

**WSR 06-11-096**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Health and Recovery Services Administration)  
 [Filed May 17, 2006, 4:23 p.m., effective June 17, 2006]

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

Purpose: The division of alcohol and substance abuse (DASA) is amending and repealing sections of chapter 388-805 WAC, Certification requirements for chemical dependency service providers, establishing the level of quality and patient care standards for chemical dependency service providers seeking certification by DSHS/DASA.

**REASON FOR ADOPTION:**

1. DASA is adopting amendments to chapter 388-805 WAC. The key new rules amendments proposed will implement:

RCW 70.96A.142, effective July 1, 2004, amended by the 2004 Washington state legislature in chapter 166, Laws of 2004.

RCW 70.96A.090, effective July 24, 2005, amended by the 2005 Washington state legislature in chapter 70, Laws of 2005.

RCW 70.96A.157, effective July 1, 2005, amended by the 2005 Washington state legislature in chapter 504, Laws of 2005.

2. In addition, DASA stakeholders recommended language clarifying the federal requirements of 42 Code of Federal Regulation, Part 2 and federal requirements regarding court ordered release of patient confidential information listed in 42 Code of Federal Regulations, Part 2, Sections 2.63 through 2.67 prior to the release of any patient identifying information. Other revisions included:

a. Language to clarify requirement of agencies to report critical incidents to DASA.

b. Language to clarify definitions for change of ownership, community relations plan, county coordinator, critical incident, determination of need, established ratio and opiate substitution treatment program.

c. Language is proposed to synchronize the term "client" to "patient" throughout the chapter.

d. Language is proposed to clarify for opiate substitution treatment programs:

- Application and relation process.
- The state methadone authority must authorize exception to the take-home regulations as defined in 42 Code of Federal Regulations, Part 8.12.
- Treatment plan reviews every six months after two years of continued care of a patient.
- The administrator must formally appoint a medical director. The medical director is responsible for all medical services and compliance with state and federal regulations.

3. In addition, other sections of this chapter were subject to review and amendment deemed appropriate as required by the Governor's Executive Order 97-02 on Regulatory Improvement.

Amending WAC 388-805-005 What definitions are important throughout this chapter?, 388-805-010 What

chemical dependency services are certified by the department?, 388-805-030 What are the requirements for opiate substitution treatment program certification?, 388-805-035 What are the responsibilities for the department when an applicant applies for approval of an opiate substitution treatment program?, 388-805-040 How does the department determine there is a need in the community for opiate substitution treatment?, 388-805-085 What are the fees for agency certification?, 388-805-090 May certification fees be waived?, 388-805-100 What do I need to do to maintain agency certification?, 388-805-110 What do I do to relocate or remodel a facility?, 388-805-145 What are the key responsibilities required of an agency administrator?, 388-805-150 What must be included in an agency administrative manual?, 388-805-300 What must be included in the agency clinical manual?, 388-805-310 What are the requirements for chemical dependency assessments?, 388-805-315 What are the requirements for treatment, continuing care, transfer, and discharge plans?, 388-805-325 What are the requirements for patient record content?, 388-805-330 What are the requirements for reporting patient noncompliance?, 388-805-620 What are the requirements for outpatient services?, 388-805-625 What are the requirements for outpatient services for persons subject to RCW 46.61.5056?, 388-805-640 What are the requirements for providing off-site chemical dependency treatment services?, 388-805-710 What are the requirements for opiate substitution medical management?, 388-805-715 What are the requirements for opiate substitution medication management?, 388-805-740 What are the requirements for opiate substitution treatment counseling?, 388-805-750 What are the requirements for opiate substitution treatment take-home medications?, 388-805-800 What are the requirements for ADATSA assessment services?, 388-805-810 What are the requirements for DUI assessment providers?, 388-805-815 What are the requirements for DUI assessment services?, and 388-805-820 What are the requirements for alcohol and other drug information school?; and repealing WAC 388-805-850 What are the requirements for treatment accountability for safer communities (TASC) providers and services?

Citation of Existing Rules Affected by this Order: Repealing WAC 388-805-850; and amending WAC 388-805-005, 388-805-010, 388-805-030, 388-805-035, 388-805-040, 388-805-085, 388-805-090, 388-805-100, 388-805-110, 388-805-145, 388-805-150, 388-805-300, 388-805-310, 388-805-315, 388-805-325, 388-805-330, 388-805-620, 388-805-625, 388-805-640, 388-805-710, 388-805-715, 388-805-740, 388-805-750, 388-805-800, 388-805-810, 388-805-815, and 388-805-820.

Statutory Authority for Adoption: RCW 70.96A.090, 70.96A.142, and 70.96A.157.

Other Authority: Chapter 70.96A RCW; chapter 166, Laws of 2004; chapters 70 and 504, Laws of 2005; 42 C.F.R. part 2; and 42 C.F.R. part 8.

Adopted under notice filed as WSR 06-06-014 on February 17, 2006.

A final cost-benefit analysis is available by contacting Deb Cummins, Certification, P.O. Box 45330, Olympia, WA 98504-5330, phone (360) 725-3716, toll free 1-877-301-4557, fax (360) 438-8057, e-mail cummida@dshs.wa.gov.

No changes were made. The preliminary cost-benefit analysis 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 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 21, 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 27, Repealed 1.

Date Adopted: May 10, 2006.

Andy Fernando, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-005 What definitions are important throughout this chapter? "Added service"** means the adding of certification for chemical dependency levels of care to an existing certified agency at an approved location.

**"Addiction counseling competencies"** means the knowledge, skills, and attitudes of chemical dependency counselor professional practice as described in Technical Assistance Publication No. 21, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services 1998.

**"Administrator"** means the person designated responsible for the operation of the certified treatment service.

**"Adult"** means a person eighteen years of age or older.

**"Alcoholic"** means a person who has the disease of alcoholism.

**"Alcoholism"** means a primary, chronic disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. The disease is often progressive and fatal. It is characterized by impaired control over drinking, preoccupation with the drug alcohol, use of alcohol despite adverse consequences, and distortions in thinking, most notably denial. Each of these symptoms may be continuous or periodic.

**"Approved supervisor"** means a person who meets the education and experience requirements described in WAC 246-811-030 and 246-811-045 through 246-811-049 and who is available to the person being supervised.

**"Authenticated"** means written, permanent verification of an entry in a patient treatment record by an individual, by means of an original signature including first initial, last name, and professional designation or job title, or initials of the name if the file includes an authentication record, and the date of the entry. If patient records are maintained electroni-

cally, unique electronic passwords, biophysical or passcard equipment are acceptable methods of authentication.

**"Authentication record"** means a document that is part of a patient's treatment record, with legible identification of all persons initialing entries in the treatment record, and includes:

- (1) Full printed name;
- (2) Signature including the first initial and last name; and
- (3) Initials and abbreviations indicating professional designation or job title.

**"Bloodborne pathogens"** means pathogenic microorganisms that are present in human blood and can cause disease in humans. The pathogens include, but are not limited to, hepatitis B virus (HBV) and human immunodeficiency virus (HIV).

**"Branch site"** means a physically separate certified site where qualified staff provides a certified treatment service, governed by a parent organization. The branch site is an extension of a certified provider's services to one or more sites.

**"Certified treatment service"** means a discrete program of chemical dependency treatment offered by a service provider who has a certificate of approval from the department of social and health services, as evidence the provider meets the standards of chapter 388-805 WAC.

**"Change in ownership"** means one of the following conditions:

(1) When the ownership of a certified chemical dependency treatment provider changes from one distinct legal (~~(entity)~~) owner (~~(s)~~) to (~~(a)~~) another distinct (~~(other)~~) legal owner;

(2) When the type of business changes from one type to another such as, from a sole proprietorship to a corporation; or

(3) When the current ownership takes on a new owner of five percent or more of the organizational assets.

**"Chemical dependency"** means a person's alcoholism or drug addiction or both.

**"Chemical dependency counseling"** means face-to-face individual or group contact using therapeutic techniques that are:

(1) Led by a chemical dependency professional (CDP), or CDP trainee under supervision of a CDP;

(2) Directed toward patients and others who are harmfully affected by the use of mood-altering chemicals or are chemically dependent; and

(3) Directed toward a goal of abstinence for chemically dependent persons.

**"Chemical dependency professional"** means a person certified as a chemical dependency professional by the Washington state department of health under chapter 18.205 RCW.

**"Child"** means a person less than eighteen years of age, also known as adolescent, juvenile, or minor.

**"Clinical indicators"** include, but are not limited to, inability to maintain abstinence from alcohol or other nonprescribed drugs, positive drug screens, patient report of a subsequent alcohol/drug arrest, patient leaves program against program advice, unexcused absences from treatment, lack of participation in self-help groups, and lack of patient progress in any part of the treatment plan.

**"Community relations plan"** means a plan to minimize the impact of an opiate substitution treatment program as ~~((required))~~ defined by the Center for Substance Abuse Guidelines for the Accreditation of Opioid Treatment Programs, section XVIII.

**"County coordinator"** means the person designated by the ~~((chief executive officer))~~ legislative authority of a county to carry out administrative and oversight responsibilities of the county chemical dependency program.

**"Criminal background check"** means a search by the Washington state patrol for any record of convictions or civil adjudication related to crimes against children or other persons, including developmentally disabled and vulnerable adults, per RCW 43.43.830 through 43.43.842 relating to the Washington state patrol.

**"Critical incidents"** includes:

- (1) Death of a patient;
- (2) Serious injury ~~((or))~~;
- (3) Sexual assault of patients, staff members, or public citizens on the facility premises;
- (4) Abuse or neglect of an adolescent or vulnerable adult patient by another patient or agency staff member on facility premises;
- (5) A natural disaster presenting a threat to facility operation or patient safety;
- (6) A bomb threat; a break in or ~~((a burglary))~~ theft of patient identifying information;
- (7) Suicide attempt at the facility ~~((; or, a case alleging abuse or neglect of an adult patient by an agency staff member that was not resolved by the agency's grievance procedure)).~~

**"CSAT"** means the Federal Center For Substance Abuse Treatment, a Substance Abuse Service Center of the Substance Abuse and Mental Health Services Administration.

**"Danger to self or others,"** for purposes of WAC 388-805-520, means a youth who resides in a chemical dependency treatment agency and creates a risk of serious harm to the health, safety, or welfare to self or others. Behaviors considered a danger to self or others include:

- (1) Suicide threat or attempt;
- (2) Assault or threat of assault; or
- (3) Attempt to run from treatment, potentially resulting in a dangerous or life-threatening situation.

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

**"Determination of need"** means a process used by the department for opiate substitution treatment program ~~((certification applications))~~ slots within a county area as described in WAC 388-805-040.

**"Detoxification"** or **"detox"** means care and treatment of a person while the person recovers from the transitory effects of acute or chronic intoxication or withdrawal from alcohol or other drugs.

**"Disability, a person with"** means a person whom:

- (1) Has a physical or mental impairment that substantially limits one or more major life activities of the person;
- (2) Has a record of such an impairment; or
- (3) Is regarded as having such an impairment.

**"Discrete treatment service"** means a chemical dependency treatment service that:

- (1) Provides distinct chemical dependency supervision and treatment separate from any other services provided within the facility;
- (2) Provides a separate treatment area for ensuring confidentiality of chemical dependency treatment services; and
- (3) Has separate accounting records and documents identifying the provider's funding sources and expenditures of all funds received for the provision of chemical dependency treatment services.

**"Domestic violence"** means:

- (1) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members;
- (2) Sexual assault of one family or household member by another;
- (3) Stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member; or
- (4) As defined in RCW 10.99.020, 26.50.010, or other Washington state statutes.

**"Drug addiction"** means a primary, chronic disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. The disease is often progressive and fatal. Drug addiction is characterized by impaired control over use of drugs, preoccupation with drugs, use of a drug despite adverse consequences, and distortions in thinking, most notably denial. Each of these symptoms may be continuous or periodic.

**"Essential requirement"** means a critical element of chemical dependency treatment services that must be present in order to provide effective treatment.

**"Established ratio"** means using 0.7 percent (.007) of a designated county's adult population to determine an estimate for the number of potential ~~((clients))~~ patients with an opiate diagnosis in need of treatment services as described in WAC 388-805-040.

**"Faith-based organization"** means an agency or organization such as a church, religiously affiliated entity, or religious organization.

**"First steps"** means a program available across the state for low-income pregnant women and their infants. First steps provides maternity care for pregnant and postpartum women and health care for infants and young children.

**"Governing body"** means the legal entity responsible for the operation of the chemical dependency treatment service.

**"HIV/AIDS brief risk intervention (BRI)"** means an individual face-to-face interview with a ~~((client or))~~ patient, to help that person assess personal risk for HIV/AIDS infection and discuss methods to reduce infection transmission.

**"HIV/AIDS education"** means education, in addition to the brief risk intervention, designed to provide a person with information regarding HIV/AIDS risk factors, HIV antibody testing, HIV infection prevention techniques, the impact of alcohol and other drug use on risks and the disease process, and trends in the spread of the disease.

**"Medical practitioner"** means a physician, advanced registered nurse practitioner (ARNP), or certified physician's

assistant. ARNPs and midwives with prescriptive authority may perform practitioner functions related only to indicated specialty services.

**"Off-site treatment"** means provision of chemical dependency treatment by a certified provider at a location where treatment is not the primary purpose of the site; such as in schools, hospitals, or correctional facilities.

**"Opiate substitution treatment program"** means an organization that administers or dispenses an approved (~~(drug)~~) medication as specified in 212 CFR Part 291 for treatment or detoxification of opiate (~~(substitution)~~) dependence. The agency is:

- (1) Certified as an opioid treatment program by the Federal Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration;
- (2) Licensed by the Federal Drug Enforcement Administration;
- (3) Registered by the state board of pharmacy;
- (4) Accredited by an opioid treatment program accreditation body approved by the Federal Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration; and
- (5) Certified as an opiate substitution treatment program by the department.

**"Outcomes evaluation"** means a system for determining the effectiveness of results achieved by patients during or following service delivery, and patient satisfaction with those results for the purpose of program improvement.

**"Patient"** is a person receiving chemical dependency treatment services from a certified program.

**"Patient contact"** means time spent with a (~~(client or)~~) patient to do assessments, individual or group counseling, or education.

**"Patient placement criteria (PPC)"** means admission, continued service, and discharge criteria found in the patient placement criteria for the treatment of substance-related disorders as published by the American Society of Addiction Medicine (ASAM).

**"Probation assessment officer (PAO)"** means a person employed at a certified district or municipal court probation assessment service that meets the PAO requirements of WAC 388-805-220.

**"Probation assessment service"** means a certified assessment service offered by a misdemeanor probation department or unit within a county or municipality.

**"Progress notes"** are a permanent record of ongoing assessments of a patient's participation in and response to treatment, and progress in recovery.

**"Qualified personnel"** means trained, qualified staff, consultants, trainees, and volunteers who meet appropriate legal, licensing, certification, and registration requirements.

**"Registered counselor"** means a person registered (~~(or certified)~~) by the state department of health as required by chapter 18.19 RCW.

**"Relocation"** means change in location from one office space to a new office space, or moving from one office building to another.

**"Remodeling"** means expansion of existing office space to additional office space at the same address, or

remodeling of interior walls and space within existing office space.

**"SAMHSA"** means the Federal Substance Abuse and Mental Health Services Administration.

**"Self-help group"** means community based support groups that address chemical dependency.

**"Service provider"** or **"provider"** means a legally operated entity certified by the department to provide chemical dependency services. The components of a service provider are:

- (1) Legal entity/owner;
- (2) Facility; and
- (3) Staff and services.

**"Sexual abuse"** means:

- (1) Sexual assault(~~(s)~~);
- (2) Incest(~~(s)~~); or
- (3) Sexual exploitation.

**"Sexual harassment"** means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- (1) Submission to such conduct is made either explicitly or implicitly a term or condition of employment or treatment; or
- (2) Such conduct interferes with work performance or creates an intimidating, hostile, or offensive work or treatment environment.

**"Substance abuse"** means a recurring pattern of alcohol or other drug use that substantially impairs a person's functioning in one or more important life areas, such as familial, vocational, psychological, physical, or social.

**"Summary suspension"** means an immediate suspension of certification, per RCW 34.05.422(4), by the department pending administrative proceedings for suspension, revocation, or other actions deemed necessary by the department.

**"Supervision"** means:

- (1) Regular monitoring of the administrative, clinical, or clerical work performance of a staff member, trainee, student, volunteer, or employee on contract by a person with the authority to give directions and require change; and
- (2) **"Direct supervision"** means the supervisor is on the premises and available for immediate consultation.

**"Suspend"** means termination of the department's certification of a provider's treatment services for a specified period or until specific conditions have been met and the department notifies the provider of reinstatement.

**"TARGET"** means the treatment and assessment report generation tool.

**"Treatment plan review"** means a review of active problems on the patient's individualized treatment plan, the need to address new problems, and patient placement.

**"Treatment services"** means the broad range of emergency, detoxification, residential, and outpatient services and care. Treatment services include diagnostic evaluation, chemical dependency education, individual and group counseling, medical, psychiatric, psychological, and social services, vocational rehabilitation and career counseling that may be extended to alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other drugs, and intoxicated persons.

"**Urinalysis**" means analysis of a patient's urine sample for the presence of alcohol or controlled substances by a licensed laboratory or a provider who is exempted from licensure by the department of health:

(1) "**Negative urine**" is a urine sample in which the lab does not detect specific levels of alcohol or other specified drugs; and

(2) "**Positive urine**" is a urine sample in which the lab confirms specific levels of alcohol or other specified drugs.

"**Vulnerable adult**" means a person who lacks the functional, mental, or physical ability to care for oneself.

"**Young adult**" means an adult who is eighteen, nineteen, or twenty years old.

"**Youth**" means a person seventeen years of age or younger.

AMENDATORY SECTION (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-010 What chemical dependency services are certified by the department?** (1) The department certifies the following types of chemical dependency services:

(a) **Detoxification services**, which assist patients in withdrawing from alcohol and other drugs including:

(i) **Acute detox**, which provides medical care and physician supervision for withdrawal from alcohol or other drugs; and

(ii) **Subacute detox**, which is nonmedical detoxification or patient self-administration of withdrawal medications ordered by a physician, provided in a home-like environment.

(b) **Residential treatment services**, which provide chemical dependency treatment for patients and include room and board in a twenty-four-hour-a-day supervised facility, including:

(i) **Intensive inpatient**, a concentrated program of individual and group counseling, education, and activities for detoxified alcoholics and addicts, and their families;

(ii) **Recovery house**, a program of care and treatment with social, vocational, and recreational activities to aid in patient adjustment to abstinence and to aid in job training, employment, or other types of community activities; and

(iii) **Long-term treatment**, a program of treatment with personal care services for chronically impaired alcoholics and addicts with impaired self-maintenance capabilities. These patients need personal guidance to maintain abstinence and good health.

(c) **Outpatient treatment services**, which provide chemical dependency treatment to patients less than twenty-four hours a day, including:

(i) **Intensive outpatient**, a concentrated program of individual and group counseling, education, and activities for detoxified alcoholics and addicts and their families;

(ii) **Outpatient**, individual and group treatment services of varying duration and intensity according to a prescribed plan; and

(iii) **Opiate substitution outpatient treatment**, which meets both outpatient and opiate substitution treatment program service requirements.

(d) **Assessment services**, which include:

(i) **ADATSA assessments**, alcohol and other drug assessments of ~~((clients))~~ patients seeking financial assistance from the department due to the incapacity of chemical dependency. Services include assessment, referral, case monitoring, and assistance with employment; and

(ii) **DUI assessments**, diagnostic services requested by the courts to determine a ~~((client's))~~ person's involvement with alcohol and other drugs and to recommend a course of action.

(e) **Information and assistance services**, which include:

(i) **Alcohol and drug information school**, an education program about the use and abuse of alcohol and other drugs, for persons referred by the courts and others, who may have been assessed and do not present a significant chemical dependency problem, to help those persons make informed decisions about the use of alcohol and other drugs;

(ii) **Information and crisis services**, response to persons having chemical dependency needs, by phone or in person;

(iii) **Emergency service patrol**, assistance provided to intoxicated persons in the streets and other public places;

~~((iv) **Treatment accountability for safer communities (TASC)**, is a referral and case management service. TASC providers furnish a link between the criminal justice system and the treatment system. TASC identifies, assesses, and refers appropriate alcohol and other drug dependent offenders to community-based substance abuse treatment and monitors the outcome for the criminal justice system.))~~

(2) The department may certify a provider for more than one of the services listed under subsection (1) of this section when the provider complies with the specific requirements of the selected services.

AMENDATORY SECTION (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-030 What are the requirements for opiate substitution treatment program certification?** Certification as an opiate substitution treatment program is contingent on the concurrent approval by applicable state regulatory authorities; certification as an opioid treatment program by the Federal CSAT SAMHSA; accreditation by an opioid treatment program accreditation body approved by the Federal CSAT SAMSHA; and licensure by the Federal Drug Enforcement Administration. In addition to WAC 388-805-015 or 388-805-020 requirements, a potential opiate substitution treatment program provider must submit to the department:

(1) Documentation the provider has communicated with the county legislative authority and if applicable, the city legislative authority or tribal legislative authority, in order to secure a location for the new opiate substitution treatment program that(=

~~((a)))~~ meets county, tribal or city land use ordinances((=  
~~and~~

~~((b) Includes a)).~~

(2) A completed community relations plan developed in consultation with the legislative authority or their designee to minimize the impact of the opiate substitution treatment pro-

grams upon the business and residential neighborhoods in which the program is located. The plan must include documentation of strategies used to:

~~((i))~~ ~~(a)~~ Obtain ~~((and document))~~ stakeholder input regarding the proposed location;

~~((ii))~~ ~~(b)~~ Address any concerns identified by stakeholders; and

~~((iii))~~ ~~(c)~~ Develop an ongoing community relations plan to address new concerns expressed by stakeholders as they arise.

~~((2))~~ ~~(3)~~ A copy of the application for a registration certificate from the Washington state board of pharmacy.

~~((3))~~ ~~(4)~~ A copy of the application for licensure to the Federal Drug Enforcement Administration.

~~((4))~~ ~~(5)~~ A copy of the application for certification to the Federal CSAT SAMHSA.

~~((5))~~ ~~(6)~~ A copy of the application for accreditation by an accreditation body approved as an opioid treatment program accreditation body by the Federal CSAT SAMHSA.

~~((6))~~ ~~(7)~~ Policies and procedures identified under WAC 388-805-700 through 388-805-750.

~~((7))~~ ~~(8)~~ Documentation that transportation systems will provide reasonable opportunities to persons in need of treatment to access the services of the program.

~~((8))~~ ~~(9)~~ At least three letters of support from the administrator or their designee of other health care providers within the existing health care system in the area the applicant proposes to establish a new opiate substitution treatment program ~~((to))~~. The letters must demonstrate ~~((an appropriate))~~ a relationship to the service area's existing health care system.

~~((9))~~ ~~(10)~~ A declaration to limit the number of individual program participants to three hundred fifty as specified in RCW 70.96A.410 (1)(e).

~~((10))~~ ~~(11)~~ For new applicants, who operate opiate substitution treatment programs in another state, copies of national and state certification/accreditation documentation, and copies of all survey reports written by national and/or state certification or accreditation organizations for each site they have operated an opiate substitution program in over the past six years.

**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 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-035 What are the responsibilities for the department when an applicant applies for approval of an opiate substitution treatment program?** For purposes of this section, "area" means the county in which an opiate substitution treatment program applicant proposes to locate a certified program, and counties adjacent or near to the county in which the program is proposed to be located. When making a decision on an application for certification of a program, the department must:

(1) Consult with the county legislative authority in the area in which an applicant proposes to locate a program and the city legislative authority ~~((in any city))~~ or tribal legislative authority applicable to the site in which an applicant pro-

poses to locate a program. The department will request the county and city or tribal legislative authority to notify the department of any applicable requirements or other issues that the department should consider in order to fulfill the requirements of WAC 388-805-030(7), or 388-805-040 (1) through (5);

(2) Not discriminate in its certification decision on the basis of the corporate structure of the applicant;

(3) Consider the size of the population in need of treatment in the area in which the program would be located and certify only applicants whose programs meet the necessary treatment needs of the population;

(4) Determine there is a need in the community for opiate substitution treatment and not certify more programs ~~((slots))~~ than justified by the need in that community as described in WAC 388-805-040;

(5) Consider whether the applicant has the capability, or has in the past demonstrated the capability to provide appropriate treatment services to assist persons in meeting legislative goals of abstinence from opiates and opiate substitutes, obtaining mental health treatment, improving economic independence, and reducing adverse consequences associated with illegal use of controlled substances;

(6) Hold at least one public hearing in the county in which the facility is proposed to be located and one public hearing in the area in which the facility is proposed to be located. After consultation with the county legislative authority, the department may have the public hearing in the adjacent county with the largest population, the adjacent county with the largest underserved population, or the county nearest to the proposed location. The hearing must be held at a time and location most likely to permit the largest number of interested persons to attend and present testimony. The department must notify appropriate media outlets of the time, date, and location of the hearing at least three weeks in advance of the hearing.

AMENDATORY SECTION (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-040 How does the department determine there is a need in the community for opiate substitution treatment?** The department will determine whether or not there is a demonstrated need in the community for opiate substitution treatment from information provided to the department by the applicant and through department consultation with the city or tribal and county legislative authority, and other appropriate community resources. A "determination of need" for a proposed program will include a review and evaluation of the following criteria:

(1) For the number of potential ~~((clients))~~ patients in an area, the department will consider the size of the population in need of treatment in the area in which the program would be located using adult population statistics from the most recent area population trend reports. The department will use the established ratio of .7 percent of the adult population as an estimate for the number of potential ~~((clients))~~ patients with an opiate diagnosis in need of treatment services.

(2) For the number of anticipated program slots in an area, the department will multiply the sum of the established

ratio of .7 percent of the adult population in subsection (1) of this section by thirty-five percent to determine an estimate of the anticipated need for the number of opiate substitution treatment program slots in the area in which the program would be located.

(3) Demographic and trend data from the area in which the program would be located including the most recent department county trend data, TARGET admission data for opiate substitution treatment from the county, hospital and emergency department admission data from the county, needle exchange data from the county, and other relevant reports and data from county health organizations demonstrating the need for opiate substitution treatment program services.

(4) Availability of other opiate substitution treatment programs near the area of the applicant's proposed program. The department will determine the number of patients, capacity, and accessibility of existing opiate substitution treatment programs near the area of the applicant's proposed program and whether existing programs have the capacity to assume additional patients for treatment services.

(5) Whether the population served or to be served has need for the proposed program and whether other existing services and facilities of the type proposed are available or accessible to meet that need. The assessment will include, but not limited to, consideration of the following:

- (a) The extent to which the proposed program meets the need of the population presently served;
  - (b) The extent to which the underserved need will be met adequately by the proposed program; and
  - (c) The impact of the service on the ability of low-income persons, racial and ethnic minorities, women, handicapped persons, the elderly, and other underserved groups to obtain needed health care.
- (6) The department will review agency policies and procedures that describe the cost of services to ~~((clients))~~ patients, sliding fee scales, and charity care policies, procedures, and goals.

**AMENDATORY SECTION** (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-085 What are the fees for agency certification?** (1) Application fees:

- (a) New agency \$500
- (b) Branch agency \$500
- (c) Application for adding one or more services \$200
- (d) Change in ownership \$500

(2) Initial and annual certification fees:

- (a) For detoxification and residential services: \$26 per licensed bed
- (b) For nonresidential services:
  - (i) Large size agencies: \$1,125 per year
  - 3,000 or more ~~((clients))~~ patients served per year

- (ii) Medium size agencies: \$750 per year
- 1,000-2,999 ~~((clients))~~ patients served per year
- (iii) Small size agencies: \$375 per year
- 0-999 ~~((clients))~~ patients served per year
- (c) For agencies certified through deeming per WAC 388-805-115 \$200 per year

(3) Each year providers must complete a declaration form provided by the department indicating the number of patients served annually, the provider's national accreditation status, and other information necessary for establishing fees and updating certification information.

**AMENDATORY SECTION** (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-090 May certification fees be waived?**

- (1) Certification fees may be waived when:
- (a) The fees would not be in the interest of public health and safety; or
  - (b) The fees would be to the financial disadvantage of the state; or
  - (c) The department determines that the cost of processing the application is so small that it warrants granting an application fee waiver.
- (2) Providers may submit a letter requesting a waiver of fees to the Supervisor, Certification Section, Division of Alcohol and Substance Abuse, P.O. Box 45330, Olympia, Washington, 98504-5330.
- (3) Fee waivers may be granted to qualified providers who receive funding from tribal, federal, state or county government resources as follows:
- (a) For residential providers: The twenty-six dollar per bed annual fee will be assessed only for those beds not funded by a governmental source;
  - (b) For nonresidential providers: The amount of the fee waiver must be determined by the percent of the provider's revenues that come from governmental sources, according to the following schedule:

Percent Government Revenues	90-100%	75-89%	50-74%	0-49%
Small agency	No fee	\$90	\$185	\$375
Medium agency	No fee	\$185	\$375	\$750
Large agency	No fee	\$285	\$565	\$1,125

- (4) Requests for fee waiver must be mailed to the department and include the following:
- (a) The reason for the request;
  - (b) For residential providers:
    - (i) Documentation of the number of beds currently licensed by the department of health;
    - (ii) Documentation showing the number of beds funded by a government entity including, tribal, federal, state or county government sources.

(c) For nonresidential providers:

- (i) Documentation of the number of ~~((clients))~~ patients served during the previous twelve-month period;
- (ii) Documentation showing the amount of government revenues received during the previous twelve-month period;
- (iii) Documentation showing the amount of private revenues received during the previous twelve-month period.

