising content on the sign within ninety days following written notice thereof.

(2)(a) Any written notice referenced in subsection (1) of this section shall be sent by first class mail, postage prepaid, to the permittee at their last known address on file with the department; and the permittee's receipt of said notice shall be deemed the third day after mailing.

(b) If the permittee does not comply with the written notice within thirty days, the department shall conduct a hearing, revoke the permit, and send written notice of the permit revocation to the permittee. Upon permit revocation the sign will become an illegal sign, and the department will initiate proceedings as authorized by RCW 47.42.080 to remove the illegal sign. Review of the department's action shall be in compliance with RCW 47.42.060.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 468-66-055 National scenic byway demonstration project.
- WAC 468-66-060 Signs along scenic, primary, and interstate systems.
- WAC 468-66-070 On-premise signs (Type 3).
- WAC 468-66-080 Number of signs and spacing requirements along interstate system.
- WAC 468-66-090 Preference of applicants for Type 4, Type 5, and Type 8 sites.
- WAC 468-66-100 Advertising copy.
- WAC 468-66-110 Signs within commercial and industrial areas of primary system.
- WAC 468-66-120 Signs erected prior to June 1, 1971 in commercial and industrial areas along the primary system.
- WAC 468-66-130 Signs to be removed.
- WAC 468-66-140 Permits.
- WAC 468-66-150 Penalties.

**WSR 06-03-016
PERMANENT RULES
DEPARTMENT OF
NATURAL RESOURCES**

[Filed January 6, 2006, 11:24 a.m., effective February 6, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To provide a more clearly defined distribution of harbor area lease proceeds in Washington state.

Citation of Existing Rules Affected by this Order: Amending WAC 332-100-040.

Statutory Authority for Adoption: RCW 79.64.040.

Adopted under notice filed as WSR 05-17-184 on August 24, 2005.

Changes Other than Editing from Proposed to Adopted Version: The changes to the amended rule are in subsection (2); see strikethrough, below:

(2) The department of natural resources shall deduct the maximum percentages as provided for in RCW 69.64.040 [79.64.040] and related statutes ~~except that deductions from the gross proceeds of harbor area leases shall be at twenty percent.~~

By removing this section of the sentence, the deduction from harbor area leases will no longer be 20%. Instead, the deduction will be based on RCW 69.64.040 [79.64.040], in which the maximum amount DNR can deduct from the gross proceeds on state-owned aquatic lands within harbor areas is 25%. This is consistent with the deduction rates for all other transactions on state-owned aquatic lands. This change will also help cover the rising costs associated with managing harbor area leases.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: February [January] 6, 2006.

Doug Sutherland
Commissioner of
Public Lands

AMENDATORY SECTION (Amending Order 398, Resolution No. 419, filed 5/6/83, effective 6/30/83)

WAC 332-100-040 Deduction determination. (1) The board of natural resources hereby determines that a deduction from the gross proceeds of all leases, sales, contracts, licenses, permits, easements, and rights of way issued by the department of natural resources and affecting public lands as

provided for in subsection (2) hereof is necessary in order to achieve the purposes of chapter 79.64 RCW.

(2) The department of natural resources shall deduct the maximum percentages as provided for in RCW 79.64.040 and related statutes (~~(except that deductions from the gross proceeds of harbor area leases shall be at twenty percent)~~). Except for transactions involving aquatic lands, harbor areas and trust land categories that have a deficit revenue/expenditure status, the deductions may be temporarily discontinued by a resolution of the board of natural resources at such times as the balance in the resource management cost account exceeds an amount equal to twelve months operating expenses for the department of natural resources or when the board determines such discontinuation is in the best interest of the trust beneficiaries. The board shall specify the trust lands subject to such discontinuation. The duration of such orders shall be for a specified time period calculated to allow a reduction of the resource management cost account balance to an amount approximately equal to three months operating expenses for the department. Operating expense needs will be determined by the board based on pro rata increments of biennial legislative appropriations. All sums so deducted shall be paid into the resource management cost account in the state general fund created by chapter 79.64 RCW.

WSR 06-03-026

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed January 6, 2006, 4:31 p.m., effective February 6, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The division of child support (DCS) seeks to clarify the rules on which parents' photographs may be posted to the DCS most wanted web site, and to clarify the process to request that a noncustodial parent be posted on the site.

Citation of Existing Rules Affected by this Order: Amending WAC 388-14A-4605.

Statutory Authority for Adoption: RCW 26.23.120(2) and 74.08.090.

Adopted under notice filed as WSR 05-23-079 on November 15, 2005.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: December 30, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 03-20-072, filed 9/29/03, effective 10/30/03)

WAC 388-14A-4605 Whose picture can go on the division of child support's DCS most wanted internet site? (1) If the child's custodial parent (CP) requests DCS to post the NCP to the DCS most wanted internet site (also called the "site"), the CP must:

(a) Have an open full support enforcement services case with DCS:

(b) Give written permission to DCS to post the NCP on the site; and

~~((b))~~ (c) Provide a photograph of the NCP.

(2) Only the NCP's photograph appears on the site. If the CP submits a group photograph, DCS edits out everyone except the NCP.

(3) DCS may post an NCP to the site when(=

~~(a))~~ the NCP(=

~~(i))~~ has made no payments in at least six months (intercepted IRS refunds are not considered to be payments for purposes of this section)(=)

~~((i))~~ owes at least five thousand dollars in back child

support(=

~~(b))~~.

(4) DCS may post an NCP to the site when DCS has been unable to locate the NCP after trying other means for at least twelve months, and:

~~((i))~~ (a) There is a valid support order; or

~~((i))~~ (b) There is a valid paternity affidavit filed for a child on the case, or

~~((iii))~~ (c) The NCP is:

~~((A))~~ (i) The mother of the child(ren) on the case; or

~~((B))~~ (ii) The presumed father under RCW 26.26.320.

(5) If the NCP has more than one open DCS case, all custodial parents must provide written consent to the posting.

WSR 06-03-028

PERMANENT RULES

DEPARTMENT OF HEALTH

(Medical Quality Assurance Commission)

[Filed January 9, 2006, 7:30 a.m., effective February 9, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose for the sexual misconduct and abuse rules is to raise the awareness of sexual inappropriate behaviors and prevent physicians and physician assistants from engaging in abusive or sexual contact or sexual activity with current and former patients. The medical quality assurance commission (commission) has difficulty taking action on a practitioner's license who engages in sexually inappropriate behavior that does not constitute "sexual contact" under RCW 18.130.180(24). When the commission evalu-

ates a case involving a sexual boundary issue in which the behavior does not constitute "sexual contact," the commission either takes action under RCW 18.130.180(1) on the theory the conduct constitutes "moral turpitude," or simply closes the case. These rules will allow the commission to better protect the public by taking disciplinary action in a wider range of inappropriate behaviors.

Statutory Authority for Adoption: RCW 18.130.180, 18.71.017, and 18.71A.020.

Adopted under notice filed as WSR 05-17-188 on August 24, 2005.

A final cost-benefit analysis is available by contacting Beverly A. Thomas, P.O. Box 47866, Olympia, WA 98504, phone (360) 236-4788, fax (360) 236-4768, e-mail beverly.thomas@doh.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 4, Amended 0, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 0, Repealed 0.

Date Adopted: November 18, 2005.

December 28, 2005
Maryella E. Jansen
for Blake T. Maresh
Executive Director

NEW SECTION

WAC 246-919-630 Sexual misconduct. (1) Definitions:

(a) "Patient" means a person who is receiving health care or treatment, or has received health care or treatment without a termination of the physician-patient relationship. The determination of when a person is a patient is made on a case-by-case basis with consideration given to a number of factors, including the nature, extent and context of the professional relationship between the physician and the person. The fact that a person is not actively receiving treatment or professional services is not the sole determining factor.

(b) "Physician" means a person licensed to practice medicine and surgery under chapter 18.71 RCW.

(c) "Key third party" means a person in a close personal relationship with the patient and includes, but is not limited to, spouses, partners, parents, siblings, children, guardians and proxies.

(2) A physician shall not engage in sexual misconduct with a current patient or a key third party. A physician engages in sexual misconduct when he or she engages in the following behaviors with a patient or key third party:

- (a) Sexual intercourse or genital to genital contact;
 - (b) Oral to genital contact;
 - (c) Genital to anal contact or oral to anal contact;
 - (d) Kissing in a romantic or sexual manner;
 - (e) Touching breasts, genitals or any sexualized body part for any purpose other than appropriate examination or treatment;
 - (f) Examination or touching of genitals without using gloves;
 - (g) Not allowing a patient the privacy to dress or undress;
 - (h) Encouraging the patient to masturbate in the presence of the physician or masturbation by the physician while the patient is present;
 - (i) Offering to provide practice-related services, such as medications, in exchange for sexual favors;
 - (j) Soliciting a date;
 - (k) Engaging in a conversation regarding the sexual history, preferences or fantasies of the physician.
- (3) A physician shall not engage in any of the conduct described in subsection (2) of this section with a former patient or key third party if the physician:
- (a) Uses or exploits the trust, knowledge, influence, or emotions derived from the professional relationship; or
 - (b) Uses or exploits privileged information or access to privileged information to meet the physician's personal or sexual needs.
- (4) To determine whether a patient is a current patient or a former patient, the commission will analyze each case individually, and will consider a number of factors, including, but not limited to, the following:
- (a) Documentation of formal termination;
 - (b) Transfer of the patient's care to another health care provider;
 - (c) The length of time that has passed;
 - (d) The length of time of the professional relationship;
 - (e) The extent to which the patient has confided personal or private information to the physician;
 - (f) The nature of the patient's health problem;
 - (g) The degree of emotional dependence and vulnerability.
- (5) This section does not prohibit conduct that is required for medically recognized diagnostic or treatment purposes if the conduct meets the standard of care appropriate to the diagnostic or treatment situation.
- (6) It is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.
- (7) A violation of any provision of this rule shall constitute grounds for disciplinary action.

NEW SECTION

WAC 246-919-640 Abuse. (1) A physician commits unprofessional conduct if the physician abuses a patient. A physician abuses a patient when he or she:

- (a) Makes statements regarding the patient's body, appearance, sexual history, or sexual orientation that have no legitimate medical or therapeutic purpose;

- (b) Removes a patient's clothing or gown without consent;
 - (c) Fails to treat an unconscious or deceased patient's body or property respectfully; or
 - (d) Engages in any conduct, whether verbal or physical, which unreasonably demeans, humiliates, embarrasses, threatens, or harms a patient.
- (2) A violation of any provision of this rule shall constitute grounds for disciplinary action.

NEW SECTION

WAC 246-918-410 Sexual misconduct. (1) Definitions:

(a) "Patient" means a person who is receiving health care or treatment, or has received health care or treatment without a termination of the physician assistant-patient relationship. The determination of when a person is a patient is made on a case-by-case basis with consideration given to a number of factors, including the nature, extent and context of the professional relationship between the physician assistant and the person. The fact that a person is not actively receiving treatment or professional services is not the sole determining factor.

(b) "Physician assistant" means a person licensed to practice as a physician assistant under chapter 18.71A RCW.

(c) "Key third party" means a person in a close personal relationship with the patient and includes, but is not limited to, spouses, partners, parents, siblings, children, guardians and proxies.

(2) A physician assistant shall not engage in sexual misconduct with a current patient or a key third party. A physician assistant engages in sexual misconduct when he or she engages in the following behaviors with a patient or key third party:

- (a) Sexual intercourse or genital to genital contact;
- (b) Oral to genital contact;
- (c) Genital to anal contact or oral to anal contact;
- (d) Kissing in a romantic or sexual manner;
- (e) Touching breasts, genitals or any sexualized body part for any purpose other than appropriate examination or treatment;
- (f) Examination or touching of genitals without using gloves;
- (g) Not allowing a patient the privacy to dress or undress;
- (h) Encouraging the patient to masturbate in the presence of the physician assistant or masturbation by the physician assistant while the patient is present;
- (i) Offering to provide practice-related services, such as medications, in exchange for sexual favors;
- (j) Soliciting a date;
- (k) Engaging in a conversation regarding the sexual history, preferences or fantasies of the physician assistant.

(3) A physician assistant shall not engage in any of the conduct described in subsection (2) of this section with a former patient or key third party if the physician assistant:

- (a) Uses or exploits the trust, knowledge, influence, or emotions derived from the professional relationship; or

(b) Uses or exploits privileged information or access to privileged information to meet the physician assistant's personal or sexual needs.

(4) To determine whether a patient is a current patient or a former patient, the commission will analyze each case individually, and will consider a number of factors, including, but not limited to, the following:

- (a) Documentation of formal termination;
- (b) Transfer of the patient's care to another health care provider;
- (c) The length of time that has passed;
- (d) The length of time of the professional relationship;
- (e) The extent to which the patient has confided personal or private information to the physician assistant;
- (f) The nature of the patient's health problem;
- (g) The degree of emotional dependence and vulnerability.

(5) This section does not prohibit conduct that is required for medically recognized diagnostic or treatment purposes if the conduct meets the standard of care appropriate to the diagnostic or treatment situation.

(6) It is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.

(7) A violation of any provision of this rule shall constitute grounds for disciplinary action.

NEW SECTION

WAC 246-918-420 Abuse. (1) A physician assistant commits unprofessional conduct if the physician assistant abuses a patient. A physician assistant abuses a patient when he or she:

- (a) Makes statements regarding the patient's body, appearance, sexual history, or sexual orientation that have no legitimate medical or therapeutic purpose;
- (b) Removes a patient's clothing or gown without consent;
- (c) Fails to treat an unconscious or deceased patient's body or property respectfully; or
- (d) Engages in any conduct, whether verbal or physical, which unreasonably demeans, humiliates, embarrasses, threatens, or harms a patient.

(2) A violation of any provision of this rule shall constitute grounds for disciplinary action.

WSR 06-03-047

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Children's Administration)

[Filed January 10, 2006, 4:26 p.m., effective February 10, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is amending WAC 388-160-0195 to correct a typographical error in subsection (2), changing "you" to "your" so that this subsection will read: "The department must deny, suspend or revoke your license for any of the following...."

Citation of Existing Rules Affected by this Order:
Amending WAC 388-160-0195.

Statutory Authority for Adoption: RCW 74.15.010,
74.15.030.

Adopted under notice filed as WSR 05-21-104 on Octo-
ber 18, 2005.

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

Number of Sections Adopted at Request of a Nongov-
ernmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify,
Streamline, or Reform Agency Procedures: New 0,
Amended 1, Repealed 0.