**AMENDATORY SECTION** (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-100 What do I need to do to maintain agency certification?** (1) A service provider's continued certification and renewal is contingent upon:

- (a) Completion of an annual declaration of certification; and
  - (b) Payment of certification fees, if applicable.
- (2) Providing the essential requirements for chemical dependency treatment, including the following elements:
- (a) Treatment process:
    - (i) Assessments, as described in WAC 388-805-310;
    - (ii) Treatment planning, as described in WAC 388-805-315 (2)(a) and ~~((388-805-325(10)))~~ 388-805-325(11);
    - (iii) Documenting patient progress, as described in WAC 388-805-315 (1)(b) and ~~((388-805-325(12)))~~ 388-805-325(13);
    - (iv) Treatment plan reviews and updates, as described in WAC 388-805-315 (2)(a), ~~((388-805-325(10)))~~ 388-805-325(11) and ~~((388-805-325(12)(e)))~~ 388-805-325(13)(c);
    - (v) Patient compliance reports, as described in WAC 388-805-315 (4)(b), ~~((388-805-325(16)))~~ 388-805-325(17), and 388-805-330;
    - (vi) Continuing care, and discharge planning, as described in WAC 388-805-315 (2)(c) and (d) and (7)(a), and ~~((388-805-325(17)))~~ 388-805-325(18) and ~~((18))~~ (19); and
    - (vii) Conducting individual and group counseling, as described in WAC 388-805-315 (2)(b) and ~~((388-805-325(12)))~~ 388-805-325(13).
  - (b) Staffing: Provide sufficient qualified personnel for the care of patients as described in WAC 388-805-140(5) and 388-805-145(5);
  - (c) Facility:
    - (i) Provide sufficient facilities, equipment, and supplies for the care and safety of patients as described in WAC 388-805-140 (5) and (6);
    - (ii) If a residential provider, be licensed by the department of health as described by WAC 388-805-015 (1)(b).
- (3) Findings during periodic on-site surveys and complaint investigations to determine the provider's compliance with this chapter. During on-site surveys and complaint investigations, provider representatives must cooperate with department representatives to:
- (a) Examine any part of the facility at reasonable times and as needed;
  - (b) Review and evaluate records, including patient clinical records, personnel files, policies, procedures, fiscal records, data, and other documents as the department requires to determine compliance; and
  - (c) Conduct individual interviews with patients and staff members.

(4) The provider must post the notice of a scheduled department on-site survey in a conspicuous place accessible to patients and staff.

(5) The provider must correct compliance deficiencies found at such surveys immediately or as agreed by a plan of correction approved by the department.

**AMENDATORY SECTION** (Amending WSR 00-23-107, filed 11/21/00, effective 1/1/01)

**WAC 388-805-110 What do I do to relocate or remodel a facility?** (1) When a certified chemical dependency service provider plans to relocate or change the physical structure of a facility in a manner that affects patient care, the provider must:

- ~~((1))~~ (a) Submit a completed agency relocation approval request form, or a request for approval in writing if remodeling, sixty or more days before the proposed date of relocation or change.
  - ~~((2))~~ (b) Submit a sample floor plan that includes information identified under WAC 388-805-015 (2)(f) through (k).
  - ~~((3))~~ (c) Submit a completed facility accessibility self-evaluation form.
  - ~~((4))~~ (d) Provide for department examination of non-residential premises before approval, as described under WAC 388-805-060.
  - ~~((5))~~ (e) Contact the department of health for approval before relocation or remodel if a residential treatment facility.
- (2) Opiate substitution treatment provider must complete WAC 388-805-030, 388-805-035, and 388-805-040 requirements for a facility relocation.

**AMENDATORY SECTION** (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-145 What are the key responsibilities required of an agency administrator?** (1) The administrator is responsible for the day-to-day operation of the certified treatment service, including:

- (a) All administrative matters;
  - (b) Patient care services; and
  - (c) Meeting all applicable rules and ethical standards.
- (2) When the administrator is not on duty or on call, a staff person must be delegated the authority and responsibility to act in the administrator's behalf.
- (3) The administrator must ensure administrative, personnel, and clinical policy and procedure manuals:
    - (a) Are developed and adhered to; and
    - (b) Are reviewed and revised as necessary, and at least annually.
  - (4) The administrator must employ sufficient qualified personnel to provide adequate chemical dependency treatment, facility security, patient safety and other special needs of patients.
  - (5) The administrator must ensure all persons providing counseling services are registered, certified or licensed by the department of health.
  - (6) The administrator must ensure full-time chemical dependency professionals (CDPs), CDP trainees, or other licensed or registered counselors in training to become a CDP



do not exceed one hundred twenty hours of patient contact per month.

(7) The administrator must assign the responsibilities for a clinical supervisor to at least one person within the organization.

(8) The administrator of a certified opiate substitution treatment program must ensure that the number of patients will not exceed three hundred and fifty unless authorized by the county in which the program is located.

(9) The administrator or program sponsor of a certified opiate substitution treatment program must ensure that treatment is provided to patients in compliance with 42 Code of Federal Regulations, Part 8.12.

(10) The administrator or program sponsor of a certified opiate substitution treatment program shall formally designate a medical director who shall assume responsibility for:

(a) All medical services performed;

(b) Ensuring the program is in compliance with all applicable Federal, State and local laws and regulations.

AMENDATORY SECTION (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-150 What must be included in an agency administrative manual?** Each service provider must have and adhere to an administrative manual that contains at a minimum:

(1) The organization's:

(a) Articles and certificate of incorporation if the owner is a corporation;

(b) Partnership agreement if the owner is a partnership; or

(c) Statement of sole proprietorship.

(2) The agency's bylaws if the owner is a corporation.

(3) Copies of a current master license and state business licenses or a current declaration statement that they are updated as required.

(4) The provider's philosophy on and objectives of chemical dependency treatment with a goal of total abstinence, consistent with RCW 70.96A.011.

(5) A policy and procedures describing how services will be made sensitive to the needs of each patient, including assurance that:

(a) Certified interpreters or other acceptable alternatives are available for persons with limited English-speaking proficiency and persons having a sensory impairment; and

(b) Assistance will be provided to persons with disabilities in case of an emergency.

(6) A policy addressing special needs and protection for youth and young adults, and for determining whether a youth or young adult can fully participate in treatment, before admission of:

(a) A youth to a treatment service caring for adults; or

(b) A young adult to a treatment service caring for youth.

(7) An organization chart specifying:

(a) The governing body;

(b) Each staff position by job title, including volunteers, students, and persons on contract; and

(c) The number of full- or part-time persons for each position.

(8) A delegation of authority policy.

(9) A copy of current fee schedules.

(10) A policy and procedures implementing state and federal regulations on patient confidentiality, including provision of a summary of 42 CFR Part 2.22 (a)(1) and (2) to each patient.

(11) A policy and procedures for reporting suspected child abuse and neglect.

(12) A policy and procedures for reporting the death of a patient to the ((department)) division of alcohol and substance abuse within one business day when:

(a) The patient is in residence; or

(b) An outpatient dies on the premises.

(13) Patient grievance policy and procedures.

(14) A policy and procedures on reporting of critical incidents and actions taken to the ((department)) division of alcohol and substance abuse within two business days when an unexpected event occurs.

(15) A smoking policy consistent with the Washington Clean Indoor Air Act, chapter 70.160 RCW.

(16) For a residential provider, a facility security policy and procedures, including:

(a) Preventing entry of unauthorized visitors; and

(b) Use of passes for leaves of patients.

(17) For a nonresidential provider, an evacuation plan for use in the event of a disaster, addressing:

(a) Communication methods for patients, staff, and visitors including persons with a visual or hearing impairment or limitation;

(b) Evacuation of mobility-impaired persons;

(c) Evacuation of children if child care is offered;

(d) Different types of disasters;

(e) Placement of posters showing routes of exit; and

(f) The need to mention evacuation routes at public meetings.

AMENDATORY SECTION (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-300 What must be included in the agency clinical manual?** Each chemical dependency service provider must have and adhere to a clinical manual containing patient care policies and procedures, including:

(1) How the provider meets WAC 388-805-305 through 388-805-350 requirements.

(2) How the provider will meet applicable certified service standards for the level of program service requirements: Allowance of up to twenty percent of education time to consist of film or video presentations.

(3) Identification of resources and referral options so staff can make referrals required by law and as indicated by patient needs.

(4) Assurance that there is an identified clinical supervisor who:

(a) Is a chemical dependency professional (CDP);

(b) Reviews a sample of patient records of each CDP quarterly; and

(c) Ensures implementation of assessment, treatment, continuing care, transfer and discharge plans in accord with WAC 388-805-315.

(5) Patient admission, continued service, and discharge criteria using PPC.

(6) Policies and procedures to implement the following requirements:

(a) The administrator must not admit or retain a person unless the person's treatment needs can be met;

(b) A chemical dependency professional (CDP), or a CDP trainee under supervision of a CDP, must assess and refer each patient to the appropriate treatment service; and

(c) A person needing detoxification must immediately be referred to a detoxification provider, unless the person needs acute care in a hospital.

(7) Additional requirements for opiate substitution treatment programs:

(a) A program physician must ensure that a person is currently addicted to an opioid drug and that the person became addicted at least one year before admission to treatment;

(b) A program physician must ensure that each patient voluntarily chooses maintenance treatment and provides informed written consent to treatment;

(c) A program physician must ensure that all relevant facts concerning the use of the opioid drug are clearly and adequately explained to the patient;

(d) A person under eighteen years of age needing opiate substitution treatment is required to have had two documented attempts at short-term detoxification or drug-free treatment within a twelve-month period. A waiting period of no less than seven days is required between the first and second short-term detoxification treatment;

(e) No person under eighteen years of age may be admitted to maintenance treatment unless a parent, legal guardian, or responsible adult designated by the relevant state authority consents in writing to treatment;

(f) A program physician may waive the requirement of a one year history of addiction under subsection (7)(a) of this section, for patients released from penal institutions (within six months after release), for pregnant patients (program physician must certify pregnancy), and for previously treated patients (up to two years after discharge);

(g) Documentation in each patient's record that the service provider made a good faith effort to review if the patient is enrolled in any other opiate substitution treatment service;

(h) When the medical director or program physician of an opiate substitution treatment program provider in which the patient is enrolled determines that exceptional circumstances exist, the patient may be granted permission to seek concurrent treatment at another opiate substitution treatment program provider. The justification for finding exceptional circumstances for double enrollment must be documented in the patient's record at both treatment program providers.

(8) Tuberculosis screening for prevention and control of TB in all detox, residential, and outpatient programs, including:

(a) Obtaining a history of preventive or curative therapy;

(b) Screening and related procedures for coordinating with the local health department; and

(c) Implementing TB control as provided by the department of health TB control program.

(9) HIV/AIDS information, brief risk intervention, and referral.

(10) Limitation of group counseling sessions to twelve or fewer patients.

(11) Counseling sessions with nine to twelve youths to include a second adult staff member.

(12) Provision of education to each patient on:

(a) Alcohol, other drugs, and chemical dependency;

(b) Relapse prevention; and

(c) HIV/AIDS, hepatitis, and TB.

(13) Provision of education or information to each patient on:

(a) The impact of chemical use during pregnancy, risks to the fetus, and the importance of informing medical practitioners of chemical use during pregnancy;

(b) Emotional, physical, and sexual abuse; and

(c) Nicotine addiction.

(14) An outline of each lecture and education session included in the service, sufficient in detail for another trained staff person to deliver the session in the absence of the regular instructor.

(15) Assigning of work to a patient by a CDP when the assignment:

(a) Is part of the treatment program; and

(b) Has therapeutic value.

(16) Use of self-help groups.

(17) Patient rules and responsibilities, including disciplinary sanctions for noncomplying patients.

(18) If youth are admitted, a policy and procedure for assessing the need for referral to child welfare services.

(19) Implementation of the deferred prosecution program.

(20) ~~((Policy and procedures for))~~ Reporting status of persons convicted under chapter 46.61 RCW to the department of licensing.

(21) Asking at intake or next counseling session if the patient has been court ordered to chemical dependency or mental health treatment and is under supervision by the department of corrections, and documenting the patient's response in the clinical record.

(22) For patients that are court ordered to receive chemical dependency or mental health treatment and under department of corrections supervision, the provider must request:

(a) Authorizations to share information with the department of corrections, the county designated chemical dependency specialist and any other court ordered treatment provider; or

(b) A copy of the court order that exempts the patient from the reporting requirements with the department of corrections and mental health provider.

(c) If a patient refuses to sign a release, document attempt in the patient record.

(23) Nonresidential providers must have policies and procedures on:

(a) Medical emergencies;

(b) Suicidal and mentally ill patients;

(c) Laboratory tests, including UA's and drug testing;

(d) Services and resources for pregnant women;

(i) A pregnant woman who is not seen by a private physician must be referred to a physician or the local first steps maternity care program for determination of prenatal care needs; and

(ii) Services include discussion of pregnancy specific issues and resources.

**AMENDATORY SECTION** (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-310 What are the requirements for chemical dependency assessments?** A chemical dependency professional (CDP), or a CDP trainee under supervision of a CDP, must conduct and document an assessment of each ((~~client's~~) patient's) involvement with alcohol and other drugs. The CDP's assessment must include:

(1) A face-to-face diagnostic interview with each ((~~client~~) patient) to obtain, review, evaluate, and document the following:

(a) A history of the ((~~client's~~) patient's) involvement with alcohol and other drugs, including:

- (i) The type of substances used;
- (ii) The route of administration; and
- (iii) Amount, frequency, and duration of use.

(b) History of alcohol or other drug treatment or education;

(c) The ((~~client's~~) patient's) self-assessment of use of alcohol and other drugs;

- (d) A relapse history; and
- (e) A legal history.

(2) If the ((~~client~~) patient) is in need of treatment, a CDP or CDP trainee under supervision of a CDP must evaluate the assessment using PPC dimensions for the patient placement decision.

(3) If an assessment is conducted on a youth, and the ((~~client~~) patient) is in need of treatment, the CDP, or CDP trainee under supervision of a CDP, must also obtain the following information:

- (a) Parental and sibling use of drugs;
- (b) History of school assessments for learning disabilities or other problems, which may affect ability to understand written materials;
- (c) Past and present parent/guardian custodial status, including running away and out-of-home placements;
- (d) History of emotional or psychological problems;
- (e) History of child or adolescent developmental problems; and
- (f) Ability of parents/guardians to participate in treatment.

(4) Documentation of the information collected, including:

(a) A diagnostic assessment statement including sufficient data to determine a patient diagnosis supported by criteria of substance abuse or substance dependence;

(b) A written summary of the data gathered in subsections (1), (2), and (3) of this section that supports the treatment recommendation;

(c) A statement regarding provision of an HIV/AIDS brief risk intervention, and referrals made; and

(d) Evidence the ((~~client~~) patient):

(i) Was notified of the assessment results; and

(ii) Documentation of treatment options provided, and the ((~~client's~~) patient's) choice; or

(iii) If the ((~~client~~) patient) was not notified of the results and advised of referral options, the reason must be documented.

(5) Completion and submission of all reports required by the courts, department of corrections, department of licensing, and department of social and health services in a timely manner.

(6) Referral of an adult or minor who requires assessment for involuntary chemical dependency treatment to the county-designated chemical dependency specialist.

**AMENDATORY SECTION** (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-315 What are the requirements for treatment, continuing care, transfer, and discharge plans?** (1) A chemical dependency professional (CDP), or a CDP trainee under supervision of a CDP, must be responsible for the overall treatment plan for each patient, including:

(a) Patient involvement in treatment planning;

(b) Documentation of progress toward patient attainment of goals; and

(c) Completeness of patient records.

(2) A CDP or a CDP trainee under supervision of a CDP must:

(a) Develop the individualized treatment plan based upon the assessment and update the treatment plan based upon achievement of goals, or when new problems are identified;

(b) Conduct individual and group counseling;

(c) Develop the continuing care plan; and

(d) Complete the discharge summary.

(3) A CDP, or CDP trainee under supervision of a CDP, must also include in the treatment plan for youth problems identified in specific youth assessment, including any referrals to school and community support services.

(4) A CDP, or CDP trainee under supervision of a CDP, must follow up when a patient misses an appointment to:

(a) Try to motivate the patient to stay in treatment; and

(b) Report a noncompliant patient to the committing authority as appropriate.

(5) A CDP, or CDP trainee under supervision of a CDP, must involve each patient's family or other support persons, when the patient gives written consent:

(a) In the treatment program; and

(b) In self-help groups.

(6) When transferring a patient from one certified treatment service to another within the same agency, at the same location, a CDP, or a CDP trainee under supervision of a CDP, must:

(a) Update the patient assessment and treatment plan; and

(b) Provide a summary report of the patient's treatment and progress, in the patient's record.

(7) A CDP, or CDP trainee under supervision of a CDP, must meet with each patient at the time of discharge from any treatment agency, unless in detox or when a patient leaves treatment without notice, to:

(a) Finalize a continuing care plan to assist in determining appropriate recommendation for care;

- (b) Assist the patient in making contact with necessary agencies or services; and
- (c) Provide the patient a copy of the plan.
- (8) When transferring a patient to another treatment provider, the current provider must forward copies of the following information to the receiving provider when a release of confidential information is signed by the patient:
  - (a) Patient demographic information;
  - (b) Diagnostic assessment statement and other assessment information, including:
    - (i) Documentation of the HIV/AIDS intervention;
    - (ii) TB test result;
    - (iii) A record of the patient's detox and treatment history;
    - (iv) The reason for the transfer; and
    - (v) Court mandated, department of correction supervision status or agency recommended follow-up treatment.
  - (c) Discharge summary; and
  - (d) The plan for continuing care or treatment.
- (9) A CDP, or CDP trainee under supervision of a CDP, must complete a discharge summary, within seven days of each patient's discharge from the agency, which includes:
  - (a) The date of discharge or transfer; and
  - (b) A summary of the patient's progress toward each treatment goal, except in detox.

AMENDATORY SECTION (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-325 What are the requirements for patient record content?** The service provider must ensure patient record content includes:

- (1) Demographic information;
- (2) A chemical dependency assessment and history of involvement with alcohol and other drugs;
- (3) Documentation of the patient's response when asked if the patient is under:
  - (a) Department of corrections supervision; and
  - (b) Civil or criminal court ordered mental health or chemical dependency treatment; or
  - (c) A copy of the court order exempting patient from reporting requirements.
- (4) Documentation the patient was informed of the diagnostic assessment and options for referral or the reason not informed;
- ~~((4))~~ (5) Documentation the patient was informed of federal confidentiality requirements and received a copy of the patient notice required under 42 CFR, Part 2 and 45 CFR, Part 160 through 164;
- ~~((5))~~ (6) Documentation the patient was informed of treatment service rules, translated when needed, signed and dated by the patient before beginning treatment;
- ~~((6))~~ (7) Voluntary consent to treatment signed and dated by the patient, parent or legal guardian, except as authorized by law for protective custody, involuntary treatment, or the department of corrections;
- ~~((7))~~ (8) Documentation the patient received counselor disclosure information, acknowledged by the provider and patient by signature and date;
- ~~((8))~~ (9) Documentation of the patient's tuberculosis test and results;

- ~~((9))~~ (10) Documentation the patient received the HIV/AIDS brief risk intervention;
- ~~((10))~~ (11) Initial and updated individual treatment plans, including results of the initial assessment and periodic reviews, addressing:
  - (a) Patient biopsychosocial problems;
  - (b) Treatment goals;
  - (c) Estimated dates or conditions for completion of each treatment goal;
  - (d) Approaches to resolve the problems;
  - (e) Identification of persons responsible for implementing the approaches;
  - (f) Medical orders, if appropriate.
- ~~((11))~~ (12) Documentation of referrals made for specialized care or services;
- ~~((12))~~ (13) At least weekly individualized documentation of ongoing services in residential services, and as required in intensive outpatient and outpatient services, including:
  - (a) Date, duration, and content of counseling and other treatment sessions;
  - (b) Ongoing assessments of each patient's participation in and response to treatment and other activities;
  - (c) Progress notes as events occur, and treatment plan reviews as specified under each treatment service of chapter 388-805 WAC; and
  - (d) Documentation of missed appointments.
- ~~((13))~~ (14) Medication records, if applicable;
- ~~((14))~~ (15) Laboratory reports, if applicable;
- ~~((15))~~ (16) Properly completed authorizations for release of information;
- ~~((16))~~ (17) Copies of all correspondence related to the patient, including any court orders and reports of noncompliance;
- ~~((17))~~ (18) A copy of the continuing care plan signed and dated by the CDP and the patient; and
- ~~((18))~~ (19) The discharge summary.

AMENDATORY SECTION (Amending WSR 00-23-107, filed 11/21/00, effective 1/1/01)

**WAC 388-805-330 What are the requirements for reporting patient noncompliance?** The following standards define patient noncompliance behaviors and set minimum time lines for reporting these behaviors to the appropriate court~~((:))~~, community corrections officer, or county designated chemical dependency specialist.

- (1) Reporting patient noncompliance is contingent upon obtaining a properly completed authorization to release confidential information form meeting the requirements of 42 CFR Part 2 and 45 CFR Parts 160 and 164 or through a court order authorizing the disclosure pursuant to 42 CFR Part 2, Section 2.63 through 2.67.
- (2) Chemical dependency service providers failing to report patient noncompliance with court ordered or deferred prosecution treatment requirements may be considered in violation of chapters 46.61, 70.96A, 142 or 10.05 RCW reporting requirements and be subject to penalties specified in WAC 388-805-120, 388-805-125, and 388-805-130.

(3) For patients under the department of corrections supervision and court ordered to treatment, the provider must notify the designated chemical dependency specialist within three working days from obtaining information of any violation of the terms of the court order for purposes of revocation of the patient's conditional release.

~~((4))~~ (4) For emergent noncompliance: The following noncompliance is considered emergent noncompliance and must be reported to the appropriate court within three working days from obtaining the information:

(a) Patient failure to maintain abstinence from alcohol and other nonprescribed drugs as verified by patient self-report, identified third party report confirmed by the agency, or blood alcohol content or other laboratory test;

(b) Patient reports a subsequent alcohol/drug related arrest;

(c) Patient leaves program against program advice or is discharged for rule violation.

~~((5))~~ (5) For nonemergent noncompliance: The following noncompliance is considered nonemergent noncompliance and must be reported to the appropriate court as required by subsection ~~((3))~~ (6) and ~~((4))~~ (7) of this section:

(a) Patient has unexcused absences or failure to report. Agencies must report all patient unexcused absences, including failure to attend self-help groups. Report failure of patient to provide agency with documentation of attendance at self-help groups if under a deferred prosecution order or required by the treatment plan. In providing this report, include the agency's recommendation for action.

(b) Patient failure to make acceptable progress in any part of the treatment plan. Report details of the patient's non-compliance behavior along with a recommendation for action.

~~((3))~~ (6) If a court accepts monthly progress reports, nonemergent noncompliance may be reported in monthly progress reports, which must be mailed to the court within ten working days from the end of each reporting period.

~~((4))~~ (7) If a court does not wish to receive monthly reports and only requests notification of noncompliance or other significant changes in patient status, the reports should be transmitted as soon as possible, but in no event longer than ten working days from the date of the noncompliance.

AMENDATORY SECTION (Amending WSR 00-23-107, filed 11/21/00, effective 1/1/01)

**WAC 388-805-620 What are the requirements for outpatient services?** A chemical dependency professional (CDP), or a CDP trainee under supervision of a CDP, must:

(1) Complete admission assessments within ten calendar days of admission, or by the second visit, unless participation in this outpatient treatment service is part of the same provider's continuum of care.

(2) Conduct group or individual chemical dependency counseling sessions for each patient, each month, according to an individual treatment plan.

~~((Assess and document the adequacy of each patient's treatment and attainment of goals))~~ Conduct and document a treatment plan review for each patient:

- (a) Once a month for the first three months; and
- (b) Quarterly thereafter or sooner if required by other laws.

AMENDATORY SECTION (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-625 What are the requirements for outpatient services for persons subject to RCW 46.61-.5056?** (1) Patients admitted to outpatient treatment subject to RCW 46.61.5056, must complete outpatient treatment as described in subsection (2) of this section.

(2) A chemical dependency professional (CDP), or a CDP trainee under supervision of a CDP, must:

(a) For the first sixty days of treatment:

(i) Conduct group or individual chemical dependency counseling sessions for each patient, each week, according to an individual treatment plan.

(ii) Conduct at least one individual chemical dependency counseling session of no less than thirty minutes duration excluding a chemical dependency assessment for each patient, according to an individual treatment plan.

(iii) Conduct alcohol and drug basic education for each patient.

(iv) Document patient participation in self-help groups described in WAC 388-805-300(16) for patients with a diagnosis of substance dependence.

(v) For patients with a diagnosis of substance dependence who received intensive inpatient chemical dependency treatment services, the balance of the sixty-day time period will consist, at a minimum, of weekly outpatient counseling sessions according to an individual treatment plan.

(b) For the next one hundred twenty days of treatment:

(i) Conduct group or individual chemical dependency counseling sessions for each patient, every two weeks, according to an individual treatment plan.

(ii) Conduct at least one individual chemical dependency counseling session of no less than thirty minutes duration every sixty days for each patient, according to an individual treatment plan.

(c) Upon completion of one hundred eighty days of intensive treatment, a CDP, or a CDP trainee under the supervision of a CDP, must refer each patient for ongoing treatment or support, as necessary, using PPC.

(3) For ~~(client's that))~~ patients who are assessed with insufficient evidence of substance dependence or substance abuse, a CDP must refer the ~~((client))~~ patient to alcohol/drug information school.

AMENDATORY SECTION (Amending WSR 00-23-107, filed 11/21/00, effective 1/1/01)

**WAC 388-805-640 What are the requirements for providing off-site chemical dependency treatment services?** (1) If a certified service provider wishes to offer treatment services, for which the provider is certified, at a site where ~~((clients))~~ patients are located primarily for purposes other than chemical dependency treatment, the administrator must:

(a) Ensure off-site treatment services will be provided:

(i) In a private, confidential setting that is discrete from other services provided within the off-site location; and

(ii) By a chemical dependency professional (CDP) or CDP trainee under supervision of a CDP;

(b) Revise agency policy and procedures manuals to include:

(i) A description of how confidentiality will be maintained at each off-site location, including how confidential information and patient records will be transported between the certified facility and the off-site location;

(ii) A description of how services will be offered in a manner that promotes patient and staff member safety; and

(iii) Relevant administrative, personnel, and clinical practices.

(c) Maintain a current list of all locations where off-site services are provided including the name, address (except patient in-home services), primary purpose of the off-site location, level of services provided, and date off-site services began at the off-site location.

**AMENDATORY SECTION** (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-710 What are the requirements for opiate substitution medical management?** (1) The medical director must assume responsibility for administering all medical services performed by the opiate substitution treatment program.

(2) The medical director must be responsible for ensuring that the opiate substitution treatment program is in compliance with all applicable federal, state, and local laws and regulations.

(3) A program physician or authorized health care professional under supervision of a program physician, must provide oversight for determination of opiate physical addiction and conducting a complete, fully documented physical evaluation for each patient before admission.

(4) A ~~((physical))~~ medical examination must be conducted on each patient:

(a) By a program physician or other medical practitioner; and

(b) Within fourteen days of admission.

(5) Prior to initial prescribed dosage of opiate substitution medication, a program physician must ensure that all pregnant patients are provided written and verbal:

(a) Current health information concerning the possible addiction, health risks and benefits opiate substitution medication may have on them and their fetus;

(b) Current health information concerning the risks of not initiating opiate substitution medication may have on them and their fetus and;

(c) Referral options to address neonatal abstinence syndrome for their baby.

(6) Following the patient's initial dose of opiate substitution treatment, the physician must establish adequacy of dose, considering:

(a) Signs and symptoms of withdrawal;

(b) Patient comfort; and

(c) Side effects from over medication.

~~((6))~~ (7) Prior to the beginning of detox, a program physician must approve an individual detoxification schedule for each patient being detoxified.

**AMENDATORY SECTION** (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-715 What are the requirements for opiate substitution medication management?** (1) An opiate substitution treatment program must use only those opioid agonist treatment medications that are approved by the Food and Drug Administration under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) for use in the treatment of opioid addiction.

(2) In addition, an opiate substitution treatment program who is fully compliant with the protocol of an investigational use of a drug and other conditions set forth in the application may administer a drug that has been authorized by the Food and Drug Administration under an investigational new drug application under section 505(i) of the Federal Food, Drug, and Cosmetic Act for investigational use in the treatment of opioid addiction. Currently the following opioid agonist treatment medications will be considered to be approved by the Food and Drug Administration for use in the treatment of opioid addiction:

(a) Methadone;

(b) Levomethadyl acetate (LAAM); and

(c) Buprenorphine distributed as subutex and suboxone.

(3) An opiate substitution treatment program must maintain current procedures that are adequate to ensure that the following dosage form and initial dosing requirements are met:

(a) Methadone must be administered or dispensed only in oral form and must be formulated in such a way as to reduce its potential for parenteral abuse;

(b) For each new patient enrolled in a program, the initial dose of methadone must not exceed thirty milligrams and the total dose for the first day must not exceed forty milligrams, unless the program physician documents in the patient's record that forty milligrams did not suppress opiate abstinence symptoms.

(4) An opiate substitution treatment program must maintain current procedures adequate to ensure that each opioid agonist treatment medication used by the program is administered and dispensed in accordance with its approved product labeling. Dosing and administration decisions must be made by a program physician familiar with the most up-to-date product labeling. These procedures must ensure that any significant deviations from the approved labeling, including deviations with regard to dose, frequency, or the conditions of use described in the approved labeling, are specifically documented in the patient's record.

**AMENDATORY SECTION** (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-740 What are the requirements for opiate substitution treatment counseling?** (1) A chemical dependency professional (CDP), or a CDP trainee under supervision of a CDP, must provide individual or group counseling sessions once each:

(a) Week, for the first ninety days, for a new patient or a patient readmitted more than ninety days since the person's most recent discharge from opiate substitution treatment;

(b) Week, for the first month, for a patient readmitted within ninety days of the most recent discharge from opiate substitution treatment; and

(c) Month, for a patient transferring from another opiate substitution treatment program where the patient stayed for ninety or more days.

(2) ~~((A CDP, or a CDP trainee under supervision of a CDP, must conduct and document a continuing care review with each patient to review progress, discuss facts, and determine the need for continuing opiate substitution treatment:~~

~~(a) Between six and seven months after admission; and~~

~~(b) Once every six months thereafter)) Conduct a treatment plan review once every six months after the second year of continued enrollment in treatment.~~

(3) A CDP, or a CDP trainee under supervision of a CDP, must provide counseling in a location that is physically separate from other activities.

(4) A pregnant woman and any other patient who requests, must receive at least one-half hour of counseling and education each month on:

(a) Matters relating to pregnancy and street drugs;

(b) Pregnancy spacing and planning; and

(c) The effects of opiate substitution treatment on the woman and fetus, when opiate substitution treatment occurs during pregnancy.

(5) Staff must provide at least one-half hour of counseling on family planning with each patient through either individual or group counseling.

(6) The administrator must ensure there is one staff member who has training in family planning, prenatal health care, and parenting skills.

AMENDATORY SECTION (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-750 What are the requirements for opiate substitution treatment take-home medications?** (1) An opiate substitution treatment provider may authorize take-home medications for a patient when:

(a) The medication is for a Sunday or legal holiday, as identified under RCW 1.16.050; or

(b) Travel to the facility presents a safety risk for patients or staff due to inclement weather.

(2) A service provider may permit take-home medications on other days for a stabilized patient who:

(a) Has received opiate substitution treatment medication for a minimum of ninety days; and

(b) Had negative urines for the last sixty days.

(3) The provider must meet 42 CFR, Part 8.12 (i)(1-5) requirements.

(4) The provider may arrange for opiate substitution treatment medication to be administered by licensed staff or self-administered by a pregnant woman receiving treatment at a certified residential treatment agency when:

(a) The woman had been receiving treatment medication for ninety or more days; and

(b) The woman's use of treatment medication can be supervised.

(5) All exceptions to take-home requirements must be authorized by the state methadone authority.

AMENDATORY SECTION (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-800 What are the requirements for ADATSA assessment services?** (1) An agency certified to conduct ADATSA assessments must conduct the assessment for each eligible patient and be governed by the requirements under:

(a) WAC 388-805-001 through 388-805-310;

(b) WAC 388-805-020 and 388-805-325 (1), (2), (3), (4),

(5), (9), (15), (16), 388-805-330; and 388-805-350; and

(c) Chapter 388-800 WAC.

AMENDATORY SECTION (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-810 What are the requirements for DUI assessment providers?** (1) If located in a district or municipal probation department, each DUI service provider must meet the requirements of:

(a) WAC 388-805-001 through 388-805-135,

(b) WAC 388-805-145 (4), (5), and (6);

(c) WAC 388-805-150, the administrative manual, subsections (4), (7) through (11), (13), and (14);

(d) WAC 388-805-155, facilities, subsections (1)(b), (c), (d), and (2)(b);

(e) WAC 388-805-200 (1), (4), and (5);

(f) WAC 388-805-205 (1), (2), (3)(a) through (d), (4), (6), and (7);

(g) WAC 388-805-220, 388-805-225, and 388-805-230;

(h) WAC 388-805-260, volunteers;

(i) WAC 388-805-300, clinical manual, subsections (1), (2), (3), (9), ~~((and (20)(e)))~~ (20), (21), and (22);

(j) WAC 388-805-305, patients' rights;

(k) WAC 388-805-310, assessments;

(l) WAC 388-805-320, patient record system, subsections (3)(a) through (f), and (5);

(m) WAC 388-805-325, record content, subsections (1), (2), (3), (4), (5), (7), ((9)) (8), ((44)) (10), (15), (16), and (17); and

(n) WAC 388-805-350, outcomes evaluation;

(o) WAC 388-805-815, DUI assessment services.

(2) If located in another certified chemical dependency treatment facility, the DUI service provider must meet the requirements of:

(a) WAC 388-805-001 through 388-805-260; 388-805-305 and 388-805-310;

(b) WAC 388-805-300, 388-805-320, 388-805-325 as noted in subsection (1) of this section, 388-805-350; and

(c) WAC 388-805-815.

AMENDATORY SECTION (Amending WSR 00-23-107, filed 11/21/00, effective 1/1/01)

**WAC 388-805-815 What are the requirements for DUI assessment services?** (1) The administrator must limit

((~~clients~~)) patients to persons who have been arrested for a violation of driving while under the influence of intoxicating liquor or other drugs or in physical control of a vehicle as defined under chapter 46.61 RCW;

(2) A chemical dependency professional (CDP), or a CDP trainee under the supervision of a CDP, or a probation assessment officer must conduct each ((~~client~~)) patient assessment and ensure the assessment includes, in addition to the requirements under WAC 388-805-310:

(a) Evaluation of the ((~~client's~~)) patient's blood alcohol level and other drug levels at the time of arrest, if available; and

(b) Assessment of the ((~~client's~~)) patient's self-reported driving record and the abstract of the ((~~client's~~)) patient's legal driving record.

AMENDATORY SECTION (Amending WSR 03-20-020, filed 9/23/03, effective 10/25/03)

**WAC 388-805-820 What are the requirements for alcohol and other drug information school?** (1) Alcohol and other drug information school providers must be governed under:

- (a) WAC 388-805-001 through 388-805-135; and
- (b) This section.

(2) The provider must:

(a) Inform each student of fees at the time of enrollment; and

(b) Ensure adequate and comfortable seating in well-lit and ventilated rooms.

(3) A certified information school instructor or a chemical dependency professional must teach the course and:

(a) Advise each student there is no assumption the student is an alcoholic or drug addict, and this is not a therapy session;

(b) Discuss the class rules;

(c) Review the course objectives;

(d) Follow curriculum contained in "Alcohol and Other Drugs Information School Training Curriculum," published in 2001, or later amended;

(e) Ensure not less than eight and not more than fifteen hours of class room instruction;

(f) Administer the posttest from the above reference to each enrolled student after the course is completed;

(g) Ensure individual ((~~client~~)) student records include:

(i) Intake form;

(ii) Hours and date or dates in attendance;

(iii) Source of referral;

(iv) Copies of all reports, letters, certificates, and other correspondence;

(v) A record of any referrals made; and

(vi) A copy of the scored posttest.

(h) Complete and submit reports required by the courts and the department of licensing, in a timely manner.

## REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-805-850

What are the requirements for treatment accountability for safer communities (TASC) providers and services?

## **WSR 06-13-006**

### **PERMANENT RULES**

### **UTILITIES AND TRANSPORTATION**

### **COMMISSION**

[General Order No. R-533, Docket No. TC-020497—Filed June 8, 2006, 1:31 p.m., effective July 9, 2006]

**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 06-15 issue of the Register.

## **WSR 06-13-012**

### **PERMANENT RULES**

### **DEPARTMENT OF HEALTH**

[Filed June 9, 2006, 1:36 p.m., effective July 1, 2006]

Effective Date of Rule: July 1, 2006.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The agency is setting an effective date of July 1, 2006. An effective date earlier than thirty-one days is necessary under RCW 34.05.380 (3)(a), because chapter 372, Laws of 2006 (ESSB 6386), the supplemental operating budget, requires that fees for initial and renewal licensure of midwives be no more than \$450 between July 1, 2006, and June 30, 2007.

Purpose: This rule reduces midwifery fees in accordance with chapter 372, Laws of 2006 (ESSB 6386) which requires that fees for initial and renewal licensure of midwives be no more than \$450 between July 1, 2006, and June 30, 2007. The legislation provides additional funding to offset the reduced income. It also reduces the late renewal penalty from \$300 to \$225, which is in alignment with an internal policy that provides a standardized process for calculating renewal penalty fees. This rule will become effective on July 1, 2006, as required by the legislation (RCW 34.05.380 (3)(a)).

Citation of Existing Rules Affected by this Order: Amending WAC 246-834-990.

Statutory Authority for Adoption: Chapter 372, Laws of 2006; RCW 43.70.250 and 18.50.135.

Adopted under notice filed as WSR 06-08-105 on April 5, 2006.

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: June 8, 2006.

Mary C. Selecky  
Secretary

**AMENDATORY SECTION** (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

**WAC 246-834-990 Midwifery fees and renewal cycle.**

(1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following fees are nonrefundable:

Title of Fee	Fee
Initial application	\$(( <del>15.00</del> )) <u>450.00</u>
National examination administration (initial/retake)	103.00
State examination (initial/retake)	154.50
Renewal	(( <del>978.75</del> )) <u>450.00</u>
Late renewal penalty	(( <del>300.00</del> )) <u>225.00</u>
Duplicate license	25.00
Certification of license	25.00
Application fee—Midwife-in-training program	978.75
Expired license reissuance	300.00

**WSR 06-13-021**

**PERMANENT RULES**

**UNIVERSITY OF WASHINGTON**

[Filed June 13, 2006, 8:33 a.m., effective July 14, 2006]

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

Purpose: Housekeeping amendments to Title 478 WAC rules update two office locations, the office responsible for an

administrative function, and make a small wording change that clarifies without changing the effect of the rules.

Citation of Existing Rules Affected by this Order: Amending WAC 478-108-020, 478-136-030, 478-276-060, and 478-276-140.

Statutory Authority for Adoption: RCW 28B.20.130.

Other Authority: Executive Order 97-02.

Adopted under notice filed as WSR 06-08-008 on March 23, 2006.

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 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, 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 0, Amended 4, Repealed 0.

Date Adopted: June 8, 2006.

Mark A. Emmert  
President

**AMENDATORY SECTION** (Amending WSR 97-14-004, filed 6/19/97, effective 7/20/97)

**WAC 478-108-020 Application for adjudicative proceeding.** An application for an adjudicative proceeding shall be in writing. The application shall include the signature of the applicant, the nature of the matter for which an adjudicative proceeding is sought, and an explanation of the facts involved. Application forms are available at the following address:

University of Washington  
((Visitors Information Center  
4014 University Way N.E.))  
Rules Coordination Office  
4046 12th Ave. N.E.  
Seattle, WA ((~~98105-6203~~)) 98105

(for internal campus mail use: Box ((~~355502~~)) 355509 or e-mail rules@u.washington.edu). An application for an adjudicative proceeding should be submitted to the above address within twenty days of the agency action giving rise to the application, unless otherwise provided for by statute or rule.

**AMENDATORY SECTION** (Amending WSR 05-21-133, filed 10/19/05, effective 11/19/05)

**WAC 478-136-030 Limitations on use.** (1) Freedom of expression is a highly valued and indispensable quality of university life. However, university facilities may not be used in ways which obstruct or disrupt university operations, the freedom of movement, or any other lawful activities. Addi-

tionally, use of university facilities may be subject to reasonable time, place and manner restrictions.

(2) University facilities may be used for events and forums regarding ballot propositions and/or candidates who have filed for public office so long as the event has received preliminary approval by an administrative or academic unit and final approval by the committee on the use of university facilities. There are, however, certain limitations on the use of university facilities for these political activities.

(a) First priority for the use of campus facilities shall be given to regularly scheduled university activities.

(b) University facilities may be used for political purposes such as events and forums regarding ballot propositions and/or candidates who have filed for public office only when the full rental cost of the facility is paid. However, use of state funds for payment of facility rental costs is prohibited.

(c) Forums or debates may be scheduled at full facility rental rates if all parties to a ballot proposition election or all candidates who have filed for office for a given position, regardless of party affiliation, are given equal access to the use of facilities within a reasonable time.

(d) No person shall solicit contributions on university property for political uses, except in instances where this limitation conflicts with applicable federal law regarding interference with the mails.

(e) Public areas outside university buildings may be used for political purposes such as events and forums regarding ballot propositions and/or candidates who have filed for public office, excluding solicitation of funds, provided the other normal business of the university is not disrupted and entrances to and exits from buildings are not blocked.

(f) University facilities or services may not be used to establish or maintain offices or headquarters for political candidates or partisan political causes.

(3) University facilities may not be used for private or commercial purposes such as sales, advertising, or promotional activities unless such activities serve an educational purpose, as determined by the committee on the use of university facilities.

(4) Nothing in these rules is intended to alter or affect the regular advertising, promotional, or underwriting activities carried on, by, or in the regular university media or publications. Policies concerning advertising, promotional or underwriting activities included in these media or publications are under the jurisdiction of and must be approved by their respective management or, where applicable, advisory committees, in accordance with applicable state and federal laws.

(5) In accordance with WAC 478-136-010, the university will make its facilities available only for purposes related to the educational mission of the university, as determined by the committee on the use of university facilities, including but not limited to instruction, research, public assembly, and student activities. When permission is granted to use university facilities for approved instructional or related purposes, as a condition of approval, the user of university facilities agrees to include in all materials nonendorsement statements in the form approved by the committee on the use of university facilities. "Materials" includes all communications, advertisement, and any other printed, electronic, or broad-

cast/telecast information related to the user's activities offered in university facilities. The committee will determine the content, size of print and placement of the nonendorsement language. The university will not make its facilities available for instructional or related purposes that compete with courses or programs offered by the university.

(6) Solicitation, or distribution of handbills, pamphlets and similar materials by anyone, whether a member of the university community or of the general public, is not permitted in those areas of campus to which access by the public is restricted or where such solicitation or distribution would significantly impinge upon the primary business being conducted.

(7) Solicitation and distribution of materials in university residence halls are governed by residence hall policies. No solicitation of a commercial nature is permitted in university residence halls. Commercial advertising may be allowed, and is restricted to certain designated areas of each residence hall, when it is related to the university's mission and approved by the department of housing and food services.

(8) Electronic amplification on the grounds of the campus is prohibited with the following exceptions:

(a) The lawn area immediately west of the Husky Union Building will be available for open-air speaking events using directional and volume-controlled speech amplification equipment provided by the university. Use of the Husky Union Building lawn site will be available to registered or official student organizations and faculty or staff groups on a first-come, first-served basis. The amplification system will be issued upon presentation of a currently valid student, faculty or staff identification card at the Husky Union Building Reservation Office.

(b) The committee on the use of university facilities may grant permission, under special circumstances, for the use of other amplification equipment on the lawn site west of the Husky Union Building or in other outdoor locations. Permission should be requested through:

University of Washington  
Secretary to the Committee on the  
Use of University Facilities  
239M Gerberding Hall  
Box 351241  
Seattle, WA 98195-1241

(or phone: 206-543-9233), sufficiently in advance of the program to allow timely consideration.

(9)(a) No person may use university facilities to camp, except if permission to do so has been granted in accordance with the provisions of chapters 478-116 and 478-136 WAC or except as provided in (b) of this subsection. "Camp" means to remain overnight, to erect a tent or other shelter, or to use sleeping equipment, a vehicle, or a trailer camper, for the purpose of or in such ways as will permit remaining overnight. Violators are subject to arrest and criminal prosecution under applicable state, county and city laws.

(b) This provision does not prohibit use of the university residence facilities in accordance with chapter 478-156 WAC or the use of facilities where the employee remains overnight to fulfill the responsibilities of his or her position or where a

student remains overnight to fulfill the requirements of his or her course of study.

(10) Within the limits of applicable laws, the University of Washington is committed to establishing and maintaining safe conditions for persons attending football games in Husky Stadium or other athletic events or concerts in campus facilities. Accordingly, the rules enumerated below will apply to all such events and be strictly enforced.

(a) The possession or consumption of alcoholic beverages or illegal drugs is prohibited, except for alcohol allowed under a permit or license obtained under subsection (13) of this section. In addition to having the beverages or drugs confiscated, violators may be subject to university disciplinary action and/or legal proceedings, and removal from the events.

(b) Air horns, glass bottles, cans, picnic baskets, bota bags, ice chests, and thermoses (in excess of two-quart capacity) are prohibited. Individuals possessing such will not be admitted to, or will be removed from, Husky Stadium or other athletic or concert facilities until the items have been stored temporarily at locations provided for that purpose or disposed of in some other manner.

(c) Smoking is prohibited in the seating areas of all athletic stadia. Smoking is permitted on pedestrian concourses.

(d) All persons entering events in Husky Stadium or other athletic venues or events in other campus auditoria or facilities shall be subject to having all containers, bags, backpacks, coolers, or similar items visually inspected. Security personnel shall first ask permission to visually inspect the item and advise the person that he/she may refuse. Persons who refuse to allow inspection shall be allowed to return the item to a vehicle or otherwise dispose of it, after which admission shall be allowed. Persons who refuse the visual inspection and refuse to dispose of the item shall be denied entry.

(11) Only public service announcements and acknowledgment of sponsors will be allowed on scoreboards at athletic venues.

(a) For purposes of this section, a public service announcement is defined as an announcement which promotes the activities or services of federal, state or local governments, including the University of Washington, or non-profit organizations, or generally contributes to the community's welfare and interests.

(b) In acknowledgment of their sponsorship of the scoreboards or sponsorship of events and programs, sponsors may propose public service announcements for display on the scoreboard during athletic events. The public service announcement may be accompanied by a sponsor's name or logo, but in keeping with university policy may not directly promote the products or services of the company. The text and graphics of public service announcements must be submitted at least three days in advance to the department of intercollegiate athletics for approval by the university.

(c) In addition to these public service announcements, sponsors also may be acknowledged by the display of corporate logos, trademarks, or other approved messages upon panels located on the scoreboard.

(12) The University of Washington is committed to maintaining a safe and healthful work and educational envi-

ronment for all faculty, staff, students, and visitors. Accordingly, the University of Washington establishes the following smoking policy to protect nonsmokers from exposure to smoke in their university-associated environments and to protect life and property against fire hazards:

(a) Except as provided in subsections (10)(c) and (12)(b) of this section, smoking is prohibited in all university vehicles, inside all buildings owned or occupied by the university and/or used by the university's faculty, staff or students and at any outside areas or locations that may directly or indirectly affect the air supply of buildings or carry smoke into buildings.

(b) Smoking may be permitted in student rooms in university residence halls and apartments in university student housing in accordance with smoking regulations established for those facilities by the vice-president for student affairs.

(c) The director of environmental health and safety may designate specific outdoor locations as no smoking areas.

(d) Any student, staff, or faculty member who violates the university smoking policy may be subject to disciplinary action. In addition, violations of the university smoking policy may be subject to enforcement by the University of Washington police department.

(13) Alcoholic beverages may be possessed, sold, served, and consumed at university facilities only if the procedures set forth in this section are followed.

(a) The appropriate permits/licenses for possession, sale, service, and consumption of alcohol must be obtained from the Washington state liquor control board.

(b) Permits/licenses must be displayed during the event and all other guidelines and restrictions established by the Washington state liquor control board must be followed.

(c) Alcoholic beverages may be possessed, sold, served, and consumed at the faculty center, as so designated by the university board of regents to the Washington state liquor control board, pursuant to a spirits, beer, and wine private club license issued by the Washington state liquor control board.

(d) Alcoholic beverages may be possessed, sold, served, and consumed at university facilities leased to a commercial tenant under a lease that includes authorization for the tenant to apply and hold a license issued by the Washington state liquor control board.

(e) Except as provided in (c) and (d) of this subsection, alcoholic beverages may be possessed, sold, served, and consumed at university facilities only under permits/licenses issued by the Washington state liquor control board and only as follows:

(i) Events at which alcohol is to be sold must be approved by the committee on the use of university facilities and an application to the committee must be accompanied by a request for written authorization under (f) (~~(f)~~) of this subsection or proof that the seller holds an appropriate license; and

(ii) Events at athletic venues at which alcohol is to be possessed, sold, served, or consumed must not be within the spectator viewing areas and must have restricted attendance, and a university unit, or an individual or organization applying for a permit/license must have obtained approval under (f) (~~(f)~~) of this subsection; and

(iii) A university unit, or an individual or organization applying for a permit/license must have obtained approval under (f) ~~((or (g)))~~ of this subsection; and

(iv) Sale, service, and consumption of alcohol is to be confined to specified room(s) or area(s) specified on the license or permit. ~~((Unopen))~~ Unopened containers may not be sold or served. No alcohol is permitted to be taken off-premises.

(f) Written authorization to apply for a special occasion license to sell alcoholic beverages or a banquet permit to serve and consume alcoholic beverages at university facilities must be obtained from the committee on the use of university facilities prior to applying for a special occasion license or banquet permit from the Washington state liquor control board. Authorization should be requested through the University of Washington, secretary to the committee on the use of university facilities, sufficiently in advance of the program to allow timely consideration. (Note: Some license applications must be filed with the Washington state liquor control board at least thirty days or more before the event.) Written authorization to apply for such a permit/license shall accompany the ~~((heense))~~ application filed with the Washington state liquor control board.

~~(g) ((Written authorization to apply for a banquet permit to serve and consume alcoholic beverages at university facilities must be obtained from the vice president for student affairs prior to applying for the permit from the Washington state liquor control board. Authorization should be requested through the University of Washington, office of the vice president for student affairs, sufficiently in advance of the program to allow timely consideration. Written authorization to apply for such permit shall accompany the permit application filed with the Washington state liquor control board.~~

~~((h))~~ Consumption, possession, dispensation, or sale of alcohol is prohibited except for persons of legal age.

AMENDATORY SECTION (Amending WSR 01-11-136, filed 5/23/01, effective 6/23/01)

**WAC 478-276-060 Public records officer.** For purposes of compliance with chapter 42.17 RCW, the person designated as public records officer for the University of Washington is the director of public records and open public meetings. Duties for this individual shall include but not be limited to: The implementation of the university's rules and regulations regarding release of public records, coordinating the staff of the public records and open public meetings office in this regard, and generally coordinating compliance by the university with the public records disclosure requirements of chapter 42.17 RCW. The person so designated shall be at the following location:

University of Washington  
Public Records and Open Public Meetings Office  
~~((Visitors Information Center))~~  
4014 University Way N.E.)  
4311 11th Ave. N.E.  
Suite 360  
Seattle, WA ~~((98105-6203))~~ 98105

(for internal campus mail use: Box ~~((355502))~~ 354997).

AMENDATORY SECTION (Amending WSR 03-12-007, filed 5/22/03, effective 6/22/03)

**WAC 478-276-140 Public records and open public meetings office—Address.** All requests for public records to the University of Washington shall be addressed as follows:

University of Washington  
Public Records and Open Public Meetings Office  
~~((4014 University Way N.E.))~~  
4311 11th Ave. N.E.  
Suite 360  
Seattle, WA ~~((98105-6203))~~ 98105

(for internal campus mail use: Box ~~((355502))~~ 354997). The telephone number of the public records and open public meetings office is 206-543-9180.

## WSR 06-13-022

### PERMANENT RULES

#### UNIVERSITY OF WASHINGTON

[Filed June 13, 2006, 8:35 a.m., effective August 1, 2006]

Effective Date of Rule: August 1, 2006.

Purpose: To provide the colocated campus of the University of Washington, Bothell, and Cascadia Community College with facilities use rules for their shared spaces. (The Cascadia Community College will file separate but similar rules for Title 132Z WAC.)

Statutory Authority for Adoption: RCW 28B.20.130.

Other Authority: RCW 28B.20.130.

Adopted under notice filed as WSR 06-08-083 on April 4, 2006.

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 6, Amended 0, Repealed 0.

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

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

Date Adopted: June 8, 2006.

Rebecca Goodwin Deardorff  
Director of Rules Coordination

**Chapter 478-137 WAC****USE OF JOINT UNIVERSITY OF WASHINGTON,  
BOTHELL, AND CASCADIA COMMUNITY COL-  
LEGE FACILITIES**NEW SECTION

**WAC 478-137-010 Purpose.** The colocated campus of the University of Washington, Bothell, and Cascadia Community College operates joint facilities that provide benefits to each educational institution. The purpose of this chapter is to define the facilities jointly operated by the institutions and to ensure that these joint facilities are reserved primarily for activities related to the educational missions of the institutions. Further, the joint facilities may be used for a variety of activities, providing the primary function the facility or space was intended to serve is not compromised. Reasonable time, place, and manner restrictions may be placed on the use of joint facilities.

The rules set forth in this chapter have been jointly developed and agreed upon by the two institutions of higher education, and adopted and codified in separate chapters of the Washington Administrative Code by each of the institutions. Rules for the use of dedicated facilities of the University of Washington, Bothell, and Cascadia Community College are governed by chapter 478-136 WAC and chapter 132Z-140 WAC, respectively.

NEW SECTION

**WAC 478-137-020 Definitions.** (1) "College" shall mean Cascadia Community College.

(2) "Institutions" shall mean University of Washington, Bothell, and Cascadia Community College.

(3) "Joint facilities" shall mean those structures, spaces, campus grounds, and parking lots operated jointly by the institutions. Specific rules also apply to parking lots (chapters 132Z-116 and 478-117 WAC).

(4) "University" shall mean University of Washington, Bothell.

(5) "Use of facilities" includes, but is not limited to: The holding of classes, events, the posting and removal of signs, all forms of advertising, commercial and community activities, and charitable solicitation.

(6) "Wetlands" shall mean campus grounds to the east of Campus Way N.E. and east of 110th N.E. between N.E. 185th and Beardslee Blvd., and the Chase House.

NEW SECTION

**WAC 478-137-030 Administrative authority.** (1) The board of regents of the University of Washington and the board of trustees for Cascadia Community College have delegated to the chancellor of the university and the president of the college, respectively, the authority to regulate the use of facilities on the colocated campus.

(2) Under this authority, the chancellor of the university and the president of the college designate the coordination for use of joint facilities to an appointed joint committee on facility use and designate the use of the wetlands to the wetlands

oversight committee. The chancellor of the university and the president of the college shall each appoint representatives to the joint committee on facility use to develop suggested event procedures. Each designee shall review the use of the facilities; establish administrative procedures governing such use that are consistent with these rules; approve or disapprove requested uses and establish policies regarding fees and rental schedules unique to joint facilities as appropriate. Additionally, the joint committee on facility use shall act as an appeals board for decisions of the wetlands oversight committee regarding wetlands use requests. Inquiries concerning the use of joint facilities may be directed to:

University of Washington, Bothell  
Office of Administrative Services  
Facilities Use Coordinator  
Box 358535  
18115 Campus Way N.E.  
Bothell, WA 98011

(Phone: 425-352-3556 or e-mail: [facuse@uwb.edu](mailto:facuse@uwb.edu)); and  
Cascadia Community College  
Finance and Operations Office  
Director of Auxiliary Services and Capital Projects  
18345 Campus Way N.E.  
Bothell, WA 98011  
(Phone: 425-352-8269).

(3) Preliminary approval of an event by an academic or administrative unit of the university or college implies that a responsible official has applied his or her professional judgment to the content of the program, the qualifications of the individuals conducting the event, the manner of presentation, and has concluded that the event is consistent with the teaching, research, and/or public service mission of the institutions.

(4) Final approval of a joint facilities use request by the appropriate designee on the use of joint facilities implies that the designee has reviewed the proposed event with regard to: The rules in this chapter; the direct and indirect costs to the institutions; environmental, health and safety concerns; wear and tear on the facilities; appropriateness of the event to the specific facility; and the impact of the event on the institutions, surrounding neighborhoods and the general public.

(5) The institutions will not make their joint facilities or services available to organizations that do not assure the institutions that they will comply with the terms of the Americans with Disabilities Act (ADA, 42 U.S.C. 12132, 12182) and the Rehabilitation Act of 1973 (RA, 29 U.S.C. 794). Uses must not impose restrictions nor alter facilities in a manner which would violate the ADA or RA.

(6) The institutions will not make their joint facilities or services available to organizations which do not assure the institutions that they do not discriminate against any person because of race, color, religion, national origin, sex, sexual orientation, age, handicap, or status as a Vietnam era or disabled veteran, except where such organizations have been exempted from provisions of applicable state or federal laws or regulations.

(7) Individuals who violate the institutions' use of joint facilities regulations and approved users who violate the institutions' contract terms for use of joint facilities may be

advised of the specific nature of the violation and individuals may be requested to leave the property or be refused future use of joint facilities. Failure to comply with a request to leave the property may subject such individuals to arrest and criminal prosecution under provisions of applicable state, county, and city laws.

#### NEW SECTION

**WAC 478-137-040 Use of joint facilities.** When allocating use of joint facilities, the highest priority shall be given to activities specifically related to the institutions' missions. No arrangements will be made that may interfere with or operate to the detriment of the institutions' own instruction, research, public assembly, and student activities. In particular, joint facilities are used primarily for:

(1) The regularly established instruction, research, public assembly, and student activities of the institutions and their departments.

(2) Cultural, educational, or recreational activities of the students, faculty, or staff of the university or college.

(3) Short courses, conferences, seminars, or similar events, when arranged under the sponsorship of the institutions or their departments.

(4) Public events of a cultural or professional nature brought to the campus at the request of institution departments or committees or institutionally sanctioned student organizations and presented with their active sponsorship and active participation.

(5) Activities or programs sponsored by other educational institutions, by state or federal agencies, by charitable agencies or civic or community organizations whose activities are of widespread public service and of a character appropriate to the institutions. However, joint facilities will not be made available for instructional or related purposes that compete with courses or programs offered by the institutions.

(6) Faculty, staff, registered or official student organizations of the institutions may use joint facilities to hold events for university or college faculty, staff and students provided such uses comply with these rules on use of joint facilities. These events do not, however, require either preliminary approval by an academic or administrative unit or final approval by the joint committee on facility use.