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

Date Adopted: January 6, 2006.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-14-013,
filed 6/22/05, effective 7/23/05)

WAC 388-160-0195 When must the department deny, suspend or revoke a license? (1) A license must be denied, suspended or revoked if the department decides that you cannot provide care for youth in a way that ensures their safety, health and well-being.

(2) The department must deny, suspend, or revoke your license for any of the reasons that follow.

(a) You have failed your background check (see chapter 388-06 WAC).

(b) You have been found to have committed child abuse or neglect or you treat, permit or assist in treating children in your care with cruelty, indifference, abuse, neglect, or exploitation.

(c) You or anyone on the premises had a license denied or revoked from an agency that provided care to children or vulnerable adults.

(d) You attempt to get a license by deceitful means, such as making false statements or leaving out important information on the application.

(e) You commit, permit or assist in an illegal act on the premises of a home or facility providing care to children.

(f) You are using illegal drugs, or excessively using alcohol and/or prescription drugs.

(g) You knowingly allowed employees or volunteers who made false statements on their applications to work at your agency.

(h) You repeatedly lack qualified or an adequate number of staff to care for the number and types of children under your care.

(i) You have refused to allow our authorized staff and inspectors to have requested information or access to your facility, child and program files, and/or your staff and clients.

(j) You are unable to manage the property, fiscal responsibilities, or staff in your agency.

WSR 06-03-048

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed January 10, 2006, 4:27 p.m., effective February 10, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is amending WAC 388-452-0010 What does the family violence amendment mean for TANF/SFA recipients?, in order to replace references to "family violence amendments" with the correct reference "family violence option," and to clarify other existing language.

Citation of Existing Rules Affected by this Order:
Amending WAC 388-452-0010.

Statutory Authority for Adoption: RCW 74.04.050,
74.08.090, 74.08A.340.

Adopted under notice filed as WSR 05-23-108 on
November 18, 2005.

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

Number of Sections Adopted at Request of a Nongov-
ernmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify,
Streamline, or Reform Agency Procedures: New 0,
Amended 1, Repealed 0.

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

Date Adopted: January 6, 2006.

Andy Fernando, Manager
Rules and Policies Assistance Unit

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

WAC 388-452-0010 What does the family violence ((~~amendment~~)) option mean for TANF/SFA recipients? The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), ((~~also known as the Welfare Reform Act,~~)) gave every state the option to have ((~~a program~~)) procedures in place to address issues of family violence for recipients receiving temporary assistance for needy families (TANF) ((~~and~~)) or state family assistance (SFA) ((~~recipients~~)).

(1) For TANF/SFA, it is family violence when a recipient, or family member or household member has been subjected by another family member or household member as defined in RCW 26.50.010(2) to one of the following:

- (a) Physical acts that resulted in, or threatened to result in, physical injury;
- (b) Sexual abuse;
- (c) Sexual activity involving a dependent child;
- (d) Being forced as the caretaker relative or a dependent child to engage in nonconsensual sexual acts or activities;
- (e) Threats of or attempts at, physical sexual abuse;
- (f) Mental abuse;
- (g) Neglect or deprivation of medical care; or
- (h) Stalking.

(2) Under the family violence option DSHS ~~((shall))~~ **must**:

- (a) Screen and identify TANF/SFA recipients for a history of family violence;
- (b) Notify TANF/SFA recipients about the family violence ~~((amendment))~~ option both verbally and in writing;
- (c) Maintain confidentiality as stated in RCW 74.04.060;
- (d) Offer referral to social services or other resources for ~~((clients))~~ recipients who meet the criteria in subsection (1) of this section;

(e) Waive WorkFirst requirements ~~((that))~~ in cases where the requirements would make it more difficult to escape family violence, unfairly penalize victims of family violence ~~((, would make it more difficult to escape family violence))~~ or place victims at further risk. Requirements to be waived may include:

- (i) Time limits for TANF/SFA recipients, for as long as necessary (after fifty-two months of receiving TANF/SFA);
- (ii) Cooperation with the division of child support.
- (f) Develop specialized work activities for instances where participation in regular work activities would place the recipient at further risk of family violence.

WSR 06-03-057

PERMANENT RULES

DEPARTMENT OF HEALTH

(Chiropractic Quality Assurance Commission)

[Filed January 11, 2006, 2:25 p.m., effective February 11, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule updates the approved continuing education (CE) subject matter by adding nutrition and business management, add limits on CE hours that can be earned for some subject material, allow for CE credits to be earned by attending various multimedia CE programs, streamline the exemption rule, and requires chiropractors practicing out-of-state to comply with the same requirements of those chiropractors who reside and practice in Washington.

Citation of Existing Rules Affected by this Order: Amending WAC 246-808-150, 246-808-165, and 246-808-170.

Statutory Authority for Adoption: RCW 18.25.0171.

Other Authority: RCW 18.25.070.

Adopted under notice filed as WSR 05-20-101 on October 5, 2005.

A final cost-benefit analysis is available by contacting Karen Kelley, Program Manager, P.O. Box 47869, Olympia, WA 98504-7869, phone (360) 236-4856, fax (360) 236-4918, e-mail karen.kelley@doh.wa.gov.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 2, Repealed 1.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 1.

Date Adopted: November 17, 2005.

Nancy McCown, DC, Vice Chair
Chiropractic Quality
Assurance Commission

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-808-150 Commission approved continuing education. (1) ~~((Licensed))~~ Chiropractors must complete twenty-five hours of continuing education ~~((as required in))~~ per year under RCW 18.25.070 and chapter 246-12 WAC, Part 7.

(2) The commission approves the following subject material for continuing chiropractic education credit:

- (a) Diagnosis and treatment of the spine or immediate articulations within the scope of practice;
- (b) X-ray/diagnostic imaging;
- (c) Adjustive technique;
- (d) Detection of a subluxation;
- (e) Physical examination;
- (f) Hygiene;
- (g) Symptomatology;
- (h) Neurology;
- (i) ~~((Spinal))~~ Pathology;
- (j) ~~((Spinal))~~ Orthopedics;
- (k) Patient/case management;
- (l) Impairment within the scope of practice;
- (m) CPR ~~((--once every three years--))~~;
- (n) Dietary and nutrition advice; and
- (o) Chiropractic philosophy and business management ~~((not to exceed a total of eight hours))~~.

(3) Subject matter not approved for continuing education credit:

- (a) ~~((Business management; ~~((b)))~~ Subject matter not directly relating to the chiropractic clinical scope of practice; and ~~((c)) Practice building; and~~~~

~~(d))~~ (b) Conduct prohibited by Washington state statutes or rules governing chiropractic practice.

(4) ~~((A formal video continuing education program that meets the requirements of this section is acceptable provided that the video viewing is accompanied by a moderator and/or a panel knowledgeable in the video contents to comment thereon and answer questions or conduct discussions-))~~ A chiropractor may earn a maximum of twelve hours for:

(a) Completing a multimedia chiropractic education program, which includes, but is not limited to, the internet, and video presentations.

(b) Serving as teachers or lecturers in continuing education programs. A chiropractor may receive credit on the same basis as the doctors attending the program.

(5) The individual or organization responsible for a continuing education presentation must provide documentation of attendance to ~~((the))~~ participants, including course content and number of hours.

~~((Licensed chiropractors serving as teachers or lecturers in commission approved continuing education programs receive credit on the same basis as the doctors attending the program-))~~ Chiropractors in active status who reside and practice outside Washington must meet all the requirements of this section.

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-808-165 Exemptions. ~~((In the event a licensee fails to meet requirements because of illness or retirement (with no further provision of chiropractic services to consumers) or failure to renew, or other extenuating circumstances, each case shall be considered by the commission on an individual basis. When circumstances justify it, the commission may grant a time extension. In the case of permanent retirement or illness, the commission may grant indefinite waiver of continuing chiropractic education as a requirement for relicensure, provided an affidavit is received indicating the chiropractor is not providing chiropractic services to consumers. If such permanent illness or retirement status is changed or consumer chiropractic services resumed, it is incumbent upon the licensed chiropractor to immediately notify the commission and meet continuing chiropractor education requirements for relicensure. Continuing chiropractic education hours shall be prorated for the portion of the period involving resumption of such services-))~~ The commission may grant exemptions or time extensions on an individual basis, if a licensee fails to meet continuing education requirements due to illness, retirement, or other extenuating circumstances.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-808-170	Licensees residing and practicing out-of-state—Continuing education requirements.
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WSR 06-03-069

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed January 12, 2006, 1:56 p.m., effective February 13, 2006]

Effective Date of Rule: February 13, 2006.

Purpose: The purpose of this rule is to explain who has the burden of proof at an appeal hearing before the Washington personnel resources board.

Citation of Existing Rules Affected by this Order: Amending WAC 357-52-110.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 05-24-134 on December 7, 2005.

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

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

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

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

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

Date Adopted: January 12, 2006.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-01-191, filed 12/21/04, effective 7/1/05)

WAC 357-52-110 Who has the burden of proof at hearings? ~~((At any hearing on appeal from a dismissal, suspension, demotion, reduction in base salary, or separation, the employer has the burden of supporting the charges upon which the action was initiated. At any other hearing, the party filing the appeal has the burden of proof.))~~

(1) At any hearing on appeal of a:

(a) Dismissal, suspension, demotion, or reduction in base salary, the employer has the burden of supporting the charges upon which the action was initiated; or

(b) Layoff or separation, the employer has the burden of supporting both the basis for the action taken and compliance with the civil service law(s) or rule(s) governing the action.

(2) At any other hearing, the party filing the appeal has the burden of proof.

WSR 06-03-070

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed January 12, 2006, 1:57 p.m., effective February 13, 2006]

Effective Date of Rule: February 13, 2006.

Purpose: The purpose of these rules is to address how written documents must be filed for a director's review and what happens if the person requesting a director's review does not file all of the information required.

Statutory Authority for Adoption: Chapter 41.06 WAC.

Adopted under notice filed as WSR 05-24-128 [05-24-129] on December 7, 2005.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 0, Repealed 0.

Date Adopted: January 12, 2006.

Eva N. Santos
Director

NEW SECTION

WAC 357-49-023 For purposes of this chapter, how must written documents be filed with the director? (1) Filing papers for director's review requests. Papers that must be filed with the director for director's review requests are considered to be filed only when the papers are actually received in the director's review office in Olympia, Washington.

(2) Filing papers for director's review requests by telephone facsimile.

(a) Written documents filed with the director for review requests by telephone facsimile are considered received when a legible copy of the document is reproduced on the director's telephone facsimile equipment in the director's review office. If transmission begins after customary office hours, which are 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, the document will be deemed filed on the next business day.

(b) Any document filed with the director by telephone facsimile should be preceded by a cover page identifying the addressee; the party making the transmission, including the address, telephone and telephone facsimile number of such party; the review to which the document relates; the date of transmission; and the total number of pages included in the transmission.

(c) The party attempting to file papers by telephone facsimile bears the risk that the papers will not be timely received or legibly printed, regardless of the cause. If the telephone facsimile is not legible, it will be considered as if it had never been sent.

(d) The original of any document filed by telephone facsimile should be mailed to the director within twenty-four hours of the time that the telephone facsimile was sent.

(3) The filing of papers for director's review requests by electronic mail ("e-mail") is not authorized without the express prior approval of the director, and only under such circumstances as the director allows.

NEW SECTION

WAC 357-49-027 What happens if the person requesting a director's review does not submit all the information required by WAC 357-49-015? (1) When the director receives a request for review, the director reviews the document(s) to determine whether the information required by this section has been provided.

(2) If any of the required information is not provided with the request for review, the director instructs the person requesting the review to provide the missing information and sends a copy of the notice to all affected parties.

(3) The person requesting the review must provide the missing information as requested within twenty-one calendar days of the date the notification is mailed.

(4) When the director receives the requested information, a copy will be sent to the other affected parties.

(5) If the person requesting the review fails to comply with the requirements of this section the director may dismiss the request for review.

WSR 06-03-071

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed January 12, 2006, 2:00 p.m., effective February 13, 2006]

Effective Date of Rule: February 13, 2006.

Purpose: The purpose of these rules is to address when someone's name is removed from a layoff list or from an applicant and/or candidate pool, and director's reviews.

Citation of Existing Rules Affected by this Order: WAC 357-46-135 What causes an individual's name to be removed from a layoff list?, 357-46-140 What is the notice requirement when an individual's name has been removed from an internal or statewide layoff list?, 357-46-145 To whom and by when must an individual request a review of the removal from an internal or statewide layoff list?, 357-16-157 Is an eligible's name removed from applicant and/or candidate pools when he/she is appointed to a position?, 357-16-160 How must an employer notify an applicant or candidate who has been removed from an applicant or candidate pool?, 357-16-170 Can an applicant or candidate request a review of his/her examination results or the removal of his/her name from an applicant or candidate pool?, and 357-49-010 For what actions may an individual request a director's review?

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 05-24-128 on December 7, 2005.

Changes Other than Editing from Proposed to Adopted Version: A withdrawal was filed on December 20, 2005 (WSR 06-01-080) for the modifications to WAC 357-16-175

and 357-16-177. In the proposed version the words "his/her examination results" was deleted from WAC 357-16-170, in the adopted version this was not deleted. In the proposed version of WAC 357-49-010 reference to the assessment process and "his/her examination results" was deleted, in the adopted version this was not deleted.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 6, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 6, Repealed 0.

Date Adopted: January 12, 2006.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 04-18-114, filed 9/1/04, effective 7/1/05)

WAC 357-46-135 What causes an individual's name to be removed from a layoff list? (1) An individual's name **must** be removed from an internal layoff list or statewide layoff list at the request of the individual or upon an employee's retirement, resignation, expiration of eligibility or dismissal from the employer.

(2) An individual's name **may** be removed from the internal and/or statewide layoff list for a class when:

(a) The individual is appointed to a position in the class. The individual may also be removed from the internal and/or statewide layoff list for any classes with a lower salary range maximum in that class series/occupational category.

(b) The individual is appointed to a position in a class with a higher salary range maximum in a different class series/occupational category.

~~((b))~~ (c) The individual has been certified from the layoff list and waives consideration for a position in the class three times.

~~((c))~~ (d) The employer determines good and sufficient reason exists.

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

AMENDATORY SECTION (Amending WSR 05-01-184, filed 12/21/04, effective 7/1/05)

WAC 357-46-140 What is the notice requirement when an individual's name has been removed from an internal or statewide layoff list? An individual whose name has been removed from an internal or statewide layoff list in accordance with WAC 357-46-135 (2)(b), (2)(c), and (2)(d)

must be notified in writing at the time of removal. The notification must provide the specific reason for the removal and inform the individual of the right to request a review of the removal under the provisions of WAC 357-46-145. Only individuals who have had their name removed under the provisions of WAC 357-46-135 (2)(b), (2)(c), and (2)(d) have the right to request a review of the removal.