(7) Faculty, staff, registered or official student organizations of the institutions may use joint facilities to hold events to which the general public is invited when the event has preliminary approval by an academic or administrative unit of one of the institutions and final approval of the appropriate designee. The appearance of an invited speaker on campus does not represent an endorsement by the institutions of the speaker's views.

(8) Noninstitution organizations and individuals may use joint facilities to hold events which have received preliminary approval by an academic or administrative unit of one of the institutions and final approval of the appropriate designee. The general public may be invited to such events.

(9) Reasonable conditions may be imposed to regulate the timeliness of requests, to determine the appropriateness of space assigned, time of use, and proper maintenance of the facilities. Subject to the same limitations, joint facilities shall

be made available for assignment to individuals or groups within the institutions. Arrangements by both organizations and individuals must be made through the appropriate facility designee. Allocation of space shall be made in accordance with these rules and on the basis of time, space, priority of request and the demonstrated needs of the applicant.

#### NEW SECTION

**WAC 478-137-050 Limitations on use.** (1) Freedom of expression is a highly valued and indispensable quality of university and college life. However, joint facilities may not be used in ways that obstruct or disrupt the institutions' operations, the freedom of movement, or any other lawful activities. Additionally, use of joint facilities may be subject to reasonable time, place and manner restrictions.

(2) Joint facilities may be used for events and forums regarding ballot propositions and/or candidates who have filed for public office providing the event has received preliminary approval by an administrative or academic unit of one of the institutions and final approval by the appropriate facility designee. There are, however, certain limitations on the use of joint facilities for these political activities.

(a) First priority for the use of joint facilities shall be given to regularly scheduled university and college activities.

(b) Joint facilities may be used for political purposes such as events and forums regarding ballot propositions and/or candidates who have filed for public office only when the full rental cost of the facility is paid. Use of state funds for payment of facility rental costs is prohibited.

(c) Forums or debates may be scheduled at full facility rental rates if all parties to a ballot proposition election or all candidates who have filed for office for a given position, regardless of party affiliation, are given equal access to the use of facilities within a reasonable time.

(d) No person shall solicit contributions on joint property for political uses, except in instances where this limitation conflicts with applicable federal law regarding interference with the mails.

(e) Public areas outside joint facility buildings may be used for political purposes such as events and forums regarding ballot propositions and/or candidates who have filed for public office, excluding solicitation of funds, provided the other normal business of the institutions is not disrupted and entrances to and exits from buildings are not blocked.

(f) Joint facilities or services may not be used to establish or maintain offices or headquarters for political candidates or partisan political causes.

(3) Joint facilities may not be used for private or commercial purposes such as sales, advertising, or promotional activities unless such activities are consistent with the institution's mission, as determined by the appropriate designee.

(4) Nothing in these rules is intended to alter or affect the regular advertising, promotional, or underwriting activities carried on, by, or in the regular media or publications of the institutions. Policies concerning advertising, promotional or underwriting activities included in these media or publications are under the jurisdiction of and must be approved by their respective management or, where applicable, advisory

committees, in accordance with applicable state and federal laws.

(5) In accordance with WAC 478-137-010 the institutions will make their joint facilities available only for purposes related to their educational missions, including but not limited to instruction, research, public assembly, community programs, and student activities. When permission is granted to use joint facilities for approved instructional or related purposes, as a condition of approval, the user of joint facilities agrees to include in all materials nonendorsement statements in the form approved by the appropriate designee. "Materials" includes all communications, advertisement, and any other printed, electronic, or broadcast/telecast information related to the user's activities offered in joint facilities. The designee will determine the content, size of print and placement of the nonendorsement language. The institutions will not make their joint facilities available for instructional or related purposes that compete with courses or programs offered by the university or college.

(6) Solicitation, or distribution of handbills, pamphlets and similar materials by anyone, whether a member of the university and college community or of the general public, is not permitted in those areas of campus to which access by the public is restricted or where such solicitation or distribution would significantly impinge upon the primary business being conducted.

(7) Electronic amplification on the grounds of the campus shall not be permitted unless approved by the joint committee on facility use.

(8) No person may use joint facilities to camp. "Camp" means to remain overnight, to erect a tent or other shelter, or to use sleeping equipment, a vehicle, or a trailer camper, for the purpose of or in such ways as will permit remaining overnight. Violators are subject to arrest and criminal prosecution under applicable state, county and city laws. This provision does not prohibit use of joint facilities where a university or college employee remains overnight to fulfill the responsibilities of his or her position.

(9) The institutions are committed to maintaining a safe and healthful work and educational environment for all faculty, staff, students, and visitors. In accordance with the Washington Clean Indoor Air Act (chapter 70.160 RCW), the Use of University of Washington facilities (chapter 478-136 WAC) and Cascadia Community College facility use (chapter 132Z-140 WAC), the following smoking policy is intended to protect nonsmokers from exposure to smoke in their campus-associated environments and to protect life and property against fire hazards:

(a) Smoking is prohibited inside all university or college vehicles, inside buildings and parking structures owned or occupied by the university or college and/or used by university or college faculty, staff or students and at any outside areas or locations that may directly or indirectly affect the air supply of buildings or carry smoke into buildings.

(b) The institutions may designate specific outdoor locations as smoking areas. Signage will be placed to indicate the designated locations.

(c) Any student, staff, or faculty member who violates the smoking policy may be subject to disciplinary action. In

addition, violations of the smoking policy may be subject to appropriate enforcement.

(10) Alcoholic beverages may be possessed, sold, served, and consumed at joint facilities only if the procedures set forth in this section are followed.

(a) The appropriate permits/licenses for possession, sale, service, and consumption of alcohol must be obtained from the Washington state liquor control board.

(b) Permits/licenses must be displayed during the event and all other guidelines and restrictions established by the Washington state liquor control board must be followed.

(c) Alcoholic beverages may be possessed, sold, served, and consumed at joint facilities leased to a commercial tenant under a lease that includes authorization for the tenant to apply and hold a license issued by the Washington state liquor control board.

(d) Except as provided in (c) of this subsection, alcoholic beverages may be possessed, sold, served, and consumed at joint facilities only under permits/licenses issued by the Washington state liquor control board and only as follows:

(i) Events at which alcohol is to be sold must be approved by the joint committee on facility use and an application to the committee must be accompanied by a request for written authorization under (e) or (f) of this subsection or proof that the seller holds an appropriate license; and

(ii) A university or college unit or an individual or organization applying for a permit/license must have obtained approval under (e) or (f) of this subsection; and

(iii) Sale, service, and consumption of alcohol is to be confined to specified room(s) or area(s) specified on the license or permit. Unopened containers may not be sold or served. No alcohol is permitted to be taken off-premises.

(e) Written authorization to apply for a special occasion license to sell alcoholic beverages at joint facilities must be obtained from the joint committee on facility use prior to applying for a special occasion license from the Washington state liquor control board. Authorization should be requested through the facilities use coordinator for the joint committee on facility use sufficiently in advance of the program to allow timely consideration. (Note: Some license applications must be filed with the Washington state liquor control board at least thirty days or more before the event.) Written authorization to apply for such license shall accompany the license application filed with the Washington state liquor control board.

(f) Written authorization to apply for a banquet permit to serve and consume alcoholic beverages at joint facilities must be obtained from the university chancellor or college president prior to applying for the permit from the Washington state liquor control board. Authorization should be requested sufficiently in advance of the program to allow timely consideration. Written authorization to apply for such permit shall accompany the permit application filed with the Washington state liquor control board.

(g) Consumption, possession, dispensation, or sale of alcohol is prohibited except for persons of legal age.

NEW SECTION

**WAC 478-137-060 Safety and liability.** (1) It is the responsibility of any person or organization requesting the use of joint facilities to comply with all applicable policies, procedures, rules and regulations of the institutions, and applicable local, state and federal laws, including but not limited to fire, health and safety regulations.

(2) Permission to an organization not affiliated with one of the institutions or to a registered or official student organization of the university or college for the use of joint facilities is granted with the express understanding and condition that such organization assumes full responsibility for any loss, damage or claims arising out of such use.

When the event involves physical activity, or otherwise will increase the risk of bodily injury above the level inherent in the facilities to be used, proof of appropriate liability insurance coverage with limits of at least one million dollars per occurrence must be provided to the state office of risk management before approval for the requested use will be granted.

**WSR 06-13-023  
PERMANENT RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 06-135—Filed June 13, 2006, 2:50 p.m., effective July 14, 2006]

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

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-12-144; and amending WAC 220-20-010, 220-55-160, 220-56-100, 220-56-122, 220-56-175, 232-12-001, and 232-12-619.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 06-10-090 on May 3, 2006.

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 3, Amended 7, Repealed 1.

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

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

Date Adopted: June 9, 2006.

Nancy Burkhart  
for Ron Ozment, Chair  
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 05-53, filed 3/30/05, effective 4/30/05)

**WAC 220-20-010 General provisions—Lawful and unlawful acts—Salmon, other (~~food~~) fish and shellfish.**

(1) It shall be unlawful to take, fish for, possess or transport for any purpose (~~food~~) fish, shellfish or parts thereof, in or from any of the waters or land over which the state of Washington has jurisdiction, or from the waters of the Pacific Ocean, except at the times, places and in the manners and for the species, quantities, sizes or sexes provided for in the regulations of the department.

(2) It shall be unlawful for any person to have in possession or under control or custody any food fish or shellfish within the land or water boundaries of the state of Washington, except in those areas which are open to commercial fishing or wherein the possession, control or custody of salmon or other food fish or shellfish for commercial purposes is made lawful under a statute of the state of Washington or the rules and regulations of the commission or director, unless otherwise provided.

(3) It shall be lawful to fish for, possess, process and otherwise deal in food fish and fish offal or scrap for any purpose, provided; that it shall be unlawful to use any of the following listed species for purposes other than human consumption or fishing bait:

Pacific halibut	<i>(Hippoglossus stenolepis)</i>
Pacific herring	<i>(Clupea harengus pallasi)</i>
(except as prescribed in WAC 220-49-020)	
Salmon	
Chinook	<i>(Oncorhynchus tshawytscha)</i>
Coho	<i>(Oncorhynchus kisutch)</i>
Chum	<i>(Oncorhynchus keta)</i>
Pink	<i>(Oncorhynchus gorbuscha)</i>
Sockeye	<i>(Oncorhynchus nerka)</i>
Masu	<i>(Oncorhynchus masu)</i>
Pilchard	<i>(Sardinops sagax)</i>
Except as provided for in WAC 220-88C-040	

(4) It shall be unlawful for any person to fish for (~~food~~) fish or shellfish while in possession in the field of (~~food~~) fish or shellfish that are in violation of the harvest regulations for the area being fished. This regulation does not apply to vessels in transit.

(5) It shall be unlawful for the owner or operator of any commercial food fish or shellfish gear to leave such gear unattended in waters of the state or offshore waters unless said gear is marked.

(a) Shellfish pot, bottom fish pot, set line and set net gear must be marked with a buoy to which shall be affixed in a visible and legible manner the department approved and registered buoy brand issued to the license, provided that:

(i) Buoys affixed to unattended gear must be visible on the surface of the water except during strong tidal flow or extreme weather conditions.



(ii) When two or more shellfish pots are attached to a common ground line the number of pots so attached must be clearly labeled on the required buoy.

(b) It is unlawful to operate any gill net, attended or unattended, unless there is affixed, within five feet of each end of the net, a buoy, float, or some other form of marker, visible on the corkline of the net, on which shall be marked in a visible, legible and permanent manner the name and gill net license number of the fisher.

(c) It shall be unlawful at any time to leave a gill net unattended in the commercial salmon fishery.

(6) It shall be unlawful to place any commercial food fish or shellfish gear in any waters closed to commercial fishing, provided; that this provision shall not apply to reef nets or brush weirs or to gear being tested under supervision of the department, provided further that it shall be unlawful to take, fish for or possess food fish with any type of commercial fishing gear in the waters of Carr Inlet north of north latitude 47°20' from August 15 through November 30 except as provided in chapter 220-47 WAC.

(7) It shall be unlawful for the owner or operator of any fishing gear to refuse to submit such gear to inspection in any manner specified by authorized representatives of the department.

(8) It shall be unlawful for any person taking or possessing ((~~food~~)) fish or shellfish taken from any of the waters or beaches of the Columbia River, the state of Washington or the Pacific Ocean for any purpose to fail to submit such ((~~food~~)) fish or shellfish for inspection by authorized representatives of the department.

(9) It shall be unlawful for any person licensed by the department to fail to make or return any report required by the department relative to the taking, selling, possessing, transporting, processing, freezing and storing of ((~~food~~)) fish or shellfish whether taken within the jurisdiction of the state of Washington or beyond or on Indian reservations or usual and accustomed Indian fishing grounds.

(10) It shall be unlawful to take, fish for or possess or to injure, kill or molest fish in any fishway, fish ladder, fish screen, holding pond, rearing pond, or other fish protective device, or to interfere in any manner with the proper operation of such fish protective devices.

(11) It shall be unlawful to club, gaff, shoot with firearm, crossbow, bow and arrow or compressed air gun, snag, snare, dip net, harass, spear, stone or otherwise molest, injure, kill or destroy any ((~~food~~)) fish or shellfish or parts thereof, or for any person to attempt to commit such acts, or to have any fish, shellfish or parts thereof so taken in possession, except as provided for in this subsection:

(a) It shall be lawful to use a dip net or club in the landing of ((~~food~~)) fish taken by personal-use angling unless otherwise provided and it shall be lawful to use a gaff in the landing of tuna, halibut and dogfish in all catch record card areas.

(b) It shall be lawful to use a dip net, gaff, or club in the landing of food fish or shellfish taken for commercial purposes, except that it is unlawful to use a fish pew, pitchfork, or any other instrument that will penetrate the body of the food fish or shellfish while sorting commercial catches during the act of discarding those fish that are not going to be retained.

(c) It shall be lawful to use a spear in underwater spear fishing as provided for in WAC 220-56-160.

(d) It shall be lawful to use a bow and arrow or spear to take carp as provided for in WAC 220-56-280.

(e) It shall be lawful to snag herring, smelt, anchovies, pilchard, sand lance, and squid when using forage fish jigger gear or squid jigs.

(f) It shall be lawful to shoot halibut when landing them with a dip net or gaff.

(12) It shall be unlawful to take or possess for any purpose any ((~~food~~)) fish or shellfish smaller than the lawful minimum size limits. Any such fish either snagged, hooked, netted or gilled must be immediately returned to the water with the least possible injury to the fish or shellfish and it shall be unlawful to allow undersized salmon entangled in commercial nets to pass through a power block or onto a power reel or drum.

(13) It shall be unlawful to possess aboard any vessel engaged in commercial fishing or having commercially caught fish aboard, any food fish or shellfish in such condition that its species, length, weight or sex cannot be determined if a species, length, weight, or sex limit is prescribed for said species and it is unlawful to possess food fish or shellfish mutilated in any manner such that the natural length or weight cannot be determined if a length or weight limit is prescribed for said species.

(14) It shall be unlawful in any area to use, operate or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department.

(15) It shall be unlawful for any permit holder to fail to comply with all provisions of any special permit or letter of approval issued to him under the authority of the director, or to perform any act not specifically authorized in said document or in the regulations of the commission or director.

(16) It shall be unlawful to use, place or cause to be placed in the waters or on the beaches or tidelands of the state any substance or chemical used for control of predators or pests affecting ((~~food~~)) fish or shellfish or other aquatic marine organisms, without first having obtained a special permit to do so from the director.

(17) It shall be unlawful to test commercial fishing gear except as follows:

(a) Bellingham Bay - inside and northerly of a line from Governor's Point to the south tip of Eliza Island to Point Frances in waters 10 fathoms and deeper.

(b) Boundary Bay - north of a line from Birch Point to Point Roberts and south of the international boundary in waters 10 fathoms and deeper during times not under IPSFC control.

(c) San Juan Channel - within a 1 mile radius of Point Caution during times not under IPSFC control.

(d) Port Angeles - inside and westerly of a line projected from the east tip of Ediz Hook through buoy C "1" to the mainland.

(e) Port Gardner - within a 2 mile radius of the entrance to Everett breakwater in waters 10 fathoms and deeper.

(f) Central Puget Sound - between lines from Meadow Point to Point Monroe and Skiff Point to West Point in waters 50 fathoms and deeper.

(g) East Pass - between lines from Point Robinson true east to the mainland and from Dash Point to Point Piner in waters 50 fathoms and deeper.

(h) Port Townsend - westerly of a line from the Coast Guard station in Port Townsend to Walan Point to Kala Point in waters 10 fathoms and deeper.

(i) All tows or sets are limited to 20 minutes exclusive of setting and retrieving time.

(j) All testing is to be accomplished between 8:00 a.m. and 4:00 p.m.

(k) Codends of trawl nets must be left open, all hooks of set line gear must be unbaited, and no lures or baited hooks shall be used with jig or troll gear.

(l) Any and all incidentally caught fish and shellfish must be returned to the waters immediately, and no fish or shellfish are to be retained aboard the vessel at any time during a gear test operation.

(m) It shall be unlawful for any person conducting such gear testing operations to fail to notify the fish and wildlife enforcement office in Olympia prior to testing.

(18) It is unlawful for any person or corporation either licensed by the department or bringing ~~((fish))~~ fish or shellfish into the state to fail to comply with the directions of authorized department personnel related to the collection of sampling data or material from ~~((fish))~~ fish or shellfish. It is also unlawful for any such person or corporation to fail to relinquish to the department, upon request, any part of a salmon or other ~~((fish))~~ fish containing coded-wire tags, including but not limited to, the snouts of those salmon that are marked by having clipped adipose fins.

(19) It is unlawful for any person to possess live bottom fish taken under a commercial fishery license.

(20) It is unlawful for any person to use chemical irritants to harvest fish, shellfish or unclassified marine invertebrates except as authorized by permit issued by the department.

AMENDATORY SECTION (Amending Order 99-13, filed 3/30/99, effective 5/1/99)

**WAC 220-55-160 Free fishing weekend.** The Saturday and Sunday following the first Monday in June is declared to be free fishing weekend in Washington. On this weekend a fishing license is not required for any person, regardless of age or residency, to fish for or possess fish and shellfish and a fish and wildlife lands vehicle use permit is not required to utilize department parking facilities except that it is unlawful to fish for or possess any species for which a catch record is required without a valid catch record card in possession. During free fishing weekend only the license and permit provided for in this section are affected, and all other rules including the catch record card requirement remain in effect.

AMENDATORY SECTION (Amending Order 06-23, filed 2/14/06, effective 5/1/06)

**WAC 220-56-100 Definitions—Personal-use fishing.** The following definitions apply to personal use fishing in Titles 220 and 232 WAC:

(1) "Anadromous game fish" means steelhead, searun cutthroat trout, and searun Dolly Varden/bull trout.

(2) "Bait" means any substance which attracts fish by scent or flavors. Bait includes any lure which uses scent or flavoring to attract fish.

~~((2))~~ (3) "Barbless hook" means a hook on which all barbs have been deleted when manufactured or filed off or pinched down.

~~((3))~~ (4) "Bow and arrow fishing" means any method of taking, or attempting to take, fish by the use of an arrow equipped with a barbed head and a line attached, and propelled by a bow, as in the sport of archery, while the fisher is above the surface of the water.

~~((4))~~ (5) "Buoy 10 line" means a true north-south line projected through Buoy 10 at the mouth of the Columbia River. "Buoy 10 fishery" means a fishery between a line in the Columbia River from Tongue Point in Oregon to Rocky Point in Washington and the Buoy 10 line.

~~((5))~~ (6) "Channel Marker 13 line" means a true north-south line through Grays Harbor Channel Marker 13.

~~((6))~~ (7) "Daily limit" means the maximum number or pounds of fish, shellfish, or seaweed of the required size of a given species or aggregate of species which a person may retain in a single day.

~~((7))~~ (8) "Fresh" means fish or shellfish that are refrigerated, iced, salted, or surface glazed.

~~((8))~~ (9) "Freshwater area" means:

(a) Within any freshwater river, lake, stream or pond.

(b) On the bank or within 10 yards of any freshwater river, lake, stream or pond.

(c) On or within any boat launch, ramp, or parking facility associated with any freshwater river, lake, stream or pond.

~~((9))~~ (10) "Frozen" means fish or shellfish that are hard frozen throughout.

~~((10))~~ (11) "Gaffing" means an effort to take fish by impaling the fish with a hook attached directly to a pole or other device.

~~((11))~~ (12) "Hatchery" when used to describe the difference between a hatchery fish and a nonhatchery fish, except salmon, means a fish having a clipped adipose fin or a clipped ventral fin with a healed scar at the location of the clipped fin. A hatchery salmon is a salmon having a clipped adipose fin and a healed scar at the location of the clipped fin, regardless of whether the fish is missing a ventral fin.

~~((12))~~ (13) "Hook" means one single point, double or treble hook. A "single point hook" means a hook having only one point. A "double hook" means a hook having two points on a common shank. A "treble hook" means a hook having three points on a common shank.

~~((13))~~ (14) "Hook and line" or "angling" shall be identical in meaning and, except as provided in WAC 220-56-115, shall be defined as the use of not more than one line with three hooks attached to a pole held in hand while landing fish, or the use of a hand operated line without rod or reel, to which may be attached not more than three hooks. When fishing for

bottom fish, "angling" and "jigging" shall be identical in meaning.

~~((14))~~ (15) "In the field or in transit" means at any place other than at the ordinary residence of the harvester. An ordinary residence is a residential dwelling where a person normally lives, with associated features such as address, telephone number, utility account, etc. A motor home or camper parked at a campsite or a vessel are not considered to be an ordinary residence.

~~((15))~~ (16) "Juvenile" means a person under fifteen year of age.

~~((16))~~ (17) "Lure" means a manufactured article constructed of feathers, hair, fiber, wood, metal, glass, cork, leather, rubber or plastic which does not use scent or flavoring to attract fish. "Nonbuoyant lure" means a lure complete with hooks, swivels or other attachments, which does not float in freshwater.

~~((17))~~ (18) "Night closure" means closed to fishing from one hour after official sunset to one hour before official sunrise.

~~((18))~~ (19) "Nonbuoyant lure restriction" means nonbuoyant lures, defined as lures with hooks and attachments (eyes, swivels, etc.), that do not have enough buoyancy to float in freshwater, may have only one single hook measuring not more than 3/4 inch point to shank. No weights may be attached below or less than twelve inches above a buoyant lure defined as a lure with hooks and attachments that has enough buoyancy to float in freshwater, and all hooks must be attached to or no more than three inches below a buoyant lure or within three inches of bait or a nonbuoyant lure. No hook may be attached to the line above a buoyant lure.

~~((19))~~ (20) "Possession limit" means the number of daily limits allowed to be retained in the field or in transit.

~~((20))~~ (21) "Processed" means fish or shellfish which have been processed by heat for human consumption as kippered, smoked, boiled, or canned.

~~((21))~~ (22) "~~(Seasonal wild)~~ Steelhead license year limit" means the maximum number of ~~(wild)~~ steelhead trout any one angler may retain from April 1st through the following March 31st.

~~((22))~~ (23) "Selective gear rules" means terminal fishing gear is limited to artificial flies with barbless single hooks or lures with barbless single hooks, bait is prohibited, and fishing from a floating device equipped with an internal combustion motor is prohibited unless otherwise provided. Up to three hooks may be used. Only knotless nets may be used to land fish. In waters under selective gear rules, fish may be released until the daily limit is retained.

~~((23))~~ (24) "Slough" means any swamp, marsh, bog, pond, side-channel, or backwater connected to a river by water. Waters called sloughs that are not connected to a river are considered lakes.

~~((24))~~ (25) "Snagging" means an effort to take fish with a hook and line in a manner that the fish does not take the hook or hooks voluntarily in its mouth.

~~((25))~~ (26) "Spearing" or "spear fishing" means an effort to take fish or shellfish by impaling the fish or shellfish on a shaft, arrow or other device.

~~((26))~~ (27) "Stationary gear restriction" means the line and weight and lure or bait must be moving while in the

water. The line and weight and lure or bait may not be stationary.

~~((27))~~ (28) "Steelhead" means searun rainbow trout over twenty inches in length.

(29) "Unmarked salmon" means a salmon with intact adipose and ventral fins.

~~((28))~~ (30) "Trout" means brown trout, bull trout, cutthroat trout, Dolly Varden, Eastern brook trout, golden trout, grayling, Kokanee (silver trout), lake trout, rainbow trout, tiger trout, and, in WAC 232-28-619, salmon from waters designated as "landlocked salmon rules apply."

(31) "Whitefish gear rules" means terminal fishing gear is restricted to one single hook, maximum hook size three-sixteenths inch point to shank (hook size 14), and bait is allowed. All species: Release all fish except whitefish.

~~((29))~~ (32) "Wild" when used to describe the difference between a hatchery fish and a nonhatchery fish, except salmon, means a fish with all fins intact.

~~((30))~~ (33) "Wild" when used to describe a salmon (chinook, coho, chum, pink or sockeye), means a salmon with an unclipped adipose fin, regardless of whether the fish is ventral fin-clipped. A salmon with a clipped adipose fin and a healed scar at the site of the clipped fin is not a wild salmon.

(34) "Wild cutthroat release" means it is unlawful to retain any cutthroat trout that does not have a clipped adipose fin and a healed scar at the location of the clipped fin.

(35) "Wild steelhead release" means it is unlawful to retain any steelhead that does not have a clipped adipose or ventral fin and a healed scar at the location of the clipped fin.

#### NEW SECTION

**WAC 220-56-107 Fishing hours.** (1) It is lawful to fish for food fish, game fish, and unclassified fish twenty-four hours per day during any open period for the species, except as otherwise provided. Unless otherwise provided, fishing seasons open at 12:01 a.m. on the first day and end at 11:59 p.m. on the last day of any season.

(2) It is unlawful to fish for the following species during the time periods indicated:

(a) It is unlawful to fish for salmon at night in the Hood-sport Hatchery zone as provided for in WAC 220-56-124.

(b) It is unlawful to fish for any species during night closures provided for in WAC 220-56-126 and 232-28-619.

(c) It is unlawful to fish for sturgeon in freshwater, except the Chehalis River, during the night closure provided for in WAC 220-56-282.

AMENDATORY SECTION (Amending Order 06-23, filed 2/14/06, effective 5/1/06)

**WAC 220-56-175 Catch record cards.** It is unlawful for any person to fail to comply with the catch record requirements as provided for in this section:

(1) In order to fish for or possess for personal use any crab, anadromous salmon, sturgeon, halibut, or steelhead, an angler must obtain and have in personal possession a valid appropriate catch record card as described in WAC 220-69-236 except for commercially caught salmon retained for personal use as provided for in WAC 220-20-016 and commer-

cially caught sturgeon retained for personal use as provided for in WAC 220-20-021. Notwithstanding the provisions of this subsection, a catch record card is not required for land-locked steelhead or for salmon in waters designated as "land-locked salmon rules apply" in WAC 232-28-619.

(2) Any angler, after obtaining a catch record card shall validate the catch record card by completely, accurately, and legibly completing all personal identification information in ink on the catch record card prior to detaching the catch record card from the underlying copy of the catch record card or, for automated licenses, affixing the appropriate validation sticker to the catch record card. A catch record card remains valid so long as there are one or more unfilled spaces available for the species being fished for, except:

(a) In the mainstem Columbia River downstream from where the river forms the common boundary between Oregon and Washington for sturgeon a catch record card remains valid when the sturgeon portion of the catch record card is filled. A person may not retain sturgeon after the sturgeon portion of the catch record card is filled.

(b) A second or subsequent catch record card is invalid for retention of sturgeon.

(3) Immediately upon catching and possessing a salmon, steelhead, sturgeon or halibut, the angler shall enter in ink in the appropriate space the place, date of catch, species (catch type), for sturgeon, length, for halibut, vessel type and for salmon, whether or not the fish was marked.

(4) Immediately upon retaining a Dungeness crab aboard a vessel or on the shore, the fisher must enter in ink in the appropriate space the place and date of catch, fishery type and enter a tally mark for each Dungeness crab retained from each catch record card area fished. At the end of the fishing day, the fisher shall enter the total number of crab tally marks for each fishery type.

(5) Every person possessing a catch record card shall by April 30 of the year following the year printed on the card return such card to the department of fish and wildlife.

(6) Any person possessing a catch record card shall, upon demand of any law enforcement officer or authorized department employee, exhibit said card to such officer or employee for inspection.

(7) A catch record card shall not be transferred, borrowed, altered, or loaned to another person.

**NEW SECTION**

**WAC 220-56-500 Game fish seasons.** It is unlawful to fish for game fish except during open seasons or open time periods.

(1) Freshwater lakes, ponds and reservoirs: Open year round except as provided for in WAC 232-28-619.

(2) Freshwater rivers, streams and beaver ponds: Open June 1 through October 31 except as provided for in WAC 232-28-619.

(3) Saltwater (all waters downstream and seaward of the mouths of rivers and streams generally defined in WAC 220-16-245 and specifically defined in WAC 220-56-105): Open year round, except:

(a) Lake Washington Ship Canal - Those waters of Area 10 west of the Lake Washington Ship Canal to a north-south

line 175 feet west of the Burlington-Northern Railroad Bridge are closed waters.

(b) Toliva Shoal - Waters within 500 yards of the Toliva Shoal buoy are closed waters from June 16 through April 30.

(c) Freshwater Bay - Waters south of a line from Angeles Point westerly to Observatory Point are closed July 1 through August 31.

(d) Tulalip Bay - Waters of Tulalip Bay east of a line from Hermosa Point to Mission Point are closed waters.