For purposes of this rule, written notice may be provided using alternative methods such as e-mail, campus mail, the state mail service, or commercial parcel delivery in accordance with WAC 357-04-105.

AMENDATORY SECTION (Amending WSR 05-16-042, filed 7/27/05, effective 9/1/05)

WAC 357-46-145 To whom and by when must an individual request a review of the removal from an internal or statewide layoff list? (1) ((If the employer is responsible for maintaining the layoff list, requests for review of removal from a layoff list must be made to the employer. If the individual is not in agreement with the results of the employer's review, he/she may request a director's review of the removal. If the department is responsible for maintaining the layoff list, requests for review of removal from a layoff list must be made to the director.)) Requests for review of removal from a layoff list must be made to the employer when:

(a) The removal is based on the employer's determination that good and sufficient reason exists under the provisions of WAC 357-46-135 (2)(d); or

(b) The employer is responsible for maintaining the layoff list and removed the individual for a reason listed in WAC 357-46-135 (2)(b) or (2)(c).

If the individual is not in agreement with the results of the employer's review, he/she may request a director's review of the removal.

(2) Requests for review of removal from a layoff list must be made to the director when:

(a) The removal is based on the department's determination that good and sufficient reason exists under the provisions of WAC 357-46-135 (2)(d);

(b) The department is responsible for maintaining the layoff list and removed the individual for a reason listed in WAC 357-46-135 (2)(b) or (2)(c); or

(c) The individual is not in agreement with the results of the employer's review of the removal.

(3) The request for a review must be received at the employer's office within twenty (20) calendar days or the director's office within ~~((twenty (20)))~~ thirty (30) calendar days following notice of the action for which a review is requested.

NEW SECTION

WAC 357-16-157 Is an eligible's name removed from applicant and/or candidate pools when he/she is appointed to a position? An eligible's name is removed from the applicant and/or candidate pool for the class to which he/she is appointed and all lower classes in the same class series/occupational category.

AMENDATORY SECTION (Amending WSR 05-01-200, filed 12/21/04, effective 7/1/05)

WAC 357-16-160 (~~(How must an employer notify an applicant or candidate who has been removed from an applicant or candidate pool?)~~) **Must an applicant or candidate who has been removed for good and sufficient reason per WAC 357-16-155 be notified of the removal?** ~~((An))~~ When an applicant or candidate is removed from an applicant or candidate pool for good and sufficient reason per WAC 357-16-155, the employer or the department must notify ~~((an))~~ the applicant or candidate ~~((who has been removed from an applicant or candidate pool))~~ at the time of the removal. The notice must be in writing and specify the reason for the removal. The notice must explain the right to request a review of the removal under the provisions of WAC 357-16-170, 357-16-175 and 357-16-180. For purposes of this rule, written notice may be provided using alternative methods such as e-mail, campus mail, the state mail service, or commercial parcel delivery in accordance with WAC 357-04-105.

AMENDATORY SECTION (Amending WSR 05-01-187, filed 12/21/04, effective 7/1/05)

WAC 357-16-170 **Can an applicant or candidate request a review of his/her examination results or the removal of his/her name from an applicant or candidate pool?** An applicant or candidate may request a review of his/her examination results or the removal of his/her name from an applicant or candidate pool when the removal is due to good and sufficient reason under the provisions of WAC 357-16-155.

AMENDATORY SECTION (Amending WSR 05-19-011, filed 9/8/05, effective 10/10/05)

WAC 357-49-010 **For what actions may an individual request a director's review?** (1) If the department is responsible for the assessment process, an applicant or candidate may request a director's review of his/her examination results or the removal of his/her name from an applicant or candidate pool as specified in WAC 357-16-175. Director review decisions regarding the removal of an individual's name from an applicant or candidate pool or an individual's examination results are final and not subject to further review or appeal.

(2) An individual may request a director's review of the removal of his/her name from a layoff list as specified in WAC 357-46-145.

(3) An employee may request a director's review of the following:

(a) Allocation or reallocation per WAC 357-13-080; or
(b) Performance evaluation process or procedure per WAC 357-37-080.

(4) In addition to the subject listed in section (2) of this rule, an employee ~~((may request a director's review of an alleged))~~ who has been adversely affected by a violation of the civil service laws or rules may request a director's review within thirty calendar days of the date the employee could reasonably be expected to have knowledge of the action giving

rise to a law or rule violation claim or the stated effective date, whichever is later. An employee may not request a director's review of:

(a) Allegations arising from the development and adoption of the classification plan under the provisions of WAC 357-10-020;

(b) An alleged violation of civil service laws or rules pertaining to layoff, except for removal of his/her name from a layoff list as provided in subsection 2 of this section; or

(c) The actions of reduction, dismissal, suspension, demotion or separation.

(5) An individual may request the director review his/her request for remedial action per WAC 357-19-430 or 357-19-450. Requests for remedial action must be received within thirty calendar days of the date the individual could reasonably be expected to have knowledge of the action giving rise to violation of the nonpermanent appointment or temporary appointment rules.

WSR 06-03-072

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed January 12, 2006, 2:01 p.m., effective February 13, 2006]

Effective Date of Rule: February 13, 2006.

Purpose: The purpose of this rule is to explain what actions may be appealed to the Washington personnel resources board.

Citation of Existing Rules Affected by this Order: Amending WAC 357-52-010.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 05-24-133 on December 7, 2005.

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

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

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

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

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

Date Adopted: January 12, 2006.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-19-011, filed 9/8/05, effective 10/10/05)

WAC 357-52-010 **What actions may be appealed?** (1) Within WGS, the following actions may be appealed:

~~((1))~~ (a) Any permanent WGS employee subject to the statutory jurisdiction of the board who is dismissed, suspended, demoted, or separated or whose base salary is reduced may appeal to the board.

~~((2))~~ (b) Any employee, subject to the statutory jurisdiction of the board who adversely is affected by a violation of the state civil service law (chapter 41.06 RCW) or the rules contained in Title 357 WAC, or an employer, may appeal to the board as follows:

~~((a))~~ (i) For a violation of state civil service law or rules relating to a layoff action, excluding removal from a layoff list, the employee may appeal directly to the board.

~~((b))~~ (ii) For a violation of state civil service law or rules relating to any other subject, including removal from a layoff list, the employee or employer may appeal to the board by filing written exceptions to the director's review determination, except as provided in WAC 357-49-010(1).

~~((3))~~ (c) Through December 31, 2005, an employee in a position at the time of its allocation or reallocation or the employer may appeal to the personnel appeals board by filing written exceptions to the director's review determination in accordance with Title 358 WAC. As of January 1, 2006, an employee in a position at the time of its allocation or reallocation or the employer may appeal to the personnel resources board by filing written exceptions to the director's review determination.

~~((4))~~ (d) An employee whose position has been exempted from chapter 41.06 RCW may appeal the exemption to the board.

~~((5))~~ (e) An individual or the employer may appeal remedial action to the board by filing written exceptions to the director's review determination.

(2) Within WMS, the following actions may be appealed:

(a) Any permanent Washington management service employee who is dismissed, suspended, demoted, laid off, or separated, or whose base salary is reduced may appeal to the board. A determination of which Washington management service positions will be eliminated in a layoff action is not subject to appeal.

(b) An employee whose position has been exempted from chapter 41.06 RCW may appeal the exemption to the board.

~~((6) Any permanent Washington management service employee who is dismissed, suspended, demoted, or separated, or whose base salary is reduced may appeal to the board. A determination of which Washington management service positions will be eliminated in a reduction-in-force action is not subject to appeal.))~~

WSR 06-03-073

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed January 12, 2006, 2:02 p.m., effective February 13, 2006]

Effective Date of Rule: February 13, 2006.

Purpose: The purpose of these rules is to address what order eligible candidates are certified to an employing official for hiring consideration and who administers and estab-

lishes operating procedures for the general government transition pool.

Citation of Existing Rules Affected by this Order: Amending WAC 357-16-130 and 357-46-100.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 05-24-131 on December 7, 2005.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: January 12, 2006.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-12-083, filed 5/27/05, effective 7/1/05)

WAC 357-16-130 In what order are eligible candidates certified to the employing official for hiring consideration? Only eligible candidates who satisfy the competencies and other requirements of the position to be filled will be certified. The order for certifying must follow these criteria:

(1) If there are names on the employer's internal layoff list for the class, all eligible candidates on the internal layoff list are certified to the employing official. Internal promotional candidates, as defined by the employer's promotional policy, may also be certified.

(2) If there are no names on the internal layoff list, the employer:

(a) Must certify(~~(=)~~) all statewide layoff candidates who satisfy the competencies and other position requirements.

~~((All statewide layoff candidates who satisfy the competencies and other position requirements; and))~~

~~((For general government employers, all transition pool candidates who satisfy the competencies and other position requirements.))~~

(b) May then certify other available eligible candidates. Any preference granted to promotional candidates must be in accordance with the employer's promotional policies as required by WAC 357-16-150.

(3) General government employers must certify transition pool candidates, who satisfy the competencies and other position requirements, when a certified pool contains eligible candidates other than layoff or internal promotional candidates.

AMENDATORY SECTION (Amending WSR 05-19-005, filed 9/8/05, effective 10/10/05)

WAC 357-46-100 Who administers and establishes operating procedures for the general government transition pool program? The department administers the general government transition pool program. The director develops and implements appropriate operating procedures to facilitate the program. The operating procedures include the following requirements:

(1) General government employers must certify transition pool candidates when ~~((there are no internal layoff list candidates))~~ a certified pool contains eligible candidates other than layoff or internal promotional candidates.

(2) Transition pool candidates must satisfy the competency and other position requirements to be considered for a position.

WSR 06-03-074

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed January 12, 2006, 2:02 p.m., effective February 13, 2006]

Effective Date of Rule: February 13, 2006.

Purpose: The purpose of these rules is to address when an appeal must be filed and what information must be submitted with the appeal.

Citation of Existing Rules Affected by this Order: Amending WAC 357-52-015 and 357-52-020.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 05-24-132 on December 7, 2005.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: January 12, 2006.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-01-190, filed 12/21/04, effective 7/1/05)

WAC 357-52-015 By when must an appeal be filed and received in order to be considered timely? In order to be considered timely, an appeal must be received in writing at the office of the board within thirty calendar days after:

(1) The effective date of the disciplinary action, layoff or separation,

(2) Service of the director's determination unless the rules specifically state that the director's determination is final, or

(3) The effective date of the exemption of a position or the notice of exemption, whichever is later.

AMENDATORY SECTION (Amending WSR 05-01-190, filed 12/21/04, effective 7/1/05)

WAC 357-52-020 What information must be submitted with the appeal? (1) The appeal must include:

(a) The name and address of the appellant and if represented the name, address and telephone number of the representative,

(b) The name of the employer and the department that took the action which is being appealed,

(c) A telephone number at which the appellant can be reached,

(d) The job classification or position of the employee at the time of the action which is being appealed,

(e) A short statement of the grounds or reasons for the appeal, and if applicable, the rule(s) the appellant believes has been violated,

(f) A short statement of the relief or remedy sought by the appellant, and

(g) A short statement of whether the appellant believes the case would or would not be appropriate for mediation.

(2) An appeal of a disciplinary action, separation, layoff or exemption must also include the effective date of the action and the employee's appointment status at the time of the action. The appeal must include a short statement of the nature of the action being appealed or a copy of the action letter from the employer.

(3) An appeal on exception to a director's determination must also detail the specific items of the director's determination to which exception is taken and should include a copy of the director's determination.

WSR 06-03-075

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed January 12, 2006, 2:03 p.m., effective February 13, 2006]

Effective Date of Rule: February 13, 2006.

Purpose: The purpose of this rule is to explain what the impact of layoff is for a Washington management service employee.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 05-24-135 on December 7, 2005.

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

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

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

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

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

Date Adopted: January 12, 2006.

Eva N. Santos
Director

NEW SECTION

WAC 357-58-438 What is the impact of a layoff?

Layoff is an employer-initiated action taken in accordance with WAC 357-58-445 that results in:

- (1) Separation from service with an employer;
- (2) Employment in a WMS position with a lower salary standard or evaluation points or a WGS position with a lower salary range maximum;
- (3) Reduction in the work year; or
- (4) Reduction in the number of work hours.

WSR 06-03-079

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed January 12, 2006, 4:24 p.m., effective February 12, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department of social and health services (DSHS) is adding program of all-inclusive care for the elderly (PACE), and Medicare-Medicaid integration project (MMIP) eligibility rules to this WAC section. DSHS is also changing language to make the rule clearer.

Citation of Existing Rules Affected by this Order: Amending WAC 388-515-1505.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530.

Adopted under notice filed as WSR 05-23-163 on November 23, 2005.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: January 11, 2006.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-03-077, filed 1/17/05, effective 2/17/05)

WAC 388-515-1505 ((Community options program entry system (COPES))) Financial eligibility requirements for long-term care services under COPES, PACE, and MMIP. (1) This section describes the financial eligibility requirements and the rules used to determine a client's participation in the total cost of care for ((waiver)) home or community-based long-term care (LTC) services provided under the following programs:

(a) Community options program entry system (COPES) ((and the rules used to determine a client's participation in the total cost of care-

(4))) (b) Program of all-inclusive care for the elderly (PACE); and

(c) Medicare/Medicaid integration project (MMIP).

(2) To be eligible ((for COPES)), a client must:

(a) ((Be eighteen years of age or older;)) Meet the program and age requirements for the specific program, as follows:

(i) COPES, per WAC 388-106-0310;

(ii) PACE, per WAC 388-106-0705; or

(iii) MMIP waiver services, per WAC 388-106-0725.

(b) Meet the aged, blind or disability criteria of the Supplemental Security Income (SSI) program as described in WAC ((388-503-0510(4))) 388-511-1105(1);

(c) Require the level of care provided in a nursing facility as described in WAC ((388-72A-0055)) 388-106-0355;

(d) Be residing in a medical facility as defined in WAC ((388-513-1304)) 388-500-0005, or likely to be placed in one within the next thirty days in the absence of ((waiver)) home or community-based LTC services ((described in WAC 388-71-0410 and 388-71-0415)) provided under one of the programs listed in subsection (1) of this section;

(e) Have attained institutional status as described in WAC 388-513-1320;

(f) Be determined in need of ((waivered)) home or community based LTC services and be approved for a plan of care as described in ((WAC 388-72A-0055)) subsection (2)(a)(i), (ii), or (iii);

(g) Be able to live at home with community support services and choose to remain at home, or live in a department-contracted:

(i) Enhanced adult residential care (EARC) facility;

(ii) Licensed adult family home (AFH); or

(iii) Assisted living (AL) facility.

(h) Not be subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1364, 388-513-1365 and 388-513-1366; and

(i) Meet the resource and income requirements described in subsections ((2-)) (3) ((and)), (4), and (5) or be an SSI beneficiary not subject to a penalty period as described in subsection (2)(h).

~~((2))~~ (3) Refer to WAC 388-513-1315 for rules used to determine nonexcluded resources and income.

~~((3))~~ (4) Nonexcluded resources above the standard described in WAC 388-513-1350(1):

(a) Are allowed during the month of an application or eligibility review, when the combined total of excess resources and nonexcluded income does not exceed the special income level (SIL).

(b) Are reduced by ~~((incurred))~~ medical expenses incurred by the client (for definition, see WAC 388-519-0110(10)) that are not subject to third-party payment and for which the client is liable, including:

(i) Health insurance and Medicare premiums, deductions, and co-insurance charges; and

(ii) Necessary medical care recognized under state law, but not covered under the state's Medicaid plan.

(c) Not allocated to participation must be at or below the resource standard ~~((, otherwise))~~. If excess resources are not allocated to participation, then the client is ineligible.

~~((4))~~ (5) Nonexcluded income must be at or below the SIL and is allocated in the following order:

(a) An earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;

(b) Maintenance and personal needs allowances as described in subsection ~~((6))~~ (7), ~~((and))~~ (8), and (9) of this section;

(c) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed by chapter 388-79 WAC;

(d) Income garnished for child support or withheld ~~((pursuant))~~ according to a child support order:

(i) For the time period covered by the maintenance amount; and

(ii) Not deducted under another provision in the post-eligibility process.

(e) Monthly maintenance needs allowance for the community spouse not to exceed that in WAC 388-513-1380 (6)(b) unless a greater amount is allocated as described in subsection ~~((5))~~ (6) of this section. This amount:

(i) Is allowed only to the extent that the client's income is made available to the community spouse; and

(ii) Consists of a combined total of both:

(A) An amount added to the community spouse's gross income to provide ~~((a total equal to))~~ the amount ~~((allocated))~~ described in WAC 388-513-1380 (6)(b)(i)(A); and

(B) Excess shelter expenses. For the purposes of this section, excess shelter expenses are the actual required maintenance expenses for the community spouse's principal residence. These expenses are:

(I) Rent;

(II) Mortgage;

(III) Taxes and insurance;

(IV) Any maintenance care for a condominium or cooperative; and

(V) The food assistance standard utility allowance (for LTC services this is set at the standard utility allowance (SUA) for a four-person household), provided the utilities are not included in the maintenance charges for a condominium or cooperative;

(VI) LESS the standard shelter allocation listed in WAC 388-513-1380 (7)(a).

(f) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of the community or institutionalized spouse based on the living arrangement of the dependent. If the dependent:

(i) Resides with the community spouse, the amount is equal to one-third of the community spouse income allocation as described in WAC 388-513-1380 ~~((6)(b)(1)(A))~~ (6)(b)(i)(A) that exceeds the dependent family member's income;

(ii) Does not reside with the community spouse, the amount is equal to the MNIL for the number of dependent family members in the home less the income of the dependent family members. Child support received from an absent parent is the child's income;

(g) Incurred medical expenses described in subsection ~~((3)(b))~~ (4)(b) not used to reduce excess resources, with the following exceptions:

(i) Private health insurance premiums for MMIP;

(ii) Medicare advantage plan premiums for PACE.

~~((5))~~ (6) The amount allocated to the community spouse may be greater than the amount in subsection ~~((4)(e))~~ (5)(e) only when:

(a) A court enters an order against the client for the support of the community spouse; or

(b) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

~~((6))~~ (7) A client who receives SSI does not use income to participate in the cost of personal care, but does use SSI income to participate in paying costs of board and room. When such a client lives:

(a) At home, the SSI client ~~((retains a maintenance needs amount equal to the following:~~

~~((i) Up to one hundred percent of the one person Federal Poverty Level (FPL), if the client is:~~

~~((A) Single; or~~

~~((B) Married, and is:~~

~~((I) Not living with the community spouse; or~~

~~((II) Whose spouse is receiving long-term care (LTC) services outside of the home.~~

~~((ii) Up to one hundred percent of the one person FPL for each client, if both spouses are receiving COPES services;~~

~~((iii) Up to the one person MNIL if the client is living with a community spouse who is not receiving LTC services.)~~ does not participate in the cost of personal care;

(b) In an ~~((EARC, AFH, or AL))~~ enhanced adult residential center (EARC), adult family home (AFH), or assisted living (AL), the SSI client:

(i) Retains a personal needs allowance (PNA) of fifty-eight dollars and eighty-four cents;

(ii) Pays the facility for the cost of ~~((room and))~~ board and room. ~~((Room and board))~~ Board and room is the SSI Federal Benefit Rate (FBR) minus fifty-eight dollars and eighty-four cents ~~((=));~~ and

(iii) ~~((Retains the remainder of the))~~ Does not participate in the cost of personal care if any income remains.

~~((7))~~ (8) An SSI-related client living:

(a) At home, retains a maintenance needs amount equal to the following:

(i) Up to one hundred percent of the one-person FPL, if the client is:

(A) Single; or

(B) Married, and is:

(I) Not living with the community spouse; or

(II) Whose spouse is receiving long-term care (LTC) services outside of the home.

(ii) Up to one hundred percent of the one-person FPL for each client, if both spouses are receiving COPEs, PACE, or MMIP services;

(iii) Up to the one-person medically needy income level (MNIL) for a married client who is living with a community spouse who is not receiving COPEs, PACE, or MMIP.

(b) In an (~~ARC~~) EARC, AFH, or AL, retains a maintenance needs amount equal to the SSI FBR and:

(i) Retains a personal needs allowance (PNA) of fifty-eight dollars and eighty-four cents from the maintenance needs; and

(ii) Pays the remainder of the maintenance needs to the facility for the cost of board and room. (Refer to subsection (11) in this section for allocation of the balance of income remaining over maintenance needs.)

~~((8))~~ (9) A client who is eligible for the general assistance expedited Medicaid disability (GAX) program does not participate in the cost of personal care. When such a client lives:

(a) At home, the client retains the cash grant amount authorized under the general assistance program;

(b) In an AFH, the client retains a PNA of thirty-eight dollars and eighty-four cents, and pays remaining income and GAX grant to the facility for the cost of board and room; or

(c) In an EARC or AL, the client only receives a PNA of thirty-eight dollars and eighty-four cents and retains it.

~~((9))~~ (10) The total of the following amounts cannot exceed the SIL:

(a) Maintenance and personal needs allowances as described in subsections ~~((6))~~ (7), ~~((and))~~ (8), and (9);

(b) Earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income in subsection ~~((4(a)))~~ (5)(a); and

(c) Guardianship fees and administrative costs in subsection ~~((4(e)))~~ (5)(c).

~~((10))~~ (11) The client's remaining income after the allocations described in subsections ~~((4))~~ (5) through ~~((8))~~ (9) is the client's participation in the total cost of care.

WSR 06-03-080

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed January 12, 2006, 4:28 p.m., effective February 12, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is amending this rule to reinstate the children's health program for noncitizen children

under age eighteen with income at or below 100% of the federal poverty level who are not otherwise eligible for Medicaid, as directed by the legislature (E2SHB 1441 (chapter 279, Laws of 2005)).

Citation of Existing Rules Affected by this Order: Amending WAC 388-478-0075.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.415, and 74.09.530.

Other Authority: Chapter 279, Laws of 2005.

Adopted under notice filed as WSR 05-23-078 on November 15, 2005.

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

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

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

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

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

Date Adopted: January 11, 2006.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-17-157, filed 8/22/05, effective 9/22/05)

WAC 388-478-0075 Medical programs—Monthly income standards based on the federal poverty level (FPL). (1) The department bases the income standard upon the Federal Poverty Level (FPL) for the following medical programs:

(a) Children's health program is one hundred percent of FPL;

~~((b))~~ (b) Pregnant women's program up to one hundred eighty-five percent of FPL;

~~((c))~~ (c) Children's categorically needy program up to two hundred percent of FPL;

~~((e))~~ (d) Healthcare for workers with disabilities (HWD) up to two hundred twenty percent of FPL; and

~~((f))~~ (e) The state children's health insurance program (SCHIP) is over two hundred percent of FPL but not over two hundred fifty percent of FPL.

(2) The department uses the FPL income standards to determine:

(a) The mandatory or optional Medicaid status of an individual; and

(b) Premium amount, if any, for a Medicaid child.

(3) There are no resource limits for the programs under this section.

(4) Beginning April 1, 2005, the monthly FPL standards are:

FAMILY SIZE	100% FPL (Benchmark)	133% FPL	150% FPL	185% FPL	200% FPL	220% FPL	250% FPL
1	\$798	\$1061	\$1197	\$1476	\$1595	\$1755	\$1994
2	\$1070	\$1422	\$1604	\$1978	\$2139	\$2353	\$2673
3	\$1341	\$1784	\$2012	\$2481	\$2682	\$2950	\$3353
4	\$1613	\$2145	\$2419	\$2984	\$3225	\$3548	\$4032
5	\$1885	\$2506	\$2827	\$3486	\$3769	\$4146	\$4711
6	\$2156	\$2868	\$3234	\$3989	\$4312	\$4743	\$5390
7	\$2428	\$3229	\$3642	\$4491	\$4855	\$5341	\$6069
8	\$2700	\$3590	\$4049	\$4994	\$5399	\$5939	\$6748
9	\$2971	\$3952	\$4457	\$5497	\$5942	\$6536	\$7428
10	\$3243	\$4313	\$4864	\$5999	\$6485	\$7134	\$8107
Add to the ten person standard for each person over ten:							
	\$272	\$362	\$408	\$503	\$544	\$598	\$680

WSR 06-03-081
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)
 [Filed January 12, 2006, 4:33 p.m., effective February 12, 2006]

Effective Date of Rule: Thirty-one days after filing.
 Purpose:

- Change all references of "Medical Assistance Administration (MAA)" to "the department";
- Add a definition for "enrollees representative";
- Clarify where in the department to send a completed enrollment form;
- Add the requirement of being a "recognized urban Indian Health Center or tribal clinic" to the primary care case management (PCCM) provider requirements;
- Add "delivery case rate payment" under the managed care payment section;
- Clarify that the department covers medically necessary categorically needy services that are excluded from coverage in the managed care organization's (MCO) contract;
- Clarify ninety-day coverage policy for enrollees outside their service area for emergency care and for medically necessary covered benefits that cannot wait;
- Clarify that the MCO must acknowledge receipt of grievances either orally or in writing within five working days and each appeal in writing within five working days;
- Remove the incorrect reference to "provider" under WAC 388-538-110 (7)(f)(v) and replace it with enrollee's representative;
- Remove the word "appeal" and replace it with "hearing requests" under WAC 388-538-110 (7)(m) and (n);
- Remove the word "appeal" and replace it with "hearing requests" under WAC 388-538-112 [(3)](a) and (b);
- Add contract language on MCO oversight of delegated entities responsible for any delegated activity under quality of care;

- Add language on individualized treatment plans for enrollees with special health care needs which ensure integration of clinical and nonclinical disciplines and services in the overall plan of care; and
- Add contract language on noncompliance with any contractual, state, or federal requirements.

Citation of Existing Rules Affected by this Order:
 Amending WAC 388-538-050, 388-538-060, 388-538-061, 388-538-063, 388-538-065, 388-538-067, 388-538-068, 388-538-070, 388-538-095, 388-538-100, 388-538-110, 388-538-111, 388-538-112, 388-538-120, 388-538-130, and 388-538-140.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.522.

Adopted under notice filed as WSR 05-23-027 on November 8, 2005.

A final cost-benefit analysis is available by contacting Penny Dow/Michael Paulson, Division of Program Support, P.O. Box 45530, Olympia, WA 98504-5530, phone (360) 725-1636 or (360) 725-1641, fax (360) 753-7315, e-mail dowpl@dshs.wa.gov or paulsmj@dshs.wa.gov. The preliminary cost-benefit analysis is unchanged and will be final.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 16, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 16, Repealed 0.

Date Adopted: January 9, 2006.

Andy Fernando, Manager
Rules and Policies Assistance Unit

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 06-04 issue of the Register.

WSR 06-03-094

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 04-07—Filed January 13, 2006, 4:47 p.m., effective February 13, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule is a new rule, chapter 173-333 WAC, Persistent bioaccumulative toxins, that establish ecology's process and procedures to address the subject of persistent bioaccumulative toxic substances. The 2004 legislature, and Governor Locke, in Executive Order 04-01, with continued support from Governor Gregoire, directed the department of ecology to establish, through rule, specific criteria for use in identifying persistent, toxic chemicals (PBTs) that pose human health or environmental impacts in Washington state, and a clear process for developing chemical action plans to address those impacts.

Statutory Authority for Adoption: Chapter 276, Laws of 2004 PV and chapter 70.105 RCW, Hazardous waste management.

Adopted under notice filed as WSR 05-23-008 on November 3, 2005.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 16, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 16, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 16, Amended 0, Repealed 0.

Date Adopted: January 12, 2006.

Jay J. Manning
Director

Chapter 173-333 WAC

PERSISTENT BIOACCUMULATIVE TOXINS

**PART I
GENERAL PROVISIONS**

NEW SECTION

WAC 173-333-100 Introduction. Persistent, bioaccumulative toxins (PBTs) are chemicals that pose a unique threat to human health and the environment in Washington state. They remain in the environment for long periods of time, are hazardous to the health of humans and wildlife, can build up in the food chain, and can be transported long distances and readily move between air, land and water media.

Because of the unique threat that these PBTs pose, special attention is necessary to identify actions that will reduce and eliminate threats to human health and the environment. While ecology addresses PBTs through existing regulatory and nonregulatory programs, there remains a need for multimedia, cross-program measures that will reduce and phase-out releases and uses of PBTs over time.

The goal of this chapter is to reduce and phase-out PBT uses, releases and exposures in Washington. Ecology recognizes that many factors will influence whether and when this goal can be attained and that those factors will often vary depending on the PBT and the uses of the PBT. These factors include environmental and human health benefits, economic and social costs, technical feasibility, availability of safer substitutes, and consistency with other regulatory requirements. This chapter establishes a process that ecology will use to evaluate and identify actions that should be taken for particular PBTs. This process is designed to enhance actions being taken under other environmental laws and regulations.