**NEW SECTION**

**WAC 220-56-510 Game fish possession limits and size limits.** It is unlawful to retain or possess game fish taken in excess of the daily, possession, or license year possession limits, or game fish that do not conform to the size limits provided for in this section, unless otherwise provided for in WAC 232-28-619.

(1) Daily game fish possession and size limits:

Species	Daily limit	Size limits
Bass	5	Release bass 12 to 17 inches in length. Not more than 1 bass 17 inches in length or greater may be retained.
Burbot	5	No size restriction.
Channel catfish	5	No size restriction.
Eastern brook trout	Count as part of the 5 trout daily limit in lakes, ponds and reservoirs.	No size restriction.
	Bonus limit in rivers, streams and beaver ponds. Up to 5 trout including Eastern brook trout may be retained, but not more than 2 of which may be trout other than Eastern brook trout.	No size restriction.
Grass carp	Unlawful to retain.	Not applicable.
Trout (except Eastern brook trout)	5 from lakes, ponds and reservoirs.	No size restriction.
	2 from rivers, streams, and beaver ponds.	8-inch minimum size.

Species	Daily limit	Size limits
	The daily trout limit is 5 trout, regardless of origin, of which not more than 2 may be steelhead.	
Walleye	5	16-inch minimum size. Not more than 1 walleye greater than 22 inches in length may be retained.
Whitefish	15	No size restriction.
All other game fish	No limit.	No size restriction.

(2) Possession limit: The game fish possession limit in the field is two daily limits in fresh, frozen or processed form.

(3) Wild steelhead and Dolly Varden/bull trout: Except as provided for in this section and WAC 232-28-619, it is unlawful to retain wild steelhead or Dolly Varden.

(4) Wild steelhead license year limit: From waters in which wild steelhead may be taken as provided for in WAC 232-28-619, the license year limit is one wild steelhead.

(5) Total steelhead license year limit: The license year limit is thirty steelhead in total.

(6) Saltwater game fish retention: Game fish taken in saltwater may not be retained, except that up to two hatchery steelhead per day may be retained.

AMENDATORY SECTION (Amending Order 01-69, filed 4/26/01, effective 5/27/01)

**WAC 232-12-001 Definition of terms.** Definitions used in rules of the commission are defined in RCW 77.08.-010. In addition, unless otherwise provided:

(1) A "valid" license, permit, tag, stamp or catch record card means a license, permit, tag, stamp, or catch record card that was issued to the bearer for the current season and is required to hunt, fish or possess wildlife and has not been altered except as provided by rule of the commission.

(2) "Falconry" means possession, control, or use of a raptor for the purpose of hunting and free flight training.

(3) ("~~Anadromous game fish~~" means:

(a) ~~Steelhead trout, *Oncorhynchus mykiss*, defined as any searun rainbow trout over twenty inches in length~~

(b) ~~Searun cutthroat, *Oncorhynchus clarkii*~~

(c) ~~Searun Dolly Varden, *Salvelinus malma*~~

(4)) "Handgun" means any pistol, revolver or short fire-arm with a barrel length of less than sixteen inches and does not have a shoulder stock.

((5)) (4) "Body-gripping trap" means a trap that grips an animal's body or body part. Body-gripping trap includes, but is not limited to, steel-jawed leghold traps, padded-jaw leghold traps, Conibear-type traps, neck snares, and non-strangling foot snares. Cage and box traps, suitcase-type live beaver traps, and common rat and mouse traps are not considered body-gripping traps.

((6)) (5) "Raw fur" means a pelt that has not been processed for purposes of retail sale.

((7)) (6) "Padded foot-hold trap" means a trap designed and set to grip the foot of a wild animal, both jaws of which are covered with rubber pads having a minimum thickness of one-eighth inch.

AMENDATORY SECTION (Amending Order 06-23, filed 2/14/06, effective 5/1/06)

**WAC 232-12-619 (~~Permanent Washington state-wide game fish rules~~) Bullfrogs.** ((The following statewide rules apply to all waters unless modified under regional regulation exceptions:

(1) ~~Fishing seasons open at 12:01 a.m. on the first day and close at 11:59 p.m. on the last day and fishing is allowed 24 hours per day.~~

(2)) It is unlawful to((:

(a) ~~Use a gaff hook to land game fish.~~

(b)) ~~take bullfrogs except by angling, hand dip netting, spearing (gigging) or with bow and arrow. There is no daily limit on the number of bullfrogs that may be taken, no possession limit, and no size restrictions.~~

((c) ~~Feed or use any substance to attract game fish unless specifically authorized by special regulations.~~

(d) ~~Fish for game fish with a bow and arrow or spear.~~

(e) ~~Possess fish which are under the minimum size or over the maximum size as shown in general or exceptions to state-wide rules.~~

(3) ~~Seasonal steelhead limit: Each angler who possesses a valid steelhead catch record card may not retain more than thirty steelhead April 1st through the following March 31st of which no more than one may be a wild steelhead from waters in which wild steelhead retention is allowed.~~

(4) ~~Military personnel, regardless of the length of time in the state of Washington, who are permanently stationed at a military installation within the state, are entitled to purchase a resident license. Military personnel must have a license to fish for game fish anywhere in the state. Dependents must establish a ninety-day residency.~~

(5) ~~Wild cutthroat release: In waters requiring a wild cutthroat release, it is unlawful to possess any cutthroat that does not have a clipped adipose fin and a healed sear in the location of the clipped fin.~~

(6) ~~Wild steelhead release: In waters requiring wild steelhead release, it is unlawful to possess any steelhead trout that does not have a clipped adipose or ventral fin and a healed sear at the location of the clipped fin.~~

(7) ~~Free fishing weekend: The Saturday and Sunday following the first Monday in June is declared as free fishing weekend in Washington. On this weekend a fishing license is not required for any person, regardless of residency or age, to fish for or possess game fish and a fish and wildlife lands vehicle use permit is not required to utilize department parking facilities, except that it is unlawful to fish for or possess steelhead trout without the required catch record card. During free fishing weekend only the licensing requirement is affected, and all other rules remain in effect.~~

(8) ~~Fish taken with artificial flies and lures: Where use of bait is prohibited, or where artificial flies or lures are used~~

voluntarily, fish may be released until the daily limit is retained. If any fish has swallowed the hook or is hooked in the gill, eye or tongue, it should be kept if legal to do so.

~~(9) Rainbow trout taken from landlocked lakes: Rainbow trout taken from landlocked lakes shall not be considered steelhead and no catch record card is required.~~

~~(10) open seasons:~~

~~LAKES, PONDS, AND RESERVOIRS: YEAR AROUND, unless specified otherwise under exceptions to state-wide rules.~~

~~RIVERS, STREAMS AND BEAVER PONDS: JUNE 1 THROUGH OCTOBER 31, unless specified otherwise under exceptions to state-wide rules.~~

~~Note: The date set for "traditional" April openers for Lakes, Ponds, and Reservoirs for this year and future years is the last Saturday in April.~~

~~(11) Daily limits and minimum sizes:~~

GAME FISH SPECIES	DAILY LIMIT	MINIMUM SIZE LIMIT
BASS	Five—release bass greater than twelve but less than seventeen inches in length, only one over seventeen inches may be retained. Bass may be caught, retained, and released alive from a livewell until a daily limit is in possession.	None

GRASS CARP.... It is unlawful to fish for or retain grass carp.		
TROUT (except Eastern Brook trout)	A total of five trout, of which no more than two may be from Rivers, Streams, and Beaver Ponds.	None in Lakes, Ponds, and Reservoirs.
	No more than two of the trout daily catch limit of 5 may be Steelhead.	Eight inches in Rivers, Streams, and Beaver Ponds.

GAME FISH SPECIES	DAILY LIMIT	MINIMUM SIZE LIMIT
EASTERN BROOK TROUT (Salvelinus fontinalis)	Five—to be considered part of the trout daily catch limit.	None

Counts as a bonus limit in rivers, streams and beaver ponds. Total of five fish, including brook trout, in these waters:

BURBOT	Five	None
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CHANNEL CATFISH	Five	None
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(a) The following game fish species are managed as trout:

- Eastern brook trout
- Brown trout
- Cutthroat trout
- Dolly Varden/Bull trout
- Golden trout
- Grayling
- Kokanee/Silver trout
- Lake trout
- Landlocked Atlantic salmon
- Rainbow trout/Steelhead
- Landlocked chinook and coho
- Tiger trout

(b) Wild steelhead release is required year round, except as provided in exceptions to statewide rules.

(c) All waters, statewide, are closed year around to fishing for or retaining Dolly Varden/Bull Trout.

Where exceptions to the above closure for Dolly Varden/Bull Trout occur under individual listings in the exceptions to statewide rules, Dolly Varden/Bull Trout count as part of the combined trout daily limit of five.

GAME FISH SPECIES	DAILY LIMIT	MINIMUM SIZE LIMIT
WALLEYE	Five, not more than one over twenty-two inches. Walleye may be caught, retained, and released alive from a livewell until a daily limit is in possession.	Sixteen inches

WHITEFISH	Fifteen	None
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GAME FISH SPECIES	DAILY LIMIT	MINIMUM SIZE LIMIT
ALL OTHER GAME FISH	No Limit	None
BULLFROGS	No Limit	None

~~(12) Daily wild steelhead limit: It is unlawful for any person to retain more than one wild steelhead per day from those waters in which wild steelhead retention is allowed.~~

~~(13) Possession limit. Except as otherwise provided, the possession limit is two daily limits in fresh, frozen or processed form.~~

~~(14) Marine waters rules: These rules apply to all marine waters contained within the boundaries of Washington state, within Puget Sound, Hood Canal, the Strait of Juan de Fuca, the San Juan Islands, the Strait of Georgia, and the Pacific Ocean, including estuaries (river mouths) from salt water upstream to a line between the outermost headlands measured at the highest high tide (usually the debris line furthest inshore on surrounding beaches), unless otherwise described under area regulations (see individual areas, below):~~

~~(a) Fishing hours: Twenty-four hours per day year around except:~~

~~(i) Lake Washington Ship Canal—Those waters of Area 10 west of the Lake Washington Ship Canal to a north-south line 175 feet west of the Burlington-Northern Railroad Bridge are closed waters.~~

~~(ii) Toliva Shoal—Waters within 500 yards of the Toliva Shoal buoy are closed waters from June 16 through April 30.~~

~~(iii) Freshwater Bay—Waters south of a line from Angeles Point westerly to Observatory Point are closed July 1 through August 31.~~

~~(iv) Tulalip Bay—Waters of Tulalip Bay east of a line from Hermosa Point to Mission Point are closed waters.~~

~~(b) License requirements: A valid current Washington state department of fish and wildlife saltwater license, and, if appropriate, a sport catch record card, is required to fish for game fish including steelhead in marine waters. All steelhead taken from marine areas shall be entered on the catch record card using the words Marine Area and followed by the appropriate marine area code number.~~

~~(c) Gear restrictions: Angling gear only. In all areas, underwater spearfishing, spearing, gaffing, clubbing, netting, or trapping game fish is unlawful.~~

~~(d) All species: Release all fish except up to two hatchery steelhead may be retained per day.)~~

**AMENDATORY SECTION** (Amending Order 06-67, filed 4/11/06, effective 5/12/06)

**WAC 220-56-122 Statewide bait rules.** (1) It is unlawful to fish for sturgeon except with bait.

(2) It is unlawful to use lamprey as fishing bait, regardless of the source or species of lamprey.

(3) It is lawful to use bait in saltwater, and it is unlawful to use terminal gear other than bait suspended above the bottom by a float in the East Duwamish waterway between a line projected east along the path of southwest Hanford Street and a line projected east from the south tip of Harbor Island.

(4) It is unlawful to chum, broadcast, feed, or distribute into freshwater any bait or other substance capable of attracting fish unless specifically authorized in exceptions to statewide rules.

(5) When fishing for trout with bait, all trout that are lawful to possess and are equal to or greater than the minimum size are counted as part of the daily limit, whether kept or released, and it is unlawful to continue to fish once the daily limit has been achieved, except that steelhead trout may be caught and released until the daily limit is taken.

(6) It is unlawful to use live fish as bait to fish for game fish.

(7) Use of bait in violation of this section is an infraction, punishable under RCW 77.15.160.

~~((7)) (8) It is unlawful to possess fish taken with bait in violation of the provisions of this section. Possession of fish while using bait in violation of the provisions of this section is a rebuttable presumption that the fish were taken with such bait. Violation of this subsection is punishable under RCW 77.15.380 Unlawful recreational fishing in the second degree—Penalty, unless the fish are taken in the amounts or manner to constitute a violation of RCW 77.15.370 Unlawful recreational fishing in the first degree—Penalty.~~

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 232-12-144 Possession of live fish for bait while fishing.

**WSR 06-13-024  
PERMANENT RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 06-134—Filed June 13, 2006, 2:51 p.m., effective July 14, 2006]

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

Purpose: Amend sturgeon size limit rule.

Citation of Existing Rules Affected by this Order: Amending WAC 220-20-020.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 06-10-086 on May 3, 2006.

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 Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 9, 2006.

Nancy Burkhart  
for Ron Ozment, Chair  
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 06-39, filed 3/9/06, effective 4/9/06)

**WAC 220-20-020 General provisions—Lawful and unlawful acts—Food fish other than salmon.** (1) It is unlawful to fish for or possess for commercial purposes any round, undressed (~~(white)~~) sturgeon less than 48 inches or greater than 60 inches in length (~~(or any round, undressed green sturgeon less than 48 inches or greater than 66 inches in length)~~).

(2) It is unlawful to fish for or possess for commercial purposes or possess aboard a commercial fishing vessel for any purpose any species of halibut (*Hippoglossus*) unless permitted by the current regulations of the International Pacific Halibut Commission.

(3) It is unlawful to fish for or possess for commercial purposes sturgeon taken from any of the waters of Puget Sound or tributaries, and any sturgeon taken with any type of commercial gear incidental to a lawful fishery shall immediately be returned to the water unharmed.

(4) It is unlawful to fish for food fish for commercial purposes in the waters of Shilshole Bay inland and inside a line projected in a southwesterly direction from Meadow Point to West Point.

(5) It is unlawful to fish for or possess for commercial purposes any starry flounder less than 14 inches in length taken by any commercial gear, in all Puget Sound Marine Fish-Shellfish Areas.

(6) It shall be unlawful to harvest herring eggs naturally deposited on marine vegetation or other substrate, unless a person has a permit issued by the director.

(7) It is unlawful to fish for or possess carp taken for commercial purposes except as authorized by written permit from the director, except that carp taken incidental to a commercial fishery for other species may be retained for commercial purposes. Failure to comply with the provisions of the carp permit constitutes unlawful use of the carp commercial fishery license

(8) It is unlawful to fin sharks in Washington state waters, and it is unlawful to possess shark fins in the field unless the carcass of the shark is retained, except that once a commercially taken shark carcass has been delivered to a licensed wholesale dealer or a person acting in that capacity, and the sale of the shark has been recorded on a fish receiving ticket, the shark fins need not be retained with the shark carcass.

**WSR 06-13-028**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Residential Care Services)

[Filed June 13, 2006, 4:26 p.m., effective July 14, 2006]

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

Purpose: The department's residential care services is amending the definitions of "adult day services" and "nonresident individual" in WAC 388-78A-2020 to be consistent with RCW 18.20.020 as amended by ESSB 6391 (chapter 242, Laws of 2006). The rule clarifies, consistent with statute, that licensed boarding homes may provide adult day services, limited to a period not to exceed ten continuous hours and not involving an overnight stay.

Citation of Existing Rules Affected by this Order: Amending WAC 388-78A-2020.

Statutory Authority for Adoption: RCW 18.20.090.

Other Authority: Chapter 242, Laws of 2006.

Adopted under notice filed as WSR 06-10-032 on April 27, 2006.

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: June 8, 2006.

Andy Fernando, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

**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 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 services"** means care and services provided to a nonresident individual((s)) by the boarding home on the boarding home premises, for a period of ((less than twenty-four)) time not to exceed ten 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 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 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)~~. A nonresident individual may not receive domiciliary care as defined in this section, directly or indirectly by the ~~(facility)~~ boarding home, 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, except during the time the person is receiving adult day services 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 or adjacent 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.

**WSR 06-13-034**  
**PERMANENT RULES**  
**DEPARTMENT OF REVENUE**

[Filed June 14, 2006, 4:34 p.m., effective July 15, 2006]

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

Purpose: The department has amended these rules to incorporate changes in legislation that have occurred since the rules were last adopted. These rules have also been amended to provide clearer guidance for assessors, board members, and taxpayers, based on experience with the existing rules over the past few years. This rule making brings these rules into conformity with current law and provide guidance to assessors, board members, and taxpayers with respect to the operation of the boards.

Citation of Existing Rules Affected by this Order: Amending WAC 458-14-005 Definitions, 458-14-015 Jurisdiction of county boards of equalization, 458-14-025 Assessment roll adjustments not requiring board action, 458-14-026 Assessment roll corrections agreed to by taxpayer, 458-14-046 Regularly convened session—Board duties—Presumption—Equalization to revaluation year, 458-14-056 Petitions—Time limits—Waiver of filing deadline for good cause, 458-14-066 Requests for valuation information—Duty to exchange documentary information—Time limits, 458-14-076 Hearings on petitions—~~Withdrawal~~, 458-14-095 Record of hearings, 458-14-116 Orders of the board—Notice of value adjustment—Effective date, 458-14-127 Reconvened boards—Authority, 458-14-136 Hearing examiners, 458-14-160 Continuances—Ex parte contact, and 458-14-170 Appeals to the state board of tax appeals.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, and 84.48.200.

Adopted under notice filed as WSR 06-05-036 on February 8, 2006.

Changes Other than Editing from Proposed to Adopted Version: WAC 458-14-015 has been changed to add to subsection (1)(f). This new wording indicates that, because of new legislation, boards of equalization have jurisdiction to hear appeals from an assessor's determination regarding the increase in value attributable to the installation of an automatic sprinkler system in a nightclub.

WAC 458-14-056 (2)(b)(ii) is changed to strike the word "thirty" and add "allowed in subsection (2) of this section." This change brings the rule into compliance with a legislative change.

WAC 458-14-056(6) deletes the new language in the last part of the subsection, as published. (New wording addressing the same issues is inserted in WAC 458-14-127.)

Proposed new language in WAC 458-14-066 (5)(b)(ii) is deleted from the version as published.

WAC 458-14-076(3) changed the proposed new wording from "the seller or transferor may continue to pursue the appeal unless otherwise agreed in writing between the parties. If the seller or transferor does not pursue the appeal..." to "either the seller/transferor or the buyer/transferee, or both, may continue to pursue the appeal if they can show the board that they have a personal stake in the outcome of the case." This change clarifies the rights of parties when property is sold or transferred after a petition has been timely filed.

WAC 458-14-127 adds a new subsection (3) that addresses the issues previously addressed in WAC 458-14-056(6) as noted above. The new subsection allows the local board to reconvene on its own authority in situations involving late decisions by a local board, when there was no change of value in an intervening year.

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 14, 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 14, Repealed 0.

Date Adopted: June 14, 2006.

Janis P. Bianchi, Manager  
 Interpretations and Technical Advice Unit

AMENDATORY SECTION (Amending WSR 95-17-099, filed 8/23/95, effective 9/23/95)

**WAC 458-14-005 Definitions.** The following definitions (~~shall~~) apply to chapter 458-14 WAC:

(1) "Alternate member" means a board member appointed by the county legislative authority to serve in the temporary absence of a regular board member.

(2) "Arm's length transaction" means a transaction between parties under no duress, not motivated by special purposes, and unaffected by personal or economic relationships between themselves, both seeking to maximize their positions from the transaction.

(3) "Assessed value" means the value of real or personal property determined by an assessor.

(4) "Assessment roll" means the record which contains the assessed values of property in the county.

(5) "Assessment year" means the calendar year when the property is listed and valued by the assessor and precedes the calendar year when the tax is due and payable.

(6) "Assessor" means a county assessor or any person authorized to act on behalf of the assessor.

(7) "Board" means a county board of equalization.

(8) "County financial authority" means the county treasurer or any other person in a county responsible for billing and collecting property taxes.

(9) "County legislative authority" means the board of county commissioners or the county legislative body as established under a home rule charter.

(10) "Department" means the department of revenue.

(11) "Documentary evidence" means comparable sales data, cost data, income data, or any other item of evidence, including maps or photographs, which (~~supports value~~) makes the existence of relevant facts more or less probable.

(12) "Equalize" means ensuring that comparable properties are comparably valued and refers to the process by which the county board of equalization reviews the valuation of real and personal property on the assessment roll as returned by the assessor, so that each tract or lot of real property and each article or class of personal property is entered on the assessment roll at one hundred percent of its true and fair value.

(13) "Interim member" means a board member appointed by the county legislative authority to fill a vacancy caused by the resignation or permanent incapacity of a regular board member. ~~((Such))~~ The interim member shall serve for the balance of the regular board member's term.

(14) "Manifest error" means an error in listing or assessment, which does not involve a revaluation of property, including the following:

- (a) An error in the legal description;
- (b) A clerical or posting error;
- (c) Double assessments;
- (d) Misapplication of statistical data;
- (e) Incorrect characteristic data;
- (f) Incorrect placement of improvements;
- (g) Erroneous measurements;
- (h) The assessment of property exempted by law from taxation;
- (i) The failure to deduct the exemption allowed by law to the head of a family; or
- (j) Any other error which can be corrected by reference to the records and valuation methods applied to similarly situated properties, without exercising appraisal judgment.

(15) "Market value" means the amount of money a buyer of property willing but not obligated to buy would pay a seller of property willing but not obligated to sell, taking into consideration all uses to which the property is adapted and might in reason be applied. True and fair value is the same as market value or fair market value.

(16) "May" as used in this chapter is expressly intended to be permissive.

(17) "Member" means a regular member of a board.

(18) "Reconvene" refers to the board's limited power to meet to equalize assessments in the current assessment year after the board's regularly convened session is adjourned, or to meet to hear matters concerning prior years.

(19) "Regularly convened session" means the statutorily mandated twenty-eight day period commencing annually on July 15, or the first business day following July 15 if it should fall on a Saturday, Sunday, or holiday.

(20) "Revaluation" means a change in value of property based upon an exercise of appraisal judgment.

(21) "Shall" as used in this chapter, unless the context indicates otherwise, is expressly intended to be mandatory.

(22) "Taxpayer" means the person or entity whose name and address appears on the assessment rolls, or their duly authorized agent, personal representative, or guardian. "Taxpayer" also includes the person or entity whose name and address should appear on the assessment rolls as the owner of the property, but because of mistake, delay, or inadvertence does not so appear; for example, in an instance when the rolls have not yet been updated after a transfer of property. A property owner may contract with a lessee for the purpose of making the lessee responsible for the payment of the property tax

and ~~((such))~~ the lessee may be deemed to be a taxpayer solely for the purpose of pursuing property tax appeals in his or her own name. If ~~((such))~~ the contract is made, the lessee shall be responsible for providing the county assessor with a proper and current mailing address.

(23) "Tax year" means the calendar year when property taxes are due and payable.

AMENDATORY SECTION (Amending WSR 95-17-099, filed 8/23/95, effective 9/23/95)

**WAC 458-14-015 Jurisdiction of county boards of equalization.** (1) Boards have jurisdiction to hear all appeals as may be authorized by statute, including the following types of appeals:

(a) ~~((Appeals of exemption denials arising under RCW 35.21.755 (public corporations):~~

~~((b)))~~ Appeals for a change in appraised value when the department establishes taxable rent under ~~((RCW 82.29A-020 (2)(b)))~~ chapter 82.29A RCW (leasehold excise tax) based on an appraisal done by the county assessor at the request of the department.

(b) Appeals of assessor determinations related to cancellation of exemption pursuant to RCW 84.14.110 (multiple unit dwellings in urban centers).

(c) Appeals of decisions or disputes pursuant to RCW 84.26.130 (historic property).

(d) Forest land ~~((determinations pursuant to RCW 84.33.116, 84.33.118, 84.33.120;))~~ application denial under RCW 84.33.130, and forest land removal under RCW 84.33.140 ~~((including an appeal of an assessor's refusal to classify land as forest land under RCW 84.33.120)).~~

(e) Current use determinations pursuant to RCW 84.34.035, denial of application for farm and agricultural land, and RCW 84.34.108 ~~((and 84.34.035)), removal from current use classification and appeal of new assessed valuation upon removal of current use classification.~~

(f) Determinations pursuant to RCW 84.36.660 (special property tax exemption for increase in value attributable to the installation of an automatic sprinkler system in a night-club).

(g) Appeals pursuant to RCW 84.36.385 (senior citizen exemption denials).

~~((g)))~~ (h) Appeals pursuant to RCW 84.36.812 (assessed value upon which additional tax is based, upon cessation of exempt use).

~~((h)))~~ (i) Determinations pursuant to RCW 84.38.040 (property tax deferrals).

~~((i)))~~ (j) Determinations pursuant to RCW 84.40.039 (valuation reduction after government restriction).

(k) Determinations pursuant to RCW 84.40.085 (omitted property or value).

~~((k)))~~ (l) Valuation appeals of taxpayers pursuant to RCW 84.48.010.

~~((l)))~~ (m) Appeal from a decision of the assessor relative to a claim for either real or personal property tax exemption, pursuant to RCW 84.48.010.

~~((m)))~~ (n) Determinations pursuant to RCW 84.48.065 (cancellation or correction of manifest error) when the can-

cellation or correction results in a change on the assessment or tax roll.

(o) Destroyed property appeals pursuant to RCW 84.70.010.

(2) Boards have jurisdiction to equalize property values on their own initiative pursuant to RCW 84.48.010, in accordance with WAC 458-14-046.

**AMENDATORY SECTION** (Amending WSR 93-08-050, filed 4/2/93, effective 5/3/93)

**WAC 458-14-025 Assessment roll (~~corrections~~) adjustments not requiring board action.** (1) Introduction. The board need not be involved in all determinations made by an assessor relative to property tax matters, but may become involved in instances when a taxpayer appeals from an assessor's determination.

(2) Statutorily required (~~corrections~~) adjustments to the assessment rolls (~~shall~~) must be made by the assessor as necessary and (~~shall~~) do not require any board action. Such (~~corrections~~) adjustments include:

(a) Change of tax status due to a sale to or by a public (~~corporation~~) entity;

(b) The removal, addition, or change of status of a senior citizens/disabled exemption;

(c) The removal, addition, or change of status of a current use (~~assessment~~) classification;

(d) The removal, addition, or change of status of forest land (~~classification or~~) designation;

(e) The reduction of property value with respect to destroyed property;

(f) The removal, addition, or change of status of a special valuation assessment (chapters 84.14 and 84.26 RCW);

(g) The exemption with respect to physical improvements to a single family dwelling (RCW 84.36.400);

(h) The change of status of property determined to be exempt by the department;

(i) (~~The change of status of property owned by a public corporation, commission or authority, based on use (RCW 35.21.755); and~~

(j)) The exemption of a sprinkler system installed in a nightclub (RCW 84.36.660);

(j) Valuation reduction after adoption of government restriction (RCW 84.40.039); and

(k) The cancellation or correction of assessment rolls which assessments are manifestly erroneous (RCW 84.48.-065).

(3) Notice of any of the above changes, except for subsection (2)(h) of this section, (~~shall~~) must be (~~personally served upon the taxpayer, or~~) mailed to the taxpayer by the assessor, and (~~shall~~) must notify the taxpayer of the right to appeal the change to the board and (~~shall~~) must notify the taxpayer of the time period in which to file his or her petition.

**AMENDATORY SECTION** (Amending WSR 93-08-050, filed 4/2/93, effective 5/3/93)

**WAC 458-14-026 Assessment roll corrections agreed to by taxpayer.** (1) The assessor (~~shall~~) must make a correction to the assessment roll for the current assessment year when the correction involves an error in the determination of

the valuation of property and the following conditions are met:

(a) The assessment roll has previously been certified in accordance with RCW 84.40.320;

(b) The taxpayer has timely filed a completed petition with the board for the current assessment year;

(c) The board has not yet held a hearing on the merits of the taxpayer's petition; and

(d) The assessor and taxpayer have signed an agreement as to the true and fair value of the taxpayer's property in which agreement the parties set forth the valuation information which was used to establish (~~such~~) the true and fair value. The true and fair value (~~shall~~) must be the value as of January 1 of the year in which the property was last revalued by the assessor according to a revaluation cycle approved by the department. For example, if the county is on a (~~multi-year~~) four-year revaluation cycle, and the taxpayer's property was last revalued in (~~1990~~) 2005, any agreement between the taxpayer and the assessor based on an appeal by the taxpayer in (~~1992~~) 2007, must use the true and fair value of the taxpayer's property in (~~1990~~) 2005 as the basis of the agreement. The value thus agreed to will, in this example, only apply to the (~~1992~~) 2007 assessment year (the assessment year for which the taxpayer timely filed his or her appeal) and thereafter until the taxpayer's property is again revalued in accordance with an approved revaluation cycle.

(2) The assessor (~~shall~~) must immediately notify the board of any corrections to the assessment roll made in accordance with subsection (1) of this section, with a copy of the notification provided to the taxpayer, and the taxpayer's petition shall be deemed withdrawn as of the date of notification to the board.

**AMENDATORY SECTION** (Amending WSR 90-23-097, filed 11/21/90, effective 12/22/90)

**WAC 458-14-046 Regularly convened session—Board duties—Presumption—Equalization to revaluation year.** (1) RCW 84.48.010 requires the board to meet annually beginning July 15th for the purpose of equalizing property values in the county and to hear taxpayer appeals. The board (~~shall~~) must remain in session not less than three days, nor more than twenty-eight days, provided that the board, with the approval of the county legislative authority may convene at any time when taxpayer petitions filed exceed twenty-five or ten percent of the number of petitions filed in the preceding year, whichever is greater. It is only during this twenty-eight day session that the board has the authority to equalize property values on its own initiative.