NEW SECTION

WAC 173-333-110 What is the purpose of this chapter? The purpose of this chapter is to:

- (1) Establish criteria ecology will use to identify persistent bioaccumulative toxins that pose human health or environmental threats in Washington state;
- (2) Establish a list of persistent bioaccumulative toxins;
- (3) Establish procedures ecology will use to review and periodically update the list;
- (4) Establish criteria for selecting persistent bioaccumulative toxins and metals of concern for which ecology will prepare chemical action plans;
- (5) Define the scope and content of chemical action plans and establish the process ecology will use to prepare those plans; and
- (6) Define the processes ecology will use to coordinate the implementation of this chapter with the department of health and other agencies.

NEW SECTION

WAC 173-333-120 Applicability. (1) This chapter applies to the department of ecology (ecology). This chapter does not impose new requirements on persons using or

releasing PBTs, and it does not create new authorities nor does it constrain existing authorities for ecology.

(2) This chapter provides for public involvement opportunities to allow interested persons to participate in the ecology processes for identifying PBTs and developing recommendations on measures to address uses and releases of PBTs.

NEW SECTION

WAC 173-333-130 Exemptions to the PBT list. Any pesticide with a currently valid registration that has been issued by the Environmental Protection Agency under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 et seq., or any fertilizer regulated under the Washington Fertilizer Act, chapter 15.54 RCW, will not be included on the persistent bioaccumulative toxin list established under this chapter.

NEW SECTION

WAC 173-333-140 Administrative principles. (1) **Scientific information.** Ecology will base decisions on PBTs on sound public policy and credible scientific information. However, ecology believes that lack of full scientific consensus should not be used as a justification for delaying reasonable measures to prevent harm to human health or the environment.

(2) **Public involvement.** Ecology will provide opportunities for public involvement during the decision-making processes for identifying PBTs and preparing a CAP.

(3) **Clear documentation.** Ecology will provide clear and understandable descriptions and rationale for decisions implementing this chapter.

(4) **Predictability.** Ecology will implement this chapter in ways that allow stakeholders, interest groups, and the public to plan their participation in decision-making processes and future responses to recommendations that result from those processes.

(5) **Coordination.** Ecology will coordinate with federal and state agencies, local governments, tribes, and other interested parties in the development and implementation of CAPs and when revising the PBT list.

(6) **Rule amendments.** When amending any portion of this rule, Ecology will follow the requirements of the Administrative Procedure Act (APA), chapter 34.05 RCW.

PART II DEFINITIONS

NEW SECTION

WAC 173-333-200 Definitions. For the purposes of this chapter, the following definitions shall apply:

"Administrative Procedure Act" or "APA" means the Washington Administrative Procedure Act, chapter 34.05 RCW.

"Bioaccumulation" means the process by which substances increase in concentration in living organisms as they take in contaminated air, water, soil, sediment or food

because the substances are very slowly metabolized or excreted.

"Bioaccumulation factor" or "BAF" means the ratio of the concentration of a chemical in an organism to the concentration of the chemical in the surrounding environment. The BAF is a measure of the extent to which the organism accumulates the chemical as a result of uptake through ingestion as well as contact from contaminated media, such as water.

"Bioconcentration factor" or "BCF" means the ratio of the concentration of a chemical in an aquatic organism to the concentration of the chemical in water. The BCF is a measure of the extent of chemical partitioning between an aquatic organism and water.

"Carcinogen" means a chemical or chemical group that has been identified as "carcinogenic to humans" or "likely to be carcinogenic to humans" by the Environmental Protection Agency, as a Group 1, 2A or 2B carcinogen by the International Agency for Research on Cancer or as a "known to be a human carcinogen" or "reasonably anticipated to be a human carcinogen" by the National Toxicology Program.

"Chemical" means a naturally occurring element, mixture, or group of organic and inorganic compounds that is produced by or used in a chemical process.

"Chemical action plan" or "CAP" means a plan that identifies, characterizes and evaluates uses and releases of a specific PBT, a group of PBTs or metals of concern and recommends actions to protect human health or the environment.

"Chemical group" means a grouping of chemicals which share a common chemical structure and common toxicological properties.

"Credible scientific information" means information that is based on a theory or technique that is generally accepted in the relevant scientific community or has been collected or derived using standard or generally accepted methods and protocols and appropriate quality assurance and control procedures.

"Cross-media transfer of chemicals" means the movement of a chemical from one medium, such as air, water, soil, or sediment, to another.

"Degradation" means the processes by which organic chemicals are transformed into derivative chemicals and ultimately broken down.

"Developmental or reproductive toxicant" means a chemical or chemical group identified as posing developmental or reproductive hazards by the National Toxicology Program or chemicals or chemical groups with sufficient evidence of a developmental or reproductive hazard in humans or experimental animals consistent with the United States Environmental Protection Agency's Guidelines for Reproductive Toxicity Risk Assessment and Guidelines for Developmental Toxicity Risk Assessment as set forth in 61 FR 56274 et seq. and 56 FR 63798 et seq., respectively.

"Ecology" means the department of ecology.

"Environment" means any plant, animal, natural resource, surface water (including underlying sediments), ground water, drinking water supply, land surface (including tidelands and shorelands) or subsurface strata, or ambient air.

"**Environmental half-life**" means the time required for the concentration of a chemical to diminish to half its original value. The environmental half-life of a chemical is a measure of a chemical's persistence in the environment.

"**Feasible**" means reasonably capable of being accomplished or brought about or capable of being utilized or dealt with successfully.

"**High-exposure populations**" means groups of people that have a higher potential for exposure than the general population.

"**Log-octanol water partition coefficient**" or "**Log K_{ow}**" means the ratio of a chemical's concentration in the octanol phase to its concentration in the aqueous phase of a two-phase octanol/water system as expressed in a logarithmic format.

"**Media**" or "**medium**" means a component of the environment (air, water, soil or sediment) in which a contaminant is measured and an organism lives its life, and from which an organism can accumulate contaminants.

"**Neurotoxicant**" means a chemical or chemical group with sufficient evidence of a neurotoxic hazard in humans or experimental animals consistent with the United States Environmental Protection Agency's Guidelines for Neurotoxicity Risk Assessment as set forth in 63 FR 26926 et seq.

"**No observed effect concentration**" or "**NOEC**" means the highest concentration of a chemical evaluated in an aquatic toxicity test that does not cause a statistically and biologically significant difference in effects compared with controls.

"**Persistent bioaccumulative toxin**" or "**PBT**" means a chemical or chemical group that meets or exceeds the criteria for persistence, bioaccumulation and toxicity criteria established in WAC 173-33-320.

"**Persistence**" means the tendency of a chemical to remain in the environment without transformation or breakdown into another chemical form. It refers to the length of time a chemical is expected to reside in the environment and be available for exposure.

"**Reference dose**" means a numerical estimate of a daily exposure to the human population, including sensitive subgroups such as children, that is likely to be without harmful effects during a lifetime.

"**Sensitive population group**" means groups of people that exhibit a different or enhanced response to a chemical than most people exposed to a similar level of the chemical because of genetic makeup, age, nutritional status or exposure to other toxic substances.

"**Toxicity**" means the degree to which a substance or mixture of substances can harm humans, plants or wildlife.

**PART III
THE PBT LIST AND CRITERIA AND PROCEDURES
FOR REVISING THE LIST**

NEW SECTION

WAC 173-333-300 What is the purpose of the PBT list? (1) Purpose. The purpose of the PBT list is to identify toxic chemicals that require further action because they remain ("persist") in the environment for long periods of time

where they can bioaccumulate to levels that pose threats to human health and environment in Washington.

(2) **Intended uses of the PBT list.** Ecology will use the PBT list in the following ways:

(a) **Chemical action plans.** To select chemicals for chemical action plan development.

(b) **Ambient monitoring.** To help guide decisions on the design and implementation of ecology programs for characterizing chemical concentrations in the ambient environment.

(c) **Biomonitoring.** To encourage and inform the department of health regarding their efforts to monitor chemicals in human tissue.

(d) **Public awareness.** To promote greater public awareness on the problems associated with PBT chemicals, the uses and sources of individual PBTs and steps that individuals and organizations can take to reduce PBT uses, releases and exposure.

(e) **Voluntary measures.** To help identify opportunities for government agencies, businesses and individuals to implement voluntary measures for reducing and phasing out PBT uses and releases.

(3) **Relationship to actions addressing chemical uses and releases.** Ecology has determined that the chemicals on the PBT list pose a potential threat to human health and the environment in Washington.

(a) Ecology's decision to include a particular chemical on the PBT list does not represent a final determination that all uses and releases of that chemical should be reduced and phased-out. Any recommendations on uses and releases of a particular chemical will be made in the CAP process.

(b) Ecology will not use the PBT list as the sole basis for establishing discharge monitoring requirements that are not required under current permits. Ecology will evaluate and, if necessary, prepare recommendations for additional monitoring requirements when preparing chemical action plans (WAC 173-333-420 and 173-333-430).

NEW SECTION

WAC 173-333-310 What chemicals or chemical groups are included on the PBT list? (1) Purpose. This section identifies the chemicals and chemical groups that ecology has determined meet the criteria specified in WAC 173-333-320.

(2) **PBT list.** Ecology has determined that the following chemicals or chemical groups meet the criteria specified in WAC 173-333-320.

Chemicals listed in alphabetical order	CAS Number
Aldrin	309-00-2
Chlordane	57-74-9
Chlordecone (Kepone)	143-50-0
Dichlorodiphenyltrichloroethane (DDT)	50-29-3
Dieldrin	60-57-1
Endrin	72-20-8
Heptachlor/Heptachlor epoxide	76-44-8/1024-57-3

Chemicals listed in alphabetical order	CAS Number
Hexabromobiphenyl	59536-65-1
Hexabromocyclododecane	25637-99-4
Hexachlorobenzene	118-74-1
Hexachlorobutadiene	87-68-3
Methyl mercury	22967-92-6
Mirex	2385-85-5
Pentachlorobenzene	608-93-5
Short-chain chlorinated paraffins	85535-84-8
Tetrabromobisphenol A	79-94-7
Tetrachlorobenzene, 1,2,4,5-	95-94-3
Toxaphene	8001-35-2
Chemical groups listed in alphabetical order	
Perfluorooctane sulfonates (PFOS)	
Acid	1763-23-1
Ammonium salt	29081-56-9
Diethanolamine salt	70225-14-8
Lithium salt	29457-72-5
Potassium salt	2795-39-3
Polycyclic aromatic hydrocarbons (PAHs)	
3-Methyl chlolanthrene	56-49-5
7H-Dibenzo(c,g)carazole	194-59-2
Benzo(a)phenanthrene (Chrysene)	218-01-9
Benzo(b)fluoranthene	205-99-2
Benzo(g,h,i)perylene	191-24-2
Benzo(j)fluoranthene	205-82-3
Benzo(k)fluoranthene	207-08-9
Benzo(r,s,t)pentaphene	189-55-9
Dibenzo(a,e)pyrene	192-65-4
Dibenzo(a,h)pyrene	189-64-4
Dibenzo(a,h)acridine	226-36-8
Dibenzo(a,h)anthracene	53-70-3
Dibenzo(a,i)acridine	224-42-0
Fluoranthene	206-44-0
Indeno(1,2,3-cd)pyrene	193-39-5
Perylene	198-55-0
Polybrominated dibenzodioxins and furans	
2,3,7,8-tetrabromodibenzo-p-dioxin	50585-41-6
2,3,7,8-tetrabromodibenzofuran	67733-57-7
Polybrominated diphenyl ethers	
Pentabromodiphenyl ether	32534-81-9
Octabromodiphenyl ether	32536-52-0
Decabromodiphenyl ether	1163-19-5

Chemicals listed in alphabetical order	CAS Number
Polychlorinated biphenyls (PCBs)	
2,3',4,4',5 Pentachlorobiphenyl	31508-00-6
2,3,4,4',5 Pentachlorobiphenyl	74472-37-0
2,3,3',4,4' Pentachlorobiphenyl	32598-14-4
3,3',4,4',5,5' Hexachlorobiphenyl	32774-16-6
2,3',4,4',5,5' Hexachlorobiphenyl	52663-72-6
2,3,3',4,4',5' Hexachlorobiphenyl	69782-90-7
2,3,3',4,4',5 Hexachlorobiphenyl	38380-08-4
2,3,3',4,4',5,5' Heptachlorobiphenyl	39365-31-9
Polychlorinated dibenzo-p-dioxins	
2,3,7,8 Tetrachlorodibenzo-p-dioxin	1746-01-6
1,2,3,7,8 Pentachlorodibenzo-p-dioxin	40321-76-4
1,2,3,4,7,8 Hexachlorodibenzo-p-dioxin	39227-28-6
1,2,3,6,7,8 Hexachlorodibenzo-p-dioxin	576-53-8
1,2,3,7,8,9 Hexachlorodibenzo-p-dioxin	19408-74-3
1,2,3,4,6,7,8 Heptachlorodibenzo-p-dioxin	35822-46-9
1,2,3,4,6,7,8,9 Octachlorodibenzo-p-dioxin	3268-87-9
Polychlorinated dibenzofurans	
2,3,7,8 Tetrachlorodibenzofuran	51207-31-9
1,2,3,7,8 Pentachlorodibenzofuran	57117-41-6
2,3,4,7,8 Pentachlorodibenzofuran	57117-31-4
1,2,3,4,7,8 Hexachlorodibenzofuran	70648-26-9
1,2,3,6,7,8 Hexachlorodibenzofuran	57117-44-9
1,2,3,7,8,9 Hexachlorodibenzofuran	72918-21-9
2,3,4,6,7,8 Hexachlorodibenzofuran	60851-34-5
1,2,3,4,6,7,8 Heptachlorodibenzofuran	67562-39-4
1,2,3,4,7,8,9 Heptachlorodibenzofuran	55673-89-7
1,2,3,4,6,7,8,9 Octachlorodibenzofuran	39001-02-0
Polychlorinated naphthalenes	
Trichloronaphthalene	1321-65-9
Tetrachloronaphthalene	1335-88-2
Pentachloronaphthalene	1321-64-8
Hexachloronaphthalene	1335-87-1
Heptachloronaphthalene	32241-08-0

(3) **Revising the PBT list.** Ecology will periodically review and, as appropriate, revise the PBT list in subsection (2) of this section using the criteria and procedures in WAC 173-333-320 through 173-333-340.

NEW SECTION**WAC 173-333-315 Metals of concern. (1) Purpose.**

The purpose of this section is to identify metals of concern to be addressed under this chapter. The metals of concern category was established as an interim category pending completion of EPA's inorganic metals assessment framework process.

(2) **Metals of concern.** Ecology has identified the following metals of concern based on a determination that these metals pose threats to human health and the environment in Washington.

Metals of Concern	CAS Number
Cadmium	7440-43-9
Lead	7439-92-1

(3) **Actions.** Ecology may prepare chemical action plans for one or more metals of concern using the process defined in WAC 173-333-420.

(4) **Revising the metals of concern list.** Ecology will evaluate the relationship between the metals of concern list and PBT list in WAC 173-333-310 following the completion of the EPA's inorganic metals assessment framework process.

NEW SECTION

WAC 173-333-320 What criteria will ecology use to identify and add chemicals or chemical groups to the PBT list? (1) Purpose. This section describes the criteria that ecology will use to determine whether a chemical or group of chemicals should be included on the PBT list.

(2) **Criteria for identifying PBTs.** A chemical or group of chemicals will be included on the PBT list if ecology determines it meets each of the following criteria:

(a) **Persistence.** The chemical or chemical group can persist in the environment based on credible scientific information that:

(i) The half-life of the chemical in water is greater than or equal to sixty days; or

(ii) The half-life of the chemical in soil is greater than or equal to sixty days; or

(iii) The half-life of the chemical in sediments is greater than or equal to sixty days; and

(b) **Bioaccumulation.** The chemical or chemical group has a high potential to bioaccumulate based on credible scientific information that the bioconcentration factor or bioaccumulation factor in aquatic species for the chemical is greater than 1,000 or, in the absence of such data, that the log-octanol water partition coefficient ($\log K_{ow}$) is greater than five; and

(c) **Toxicity.** The chemical or chemical group has the potential to be toxic to humans or plants and wildlife based on credible scientific information that:

(i) The chemical (or chemical group) is a carcinogen, a developmental or reproductive toxicant or a neurotoxicant;

(ii) The chemical (or chemical group) has a reference dose or equivalent toxicity measure that is less than 0.003 mg/kg/day; or

(iii) The chemical (or chemical group) has a chronic no observed effect concentration (NOEC) or equivalent toxicity measure that is less than 0.1 mg/L or an acute no observed effect concentration (NOEC) or equivalent toxicity measure that is less than 1.0 mg/L.

(d) **Additional criteria applicable to metals.** The chemical or chemical group is a metal and ecology determines that it is likely to be present in forms that are bioavailable.

(3) **Degradation products.** Ecology will consider both the parent chemical and its degradation products when making decisions on whether a chemical meets the criteria in subsection (2) of this section. If a parent chemical does not meet the criteria in this section but degrades into chemicals that do meet the criteria in subsection (2) of this section, the parent chemical may be considered for inclusion on the PBT list and in the development of a CAP. Alternately, ecology may decide not to include the parent chemical on the PBT list, but consider it during the development of a CAP for derivative chemicals.

NEW SECTION

WAC 173-333-330 What criteria will ecology use to remove a PBT from the PBT list? (1) Purpose. This section describes the criteria and factors ecology will use to determine whether a chemical or group of chemicals should be removed from the PBT list.

(2) **Criteria for removing a chemical from the PBT list.** Ecology will remove a chemical or chemical group from the PBT list if the department determines that credible scientific information developed subsequent to the listing decision provides evidence that the chemical or chemical group does not meet the PBT criteria in WAC 173-333-320(2).

NEW SECTION

WAC 173-333-340 What process will ecology follow to revise the PBT list? (1) Purpose. This section describes the processes ecology will use to notify the public and amend the PBT list after making a determination that chemicals or groups of chemicals should be added or removed from the PBT list.

(2) **Reviewing and updating the PBT list.** Ecology will periodically review and update WAC 173-333-310. The frequency of review will be determined by credible scientific information available on individual chemicals or chemical groups, rule-making petitions submitted to ecology, and available agency resources. Ecology will comply with the requirements for reviewing and responding to rule-making petitions in the Administrative Procedure Act, chapter 34.05 RCW.

(3) **Public notification.** If ecology makes a preliminary determination that a chemical should be added or removed from the PBT list, the department will prepare a technical discussion paper that summarizes the scientific information supporting the addition or removal of a chemical and notify the public through an announcement posted on the ecology web site and published in the *Washington State Register*.

(4) **Amending the PBT list.** If ecology makes a final determination that a chemical or chemical group should be

added or removed from the PBT list, the department will initiate actions to amend WAC 173-333-310 through formal rule making.

PART IV CHEMICAL ACTION PLANS (CAPs)

NEW SECTION

WAC 173-333-400 What is a chemical action plan (CAP)? (1) A chemical action plan (CAP) is a plan that identifies, characterizes and evaluates uses and releases of a specific PBT, a group of PBTs or metals of concern and recommends actions to protect human health or the environment.

(2) For the purposes of this section, the term PBT refers to both the chemicals on the PBT list (WAC 173-333-310) and the chemicals on the metals of concern list (WAC 173-333-315).

NEW SECTION

WAC 173-333-410 What evaluation factors and processes will ecology use to select PBTs or metals of concern for chemical action plan preparation? (1) **Purpose.** Ecology will consult with the department of health to develop a multiyear schedule for the preparation of chemical action plans. The purpose of this section is to describe the evaluation factors and processes ecology will use to prepare and update the multiyear schedule.

(2) **Evaluation factors.**

(a) Ecology will consider the following factors when preparing the multiyear schedule:

(i) **Relative ranking.** The relative ranking assigned to each PBT based on ecology's evaluation of information on PBT characteristics, uses of the chemical in Washington, releases of the chemical in Washington, the levels of the chemical present in the Washington environment, and levels of the chemical present in Washington residents.

(ii) **Opportunities for reductions.** Whether there are opportunities for reducing or phasing out uses, production or releases of the PBT in Washington. In reviewing available information, the agencies shall consider whether more than one PBT is present in particular products, generated in particular processes or released from particular sources (co-occurring chemicals).

(iii) **Multiple chemical releases and exposures.** Scientific evidence on the combined effects of exposure to one or more PBTs and other substances commonly present in the Washington environment.

(iv) **Sensitive population groups and high-exposure populations.** Scientific evidence on the susceptibility of various population groups including the timing of the exposure and the cumulative effects of multiple exposures.

(v) **Existing plans or regulatory requirements.** Whether there are existing plans or regulatory requirements that reduce and phase out uses and releases of a particular PBT or group of PBTs.

(b) Ecology will not prepare CAPs if the department determines:

(i) All uses and releases of the PBT are prohibited under other state and federal laws or regulations;

(ii) There is credible scientific information to support a conclusion that the PBT is not used, released or present in Washington; or

(iii) There are no available opportunities for reducing or phasing out the uses, releases or exposures of the PBT beyond levels required under other federal or state laws or regulations.

(3) **Preliminary schedule.** Ecology will prepare a preliminary schedule that will identify the PBTs for which CAPs will be developed for the multiyear schedule, the rationale for selecting these PBTs and a timeline for completing CAPs for these PBTs.

(4) **Public notice and comment.** Ecology will notify the public when it has prepared a preliminary schedule and provide an opportunity for public review and comment. Ecology will notify the public through an announcement published in the *Washington State Register* and posted on the ecology web site. Ecology will also send a written announcement to interested persons and organizations. Ecology will provide sixty days, from the date the notice is published in the *Washington State Register* for the public to review and submit comments on the preliminary selection.

(5) **Final schedule.** Ecology will review all public comments on the preliminary schedule prior to preparing a final schedule. Ecology will notify the public of the final decision through an announcement published in the *Washington State Register* and posted on the ecology web site. Ecology will also provide written notification to individuals or organizations who submitted comments on the preliminary schedule.

(6) **Schedule updates.** Ecology will review and, as appropriate, update the schedule for chemical action plans at least once every three years. In making such revisions, ecology will follow the process for preparing the schedule (including an opportunity for public review and comment) specified in this section.

NEW SECTION

WAC 173-333-420 What are the contents of a CAP?

(1) **Contents of the chemical action plans.** Chemical action plans will include, as appropriate, the following types of information, evaluations and recommendations:

(a) **General chemical information.** General information includes, but is not limited to, chemical name, properties, uses and manufacturers.

(b) **Production, uses and releases.** An analysis of information on the production, unintentional production, uses and disposal of the chemical. This will include estimates on the amount of each PBT used and released from all sources or activities in Washington and other man-made and naturally occurring sources that may contribute to exposures in Washington. Sources may include other chemicals or products that are known or suspected to degrade to the chemical included on the PBT list.

(c) **Human health and environmental impacts.** Information on the potential impacts on human health and the environment associated with the use and release of the PBT chemical. This will include consideration of available infor-

mation on the levels of the PBT present in Washington's environment, potential for exposure, the likely fate and transport mechanisms, available body-burden data, toxicity effects, and the rates of diseases that have been associated with exposure to the particular PBT.

(d) **Current management approaches.** An evaluation of the regulatory and nonregulatory approaches that influence production, uses, releases and management of each PBT.

(e) **Identification of policy options.** A list of options for managing, reducing and phasing out the different uses and releases of the PBTs addressed in the CAP. The range of options for particular uses and releases will include:

- (i) A no-action option;
- (ii) An option that results in the phase out of PBT uses and releases;
- (iii) An option to manage chemicals to reduce exposure; and
- (iv) Other options, including the use of available substitutes, which will enable full consideration of the opportunities and constraints for reducing particular uses, releases and exposures.

(f) **Recommendations.** Recommendations for:

- (i) Reducing and phasing-out uses and releases of the specific PBT or group of PBTs addressed in the CAP;
- (ii) Managing products or wastes that contain the specific PBT or group of PBTs addressed in the CAP;
- (iii) Minimizing exposure to the specific PBT or group of PBTs;
- (iv) Switching to safer substitutes; and
- (v) Encouraging the development of safer alternatives.

The recommendations will be based on an evaluation of the following factors:

- (A) Environmental and human health benefits associated with implementing the action;
- (B) Economic and social impacts associated with implementing the action;
- (C) Feasibility of implementing the action;
- (D) Availability and effectiveness of safer substitutes for uses of the PBT being addressed in the plan; and
- (E) Consistency with existing federal and state regulatory requirements.

(g) **Implementation steps.** A description of the steps ecology will take to implement the CAP, including a description of:

- (i) The existing resources and necessary additional budget ecology intends to use;
- (ii) Potential funding sources for CAP implementation, including those that tie implementation costs to PBT sources and products;
- (iii) How ecology intends to inform and educate affected persons about the CAP;
- (iv) How ecology will promote, assist, and evaluate the effectiveness of voluntary actions;
- (v) How ecology will collect additional information needed to evaluate the feasibility of potential actions; and
- (vi) Any recommended regulatory actions and how ecology will pursue them.

(h) **Performance measures.** A description of interim milestones to assess progress and the use of objectively measurable outcomes, including recommendations for environ-

mental and human health monitoring to measure levels of the chemical(s) (in the CAP) over time and whether the goals and purposes of the CAP are being achieved.

(i) **Other.** Other information that ecology determines is necessary to support the decision-making process.

(2) **Regulatory consistency.** When evaluating the consistency with existing federal and state regulatory requirements under subsection (1)(f)(iii)(E) of this section, ecology will:

- (a) Ensure that the recommendations do not violate existing federal or state laws;
- (b) Determine if the recommendations would impose more stringent performance requirements on private entities than on public entities, unless already required to do so by federal or state law, and if so, describe the justification for doing so; and
- (c) Determine if the recommendations differ from federal regulations and statutes, and if so, explain why the difference is necessary and how ecology will coordinate with other federal, state, and local laws applicable to the same activity or subject matter.

(3) **Economic analyses.** In assessing economic impacts under subsection (1)(f)(iii)(B) of this section, ecology will identify costs of implementing the recommendations. This may include a qualitative and/or quantitative analysis of the probable benefits and costs of the CAP.

NEW SECTION

WAC 173-333-430 What process will ecology use to develop CAPs? (1) **Purpose.** The purpose of this section is to identify the process ecology will use to develop CAPs.

(2) **Workplan/scoping.** Once a chemical is selected for CAP development, ecology will initially plan and scope the CAP of the selected chemical based upon available information regarding the chemical's products, uses and releases; human health exposure and ecological hazards; environmental releases, fate, and transport; environmental concentrations and available substitutes; available options for managing uses and releases; estimated costs, benefits and effectiveness of alternate management options; and any other information ecology determines is necessary to support the CAP development process. Ecology will consult with the department of health regarding all portions of the CAP related to human health exposures.

(3) **Advisory committee.** Ecology will create an external advisory committee for each CAP that ecology develops. The purpose of the advisory committee is to provide stakeholder input and expertise.

(a) The advisory committee membership will include, but not be limited to, representatives from: Large and small business sectors, community, environmental and public health advocacy groups, local governments, and public health agencies. When appropriate, representatives from the following groups will also be invited to participate: Agricultural groups, worker safety advocacy groups, and other interested parties. Federally recognized tribal governments will also be encouraged to participate. In addition, representation from other state executive agencies may be requested to provide input and to represent agency interests in the CAP devel-

opment process. Outside experts (if needed) may be requested to provide technical expertise.

(b) A neutral third-party facilitator may be hired to facilitate advisory committee meetings.

(c) The advisory committee will follow a consultative process, where ecology will draft the CAP in consideration of input from advisory committee members.

(d) All advisory committee meetings will be open to the public. Ecology will notify the public of advisory committee meetings through an announcement posted on the ecology web site and written notification to interested individuals and organizations.

(4) **Information collection phase.** Ecology will collect all necessary and up-to-date information regarding the selected chemical. CAP advisory committee members will be asked to contribute, and as appropriate, review information from ecology during this phase of CAP development. The department of health will be asked to review any information related to human health.

(5) **Draft recommendations.** Ecology will develop a draft CAP for advisory committee review and comment. Ecology will review all advisory committee comments and, as appropriate, revise the draft CAP prior to distributing it for public review and comment.

(6) **Public review and comment.** Ecology will notify the public when it has developed a draft CAP and provide an opportunity for public review and comment. The public comment period for each draft CAP will be a minimum of sixty days. Ecology will notify the public through an announcement posted concurrently on the ecology web site, a notice in the *Washington State Register*, and sent to interested persons and organizations. The comment period shall start from the date the notice is published in the *Washington State Register*. During the comment period, ecology will hold a minimum of two public meetings on the draft CAP. One meeting shall be held on the western side of the state, and one meeting shall be held on the eastern side of the state. Ecology may hold additional public meetings during the public comment period if determined necessary. Ecology will provide a response to all public comments.

(7) **Final recommendations.** Ecology will review and provide responses to all public comments on the draft CAP prior to issuing the final recommendations. Ecology will notify the public of the final recommendations through an announcement that will be published in the *Washington State Register* and posted on the ecology web site. Ecology will also provide written notification to individuals or organizations who submitted comments on the draft CAP.