(2) At its regularly convened session, the board (~~shall~~) must adjust the current assessment year's value of property, both real and personal, to its true and fair value, but only if the board finds that the assessed value is not correct based upon:

(a) Information available to the board and/or the board's own examination and comparison of the assessment roll; or

(b) A request by the assessor, together with necessary valuation information, for correction of an error which correction requires (~~some~~) appraisal judgment.

(3) The board ~~((shall))~~ must also hold hearings in accordance with WAC 458-14-076 on properly and timely filed taxpayer petitions.

(4) The assessor's valuation ~~((shall be))~~ as certified to the board of equalization under RCW 84.40.320 is presumed correct, except with respect to subsection (2)(b) of this section~~(; unless the board has clear, cogent, and convincing evidence that the valuation is grossly inequitable and palpably excessive or that the valuation was made on a fundamentally wrong basis))~~. The taxpayer may overcome the presumption of correctness in favor of the assessor's valuation as follows:

(a) If a taxpayer shows by clear, cogent, and convincing evidence that the assessor's overall approach to valuation, or the assessor's valuation method, is flawed or invalid, then the presumption does not apply. For example, the taxpayer may be able to prove that the assessor failed to deduct any amount for depreciation when using the cost approach to value on an existing improvement. In such a case, the taxpayer only needs to prove the correct value of the property by a preponderance of the evidence.

(b) If a taxpayer shows by clear, cogent, and convincing evidence that a specific value within an overall assessed value is incorrect, then the standard of proof shifts to preponderance of the evidence for all contested issues related to that specific value. For example, the overall assessment of complex industrial properties is often made up of particular values for portions of the property being appraised. An assessor's error on one value decision does not necessarily invalidate the entire property's assessment, and the presumption of correctness in favor of the assessor remains with respect to the remainder of the property.

(5) In counties which are not on an annual revaluation cycle, the board ~~((shall))~~ must, in relation to a taxpayer appeal or otherwise, equalize real property values to true and fair value as of January 1 of the year in which the property was last revalued by the county assessor according to an approved revaluation cycle.

(6) The board ~~((shall))~~ must also consider any taxpayer appeals from an assessor's decision with respect to tax exemption of real or personal property, and determine:

- (a) If the taxpayer is entitled to an exemption; and
- (b) If so, the amount thereof.

**AMENDATORY SECTION** (Amending WSR 95-17-099, filed 8/23/95, effective 9/23/95)

**WAC 458-14-056 Petitions—Time limits—Waiver of filing deadline for good cause.** (1) The sole method for appealing an assessor's determination to the board, as to valuation of property, or as to any other types of assessor determinations ~~((shall be))~~ is by means of a properly completed and timely filed taxpayer petition.

(2) A taxpayer's petition for review of the assessed valuation placed upon property by the assessor or for review of any of the types of appeals listed in WAC 458-14-015 ~~((shall))~~ must be filed in duplicate with the board on or before July 1st of the assessment year or within thirty days, or up to sixty days if a longer time period is adopted by the county legislative authority, after the date an assessment or value

change notice or other determination notice is mailed to the taxpayer, whichever date is later (RCW 84.40.038).

(3) No late filing of a petition shall be allowed except as specifically provided in this subsection. The board may waive the filing deadline if the petition is filed within a reasonable time after the filing deadline and the petitioner shows good cause, as defined in this subsection, for the late filing. A petition that is filed after the deadline without a showing of good cause ~~((shall))~~ must be dismissed unless, after the taxpayer is notified by the board that the petition will be dismissed because of the late filing, the taxpayer promptly shows good cause for the late filing. The board ~~((shall))~~ must decide a taxpayer's claim of good cause without holding a public hearing on the claim and ~~((shall))~~ must promptly notify the taxpayer of the decision, in writing. The board's decision regarding a waiver of the filing deadline is final and not appealable to the state board of tax appeals. Good cause may be shown by documentation of one or more of the following events or circumstances:

(a) The taxpayer was unable to file the petition by the filing deadline because of a death or serious illness of the taxpayer or of a member of the taxpayer's immediate family occurring at or shortly before the time for filing. For purposes of this subsection, the term "immediate family" includes, but is not limited to, a grandparent, parent, brother, sister, spouse, child, or grandchild.

(b) The taxpayer was unable to file the petition by the filing deadline because of the occurrence of all of the following:

(i) The taxpayer was absent from his or her home or from the address where the assessment notice or value change notice is normally received by the taxpayer. If the notice is normally mailed by the assessor to a mortgagee or other agent of the taxpayer, the taxpayer must show that the mortgagee or other agent was required, pursuant to written instructions from the taxpayer, to promptly transmit the notice and failed to do so; and

(ii) The taxpayer was absent (as described in (b)(i) of this subsection) for more than fifteen of the ~~((thirty))~~ allowed in subsection (2) of this section days prior to the filing deadline; and

(iii) The filing deadline is after July 1 of the assessment year ~~((; that is, the notice from which the taxpayer appeals was mailed within the assessment year and after June 1st))~~.

(c) The taxpayer was unable to file the petition by the filing deadline because the taxpayer reasonably relied upon incorrect, ambiguous, or misleading written advice as to the proper filing requirements by either a board member or board staff, the assessor or assessor's staff, or the property tax advisor designated under RCW 84.48.140, or his or her staff.

(d) The taxpayer was unable to file the petition by the filing deadline because of a natural disaster such as a flood or earthquake occurring at or shortly before the time for filing.

(e) The taxpayer was unable to file the petition by the filing deadline because of a delay or loss related to the delivery of the petition by the postal service. The taxpayer must be able to provide documentation from the postal service of such a delay or loss.

(f) The taxpayer is a business and was unable to file the petition by the filing deadline because the person employed



by the business, responsible for dealing with property taxes, was unavailable due to illness or unavoidable absence.

(4) If a petition is filed by mail it ~~((shall))~~ must be postmarked no later than the filing deadline. If the filing deadline falls upon a Saturday, Sunday or holiday, the petition ~~((shall))~~ must be filed on or postmarked no later than the next business day.

(5) A petition is properly completed when all relevant questions on the form provided or approved by the department have been answered and the answers contain sufficient information or statements to apprise the board and the assessor of the reasons for the appeal. A petition which merely states that the assessor's valuation is too high or that property taxes are excessive, or similar such statements, is not properly completed and ~~((shall))~~ must not be considered by the board. If, at the time of filing the petition, the taxpayer does not have all the documentary evidence available which he or she intends to present at the hearing, the petition will be deemed to be properly completed for purposes of preserving the taxpayer's right of appeal, if it is otherwise fully and properly filled out. However, any comparable sales ~~((or other))~~, valuation evidence, or other documentary evidence not submitted at the time the petition is filed must be provided by the taxpayer to the assessor and the board at least seven business days, excluding legal holidays, prior to the board hearing. A copy of ~~((such))~~ the completed petition ~~((shall))~~ must be provided to the assessor by the clerk of the board. Any petition not fully and properly completed ~~((shall))~~ must not be considered by the board (RCW 84.40.038) and a notice of the board's rejection of the petition must be promptly mailed to the taxpayer. See: WAC 458-14-066 Requests for valuation information—Duty to exchange information—Time limits, for an explanation of the availability, use and exchange of valuation and other documentary information prior to the hearing before the board.

(6) Whenever the taxpayer has an appeal pending with the board, the state board of tax appeals or with a court of law, and the assessor notifies the taxpayer of a change in property valuation, the taxpayer is required to file a timely petition with the board in order to preserve the right to appeal the change in valuation. For example, if a taxpayer has appealed a decision of the board to the board of tax appeals regarding an assessed value for the year ~~((1989))~~ 2005, and that appeal is pending when the assessor issues a value change notice for the ~~((1990))~~ 2006 assessment year, the taxpayer must still file a timely petition appealing the valuation for the ~~((1990))~~ 2006 assessment year in order to preserve his or her right to appeal from that ~~((1990))~~ 2006 assessed value.

(7) Petition forms shall be available from the clerk of the board and from the assessor's office.

AMENDATORY SECTION (Amending WSR 95-17-099, filed 8/23/95, effective 9/23/95)

**WAC 458-14-066 Requests for valuation information—Duty to exchange documentary information—Time limits.** (1) Introduction. Timely access to valuation and other documentary information should be provided to both parties prior to the hearing on a petition so that time-consuming and costly discovery procedures are unnecessary. The

postmark is used to determine whether the information is timely provided.

(2) Requests by a taxpayer for valuation information from the assessor may be made on the petition form filed with the board, or may be made at any reasonable time prior to the hearing. Upon request by the taxpayer, the assessor ~~((shall))~~ must make available to the taxpayer the comparable sales used in establishing the taxpayer's property valuation. If valuation criteria other than comparable sales were used, the assessor ~~((shall))~~ must provide the taxpayer with ~~((such))~~ the information. All such valuation information, including comparable sales, ~~((shall))~~ must be provided to the taxpayer and the board within sixty days of the request but at least fourteen business days, excluding legal holidays, prior to the taxpayer's appearance before the board of equalization.

(3) The valuation information provided by the assessor to the taxpayer ~~((shall))~~ must not be subsequently changed by the assessor unless the assessor has found new evidence supporting the assessor's valuation, in which situation the assessor ~~((shall))~~ must provide the additional evidence to the taxpayer and the board at least fourteen business days prior to the hearing at the board.

(4) A taxpayer who lists comparable sales on the petition, or who provides the board and the assessor with comparable sales or valuation evidence after filing the petition ~~((shall))~~ must not thereafter change or add other comparable sales ~~((or))~~, valuation evidence, or other documentary evidence without ~~((providing))~~ mailing or submitting the evidence to the assessor and the board ~~((with the additional information))~~ at least seven business days, excluding legal holidays, prior to the board hearing.

(5) If either the assessor or taxpayer does not comply with the requirements of this section, the board in its discretion may take any of the following actions:

(a) If there is no objection by either party, consider the new evidence provided by either party and proceed with the hearing;

(b) If there is an objection by either party to the failure of the other party to comply with the requirements of this section, the board may:

(i) Refuse to consider evidence that was not timely submitted;

(ii) Postpone the hearing for a definite time period designated by the board, to provide the parties an opportunity to review all evidence; or

(iii) Proceed with the hearing but allow the parties to submit new evidence to the board and the other party, after the hearing is concluded, within definite time periods designated by the board, and provide each party with an adequate opportunity to rebut or comment on the new evidence prior to the board's decision.

AMENDATORY SECTION (Amending WSR 90-23-097, filed 11/21/90, effective 12/22/90)

**WAC 458-14-076 Hearings on petitions—Withdrawal.** (1) The board or one of its hearing examiners ~~((shall))~~ must hold individual hearings on each properly filed petition which has not been withdrawn or otherwise disposed of. A taxpayer may withdraw a petition as a matter of right

by written notice received by the board no later than two business days prior to the scheduled hearing. The board, in its discretion, may allow the taxpayer to withdraw up to the time of the hearing. The board must promptly notify the assessor of the taxpayer's withdrawal.

(2) The assessor and taxpayer ((shall)) must be provided notice of the hearing date by the clerk of the board at least fifteen business days before the hearing, unless the clerk and the parties agree upon a shorter time period.

(3) If property is sold or transferred after a petition has been timely filed, ~~((the new purchaser or transferee may pursue the appeal in place of the seller or transferor))~~ either the seller/transferor or the buyer/transferee, or both, may continue to pursue the appeal if they can show the board that they have a personal stake in the outcome of the case.

(4) All persons testifying before the board ((shall)) must swear or affirm on the record that they will testify truthfully under penalty of perjury.

**AMENDATORY SECTION** (Amending WSR 90-23-097, filed 11/21/90, effective 12/22/90)

**WAC 458-14-095 Record of hearings.** (1) All hearings of a board or its hearing examiners ((shall)) must be recorded with an audio recording device.

(2) Testimony concerning information which is exempt from public disclosure pursuant to RCW 84.40.340 or 42.17.310 ((shall)) must be recorded on a separate ~~((blank audio tape))~~ audio recording device, and ((shall)) must, along with any other confidential evidence, be placed in an envelope bearing the notation "confidential evidence" and the case number, and sealed from public inspection. The clerk ((shall)) must keep a separate file for all ~~((such))~~ the confidential evidence. Provided that, notwithstanding the above described procedures, any procedure which substantially complies with the confidentiality requirements of the above mentioned statutes shall be sufficient.

(3) The public record ((shall)) must include:

(a) The date or dates the board was in session;

(b) The names of board members or hearing examiners in attendance; and

(c) All evidence presented to the board.

(4) The requirements of this section shall not apply to post hearing deliberations of a board.

(5) Boards are not required to provide transcripts of proceedings to any person or entity other than as may be required by chapter 42.17 RCW, however board clerks ((shall)) must complete a form provided by the department for each hearing.

(6) The records of the board ((shall)) must be kept and maintained as required by RCW 40.14.060.

**AMENDATORY SECTION** (Amending WSR 95-17-099, filed 8/23/95, effective 9/23/95)

**WAC 458-14-116 Orders of the board—Notice of value adjustment—Effective date.** (1) All orders issued by a board ((shall)) must be on the form provided or approved by the department and ((shall)) must state the facts and evidence upon which the decision is based and the reason(s) for the decision.

(2) All orders of the board ((shall)) must be signed by the chairman of the board, provided, however, that the chairman may, by written designation, authorize other members or the board clerk to sign orders on behalf of the chairman.

(3) After a hearing, if a board adjusts or sustains the valuation of a parcel of real property or an item of personal property, the board ((shall)) must serve or mail notice of the decision to the appellant and the assessor.

(a) If the valuation is reduced, the new valuation shall take effect immediately, subject to the parties' right to appeal the decision.

(b) If the valuation is increased, the increased valuation shall become effective thirty days after the date of service or mailing of the notice of the adjustment unless the taxpayer or assessor files a petition to the board of tax appeals in accordance with WAC 458-14-170, before the effective date. If such a petition is filed, the increase does not take effect until the board of tax appeals disposes of the matter.

(4) If the valuation is increased without a petition having been filed, the increased valuation shall become effective thirty days after the date of service or mailing of the notice of the adjustment to the assessor and the taxpayer unless the assessor or taxpayer files a petition with the board on or before the effective date.

(5) In counties with a multiyear revaluation cycle, orders issued by the board shall have effect up to the end of the revaluation cycle used by the assessor and approved by the department. The board order may contain a specific statement notifying the parties of this effect. If there has been an intervening change in assessed value of the taxpayer's property between the time the petition was filed and the date the board's order is issued, the board's order shall have effect only up to the effective date of the change in assessed value. The same effect will also apply when a valuation adjustment is ordered upon appeal of a board order.

(6) In counties with a multiyear revaluation cycle, once the board has issued a decision with respect to a taxpayer's real property, and when there has been no intervening change in assessed value, any subsequent appeal to the board:

(a) By the same taxpayer relating to the same property shall be treated as a motion for reconsideration. The board ((shall)) must hold a hearing on the appeal/motion only if the taxpayer can show that there is newly discovered evidence that materially affects the basis for the board's decision and the taxpayer can show that the evidence could not with reasonable diligence have been discovered and produced at the original hearing;

(b) By a taxpayer who acquired the property from the taxpayer to whom the board decision was issued, and for a subsequent assessment year, shall be treated as an original appeal.

**AMENDATORY SECTION** (Amending WSR 95-17-099, filed 8/23/95, effective 9/23/95)

**WAC 458-14-127 Reconvened boards—Authority.** (1) Boards of equalization may reconvene on their own authority to hear requests concerning the current assessment year when the request is filed with the board by April 30 of the tax

year immediately following the board's regularly convened session and at least one of the following conditions is met:

(a) A taxpayer requests the board reconvene and submits to the board ~~((a sworn))~~ an affidavit stating that notice of change of value for the assessment year was not received by the taxpayer at least fifteen calendar days prior to the deadline for filing the petition, and can show proof that the value was actually changed.

(b) An assessor submits an affidavit to the board stating that the assessor was unaware of facts which were discoverable at the time of appraisal and that such lack of facts caused the valuation of property to be materially affected. Submitting such an affidavit to the board is for the purpose of correcting latent defects in the assessment process that become apparent only after the normal appeal process has expired, and is wholly within the assessor's discretion. In the affidavit, the assessor ~~((shall))~~ must state the facts which affected the value and also state both the incorrect value and the true and fair market value of the property and ~~((shall))~~ must mail a copy of the affidavit to the taxpayer. If the board decides to reconvene to consider the valuation, it ~~((shall))~~ must notify both the taxpayer and assessor of its decision in writing.

(c) In an arm's length transaction, a bona fide purchaser or contract buyer of record has acquired an interest in real property subsequent to the first day of July and on or before December 31 of the assessment year and the sale price was less than ninety percent of the assessed value.

(2) Upon request of either the taxpayer or the assessor, boards may reconvene on their own authority to hear appeals with respect to property or value that was omitted from the assessment rolls. No request shall be accepted ~~((for any period more than three years preceding the year in which the omission is discovered))~~ if it is made concerning an assessment year that is more than three years prior to the year the omitted property or value was discovered. The request itself must be received by the board no later than thirty calendar days, or up to sixty days if a longer time period is adopted by the county legislative authority under RCW 84.40.038, after the mailing of the notification of the discovery of the omitted property or value. For example, if omitted property is discovered in September 2005, and the property was omitted since 2000, the board may only reconvene to hear an appeal for assessment year 2002, and subsequent years. If the taxpayer is notified by mail of the discovery of the omitted property or value on October 14, 2005, for example, any request with respect to the omitted property or value must be made no later than thirty calendar days after October 14, 2005, or up to sixty days if a longer time period is adopted by the county legislative authority under RCW 84.40.038.

(3) Upon request of either the taxpayer or the assessor, a board may reconvene on its own authority to hear an appeal under the following circumstances:

(a) A taxpayer, who owns property in a county that revalues real property on an annual basis, had a timely appeal pending with the board when the same property was valued by the assessor in at least one intervening assessment year, between the filing of the appeal and the issuance of the board's written decision;

(b) The assessed value of the property under appeal did not change during the intervening assessment year or years;

(c) No appeal was filed by the taxpayer regarding the same property during the intervening assessment year or years when the assessed value did not change; and

(d) The request to reconvene is filed with the board no later than thirty calendar days after mailing of the board's decision.

(4) Requests for reconvening boards concerning prior year's assessments or for an extension of the annual regularly convened session to enable the board to complete its annual equalization duties ~~((shall))~~ must be submitted to the clerk of the board who ~~((shall))~~ must submit ~~((such))~~ the request to the department for determination.

~~((4))~~ (5) The department may require any board to reconvene at any time for the purpose of performing or completing any duty or taking any action the board might lawfully have performed or taken at any of its previous meetings, or for any other purpose allowed by law. This statutory authority is reserved for those instances when an error has occurred and where the regular remedial procedures do not apply. These instances include significant valuation errors that become apparent only after the normal appeal process has expired.

~~((5))~~ (6) The department ~~((shall))~~ must reconvene a board upon request of a taxpayer when the taxpayer makes a prima facie showing of actual ~~((or constructive))~~ fraud on the part of taxing officials, or makes a prima facie showing that the taxpayer's property is overvalued by at least double the true and fair value. The department ~~((shall))~~ must reconvene a board upon request of an assessor when the assessor makes a prima facie showing of actual or constructive fraud on the part of a taxpayer.

~~((6))~~ (7) All reconvening requests ~~((shall))~~ must:

(a) Specify the assessment year(s) that is the subject of the request; and

(b) State the specific grounds upon which the request is based; and

(c) If the taxpayer is the party requesting the reconvening, state that he or she is the owner or duly authorized agent, personal representative or guardian, of the property or is a lessee responsible for the payment of the property taxes.

~~((7))~~ (8) No board shall reconvene later than three years after the adjournment of its regularly convened session, except in the case of omitted property or value, as noted in subsection (2) of this section. The three years is determined by the date of adjournment of the board's regularly convened session, which is four weeks after July 15th, or four weeks after the first business day after July 15th, if July 15th falls on a Saturday, Sunday, or holiday. For example, for a timely request to reconvene regarding the 2006 assessment roll, the allowable time period in which to receive the request would be from August 14, 2006 through August 13, 2009.

AMENDATORY SECTION (Amending WSR 90-23-097, filed 11/21/90, effective 12/22/90)

**WAC 458-14-136 Hearing examiners.** (1) Any board may employ one or more hearing examiners to assist the board in conducting hearings.

(2) All hearing examiners ~~((shall))~~ must take the same oath required of regular board members and ~~((shall))~~ must

meet the same qualifications for membership as regular board members.

(3) A board member may act as a hearing examiner.

(4) A hearing examiner may hold hearings separate from the board and take testimony from both parties and their witnesses.

(5) Hearing examiners ~~((shall))~~ must present to the full board or a quorum thereof, all evidence submitted by the parties at the hearing before the hearing examiner. The board ~~((shall))~~ must make the final determination on all petitions filed. The board may make its final determination based upon the record submitted by the examiner or may request further testimony or documentation from either the taxpayer or the assessor, including their witnesses, before making its final determination.

**AMENDATORY SECTION** (Amending WSR 95-17-099, filed 8/23/95, effective 9/23/95)

**WAC 458-14-160 Continuances—Ex parte contact.**

(1) Extensions of time, other than the time for filing petitions, continuances, and adjournments may be ordered by the board on its own motion or may be granted by it, in its discretion, on motion of any party showing good and sufficient cause therefor. For a waiver of the time limit in which to file the petition, see WAC 458-14-056(3).

(2) No one shall make or attempt to make any ex parte contact with board members except upon notice and opportunity for all parties to be present or to the extent required for the disposition of ex parte matters as authorized by law ~~((, nor shall a))~~. No board member shall make or attempt to make any ex parte contact with any person regarding any issue in the proceeding ~~((who has a direct or indirect interest in the outcome of the proceeding))~~, without notice and opportunity for all parties to participate, unless necessary to procedural aspects of maintaining an orderly process.

**AMENDATORY SECTION** (Amending WSR 95-17-099, filed 8/23/95, effective 9/23/95)

**WAC 458-14-170 Appeals to the state board of tax appeals.** (1) Pursuant to RCW 84.08.130, any taxpayer, taxing unit, or assessor feeling aggrieved by the action of a board may appeal to the board of tax appeals by filing with the board of tax appeals a notice of appeal within thirty days after the board has served or mailed its decision. The appeal is deemed timely filed with the board of tax appeals if post-marked on or before the thirtieth day after the board of equalization has served or mailed its decision.

(2) The notice of appeal ~~((shall))~~ must specify the actions of the board that the appellant is appealing, and ~~((shall))~~ must be in ~~((such))~~ the form ~~((as is))~~ required by the board of tax appeals (see WAC 456-10-310 and 456-09-310). ~~((The petitioner shall serve a copy of the notice of appeal on all named parties within the same thirty-day time period.))~~

(3) The board appealed from ~~((shall))~~ must file with the board of tax appeals a true and correct copy of its decision in ~~((such))~~ the action and all evidence taken in connection therewith.

**WSR 06-13-035**

**PERMANENT RULES**

**OFFICE OF THE**

**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2005-02—Filed June 15, 2006, 8:14 a.m., effective July 16, 2006]

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

Purpose: RCW 48.19.370 requires the commissioner to adopt rules and statistical plans for property and casualty insurance. WAC 284-24-015 has not been amended since 1998, and includes information that is no longer accurate. WAC 284-24-015 is repealed and replaced with chapter 284-24B WAC that sets forth a process for insurers to report insurance statistical data and for qualifying entities to be designated as statistical agents. Chapter 284-24C WAC sets forth specific data elements that medical malpractice insurers and their statistical agents must collect.

Citation of Existing Rules Affected by this Order: Repealing WAC 284-24-015.

Statutory Authority for Adoption: RCW 48.02.060, 48.19.370.

Adopted under notice filed as WSR 05-24-088 on December 6, 2005.

Changes Other than Editing from Proposed to Adopted Version: Chapter 284-24B WAC: A new section was added to provide an effective date for the rule.

Chapter 284-24C WAC: WAC 284-24C-050 (7) and (8) were deleted due to the enactment of 2SHB 2292, which requires insurers, self insurers, risk retention groups and surplus lines insurers to report comparable closed claim data.

WAC 284-24C-050(9) was amended to update numbering and remove the requirement to code based upon incident city, which could have led to disclosure of individual company data.

WAC 284-24C-060 was amended to:

1. Change the effective date of the rule to coincide with 2SHB 2292.

2. Clarify that insurers must begin reporting data currently required by the NAIC Statistical Handbook, as described in WAC 284-24C-040, to a designated statistical agent in 2007.

3. Clarify that insurers must begin reporting new data elements as described in WAC 284-24C-050, for claims opened on or after January 1, 2007, so that it is clear that insurers do not have to review and report on old claims.

4. Clarify that statistical data required under WAC 284-24C-050 must be reported by medical malpractice insurers to statistical agents in 2009, and that statistical agents must begin reporting these data to the commissioner in the 3rd quarter of 2009.

A final cost-benefit analysis is available by contacting Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 943-9440, fax (360) 586-3109, e-mail KacyS@oic.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 17, Amended 0, Repealed 1.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 17, Amended 0, Repealed 1.

Date Adopted: June 15, 2006.

Mike Kreidler  
Insurance Commissioner

## Chapter 284-24B WAC

### RULES THAT REQUIRE PROPERTY AND CASUALTY INSURERS TO REPORT STATISTICAL DATA

#### NEW SECTION

**WAC 284-24B-010 Definitions that apply to this chapter.** (1) **"Insurer"** means an authorized insurer that has premium, loss or loss adjustment expense data in Washington state for one or more of these lines of insurance:

- (a) Property, as defined in RCW 48.11.040;
- (b) Marine and transportation, as defined in RCW 48.11.050, if not exempt from statistical reporting under RCW 48.19.010 (1)(e);
- (c) Vehicle, as defined in RCW 48.11.060;
- (d) General casualty, as defined in RCW 48.11.070; and
- (e) Surety, as defined in RCW 48.11.080.

(2) **"NAIC Statistical Handbook"** is a publication of the National Association of Insurance Commissioners (NAIC) that explains insurance statistical data and provides reporting requirements and report formats for data that statistical agents must submit to the commissioner.

(3) **"Statistical agent"** means an entity that the commissioner has designated under RCW 48.19.370(4) to collect insurance statistical data from insurers and report these data to the commissioner on behalf of those insurers.

(4) **"Statistical plan"** means a system for collecting information from insurers.

#### NEW SECTION

**WAC 284-24B-020 Purpose.** (1) The purpose of this chapter is to:

- (a) Incorporate the provisions of the *NAIC Statistical Handbook* into this chapter;
- (b) Prescribe the manner of reporting statistical data and the types of statistical data insurers must submit to statistical agents under RCW 48.19.370; and
- (c) Establish a procedure for the commissioner to designate statistical agents under RCW 48.19.370.

(2) This chapter does not limit the powers granted to the commissioner by any law of this state.

#### NEW SECTION

**WAC 284-24B-030 The commissioner adopts certain statistical plans.** (1) By reference, the commissioner incorporates all provisions of the *NAIC Statistical Handbook* into this rule, except:

(a) Medical Professional Liability Reports: Statistical Plan Reporting Requirements; and

(b) Medical Professional Liability Reports: Model Medical Professional Liability Statistical Plan.

(2) The commissioner will issue technical assistance advisories to notify insurers and statistical agents of the effective date of any future revisions to the *NAIC Statistical Handbook*.

#### NEW SECTION

**WAC 284-24B-040 Insurers must report statistical experience.** (1) Under RCW 48.19.370(4), the commissioner may designate certain rating organizations or other entities as statistical agents to gather, compile, and report insurance statistical data.

(2) RCW 48.19.370 says each insurer must report loss and expense experience to the commissioner. As a condition of transacting the business of insurance under RCW 48.05.040, each insurer must:

(a) Report its insurance statistical data to a statistical agent designated by the commissioner in accordance with the statistical plans filed with the commissioner by the statistical agent under WAC 284-24B-060;

(b) Comply with the reporting requirements and data quality procedures in the *NAIC Statistical Handbook*; and

(c) Adopt edit and audit procedures to screen and check data for reasonableness and accuracy.

(3) So the commissioner may assure compliance with this chapter, each insurer filing rates under chapter 48.19 RCW must include the name of its statistical agent for that line of insurance.

#### NEW SECTION

**WAC 284-24B-050 Process for an entity to be designated a statistical agent.** The commissioner may designate an entity as a statistical agent if the entity makes a written request to the commissioner that:

(1) Identifies the line(s) of business for which the entity will collect and report statistical experience;

(2) States the entity's qualifications to act as a statistical agent; and

(3) Agrees to:

(a) Comply with the reporting requirements and data quality procedures in the *NAIC Statistical Handbook*, and all rules, technical advisories and directives issued by the commissioner;

(b) Report statistical data to the commissioner in a timely manner; and

(c) Submit to an examination in accordance with procedures described in RCW 48.03.010.

NEW SECTION

**WAC 284-24B-060 Statistical agents must file their statistical plans with the commissioner.** Entities that are designated as statistical agents under WAC 284-24B-050 must promptly file with the commissioner:

- (1) Their statistical plans, including standard report formats; and
- (2) All changes in their statistical plans or reporting formats.

NEW SECTION

**WAC 284-24B-070 Statistical agents must comply with the NAIC Statistical Handbook.** Statistical agents must collect statistical data in a form and detail as required by the *NAIC Statistical Handbook* and any additional detail required by rules adopted by the commissioner.

NEW SECTION

**WAC 284-24B-080 Multiple statistical agents for the same line of insurance.** If the commissioner designates more than one statistical agent to collect statistical data for a particular line of insurance, those statistical agents must arrange to file reports that combine all data collected by the statistical agents for that line(s) of insurance. The statistical agents may arrange among themselves for the equitable sharing of the costs to produce combined reports.

NEW SECTION

**WAC 284-24B-090 Access to data.** The commissioner shall have access to all statistical data that statistical agents collect to comply with this chapter. If requested by the commissioner, statistical agents must promptly provide a copy of any report produced from data that the statistical agent is required to collect under this chapter.

NEW SECTION

**WAC 284-24B-100 Disclosure of data.** (1) Aggregate data reported to the commissioner by statistical agents are available for public inspection.

(2) If data submitted to the commissioner by a statistical agent appear likely to identify individual insurers, claimants or insureds, or the statistical agent or an insurer asserts that data are exempt from public disclosure under RCW 48.02.120(3), such data may not be publicly disclosed until the commissioner:

- (a) Notifies the statistical agent and any insurer that has asserted the data to be exempt from public disclosure of the disclosure request;
- (b) Provides a thirty-day period from the date of notice for any insurer that reported data to the statistical agent to assert that its data are trade secrets or are otherwise protected from disclosure; and
- (c) Provides aggrieved insurers with the opportunity to request a hearing under RCW 48.04.010 and chapter 34.05 RCW.

NEW SECTION

**WAC 284-24B-110 Effective date.** Insurers must affiliate with a designated statistical agent by January 1, 2007, and report data in accordance with the requirements included in the *NAIC Statistical Handbook* and the designated statistical agent's filed statistical plan.

**Chapter 284-24C WAC****SPECIFIC RULES THAT APPLY TO STATISTICAL PLANS FOR MEDICAL PROFESSIONAL LIABILITY REPORTS**NEW SECTION

**WAC 284-24C-010 Definitions that apply to these rules.** (1) "**Medical malpractice insurer**" means an authorized general casualty insurer that has premium, loss or loss adjustment expense data for medical malpractice insurance.

(2) "**Medical professional liability insurance**" or "**medical malpractice insurance**" provides coverage for tort claims brought against various medical-related institutions and medical professionals, such as:

(a) Institutions, including hospitals, infirmaries, nursing homes, mental institutions, blood banks, sanitariums, and clinics; and

(b) Individual medical professionals including physicians, surgeons, dentists, nurses, pharmacists, opticians, optometrists, physiotherapists, chiropractors, laboratory technicians, and various specialists.

(3) "**Medical malpractice statistical agent**" means an organization designated by the commissioner under RCW 48.19.370(4) to gather, compile and report medical malpractice statistical data.

(4) "**NAIC Statistical Handbook**" is a publication of the National Association of Insurance Commissioners (NAIC) that explains insurance statistical data and provides reporting requirements and report formats for data that statistical agents must submit to the commissioner.

(5) "**Statistical plan**" means a system for collecting information from insurers.

NEW SECTION

**WAC 284-24C-020 Purpose.** (1) The purpose of this chapter is to:

(a) Incorporate the provisions of chapter 284-24B WAC into this chapter;

(b) Prescribe the manner of reporting statistical data and the types of statistical data medical malpractice insurers must submit to statistical agents under RCW 48.19.370; and

(c) Establish a medical professional liability statistical plan.

(2) This chapter does not limit the powers granted to the commissioner by any law of this state.

NEW SECTION

**WAC 284-24C-030 Statistical reporting for medical professional liability insurance.** Each medical malpractice insurer must:

- (1) Comply with the provisions of RCW 48.19.370 and chapter 284-24B WAC; and
- (2) Report its insurance statistical data to a statistical agent designated by the commissioner in accordance with the statistical plans filed by the statistical agent under WAC 284-24B-060 and all additional detail required by this chapter.

NEW SECTION

**WAC 284-24C-040 NAIC Statistical Handbook—Medical professional liability statistical plan reporting requirements.** These data items, as specified by the *NAIC Statistical Handbook*, must be reported by each medical malpractice insurer to a medical malpractice statistical agent:

- (1) Company number: Experience must be reported by the company number assigned by the medical malpractice statistical agent. Medical malpractice statistical agents must convert each company number to NAIC group and company code numbers.
  - (2) Accounting/calendar date:
    - (a) Accounting quarter (where applicable).
    - (b) Accounting year.
  - (3) Transaction identifier and amounts. Identify the following items and their respective amounts:
    - (a) Written premium.
    - (b) Paid losses.
    - (c) Paid allocated loss adjustment expenses.
    - (d) Outstanding losses.
    - (e) Outstanding allocated loss adjustment expense.
  - (4) Subline identifier:
    - (a) Hospital professional and other health care facilities liability.
    - (b) Physicians, surgeons, and dentists professional liability.
    - (c) Other health care professional liability.
    - (d) All composite rated risks.
    - (e) Indivisible premium policy experience.
  - (5) Classification codes. Individual industry classification codes describing specific coverage. In Washington, the current Insurance Services Office (ISO) five digit common statistical base classifications must be used.
    - (6) State indicator.
    - (7) Policy effective year:
      - (a) The effective date of the policy, defined as the beginning date of the declarations page or renewal certificate.
      - (b) For claims-made tail coverage, the date on which tail coverage began is required.
    - (8) Type of program indicator:
      - (a) Monoline; or
      - (b) Package.
    - (9) Date of entry into the claims-made program:
      - (a) The date of entry into the claims-made program is the retroactive date employed in claims-made coverage in order to exclude coverage for occurrences that took place prior to that date even though claims resulting from such occurrences are made within the policy period.

(b) Claims-made tail coverage records must include, in the date of entry into the claims-made program field, the date applicable to the basic and excess coverage.

- (10) Type of policy contract identifier:
  - (a) Claims-made coverage - basic and excess.
  - (b) Claims-made coverage - tail.
  - (c) Occurrence coverage.

(11) Exposures. The applicable exposure is required for each of the subdivisions of experience for which separate classification codes and exposure bases exist. The current Insurance Services Office (ISO) exposure reporting basis included with the common statistical base classifications must be used.

NEW SECTION

**WAC 284-24C-050 Additional medical professional liability statistical plan reporting requirements required by the commissioner.** In addition to the data items specified by the *NAIC Statistical Handbook*, these data items, specific to this medical malpractice statistical plan rule, must be reported by each medical malpractice insurer to a medical malpractice statistical agent:

- (1) Claim dates:
  - (a) Incident month/year; and
  - (b) Report month/year.
  - (c) Closed month/year (closed claims only).
- (2) Additional transaction identifiers and details. Identify the following items and their respective amounts:
  - (a) Paid losses segmented by amounts paid or incurred for past and future:
    - (i) Wage loss;
    - (ii) Medical expenses; and
    - (iii) All other losses.
  - (b) Paid allocated loss adjustment expenses segmented by amounts paid for:
    - (i) Defense counsel;
    - (ii) Expert witness; and
    - (iii) All other allocated loss adjustment expenses.
  - (c) Outstanding losses segmented by amounts paid or incurred for past and future:
    - (i) Wage loss;
    - (ii) Medical expenses; and
    - (iii) All other losses.
  - (d) Outstanding allocated loss adjustment expense segmented by amounts paid or incurred for:
    - (i) Defense counsel;
    - (ii) Expert witness; and
    - (iii) All other allocated loss adjustment expenses.
- (3) Policy limit per incident.
- (4) Deductible or retention.
- (5) Medical outcome classifications (use only one code):
  - (a) Emotional only: Fright, no physical damage.
  - (b) Temporary: Slight - lacerations, contusions, minor scars, rash. No delay.
  - (c) Temporary: Minor - infections, mis-set fracture, fall in hospital. Recovery delayed.
  - (d) Temporary: Major - burns, surgical material left, drug side effect, brain damage. Recovery delayed.

- (e) Permanent: Minor - loss of fingers, loss or damage to organs. Includes nondisabling injuries.
- (f) Permanent: Significant - deafness, loss of limb, loss of eye, loss of one kidney or lung.
- (g) Permanent: Major - paraplegia, blindness, loss of two limbs, brain damage.
- (h) Permanent: Grave - quadriplegia, severe brain damage, lifelong care or fatal prognosis.
- (i) Permanent: Death.
- (6) Act or omission classification, as follows:
  - (a) Diagnosis related;
  - (b) Anesthesia related;
  - (c) Surgery related;
  - (d) Medication related;
  - (e) Intravenous and/or blood products related;
  - (f) Obstetrics related;
  - (g) Treatment related;
  - (h) Monitoring related;
  - (i) Biomedical equipment and/or product related;
  - (j) Behavioral health related; or
  - (k) All other.
- (7) Territory indicator for the county of the principal location in which the incident of alleged medical malpractice occurred.

**NEW SECTION**

**WAC 284-24C-060 Effective dates.** (1) Medical malpractice insurers must:

- (a) Comply with chapter 284-24B WAC, affiliate with a designated medical malpractice statistical agent by January 1, 2007, and promptly begin reporting data required under WAC 284-24C-040; and
- (b) Begin reporting statistical data specified under WAC 284-24C-050 for claims opened on or after January 1, 2007, to a designated medical malpractice statistical agent in calendar year 2009 in accordance with the medical malpractice statistical agent's filed statistical plan.

(2) Medical malpractice statistical agents must begin reporting statistical data under these rules to the commissioner by September 30, 2009.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 284-24-015                      Statistical plans and designation of statistical agents.

**WSR 06-13-036**  
**PERMANENT RULES**  
**DEPARTMENT OF LICENSING**

[Filed June 15, 2006, 11:22 a.m., effective July 16, 2006]

Effective Date of Rule: Thirty-one days after filing.  
 Purpose: The reason for the fee increase change is because the dedicated fund requires that the program establish and maintain a reasonable fund balance.

Citation of Existing Rules Affected by this Order:  
 Amending WAC 308-17-150.

Statutory Authority for Adoption: Private investigators, chapter 18.165 RCW.

Adopted under notice filed as WSR 06-09-080 on April 18, 2006.

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: June 14, 2006.

Ralph Osgood  
 Assistance Director

**AMENDATORY SECTION** (Amending WSR 04-12-024, filed 5/26/04, effective 7/1/04)

**WAC 308-17-150 Private investigative agency, private investigator, and armed private investigator fees.** Licenses issued to private investigator agencies and private investigators expire one year from the date of issuance and must be renewed each year. The fees are as follows:

<b>Title of Fee</b>	<b>Fee</b>
Private investigative agency/principal fee:	
Application/examination/ includes first examination	\$ ( <del>500.00</del> ) <u>600.00</u>
Principal armed endorsement	100.00
Reexamination	25.00
License renewal	( <del>300.00</del> ) <u>350.00</u>
Late renewal penalty	See below*
Change of principal/includes first examination	150.00
Private investigator:	
Original license	( <del>150.00</del> ) <u>200.00</u>
Armed endorsement	100.00
Transfer fee	25.00
License renewal	( <del>150.00</del> ) <u>175.00</u>
Late renewal with penalty	200.00



Title of Fee	Fee
Certified trainer endorsement examination/reexamination	25.00
Certified trainer endorsement renewal	15.00

\*Private investigative agency license renewals filed after the license expiration date will be charged the master license service late renewal fee in compliance with RCW 19.02.085.

**WSR 06-13-042**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Health and Recovery Services Administration)  
[Filed June 15, 2006, 4:17 p.m., effective July 16, 2006]

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

Purpose: To clarify the existing policy and practice of deducting any amounts required to be paid by clients, such as deductibles, copays, cost-sharing, spenddown amounts, and emergency medical expense requirements (EMER), from payments made to providers.

Citation of Existing Rules Affected by this Order: Amending WAC 388-502-0100, 388-519-0110, and 388-865-0217.

Statutory Authority for Adoption: RCW 71.05.560, 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530.

Adopted under notice filed as WSR 06-09-086 on April 18, 2006.

Changes Other than Editing from Proposed to Adopted Version: *Added text is underlined:* WAC 388-502-0100(3), the department does not reimburse providers for medical services identified by the department as client financial obligations, and deducts from the payment the costs of those services identified as client financial obligations. Client financial obligations include, but are not limited to, the following: (a) Copayments (copays) (unless the criteria in chapter 388-517 WAC or WAC 388-501-0200 are met); (b) deductibles (unless the criteria in chapter 388-517 WAC or WAC 388-501-0200 are met); (c) emergency medical expense requirements (EMER); and (d) spenddown (see WAC 388-519-0110).

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 3, 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 3, Repealed 0.

Date Adopted: June 13, 2006.

Andy Fernando, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 00-15-050, filed 7/17/00, effective 8/17/00)

**WAC 388-502-0100 General conditions of payment.**

(1) The department reimburses for medical services furnished to an eligible client when all of the following apply:

- (a) The service is within the scope of care of the client's medical assistance program;
  - (b) The service is medically or dentally necessary;
  - (c) The service is properly authorized;
  - (d) The provider bills within the time frame set in WAC 388-502-0150;
  - (e) The provider bills according to department rules and billing instructions; and
  - (f) The provider follows third-party payment procedures.
- (2) The department is the payer of last resort, unless the other payer is:

- (a) An Indian health service;
- (b) A crime victims program through the department of labor and industries; or
- (c) A school district for health services provided under the Individuals with Disabilities Education Act.

(3) The department does not reimburse providers for medical services identified by the department as client financial obligations, and deducts from the payment the costs of those services identified as client financial obligations. Client financial obligations include, but are not limited to, the following:

- (a) Co-payments (co-pays) (unless the criteria in chapter 388-517 WAC or WAC 388-501-0200 are met);
- (b) Deductibles (unless the criteria in chapter 388-517 WAC or WAC 388-501-0200 are met);
- (c) Emergency Medical Expense Requirements (EMER); and
- (d) Spenddown (see WAC 388-519-0110).

(4) The provider must accept Medicare assignment for claims involving clients eligible for both Medicare and medical assistance before MAA makes any payment.

~~((4))~~ (5) The provider is responsible for verifying whether a client has medical assistance coverage for the dates of service.

~~((5))~~ (6) The department may reimburse a provider for services provided to a person if it is later determined that the person was ineligible for the service at the time it was provided if:

- (a) The department considered the person eligible at the time of service;
- (b) The service was not otherwise paid for; and
- (c) The provider submits a request for payment to the department.

~~((6))~~ (7) The department does not pay on a fee-for-service basis for a service for a client who is enrolled in a managed care plan when the service is included in the plan's contract with the department.

~~((7))~~ (8) Information about medical care for jail inmates is found in RCW 70.48.130.

~~((8))~~ (9) The department pays for medically necessary services on the basis of usual and customary charges or the maximum allowable fee established by the department, whichever is lower.

AMENDATORY SECTION (Amending WSR 05-08-093, filed 4/1/05, effective 5/2/05)

**WAC 388-519-0110 Spenddown of excess income for the medically needy program.** (1) The person applying for MN medical coverage chooses a three month or a six month base period for spenddown calculation. The months must be consecutive calendar months unless one of the conditions in subsection (4) of this section apply.

(2) A person's base period begins on the first day of the month of application, subject to the exceptions in subsection (4) of this section.

(3) A separate base period may be made for a retroactive period. The retroactive base period is made up of the three calendar months immediately prior to the month of application.

(4) A base period may vary from the terms in subsections (1), (2), or (3) of this section if:

(a) A three month base period would overlap a previous eligibility period; or

(b) A client is not or will not be resource eligible for the required base period; or

(c) The client is not or will not be able to meet the TANF-related or SSI-related requirement for the required base period; or

(d) The client is or will be eligible for categorically needy (CN) coverage for part of the required base period; or

(e) The client was not otherwise eligible for MN coverage for each of the months of the retroactive base period.

(5) The amount of a person's "spenddown" is calculated by the department. The MN countable income from each month of the base period is compared to the MNIL. The excess income from each of the months in the base period is added together to determine the "spenddown" for the base period.

(6) If income varies and a person's MN countable income falls below the MNIL for one or more months, the difference is used to offset the excess income in other months of the base period. If this results in a spenddown amount of zero dollars and cents, see WAC 388-519-0100(5).

(7) Once a person's spenddown amount is known, their qualifying medical expenses are subtracted from that spenddown amount to determine the date of eligibility. The following medical expenses are used to meet spenddown:

(a) First, Medicare and other health insurance deductibles, coinsurance charges, enrollment fees, or copayments;

(b) Second, medical expenses which would not be covered by the MN program;

(c) Third, hospital expenses paid by the person during the base period;

(d) Fourth, hospital expenses, regardless of age, owed by the applying person;

(e) Fifth, other medical expenses, potentially payable by the MN program, which have been paid by the applying person during the base period; and

(f) Sixth, other medical expenses, potentially payable by the MN program which are owed by the applying person.

(8) If a person meets the spenddown obligation at the time of application, they are eligible for MN medical coverage for the remainder of the base period. The beginning date of eligibility would be determined as described in WAC 388-416-0020.

(9) If a person's spenddown amount is not met at the time of application, they are not eligible until they present evidence of additional expenses which meets the spenddown amount.

(10) To be counted toward spenddown, medical expenses must:

(a) Not have been used to meet a previous spenddown; and

(b) Not be the confirmed responsibility of a third party. The entire expense will be counted unless the third party confirms its coverage within:

(i) Forty-five days of the date of the service; or

(ii) Thirty days after the base period ends; and

(c) Meet one of the following conditions:

(i) Be an unpaid liability at the beginning of the base period and be for services for:

(A) The applying person; or

(B) A family member legally or blood-related and living in the same household as the applying person.

(ii) Be for medical services either paid or unpaid and incurred during the base period; or

(iii) Be for medical services paid and incurred during a previous base period if that client payment was made necessary due to delays in the certification for that base period.

(11) An exception to the provisions in subsection (10) of this section exists. Medical expenses the person owes are applied to spenddown even if they were paid by or are subject to payment by a publicly administered program during the base period. To qualify, the program cannot be federally funded or make the payments of a person's medical expenses from federally matched funds. The expenses do not qualify if they were paid by the program before the first day of the base period.

(12) The following medical expenses which the person owes are applied to spenddown. Each dollar of an expense or obligation may count once against a spenddown cycle that leads to eligibility for MN coverage:

(a) Charges for services which would have been covered by the department's medical programs as described in chapter 388-529 WAC, less any confirmed third party payments which apply to the charges; and

(b) Charges for some items or services not typically covered by the department's medical programs, less any third party payments which apply to the charges. The allowable items or services must have been provided or prescribed by a licensed health care provider; and

(c) Medical insurance and Medicare copayments or coinsurance (premiums are income deductions under WAC 388-519-0100(4)); and

(d) Medical insurance deductibles including those Medicare deductibles for a first hospitalization in sixty days.

(13) Medical expenses may be used more than once if:

(a) The person did not meet their total spenddown amount and did not become eligible in that previous base period; and

(b) The medical expense was applied to that unsuccessful spenddown and remains an unpaid bill.

(14) To be considered toward spenddown, written proof of medical expenses for services rendered to the client must be presented to the department. The deadline for presenting medical expense information is thirty days after the base period ends unless good cause for delay can be documented.

(15) The medical expenses applied to the spenddown amount are the client's financial obligation and are not reimbursed by the department (see WAC 388-502-0100).

(16) Once a person meets their spenddown and they are issued a medical identification card for MN coverage, newly identified expenses cannot be considered toward that spenddown. Once the application is approved and coverage begins the beginning date of the certification period cannot be changed due to a client's failure to identify or list medical expenses.

AMENDATORY SECTION (Amending WSR 03-24-030, filed 11/24/03, effective 12/25/03)

**WAC 388-865-0217 Psychiatric indigent inpatient program.** (1) The psychiatric indigent inpatient (PII) program is a state funded, limited casualty (LCP) program specifically for mental health clients identified in need of inpatient psychiatric care by the regional support network (RSN).

(2) The psychiatric indigent inpatient (PII) program pays only for ~~((involuntary and))~~ emergent voluntary inpatient psychiatric care in community hospitals within the state of Washington. Psychiatric indigent inpatient (PII) does not cover ancillary charges for physician, transportation, pharmacy or other costs associated with an inpatient psychiatric hospitalization.

(3) To be eligible for the psychiatric indigent inpatient (PII) program, a client is subject to the following conditions and limitations:

(a) The client must have ~~((an involuntary or))~~ a voluntary inpatient psychiatric admission authorized by a regional support network (RSN) in the month of application or within the three months immediately preceding the month of application.

(b) Consumers applying for the psychiatric indigent inpatient (PII) program are subject to the income and resource rules for TANF and TANF-related clients in chapters 388-450 and 388-470 WAC.

(c) If a client's income and/or resources exceed the standard for medically needy (MN), as described in WAC 388-478-0070, the client must spend down the excess amount as described in WAC ~~((388-519-0100))~~ 388-519-0110 for the client to be eligible for the psychiatric indigent inpatient (PII) program. Spenddown is a client financial obligation for medical expenses. The department deducts the spenddown from payments to providers (see WAC 388-502-0100).

(d) A client who is voluntarily admitted must have incurred an emergency medical expense requirement (EMER) of two thousand dollars over a twelve-month period. ~~((A client who is detained under the Involuntary Treatment Act (ITA) is exempt from the emergency medical expense requirement (EMER)))~~ EMER is a client financial obligation. The department deducts the EMER from payments to providers (see WAC 388-502-0100).

(i) Qualifying emergency medical expense requirement (EMER) expenses are psychiatric inpatient services in a community hospital.

(ii) The emergency medical expense requirement (EMER) period lasts for twelve calendar months, beginning on the first day of the month of certification for psychiatric indigent inpatient (PII) and continuing through the last day of the twelfth month.

(e) A client is limited to a single three-month period of psychiatric indigent inpatient (PII) eligibility per twelve-month emergency medical expense requirement (EMER) period.

(4) Clients are not eligible for the psychiatric indigent inpatient (PII) program if they:

(a) Are eligible for, or receiving, any other cash or medical program; or

(b) Entered ~~((the))~~ Washington state specifically to obtain medical care; or

(c) Are inmates of a federal or state prison; or

(d) Are committed under the Involuntary Treatment Act (ITA).

## WSR 06-13-043

### PERMANENT RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 15, 2006, 4:19 p.m., effective July 17, 2006]

Effective Date of Rule: July 17, 2006.

Purpose: To amend WAC 388-400-0005 Who is eligible for temporary assistance for needy families?, 388-400-0025 Who is eligible for general assistance unemployable?, 388-400-0040 Am I eligible for benefits through the Washington Basic Food program?, 388-418-0007 When do I have to report changes in my circumstances?, 388-418-0011 What is a six-month report, and do I have to complete one in order to keep getting benefits? and 388-418-0020 How does the department determine the date a change affects by benefits?, to reflect eligibility policy for department programs and to reduce the need for households to complete multiple mid-certification reviews when they receive benefits from more than one program. Currently, someone receiving benefits from more than one program could receive multiple six-month reports.

Citation of Existing Rules Affected by this Order: Amending WAC 388-400-0005, 388-400-0025, 388-400-0040, 388-418-0007, 388-418-0011, and 388-418-0020.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Adopted under notice filed as WSR 06-10-053 on May 1, 2006.

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

Number of Sections Adopted at 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 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 0, Amended 6, Repealed 0.

Date Adopted: June 14, 2006.

Andy Fernando, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-14-100, filed 6/30/05, effective 7/31/05)

**WAC 388-400-0005 Who is eligible for temporary assistance for needy families?** (1) You can get temporary assistance for needy families (TANF), if you:

(a) Can be in a TANF/SFA assistance unit as allowed under WAC 388-408-0015 through 388-408-0030;

(b) Meet the citizenship/alien status requirements of WAC 388-424-0010;

(c) Live in the state of Washington. A child must live with a caretaker relative, guardian, or custodian who meets the state residency requirements of WAC 388-468-0005;

(d) Do not live in a public institution unless specifically allowed under RCW 74.08.025;

(e) Meet TANF/SFA:

(i) Income requirements under chapter 388-450 WAC;

(ii) Resource requirements under chapter 388-470 WAC; and

(iii) Transfer of property requirements under chapter 388-488 WAC.

(f) Assign your rights to child support as required under WAC 388-422-0005;

(g) Cooperate with the division of child support (DCS) as required under WAC 388-422-0010 by helping them:

(i) Prove who is the father of children applying for or getting TANF or SFA; and

(ii) Collect child support.

(h) Tell us your Social Security number as required under WAC 388-476-0005;

(i) Cooperate in a review of your eligibility as required under WAC 388-434-0005;

(j) Cooperate in a quality assurance review as required under WAC 388-464-0001;

(k) Participate in the WorkFirst program as required under chapter 388-310 WAC;

(l) Report changes of circumstances as required under WAC 388-418-0005; and

(m) Complete a ~~((six-month report))~~ mid-certification review and provide proof of any changes as required under WAC 388-418-0011.

(2) If you are an adult, you must have an eligible child living with you or you must be pregnant and meet the requirements of WAC 388-462-0010.

(3) If you are an unmarried pregnant teen or teen parent:

(a) Your living arrangements must meet the requirements of WAC 388-486-0005; and

(b) You must attend school as required under WAC 388-486-0010.

(4) In addition to rules listed in subsection (1) of this section, a child must meet the following rules to get TANF:

(a) Meet the age requirements under WAC 388-404-0005; and

(b) Live in the home of a relative, court-ordered guardian, court-ordered custodian, or other adult acting *in loco parentis* as required under WAC 388-454-0005; or

(c) If the child lives with a parent or other adult relative that provides care for the child, that adult cannot have used up their sixty-month lifetime limit of TANF or SFA cash benefits as defined in WAC 388-484-0005.

(5) You cannot get TANF if you have been:

(a) Convicted of certain felonies and other crimes under WAC 388-442-0010; or

(b) Convicted of unlawful practices to get public assistance under WAC 388-446-0005 or 388-446-0010.

~~((6) If you are a client in a household which is eligible for a tribal TANF program, you cannot receive state and tribal TANF in the same month.))~~ (6) If you are a client in a household which is eligible for a tribal TANF program, you cannot receive state and tribal TANF in the same month.

AMENDATORY SECTION (Amending WSR 04-23-027, filed 11/8/04, effective 12/9/04)

**WAC 388-400-0025 Who is eligible for general assistance-unemployable benefits?** (1) You can get general assistance-unemployable (GAU) benefits if you:

(a) Are incapacitated as required under WAC 388-448-0010 through 388-448-0120;

(b) Are at least eighteen years old or, if under eighteen, a member of a married couple;

(c) Are in financial need according to GAU income and resource rules in chapters 388-450, 388-470 and 388-488 WAC;

(d) Meet the general assistance citizenship/alien status requirements under WAC 388-424-0015(2);

(e) Provide a Social Security number as required under WAC 388-476-0005;

(f) Reside in the state of Washington as required under WAC 388-468-0005;

(g) Undergo a treatment and referral assessment as provided under WAC 388-448-0130 through 388-448-0150;

(h) Assign interim assistance as provided under WAC 388-448-0210;

(i) Report changes of circumstances as required under WAC 388-418-0005; and

(j) Complete a ~~((six-month report))~~ mid-certification review and provide proof of any changes as required under WAC 388-418-0011.

(2) You cannot get GAU benefits if:

(a) You are eligible for temporary assistance for needy families (TANF) benefits;

(b) You are eligible for state family assistance (SFA) benefits unless you are not eligible under WAC 388-400-0010;

(c) You have the ability to, but refuse to meet a TANF or SFA eligibility rule;

(d) You are eligible for supplemental security income (SSI) benefits;

(e) You are an ineligible spouse of an SSI recipient; or

(f) ~~((You were denied benefits or your benefits were terminated by the))~~ Social Security Administration (SSA) denied your application for benefits or terminated your benefits for failing to follow a SSI program rule or application requirement.

(3) ~~((The))~~ We determine who is in your assistance unit ~~((will be established))~~ according to WAC 388-408-0010.

(4) ~~((You may be eligible for GAU if you reside in a public institution.))~~ A "public institution" is an institution that is supported by public funds, and a governmental unit either is responsible for it or exercises administrative control over it. ~~((Your eligibility will depend upon))~~ If you live in a public institution, you may be eligible for GAU depending on the type of institution you are in.

(a) If you reside in a public institution and are otherwise eligible for GAU, you may be eligible for general assistance if you are:

(i) A patient in a public medical institution; or

(ii) A patient in a public mental institution and are:

(A) Sixty-five years of age or older; or

(B) Twenty years of age or younger.

(b) You are not eligible for GAU when you are in the custody of or confined in a public institution such as a state penitentiary or county jail including placement:

(i) In a work release program; or

(ii) Outside of the institution including home detention.

AMENDATORY SECTION (Amending WSR 04-21-025, filed 10/13/04, effective 11/13/04)

**WAC 388-400-0040 Am I eligible for benefits through the Washington Basic Food program?** The Washington Basic Food program (Basic Food) is a nutrition program to help low-income individuals and families buy food. This rule is a summary of the rules for Basic Food.

(1) When you apply for Basic Food, we decide who is in your assistance unit (AU) based on the requirements under WAC 388-408-0034 and 388-408-0035.

(2) To be eligible for Basic Food benefits, your AU must meet the eligibility requirements of the most current version of the Food Stamp Act of 1977.

(3) To be eligible for **federal** Basic Food benefits, each AU member must meet the citizenship or alien status requirements for federal benefits as described under WAC 388-424-0020.

(4) An AU member who is not eligible for federal benefits may be eligible for **state-funded** Basic Food benefits if they meet the requirements described under WAC 388-400-0045.