(8) **Coordination with other agencies.** Ecology will coordinate with other government agencies and interested parties as appropriate on the implementation of the final CAP. Ecology will consult with the department of health on public information materials addressing food safety issues.

WSR 06-03-096
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed January 17, 2006, 9:00 a.m., effective February 17, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This amendment implements HB 1270 by giving law enforcement and fire fighters' retirement system (LEOFF) Plan 2 retirees who return to work in eligible PERS, SERS or TRS position the option of continuing to receive their LEOFF retirement allowance or joining the other retirement system.

Citation of Existing Rules Affected by this Order: Amending WAC 415-104-111.

Statutory Authority for Adoption: RCW 41.50.050(5) and 41.26.500.

Adopted under notice filed as WSR 05-24-049 on December 1, 2005.

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

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

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

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

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

Date Adopted: January 11, 2006.

S. J. Matheson
Director

AMENDATORY SECTION (Amending WSR 05-12-043, filed 5/25/05, effective 6/25/05)

WAC 415-104-111 ((How does the department calculate the retirement allowance of a LEOFF Plan 2 member who retires, reenters employment, and then either retires or separates employment again?)) How is my LEOFF Plan 2 retirement allowance affected if I return to work after retirement? ((This rule establishes a method to actuarially recompute your retirement allowance if you are a Plan 2 member who retires, reenters employment causing your retirement allowance to be suspended, and then either retires or separates employment again.)) This rule applies to you if you are a LEOFF 2 retiree who returns to work in an eligible LEOFF, public employees' retirement system (PERS), school employees' retirement system (SERS), or teachers' retirement system (TRS) position.

(1) If you return to employment in a LEOFF eligible position, you must reenter membership and your retirement allowance will stop. When you separate from service, the department will calculate your retirement allowance according to this subsection.

(a) If you previously retired before age fifty-three, the department will:

(i) Calculate your retirement allowance pursuant to RCW 41.26.420 using:

(A) Your total years of career service, including service earned prior to your initial retirement and service earned after reentering membership; and

(B) Any increase in your final average salary resulting from your reentry into membership; and

(ii) Actuarially reduce your retirement allowance:

(A) Based on the present value of the retirement allowance payments you received during your initial retirement;

(B) To reflect the difference in the number of years between your current age and the attainment of age fifty-three, if ~~((applicable)) you are not yet fifty-three~~; and

(C) To offset the cost of your benefit option if it includes a survivor feature. See WAC 415-104-215.

(b) If you previously retired at or after age fifty-three, the department will ~~((recompute))~~:

~~(i) Calculate your retirement allowance pursuant to RCW 41.26.420 ((and include any additional service credit you earned)) using:~~

~~(A) Your total years of career service, including service earned prior to your initial retirement and service earned after reentering membership; and~~

~~(B) Any increase in your final average salary resulting from your reentry into membership((-The department will)), and~~

~~(ii) Actuarially reduce your retirement allowance to offset the cost of your benefit option if it includes a survivor feature. See WAC 415-104-215.~~

(c) Under no circumstances will you receive a retirement allowance creditable to a month during which you earned service credit.

(2) If you enter employment in a PERS, TRS or SERS eligible position, ~~((whether or not you enter PERS, TRS or SERS membership, your LEOFF retirement allowance will be suspended under RCW 41.26.500. Upon separation from such employment, your suspended retirement allowance will be reinstated. In addition, you may choose to have the total monthly retirement payments you would have received had you not reentered employment, plus interest, either:~~

~~(a) In a lump sum; or~~

~~(b) Actuarially computed in your)) you have two options:~~

(a) You may choose not to become a member of the PERS, TRS or SERS retirement system and continue to receive your monthly LEOFF Plan 2 retirement allowance; or

(b) You may choose to become a member of the PERS, TRS or SERS retirement system. Your LEOFF retirement allowance will be suspended while you earn service credit and make contributions toward another retirement benefit. When you leave the PERS, SERS or TRS eligible position, you will resume receiving your LEOFF retirement allowance, along with retroactive payments for the time you were employed. You may choose to have your retroactive payments in a lump sum or actuarially computed into your LEOFF Plan 2 retirement allowance.

**WSR 06-03-097
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS**

[Filed January 17, 2006, 9:01 a.m., effective February 17, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This amendment clarifies that once a PERS or SERS Plan 3 member chooses a contribution rate, or is assigned the base rate of 5%, the member may not change that contribution rate unless he/she changes employers.

Citation of Existing Rules Affected by this Order: Amending WAC 415-111-220.

Statutory Authority for Adoption: RCW 41.50.050(5).

Other Authority: RCW 41.34.090.

Adopted under notice filed as WSR 05-24-047 on December 1, 2005.

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

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

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

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

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

Date Adopted: January 11, 2006.

S. J. Matheson
Director

AMENDATORY SECTION (Amending WSR 04-02-004, filed 12/24/03, effective 1/1/04)

WAC 415-111-220 How do I choose a defined contribution rate? (1) **Contribution rates:** If you are a member of the Teachers' Retirement System (TRS) Plan 3, the School Employees' Retirement System (SERS) Plan 3, or the Public Employees' Retirement System (PERS) Plan 3, you are required to contribute from your compensation according to one of the following rate structures:

	Base Rate	Additional Rate	Total Contribution Rate
Option A			
All ages	5.0%	0.0%	5.0%
Option B			
Up to age 35	5.0%	0.0%	5.0%
Age 35 to 44	5.0%	1.0%	6.0%
Age 45 and above	5.0%	2.5%	7.5%

	Base Rate	Additional Rate	Total Contribution Rate
Option C			
Up to age 35	5.0%	1.0%	6.0%
Age 35 to 44	5.0%	2.5%	7.5%
Age 45 and above	5.0%	3.5%	8.5%
Option D			
All ages	5.0%	2.0%	7.0%
Option E			
All ages	5.0%	5.0%	10.0%
Option F			
All ages	5.0%	10.0%	15.0%

(2) **How do I make the choice?** Under WAC 415-111-110, it is your responsibility to complete the correct form for choosing a contribution rate and submitting the form in a timely manner to your employer as directed on the form.

(3) **Where do I get the form to make my choice?** Your employer must provide the appropriate form to choose a contribution rate if you are enrolling in Plan 3 or transferring from Plan 2 to Plan 3.

(4) **When do I have to choose?** You must choose a contribution rate within ninety calendar days from your date of hire in an eligible position. However, if you are transferring from Plan 2 to Plan 3, you must choose a contribution rate at the same time you transfer. The ninety-day period does not apply to a member transferring from Plan 2 to Plan 3.

(5) **When do contributions begin?**

(a) Once you choose a contribution rate, contributions will begin the first day of the pay cycle in which you make the choice.

(b) If the employer advises the department that you should be reported into Plan 3 membership retroactively, the ninety-day period starts from the date it is discovered that you should have been reported. The department will decide which date to use.

(6) **What if I work for more than one employer?** If you are a Plan 3 member working in eligible positions for more than one employer, you may select a different contribution rate with each employer.

(7) **What happens if I do not make a choice?** Under RCW 41.34.040, you will be assigned a base rate of 5% (Option A) if:

(a) You are a new employee or changing your employer, and do not choose a contribution rate within the ninety-day election period described in subsection (4) of this section; or

(b) You are transferring from Plan 2 to Plan 3 and do not choose a contribution rate at the time of transfer. Contributions required under subsection (a) or (b) will begin the first day of the pay cycle in which you are assigned to Option A.

(8) **Can I change my contribution rate?**

(a) ~~(Except as provided in (c) of this subsection, once you choose a contribution rate or are assigned the base rate of 5% (Option A), you cannot change your contribution rate unless you change employers.)~~ If you are a PERS 3 or SERS 3 member, once you choose a contribution rate or are

assigned the base rate of 5% (Option A), you cannot change that contribution rate unless you change employers. This rule is required by an IRS decision on the tax qualified status of PERS 2 and 3 and SERS 2 and 3.

(b) Each time you change employers, you must choose a new contribution rate within ninety days or you will be assigned a base rate of 5% (Option A). No contributions will be taken until you choose a rate or until the ninety-day period has elapsed, whichever occurs first.

(c) Each January, TRS Plan 3 members may change their contribution rate option by providing written notification to their employer as described in WAC 415-111-110(1).

WSR 06-03-098

PERMANENT RULES

DEPARTMENT OF

RETIREMENT SYSTEMS

[Filed January 17, 2006, 9:04 a.m., effective February 17, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To clarify that the department has the right to limit the number of times a Plan 3 member changes investment options and to impose other restrictions if necessary to protect the performance results of the funds.

Citation of Existing Rules Affected by this Order: Amending WAC 415-111-230.

Statutory Authority for Adoption: RCW 41.50.050(5).

Other Authority: Chapter 41.34 RCW.

Adopted under notice filed as WSR 05-24-048 on December 1, 2005.

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

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

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

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

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

Date Adopted: January 11, 2006.

S. J. Matheson
Director

AMENDATORY SECTION (Amending WSR 01-01-059, filed 12/12/00, effective 1/12/01)

WAC 415-111-230 Self-directed investment program allocation. This section applies only to members who elect the self-directed investment program pursuant to WAC 415-111-210.

(1) **What is an allocation?** An allocation is a set of instructions (~~(defining which self-directed)~~) identifying your choice of investment program funds (you wish your money to be invested in) and the percentage of your money you want to invest in each fund. The amount you allocate to each fund must be designated as a whole percentage (~~(The sum of the percentages that you allocate)~~), and the total must equal one-hundred percent.

Example: Martha has elected the self-directed program as her investment manager and is contributing \$150 per month. Martha decides to invest ~~(into)~~ in three different funds with the following amounts: \$30 invested in fund #1, \$45 invested in fund #2 and \$75 invested in fund #3. To accomplish this she must establish the following allocation:

Allocation to fund #1	20%
Allocation to fund #2	30%
Allocation to fund #3	50%
Total Allocation	100%

(2) **How do I establish an allocation?** You must establish your allocation by contacting the department's designated recordkeeper. Once established, you may change your allocation (~~(at any time by contacting the department's designated recordkeeper)~~) according to the provisions in subsection (5) of this section.

(3) **What happens if I do not (~~designate~~) establish an allocation?** If you do not provide an allocation (~~(prior to any of your investment money being received by)~~) before the department's designated recordkeeper begins receiving your investment money, or if you provide an allocation (~~(where)~~) but the sum of the allocated portions does not equal one-hundred percent, your investment money will be (~~(directed into the default fund such that)~~) invested as follows:

(a) If (~~(your)~~) the total (~~(allocations do not equal)~~) of the percentages you have allocated is less than one-hundred percent, (~~(+)~~) the department will determine the percentage that is unallocated, and (~~(+)~~) invest the unallocated percentage (~~(into)~~) in the default fund.

Example: Ralph designates the following allocation: 33% fund #1, 33% fund #2, and 33% fund #3. Since the total allocation equals 99%, the unallocated 1% will be (~~(directed into)~~) invested in the default fund.

(b) If the total (~~(allocations exceed)~~) of the percentages you have allocated is greater than one-hundred percent, (~~(the entire allocation)~~) all of your investment money will be (~~(directed into)~~) invested in the default fund.

Example: Chris designates the following allocations: 38% into fund #1, 40% into fund #2, (~~(and)~~) 10% into fund #3, and 15% into fund #4. Since the total allocation equals 103%, all of Chris' investment money will be (~~(directed into)~~) invested in the default fund.

(c) (~~(If no allocation is provided, the entire allocation will be directed into the default fund: Provided, That if the~~

~~member)~~) If you do not provide an allocation, your money will be invested as follows:

(i) If you previously participated in the self-directed investment program, (~~(the member's)~~) your most recent allocation will be used. However, if (~~(that)~~) your allocation includes a fund or funds that are no longer available, the portion of your investment money allocated to the unavailable fund(s) will be (~~(directed into)~~) invested in the default fund.

(ii) If you do not meet the conditions in (c)(i) of this subsection, all of your investment money will be invested in the default fund.

Example: Lew is a new member and elects the self-directed investment program, but does not establish an allocation. All of Lew's investment money will be (~~(directed into)~~) invested in the default fund.

Example: Linda becomes reemployed in an eligible position and elects to participate in the self-directed investment program again, but does not provide an allocation.

Linda previously participated in the self-directed investment program and had the following allocation:

- 10% in Fund #1
- 10% in Fund #2
- 30% in Fund #3
- 25% in Fund #4
- 25% in Fund #5

(~~(Since)~~) Because she did not establish a new allocation, her previous allocation will be used. However, fund #2 is no longer available, so that (~~(part of her allocation will be directed into)~~) portion of her money will be invested in the default fund. A new allocation will be established for Linda as follows:

- 10% in Fund #1
- 10% in Default Fund
- 30% in Fund #3
- 25% in Fund #4
- 25% in Fund #5

(4) **What is the default fund?** The default fund for the self-directed investment program is the Money Market Fund.

(5) (~~(Can)~~) **May I change my allocation?** Once you have established an allocation or been directed into the default fund, you may change your allocation (~~(at any time)~~) by contacting the department's designated recordkeeper. However, changes must be consistent with any restrictions on trading imposed by the funds involved, and, if necessary to protect the performance results of the investment program funds, the department may:

- (a) Limit the number of times you change allocations;
- (b) Limit the frequency of the changes;
- (c) Limit the manner of making changes; or
- (d) Impose other restrictions.

WSR 06-03-110
PERMANENT RULES
GAMBLING COMMISSION

[Order 453—Filed January 17, 2006, 2:43 p.m., effective February 17, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: In 2000, wagering limits for house-banked card games were set at \$100. On July 1, 2004, at the request of the card room industry, wagering limits increased to \$200 on a limited basis. Currently, card rooms authorized to operate: (a) Five tables or fewer may offer \$200 wagering limits at one table; (b) six to ten tables may offer \$200 wagering limits at two tables; and (c) more than ten tables may offer \$200 wagering limits at three tables. The Recreational Gaming Association submitted a petition for rule change requesting that \$200 wagering limits be authorized for all house-banked tables. The Recreational Gaming Association's request was adopted at the January 2006, commission meeting.

Citation of Existing Rules Affected by this Order: Amending WAC 230-40-120.

Statutory Authority for Adoption: RCW 9.46.070 and 9.46.0282.

Adopted under notice filed as WSR 05-21-074 on October 14, 2005, with a published date of July 11-22-05 [November 2, 2005].

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

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

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

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

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

Date Adopted: January 13, 2006.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 437, filed 9/16/04, effective 10/17/04)

WAC 230-40-120 Limits on wagers in card games.

Social and public card room licensees shall not allow wagering limits set by the commission to be exceeded in any card game. The number and value of wagers in card games are limited as follows:

Nonhouse-banked card games.

(1) Poker:

(a) There shall be no more than five betting rounds in any game;

(b) The maximum number of wagers in any betting round shall be four, comprised of an initial wager plus three raises; and

(c) The maximum amount of a single wager shall not exceed twenty-five dollars;

(2) Games based on achieving a specific number of points - each point shall not exceed five cents in value;

(3) An ante, except for panguingue (pan), shall not be more than the maximum wager allowed for the first betting round for any game. The ante may, by house rule, be made by one or more players, but the total ante may not exceed the maximum wager allowed for the first betting round. An ante, by house rule, may be used as part of a player's wager;

(4) Panguingue (pan) - the maximum value of a chip for a payoff shall not exceed ten dollars. An ante will not exceed one chip. Doubling of conditions is prohibited. Players going out may collect not more than two chips from each participating player;

House-banked card games.

(5) Licensees authorized to conduct house-banked card games shall not allow a single wager to exceed ~~((one))~~ two hundred dollars ~~(, except that such licensees may allow a single wager of up to two hundred dollars on a limited number of tables as follows:~~

~~(a) Licensees authorized to operate five tables or fewer may operate one table at the two hundred dollar limit;~~

~~(b) Licensees authorized to operate from six to ten tables may operate two tables at the two hundred dollar limit; and~~

~~(c) Licensees authorized to operate more than ten tables may operate three tables at the two hundred dollar limit);~~

(6) A single wager may be made for each decision made by the player before additional cards are dealt or revealed. In addition, for blackjack, an additional wager may be placed for doubling down or splitting pairs; and

(7) Bonus wagers for house-banked progressive jackpots shall not exceed one dollar. Bonus wagers with a predetermined prize amount based upon a separate element of chance within the same game shall not exceed the authorized maximum table limits as described in subsection (5) of this section.

WSR 06-03-120
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed January 17, 2006, 4:36 p.m., effective February 17, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The division of child support (DCS) seeks to clarify its rules regarding when a claim for child support starts as a result of the family receiving Medicaid or medical-only assistance.

Citation of Existing Rules Affected by this Order: Amending WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement?, 388-14A-2005 When does an application for public assistance automatically become an application for support enforcement services?, 388-14A-2025 What services does the division of

child support provide for a nonassistance support enforcement case?, 388-14A-2035 Do I assign my rights to support when I receive public assistance?, 388-14A-2036 What does assigning my rights to support mean?, 388-14A-2040 Do I have to cooperate with the division of child support in establishing or enforcing child support?, and 388-14A-3350 Are there any limits on how much back support the division of child support can seek to establish?

Statutory Authority for Adoption: RCW 74.20A.310.

Other Authority: 45 C.F.R. 302.31, 45 C.F.R. 302.33.

Adopted under notice filed as WSR 05-21-103 on October 18, 2005.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 7, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 7, Repealed 0.

Date Adopted: January 11, 2006.

Andy Fernando, Manager
Rules and Policies Assistance Unit

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 06-04 issue of the Register.

WSR 06-03-123

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed January 18, 2006, 7:38 a.m., effective February 18, 2006]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To amend chapter 246-50 WAC in order to comply with chapter 145, Laws of 2004. Amendments reflect the number of providers who can apply and maintain a coordinated quality improvement program by reducing the number of provider groups from ten or more to five or more providers. In addition, the rule combines definitions with the same statutory authority, separates sections resulting in three new sections, and clarifies language.

Citation of Existing Rules Affected by this Order: Amending chapter 246-50 WAC.

Statutory Authority for Adoption: RCW 43.70.510, 70.41.200, 4.24.250.

Adopted under notice filed as WSR 05-21-127 on October 19, 2005.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 4, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 4, Repealed 0.

Date Adopted: January 17, 2006.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 96-09-042, filed 4/11/96, effective 5/12/96)

WAC 246-50-001 Purpose and scope. (1) The purpose of the coordinated quality improvement program is to improve the quality of health care services by identifying and preventing health care malpractice under RCW 43.70.510. This chapter establishes the criteria and approval process for health care entities who choose to apply for a department of health approved coordinated quality improvement program (~~(pursuant to)~~) under RCW 43.70.510. Coordinated quality improvement programs approved by the department are provided discovery limitations (~~(pursuant to)~~) under RCW 43.70.510 (3) and (4). Information and documents (~~(created)~~) specifically created for, (~~and~~) collected, and maintained by an approved quality improvement committee are also exempt from disclosure under chapter 42.17 RCW.

(2) This chapter allows health care provider groups, professional societies or organizations, health care service contractors, health maintenance organizations, health carriers approved (~~(pursuant to)~~) under chapter 48.43 RCW, and any other person or entity providing health care coverage under chapter 48.42 RCW that is subject to the (~~(jurisdiction)~~) authority and (~~(regulation)~~) rules of any state agency or any subdivision (~~(thereof and)~~) such as health care institutions and medical facilities other than hospitals, to maintain a department-approved coordinated quality improvement program for the purpose of improving the quality of health care and identifying and preventing health care malpractice.

(3) (~~Programs submitted for department approval should be consistent with the principles for the continuous improvement of the Washington state health care system published by the health care policy board.~~)

(4) This chapter does not apply to hospital quality improvement programs required by RCW 70.41.200.

NEW SECTION

WAC 246-50-005 Applicant eligibility. (1) The following health care entities may apply for the coordinated quality improvement program:

- (a) Provider groups of five or more providers;
- (b) Health care professional societies or organizations, including, but not limited to, state or local health care professional associations;

(c) Health care service contractors as defined in RCW 48.44.010;

(d) Health maintenance organizations as defined in RCW 48.46.020;

(e) Health carriers as defined in RCW 48.43.005;

(f) Health care institutions or medical facilities other than hospitals; and

(g) Any person or entity providing personal coverage under chapter 48.42 RCW, and is subject to the authority and rules of any state agency or subdivision.

(2) This chapter does not apply to hospital quality improvement programs required by RCW 70.41.200.

AMENDATORY SECTION (Amending WSR 96-09-042, filed 4/11/96, effective 5/12/96)

WAC 246-50-010 Definitions. The words and phrases in this chapter have the following meanings unless the context clearly indicates otherwise.

(1) "Alternative program" means a coordinated quality improvement program determined by the department to be substantially equivalent to RCW 70.41.200(1).

(2) "Department" means the Washington state department of health.

(3) "Governing body" means:

(a) The person, persons or board responsible for the health care entity; or

(b) In the case of a provider group where no person, persons or board is in charge of all providers; the person, persons or group identified by the provider group ~~((to be))~~ is responsible for the coordinated quality improvement program.

(4) "Health care entity" means a health care institution, medical facility, provider group, professional society or organization, health care service contractors, health maintenance organizations, health carriers approved ~~((pursuant to))~~ under chapter 48.43 RCW, and any other person or entity providing health care coverage under chapter 48.42 RCW that is subject to the jurisdiction of any state agency or any subdivision thereof, authorized by RCW 43.70.510 to have a department-approved coordinated quality improvement program.

(5) "Health care institution" or "medical facility" includes the following:

(a) Adult residential rehabilitation centers regulated ~~((pursuant to))~~ under chapter 71.12 RCW;

(b) ~~((Alcoholism))~~ Alcohol and drug treatment facilities and hospitals regulated ~~((pursuant to))~~ under chapter ~~((s 71.12 and))~~ 70.96A RCW;

(c) ~~((Alcoholism hospitals regulated pursuant to chapters 71.12 and 70.96A RCW;~~

~~((d) Ambulance and aid services regulated pursuant to))~~ Emergency medical care and transportation services regulated under chapter 18.73 RCW;

~~((e))~~ (d) Boarding homes regulated ~~((pursuant to))~~ under chapter 18.20 RCW;

~~((f))~~ (e) Childbirth centers regulated ~~((pursuant to))~~ under chapter 18.46 RCW;

~~((g))~~ (f) Community mental health centers regulated ~~((pursuant to))~~ under chapter 71.05 or 71.24 RCW;

~~((h) Eye banks regulated pursuant to RCW 68.50.630;~~

~~((i))~~ (g) Home health agencies, home care agencies, hospice care centers, and hospice agencies regulated ~~((pursuant to))~~ under chapter 70.127 RCW;

~~((j) Hospice care centers regulated pursuant to chapter 70.41 RCW;~~

~~((k) Hospice agencies regulated pursuant to chapter 70.127 RCW;~~

~~((l))~~ (h) Medical test sites regulated ~~((pursuant to))~~ under chapter 70.42 RCW;

~~((m))~~ (i) Nursing homes regulated ~~((pursuant to))~~ under chapter 18.51 RCW;

~~((n))~~ (j) Pharmacies regulated ~~((pursuant to))~~ under chapter 18.64 RCW;

~~((o))~~ (k) Private psychiatric hospitals and residential treatment facilities for psychiatrically impaired children and youth regulated ~~((pursuant to))~~ under chapter 71.12 RCW;

~~((p) Residential treatment facilities for psychiatrically impaired children and youth regulated pursuant to chapter 71.12 RCW;~~

~~((q))~~ (l) Rural health care facilities regulated ~~((pursuant to))~~ under chapter 70.175 RCW;

~~((r))~~ (m) Organizations that provide designated trauma care services individually or jointly under chapter 70.168 RCW;

(n) Facilities owned and operated by a political subdivision or instrumentality of the state, including, but not limited to:

(i) Public health departments;

(ii) Fire districts and departments;

(iii) Soldiers' and veterans' homes;

(iv) State mental health institutions;

(v) Health clinics operated by educational institutions;

(vi) Department of corrections health care facilities;

(vii) County jail health clinics; ~~((and))~~

(viii) County drug and alcohol treatment facilities; and

(ix) Public hospital districts;

~~((s))~~ (o) Facilities required by federal law and implementing regulations, including, but not limited to:

(i) Native American health facilities; and

(ii) Veterans' affairs health services; and

~~((t))~~ (p) Other facilities ~~((determined by))~~ that the department ~~((to be within the parameters of the))~~ determines meet the definition of "health care facility" in RCW ~~((43.72-040))~~ 48.43.005.

(6) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 RCW to practice health or health related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of the employee's or agent's employment performing health care or auxiliary services.

(7) "Health care provider group" or "provider group" means an organized body or consortium of ~~((ten))~~ five or more providers in total.

(8) "Negative health care outcome" means a patient death or impairment of bodily function other than those related to the natural course of illness, disease or proper treatment in accordance with generally accepted health care standards.

(9) "Professional society or organization" means a group of health care professionals, including, but not limited to, state or local health care professional associations.

(10) "Program" means coordinated quality improvement program (~~pursuant to~~) under RCW 43.70.510.

AMENDATORY SECTION (Amending WSR 94-24-001, filed 11/23/94, effective 12/24/94)

WAC 246-50-030 Application and approval process~~(Public disclosure)~~. ~~((+))~~ A health care entity seeking department approval of a program shall submit to the department:

~~((a))~~ (1) An application on forms provided by the department;

~~((b))~~ (2) The program plan, printed on 8 1/2 by 11 inch paper, including:

~~((i))~~ (a) A table of contents clearly denoting, at a minimum, where each component specified in WAC 246-50-020 is located within the program plan; and

~~((ii))~~ (b) A detailed description of every aspect of the program;

~~((e))~~ (3) The fee specified in WAC 246-50-990; and

~~((f))~~ (4) Other information as may be required by the department.

~~((2) To maintain department approval, a health care entity modifying the scope, components or operation of an approved program, shall submit to the department:~~

~~(a) An application package specified in subsection (1) of this section; and~~

~~(b) A detailed description of the modification and how it affects the program.~~

~~(3) The department shall review each application package submitted pursuant to this section, and:~~

~~(a) Send written notification of approval to a health care entity submitting a program with the components specified in WAC 246-50-020; or~~

~~(b) Provide the health care entity an opportunity for a brief adjudicative proceeding according to RCW 34.05.482 when the department declines to approve a program.~~

~~(4) The department shall retain a copy of the program plan. Material received by the department will be subject to the public disclosure law, chapter 42.17 RCW. Health care entities submitting material that they believe is exempt from public disclosure should conspicuously mark the portion or portions and state the basis for exemption. The department will give notice to the submitting entity of any request under the Public Disclosure Act for public disclosure of material that has been marked in accordance with this subsection at least ten working days in advance of releasing the information. This will allow the submitting party to invoke the provisions of RCW 42.17.330.)~~

NEW SECTION

WAC 246-50-035 Modification of an approved plan.

(1) To maintain department approval, a health care entity modifying the scope, components or operation of an approved program, shall submit to the department:

(a) An application package specified in WAC 246-50-030(1); and

(b) A detailed description of the modification and how it affects the program.

(2) The department shall review each application package submitted under this section, and (a) send written notification of approval to a health care entity submitting a program with the components specified in WAC 246-50-020; or (b) deny the application and provide the health care entity an opportunity for a brief adjudicative proceeding according to RCW 34.05.482 when the department declines to approve a program.

(3) The department shall retain a copy of the program plan.

NEW SECTION

WAC 246-50-060 Public record disclosure. A program plan and all supplemental material are public records and are subject to the public record disclosure law, chapter 42.17 RCW, once the department receives them. Health care entities submitting material they believe is exempt from public record disclosure should clearly mark the portion or portions as "exempt" and state the specific statutory basis for exemption. The department will notify the health care entity of a public record disclosure request for material the entity marked "exempt" in accordance with this subsection. The department will allow the health care entity ten work days from when it receives department notice to deliver to the department proof that the entity has initiated formal action to secure an injunction under RCW 42.17.330. Upon receiving such proof, the department will notify the public record requester of the action the health care entity initiated under RCW 42.17.330, and take no further action pending a decision by the court. The health care entity must notify the department if it withdraws or takes any other action to terminate the judicial process under RCW 42.17.330. Absent proof from the health care entity that it has initiated action under RCW 42.17.330, the department will disclose the records consistent with state and federal law.

AMENDATORY SECTION (Amending WSR 94-24-001, filed 11/23/94, effective 12/24/94)

WAC 246-50-990 Fees. A health care entity (~~shall~~) must submit a fee with each application (~~for department approval~~) as follows:

~~((1) A coordinated quality improvement program pursuant to WAC 246-50-030(1) — two hundred fifty dollars;~~

~~(2) An alternative program pursuant to WAC 246-50-040 — forty dollars; and~~

~~(3) Modification of a department approved program pursuant to WAC 246-50-030(2) — sixty five dollars.)~~

<u>Title of Fee</u>	<u>Fee</u>
<u>Original application</u>	<u>\$250.00</u>
<u>Alternative application</u>	<u>40.00</u>
<u>Modification application of a department-approved program</u>	<u>65.00</u>