(5) To be eligible for **federal** or **state** Basic Food benefits, each AU member must:

(a) Be a resident of the state of Washington as required under WAC 388-468-0005;

(b) Meet the citizenship or alien status requirements of either WAC 388-424-0020 or 388-424-0025;

(c) ~~((Provide))~~ Give us their Social Security number as required under WAC 388-476-0005;

(d) ~~((Provide))~~ Give us proof of identity as required under WAC 388-490-0005;

(e) Participate in the food stamp employment and training program (FSE&T) as required under chapter 388-444 WAC; and

(f) Meet the eligibility criteria for strikers as described under WAC 388-480-0001.

(6) To be eligible for Basic Food, your AU must:

(a) Have countable income at or below gross and net income standards as described under WAC 388-478-0060;

(b) Have countable resources at or below your AU's resource limit under WAC 388-470-0005 unless your AU is categorically eligible under WAC 388-414-0001;

(c) Report changes of circumstances as required under WAC 388-418-0005; and

(d) Complete a ~~((six-month report))~~ mid-certification review and provide proof of any changes if required under WAC 388-418-0011.

(7) If your AU has income under the gross income standard, we deduct certain expenses from your income under WAC ~~((388-450-0200))~~ 388-450-0185 before we calculate your Basic Food benefits.

(8) If an eligible person in your AU is elderly or disabled, some rules may help your AU to be eligible for Basic Food or to ~~((get))~~ receive more Basic Food benefits. These include:

(a) Resources limits and excluding certain resources under chapter 388-470 WAC;

(b) An excess shelter deduction over the limit set for AUs without an elderly or disabled individual under WAC 388-450-0190;

(c) A deduction for out-of-pocket medical expenses for the elderly or disabled individual if they are over thirty-five dollars a month under WAC 388-450-0200; and

(d) Being exempt from the **gross monthly income** standard under WAC 388-478-0060.

(9) For Basic Food, **elderly** means a person who is age sixty or older;

(10) For Basic Food, **disabled** means a person who:

(a) ~~((Gets))~~ Receives SSI;

(b) ~~((Gets))~~ Receives disability payments or blindness payments under Title I, II, XIV, or XVI of the Social Security Act;

(c) ~~((Gets))~~ Receives disability retirement benefits from a state, local or federal government agency because of a disability considered permanent under section 221(i) of the Social Security Act;

(d) ~~((Gets))~~ Receives disability benefits from the Railroad Retirement Act under sections 2 (a)(1)(iv) and (v) and:

- (i) Meets Title XIX disability requirements; or
- (ii) Is eligible for Medicare.

(e) Receives disability-related medical assistance under Title XIX of the Social Security Act;

(f) Is a veteran and receives disability payments based on one hundred percent disability;

(g) Is a spouse of a veteran and:

(i) Either needs an attendant or is permanently house-bound; or

(ii) Has a disability under section 221(i) of the Social Security Act and is eligible for death or pension payments under Title 38 of the USC.

(11) If a person in your AU attends an institution of higher education and does not meet the requirements to be an eligible student under WAC 388-482-0005, we do not ~~((consider))~~ count this person as a member of your AU.

(12) If your AU currently receives food benefits under WASHCAP or lives on or near an Indian reservation and ~~((participates in))~~ receives benefits from a tribal food distribution program approved by Food and Nutrition Service (FNS), your AU is not eligible for food assistance benefits through the Washington Basic Food ~~((benefits))~~ Program.

(13) If an AU member is ineligible for any of the following reasons, we count the ineligible person's income as described under WAC 388-450-0140:

(a) Able-bodied adults without dependents who are no longer eligible under WAC 388-444-0030;

(b) Persons fleeing a felony prosecution, conviction, or confinement under WAC 388-442-0010;

(c) Persons who do not attest to citizenship or alien status as defined in WAC 388-424-0001;

(d) Persons who are ineligible aliens under WAC 388-424-0020;

(e) Persons disqualified for an intentional program violation under WAC 388-446-0015;

(f) Persons who do not provide a Social Security number when required under WAC 388-476-0005; or

(g) Persons who failed to meet work requirements under chapter 388-444 WAC.

AMENDATORY SECTION (Amending WSR 05-11-074, filed 5/17/05, effective 7/1/05)

**WAC 388-418-0007 When do I have to report changes in my circumstances?** (1) If your household has a change of circumstances you are **not required to report** under WAC 388-418-0005, you do not need to contact ~~((the department))~~ us about this change. If you tell us about this change, we take action based on the new information. This includes:

(a) ~~((Requesting additional))~~ Asking for more information we need to determine your eligibility and benefits under WAC 388-490-0005;

(b) Increasing your benefits when we have proof of a change that makes you eligible for more benefits; or

(c) Reducing or ~~((terminating))~~ stopping your benefits based on the change.

(2) If you **are applying for** benefits and have had a change:

(a) After the date you applied but before your interview, you must report the change ~~((at the time of))~~ during your interview; or

(b) After you have been interviewed, you must report changes ~~((required to be reported by someone receiving benefits))~~ that we require someone who receives benefits to report as described under WAC 388-418-0005. You must report this change by the tenth day of the month following the month the change happened.

(3) If you **receive** cash assistance, medical, or Basic Food, you must report changes required under WAC 388-418-0005 by the tenth day of the month following the month the change happened.

(4) For a change in income, the date a change happened is the date you receive income based on this change. For example, the date of your first paycheck for a new job, or the date of a paycheck showing a change in your wage or salary.

(5) If we require you to complete a ~~((six-month report))~~ mid-certification review, you must complete the ~~((report))~~ review to inform us of your circumstances as described under WAC 388-418-0011 in order to keep ~~((getting))~~ receiving benefits.

(6) If you ~~((get))~~ receive TANF/SFA, and you learn that a child in your assistance unit (AU) will be gone from your home longer than ninety days, you must ~~((report this information to us))~~ tell us about this within five calendar days from the date you learn this information.

(a) If you do not report this within five days, the child's caretaker is not eligible for cash benefits for one month~~((-))~~; and

(b) We continue to budget the ineligible person's countable income as described in WAC 388-450-0162 ~~((while determining))~~ to determine the benefits for the ~~((remaining))~~ people still in the AU.

(7) If you report changes late, you may ~~((get))~~ receive the wrong amount or wrong type of benefits. If you ~~((get))~~ receive more benefits than you are eligible for, you may have to pay them back as described in chapter 388-410 WAC.

AMENDATORY SECTION (Amending WSR 05-09-020, filed 4/12/05, effective 6/1/05)

**WAC 388-418-0011 What is a ~~((six-month report))~~ mid-certification review, and do I have to complete one in order to keep ~~((getting))~~ receiving benefits?** (1) A ~~((six-month report))~~ mid-certification review (MCR) is a form ~~((the department sends))~~ we send you to ~~((confirm))~~ ask about your current circumstances. We use the ~~((information))~~ answers you ~~((provide))~~ give us ~~((through this report))~~ to ~~((determine))~~ decide if you are still eligible for benefits and to calculate your monthly benefits.

(2) If you receive ~~((benefits from any of the following programs, you must complete a six-month report))~~ cash assistance, family-related medical, or Basic Food benefits, you must complete a mid-certification review unless you meet one of the exceptions below:

(a) ~~((Cash assistance unless you receive only refugee cash assistance as described under WAC 388-400-0030;))~~

You **do not** have to complete a mid-certification review for cash assistance if you:

(i) Only receive Refugee Cash Assistance as described under WAC 388-400-0030; or

(ii) Have a review period of six months or less.

(b) ~~((Family-related medical; or))~~ You **do not** have to complete a mid-certification review for Basic food if:

(i) Your assistance unit has a certification period of six months or less; or

(ii) All adults in your assistance unit are elderly or disabled and have no earned income.

~~((c) Basic Food unless you meet one of the following conditions:~~

~~(i) Your assistance unit has a certification period of six months or less. If you have a certification period of six months or less, you must complete a recertification under WAC 388-434-0010 in order to keep getting Basic Food benefits; or~~

~~(ii) All adults in your assistance unit are elderly or disabled and have no earned income.)~~

~~(3) ((If you must complete a six-month report, we send you the report with the most current information we have on your case. You can choose to complete the report in one of the following ways:~~

~~(a) Complete and return the form to the department. For us to consider your six-month report complete, you must take all of the steps below:~~

~~(i) Complete the report form, telling us about changes in your circumstances we ask about;~~

~~(ii) Sign and date the report;~~

~~(iii) Provide proof of any changes you report;~~

~~(iv) If you receive family medical benefits, provide proof of your income even if it has not changed; and~~

~~(v) Mail or turn in the completed form and any required proof to us by the due date on the report. This is the tenth day of the sixth month of your review or certification period.~~

~~(b) Complete the six-month report over the phone. For us to consider your six-month report complete, you must take all of the steps below:~~

~~(i) Contact us at the phone number we provide on the report form, telling us about changes in your circumstances we ask about;~~

~~(ii) Provide proof of any changes you report. We may be able to verify some information over the phone;~~

~~(iii) If you receive family medical benefits, provide proof of your income even if it has not changed; and~~

~~(iv) Mail or turn in any required proof to us by the due date on the report. This is the tenth day of the sixth month of your review or certification period.)~~ **When we send the review form:**

<b><u>If you must complete a MCR...</u></b>	<b><u>We send your review form...</u></b>
(a) For one program such as Basic Food or Family Medical.	In the fifth month of your certification or review period. You must complete your review by the 10th day of month six.

<b><u>If you must complete a MCR...</u></b>	<b><u>We send your review form...</u></b>
(b) For two or more programs, and all program have a 12-month certification or review period.	In the fifth month of your certification or review period. You must complete your review by the 10th day of month six.
(c) For Basic Food and another program when either program has a certification or review period between six and twelve months.	In the fifth month of your Basic Food certification period when you receive Basic Food and another program. You must complete your review by the 10th day of month six of your Basic Food certification.

~~(4) If ((your benefits change because of the information in your six-month report, the change takes effect in the seventh month of your certification or review period even if this does not provide you ten days notice before we change your benefits)) you must complete a mid-certification review, we send you the review form with questions about your current circumstances. You can choose to complete the review in one of the following ways:~~

~~(a) **Complete the form and return it to us.** For us to count your mid-certification review complete, you must take all of the steps below:~~

~~(i) Complete the review form, telling us about changes in your circumstances we ask about;~~

~~(ii) Sign and date the form;~~

~~(iii) Give us proof of any changes you report. If you report a change that will increase your benefits without giving proof of this change, we will not increase your benefits;~~

~~(iv) If you receive family medical benefits, give us proof of your income even if it has not changed; and~~

~~(v) Mail or turn in the completed form and any required proof to us by the due date on the review.~~

~~(b) **Complete the mid-certification review over the phone.** For us to count your mid-certification review as complete, you must take all of the steps below:~~

~~(i) Contact us at the phone number on the review form, telling us about changes in your circumstances we ask about;~~

~~(ii) Give us proof of any changes you report. We may be able to verify some information over the phone. If you report a change that will increase your benefits without giving proof of this change, we will not increase your benefits;~~

~~(iii) If you receive family medical benefits, give us proof of your income even if it has not changed; and~~

~~(iv) Mail or turn in any required proof to us by the due date on the review.~~

~~(c) **Complete the application process for another program.** If we approve an application for another program in the month you must complete your mid-certification review, we use the application to complete your review when the same person is head of household for the application and the mid-certification review.~~

~~(5) If your benefits change because of what we learned in your mid-certification review, the change takes effect the~~

next month even if this does not give you ten days notice before we change your benefits.

~~(6)~~ If you do not complete your required ~~((six-month report))~~ mid-certification review, we stop your benefits ~~((end))~~ at the end of the ~~((sixth))~~ month ~~((of your review or certification period))~~ the review was due.

~~((6))~~ **(7) Late ~~((reports))~~ reviews.** If you complete the ~~((report))~~ mid-certification review after the ~~((end of the sixth month of your certification or review period))~~ last day of the month the review was due, we process the ~~((report))~~ review as described below based on when we receive the ~~((report))~~ review:

(a) ~~((Reports completed))~~ **Mid-certification reviews you complete by the last day of the month after the month the ~~((report))~~ review was due:** We determine your eligibility for ongoing benefits. If you are eligible, we reinstate your benefits based on the information in the ~~((report))~~ review.

(b) ~~((Reports completed after the last day of the month after the month the report))~~ **Mid-certification reviews you complete after the last day of the month after the month the review was due:** We treat this ~~((report))~~ review as a request to send you an application. For us to determine if you are eligible for benefits, you must complete the application process as described in chapter 388-406 WAC.

**AMENDATORY SECTION** (Amending WSR 05-09-020, filed 4/12/05, effective 6/1/05)

**WAC 388-418-0020 How does the department determine the date a change affects my benefits?** (1) Unless otherwise specified, the rules in this chapter refer to cash, medical assistance, and Basic Food benefits.

(2) If you report a change that happened between the date you applied for benefits and the date we interview you under WAC 388-452-0005, we take this change into consideration when we process your application for benefits.

(3) If we learn about a change in your circumstances from another person, agency, or by matching with any number of systems, we determine the impact this change has on your benefits. We may request additional information under WAC 388-490-0005 or update your benefits based on this information.

(4) For programs other than pregnancy medical and children's medical, if you report a change in your income that we expect to continue at least a month beyond the month when you reported the change, we recalculate the income we estimated under WAC 388-450-0215 based on this change. Changes in income during a certification period do not affect pregnancy medical or children's medical assistance.

(5) When a change causes an increase in benefits, you must provide proof of the change before we adjust your benefits.

(a) If you give us the proof within ten days from the date we requested it, we increase your benefits starting the month after the month you reported the change.

(b) If you give us the proof more than ten days after the date we requested it, we increase your benefits starting the month after the month we got the proof.

(c) If you are eligible for more benefits and we have already sent you benefits for that month, we provide you the

additional benefits within ten days of the day we got the proof.

(6) When a change causes a decrease in benefits, we reduce your benefit amount without asking for proof.

(a) If you report a change within the time limits in WAC 388-418-0007, and you are not reporting this as part of a ~~((six-month report))~~ mid-certification review, we decrease your benefits starting the first month following the advance notice period. The advance notice period:

(i) Begins on the day we send you a letter about the change, and

(ii) Is determined according to the rules in WAC 388-458-0025.

(b) If you do not report a change you must tell us about under WAC 388-418-0005, or you report a change later than we require under WAC 388-418-0007, we determine your eligibility as if you had reported this on time. If you received more benefits than you should, we set up an overpayment as described under chapter 388-410 WAC.

(7) If we are not sure how the change will affect your benefits, we send you a letter as described in WAC 388-458-0020 requesting information from you.

(a) We give you ten days to provide the information. If you need more time, you can ask for it.

(b) If you do not give us the information in time, we will stop your benefits after giving you advance notice, if required, as described in WAC 388-458-0030.

(8) Within ten days of the day we learn about a change, we send advance notice according to the rules in chapter 388-458 WAC and take necessary action to provide you the correct benefits. If you request a hearing about a proposed decrease in benefits before the effective date or within the notice period as described in WAC 388-458-0040, we wait to take action on the change.

(9) If you disagree with a decision we made to change your benefits, you may request a fair hearing under chapter 388-02 WAC. The fair hearing rules in chapter 388-02 WAC do not apply for a "mass change." A mass change is when we change the rules that impact all recipients and applicants.

(10) When you request a hearing and ~~((get))~~ receive continued benefits:

(a) We keep giving you the same benefits you got before the advance notice of reduction until the earliest of the following events occur:

(i) For Basic Food only, your certification period expires;

(ii) The end of the month the fair hearing decision is mailed;

(iii) You state in writing that you do not want continued benefits;

(iv) You withdraw your fair hearing request in writing;

or

(v) You abandon your fair hearing request; or

(vi) An administrative law judge issues a written order that ends continued benefits prior to the fair hearing.

(b) We establish an overpayment claim according to the rules in chapter 388-410 WAC when the hearing decision agrees with the action we took.

(11) Some changes have a specific effective date as follows:



(a) When cash assistance benefits increase because a person is added to your assistance unit, we use the effective date rules for applications in WAC 388-406-0055.

(b) When cash assistance benefits increase because you start paying shelter costs, we use the date the change occurred.

(c) When a change in law or regulation changes the benefit amount, we use the date specified by the law or regulation.

(d) When institutional medical assistance participation changes, we calculate the new participation amount beginning with the month your income or allowable expense changes.

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 9, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 9, Repealed 0.

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

Date Adopted: June 15, 2006.

June 7, 2006

Juli Wilkerson

Director

### WSR 06-13-046

#### PERMANENT RULES

### DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT

[Filed June 16, 2006, 9:43 a.m., effective July 17, 2006]

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

Purpose: The purpose of these changes to existing rules is to:

- Implement Governor Gregoire's executive order on plain talk.
- Clarify program eligibility and staff qualifications requirements.
- Incorporate existing policy memos into rules.
- Remove day-to-day program operation details that are also in ECEAP performance standards, as recommended by the attorney general's office.
- Eliminate redundancy within rules.

These changes will lead to clearer understanding of program expectations and contractors will find it easier to use the WAC.

Citation of Existing Rules Affected by this Order: Amending chapter 365-170 WAC.

Statutory Authority for Adoption: Chapter 28A.215 RCW.

Adopted under notice filed as WSR 06-07-024 on March 7, 2006.

Changes Other than Editing from Proposed to Adopted Version: WAC TITLE: ~~STATE FUNDING FOR LOCAL EARLY CHILDHOOD EDUCATION AND ASSISTANCE PROGRAMS.~~

WAC 365-170-07005 (1)(d), Health ~~services~~, screening, information, and referral, including medical, dental, nutrition, and mental health.

WAC 365-170-080 (3)(a)(iii), Previous or current month, when annual family income has been documented and shows a significant recent decrease due to death, divorce, unexpected job loss, or similar circumstances.

NEW ADDITION: WAC 365-170-095(10), Equivalent degrees and certificates from other states and countries are accepted for ECEAP staff qualifications.

Changes made following stakeholder input.

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

### Chapter 365-170 WAC

#### ~~((STATE FUNDING FOR LOCAL))~~ EARLY CHILDHOOD EDUCATION AND ASSISTANCE PROGRAM((S))

AMENDATORY SECTION (Amending Order 88-04, filed 8/31/88)

**WAC 365-170-010 Authority.** These rules are adopted under the authority of ~~((RCW 43.63A.060 which provides that the director shall make such rules and regulations and do all other things necessary and proper to carry out the purposes of chapter 43.63A RCW. RCW 43.63A.065(2) provides that among its functions and responsibilities the department shall administer state and federal grants and programs which are assigned to the department by the governor or the legislature. These rules are also adopted under the specific authority delegated to the department under RCW 28A.34A.060 to adopt rules for the administration of the program. The program which these rules are designed to implement is found in))~~ chapter ~~((28A.34A))~~ 28A.215 RCW.

AMENDATORY SECTION (Amending WSR 99-19-176, filed 9/22/99, effective 10/23/99)

**WAC 365-170-020 Purpose.** ~~((The purpose of this chapter is to set forth the conditions and procedures under which state funding may be made available to assist local early childhood education and assistance programs.))~~ The early childhood education and assistance program (ECEAP) provides preschool education, family support, and health and nutrition services to low-income three- and four-year-old children to promote school success.

AMENDATORY SECTION (Amending WSR 99-19-176, filed 9/22/99, effective 10/23/99)

**WAC 365-170-030 Definitions.** (1) ~~((“Applicant” means a public or private nonsectarian organization which applies for state early childhood education and assistance program funds.~~

(2) "At risk" means by virtue of socio-economic, or developmental or environmental status at risk of failure in the common school system.

(3) "Contract year" means the period July 1 through June 30 in which the program must operate.

(4)) "Contractor" means a nonsectarian public or private organization that contracts with the department of community, trade, and economic development to provide local early childhood education and assistance services.

(2) "Department" means the department of community, trade and economic development.

((5)) "Direct service" means any educational, health, or social service for children which is designed to meet the early childhood education assistance program performance standards.

(6)) (3) "Director" means the director of the department of community, trade and economic development.

((7)) "Early childhood education and assistance program" means the statewide administrative activities carried out within the department of community, trade and economic development to allocate, award, and monitor state funds appropriated to assist local early childhood education and assistance programs.

(8) "Enrolled child(ren)" means participant(s) in the early childhood education and assistance program.

(9) "Family" means all persons living in the same household who are supported by the income of the parent(s) or guardian(s) of the child enrolling in the early childhood education and assistance program, and related to the parent(s) or guardian(s) by blood, marriage, adoption, or legal obligation to provide support.

(10) "Contractor" means an applicant which has been awarded state funds under the early childhood education and assistance program, and which has entered into a contract with the department of community, trade and economic development to provide an early childhood education and assistance program. Contractors may be local public or private organizations which are nonsectarian in their delivery of services.

(11) "Like educational services" means comprehensive programs providing educational, family support, and health services funded by other sources.

(12) "Low income family" means a family whose total income before taxes for the previous twelve months or full calendar year, whichever period better reflects the current income of the family, is equal to, or less than, one hundred ten percent of the federally established poverty guidelines as defined by the department of health and human services. Recipients of cash benefits under the temporary assistance to needy families program are included in this definition.

(13) "Nonsectarian" means that no aspect of early childhood education and assistance services will include any religious orientation.)

AMENDATORY SECTION (Amending Order 88-04, filed 8/31/88)

**WAC 365-170-060 Process for allocating or awarding funds.** (1) Public or private nonsectarian organizations

are eligible to apply for funding as early childhood education and assistance programs.

(2) Funds shall be awarded on a competitive basis or allocated by the department, consistent with the amount allocated by the legislature.

((2)) (3) An applicant ((shall use forms issued and)) must use the application procedures established by the department.

((3)) The department shall notify all applicants of funding decisions. All recipients of funds shall be provided with a contract for signature.) (4) Successful applicants will be awarded a contract with the department. This contract must be signed by an official with authority to bind the recipient ((and must be returned to the department prior to the award or allocation of any funds under this program)).

AMENDATORY SECTION (Amending WSR 99-19-176, filed 9/22/99, effective 10/23/99)

**WAC 365-170-070 Use of funds.** (1) ((Department funds must not be used to supplant other existing funding sources.

(2)) Contracting agencies ((receiving early childhood education assistance program funds)) must provide comprehensive early education and family support services free of charge to enrolled families.

((3)) (2) Early childhood education and assistance program funds must be used as dollars of last resort for medical, dental, nutrition, and mental health services.

((4)) (3) Administrative costs funded under this program are limited to fifteen percent of the total award.

#### NEW SECTION

**WAC 365-170-07005 Comprehensive service delivery.** (1) Contractors must conduct a community assessment, and must plan and deliver the following comprehensive services to enrolled children:

(a) Early childhood education;

(b) Family support;

(c) Parent involvement including options for participation in their child's classroom, program policy decisions, service delivery system development, and parent education and training; and

(d) Health screening, information, and referral, including medical, dental, nutrition, and mental health.

(2) Contractors must comply with the early childhood education and assistance program contract, performance standards, and policy memos in the delivery of all services.

(3) Contractors may request exceptions to rules, performance standards, or policies. Contractors must receive written approval from the department before implementing exceptions.

#### NEW SECTION

**WAC 365-170-07010 Nondiscrimination.** Contractors must not deny service to, or discriminate against, any person who meets the eligibility criteria for the early childhood education and assistance program on the basis of gender, race, color, religion, age, national origin, citizenship, ancestry,

physical or mental disability, family configuration, sexual orientation, culture, or public assistance recipient status.

AMENDATORY SECTION (Amending WSR 99-19-176, filed 9/22/99, effective 10/23/99)

**WAC 365-170-080 ((Recruitment, eligibility and enrollment of children.)) Eligibility for services.** (1) ((Non-discrimination. Programs must neither deny service to, nor otherwise discriminate in the delivery of services against, any person who otherwise meets the eligibility criteria for the program on the basis of gender, race, color, religion, age, national origin, citizenship, ancestry, physical or mental disability, family configuration, culture, or because such person is a recipient of federal, state, or local public assistance. Services must comply with ADA and the Family Policy Initiative principles defined in RCW 74.14A.025.

(2) Recruitment.

(a) Policies and procedures must be in place to systematically recruit, document eligibility, and enroll children who reflect the low income population in the service area of the program. Ongoing recruitment activities must be conducted to ensure that eligible families in the community are aware of services.

(b) Recruitment efforts must be made to ensure enrollment at one hundred percent of the funded enrollment level within thirty calendar days of the first date of service. Daily attendance at eighty five percent of the funded enrollment level must be maintained. Efforts to recruit eligible children and maintain waiting lists for filling vacancies as they occur must continue until forty five calendar days from the end of the program year.

(c) Not less than ten percent of the available slots statewide shall be reserved for children of migrant families, seasonal farmworker families, and native American families living on or off reservation.

(d) As many as ten percent of the available funded enrollment slots may be filled with children who do not meet income eligibility requirements if the child is determined to be "at-risk" due to developmental or environmental factors.

(3) Eligibility. A child is eligible if:

(a) The child is not eligible for kindergarten as of August 31 of the contract year; and

(b) The child would benefit from a preschool program designed to help prepare children to enter the school system;

(c) The child is not otherwise a participant in a federal or state program providing like educational services as defined under WAC 365-170-030(10); and

(d) The child:

(i) Is a member of a family with an income level that, as defined by the Department of Health and Human Services, is at or below one hundred ten percent of the U.S. Poverty Guidelines for family size. Verification and documentation of family income must be obtained for the previous calendar year or twelve months which precede the child's enrollment date, whichever is more reflective of current circumstances; or

(ii) Is a member of a family which receives cash benefits under the Temporary Assistance to Needy Families program; or

(iii) Occupies one of the slots of ten percent which may be filled with children who do not meet income eligibility requirements but are determined to be at-risk due to developmental or environmental factors; or

(iv) Occupies one of the slots of ten percent of slots available statewide which shall be reserved for children of migrant families, seasonal farmworker families, and native American families living on or off reservation who are otherwise eligible.

(4) Enrollment.

(a) Enrolled children and their families must not be charged fees for any services provided.

(b) Programs must develop an enrollment process that addresses identification of age eligible and income eligible children and prioritization within that same population. Priority must be given to children from families with the lowest income or to eligible children from families with multiple needs. Criteria for prioritizing child eligibility must address the various factors in WAC 365-170-080(3) and must at minimum prioritize as follows:

(i) First priority for enrollment, consistent with the intent to prepare children for the common school system, must be given to four year olds who are not eligible for kindergarten as of August 31 of the contract year and are considered to be at-risk;

(ii) Second priority must be given to three-year-olds if local program priorities determine the child would benefit from a comprehensive early education program.)) Contractors must recruit, document eligibility, and enroll children based on available funds. Enrolled children must not be participants in the federally funded head start program. Contractors must give priority for enrollment to children from families with the lowest incomes or to children from families with multiple needs.

(2) To be enrolled, children must meet the following age criteria.

(a) First priority for enrollment must be given to children who are four years old, but not yet five years old, by August 31 of the program year.

(b) Second priority may be given to children who are three years old by August 31 of the program year and meet other eligibility criteria.

(c) Contractors may not enroll children who are younger than three years old or older than five years old on August 31 of the program year.

(3) To be enrolled, children must meet either the following income or risk factor criteria:

(a) Family income. Children are eligible if their family income is at or below one hundred ten percent of the Federal Poverty Guidelines established by the United States Department of Health and Human Services. Contractors may choose which time period below best reflects the family's current financial circumstances:

(i) Previous calendar year before enrollment;

(ii) Twelve months before enrollment; or

(iii) Previous or current month, when annual family income has been documented and shows a significant recent decrease due to death, divorce, unexpected job loss, or similar circumstance.

(b) Risk factors. Up to ten percent of funded slots may be used for children from families who are not income eligible and are impacted by:

(i) Developmental factors, such as developmental delay or disability; or

(ii) Environmental factors, such as domestic violence, chemical dependency, child protective services involvement, or other factors affecting school success.

AMENDATORY SECTION (Amending WSR 99-19-176, filed 9/22/99, effective 10/23/99)

**WAC 365-170-095 ((Staffing-)) Staff qualifications.**

~~(1) ((A system must be developed for the recruitment and selection of early childhood education and assistance program staff. The system must:~~

~~(a) Meet state and relevant federal laws that ensure equity;~~

~~(b) Advertise and describe position qualifications and requirements to the public;~~

~~(c) Use a selection and hiring process which involves parents, guardians and appropriate staff;~~

~~(d) Requires background reference check, criminal record clearance, and finger printing of any staff or volunteers who have unsupervised contact with children;~~

~~(e) Prevents hiring of staff whose health or behavior presents a threat to children's safety.~~

~~(2) A description of how specific staff classifications will be used to deliver services in each distinct model must be maintained in program planning records. Programs must make concerted efforts to recruit and hire qualified staff that reflects the diversity of culture, ethnicity, language and physical abilities of the service population.~~

~~(3) Staff hired into lead teacher and family educator positions must meet the standard qualifications for their position within five years of appointment or by July 1, 2004, whichever is later. Staff hired into positions of assistant teacher, family advocate, family service worker and health aide after June 30, 1999, must meet the standard qualifications for their position within five years of appointment or by July 1, 2004, whichever is later.~~

~~(4) Early childhood education or special education degrees from out of state may be accepted on par with Washington state degrees. Out of state teaching certificates must be validated by an endorsement obtained through the office of the superintendent of public instruction.~~

~~(5) Clock hours accumulated through June 30, 1999, may be credited towards quarter credit requirements of positions at the rate of ten clock hours to one credit hour.~~

~~(6) Staff not meeting standard qualifications may be hired if they meet provisional qualifications and program records document planning for progression to the standard qualifications within five years.~~

~~(7) An exception to minimum qualifications may be requested of the department to retain or appoint a person who does not meet the standard or provisional qualifications but has other education and experience in the applicable field. Any necessary approvals for existing staff must be obtained by August 31, 1999.~~

~~(8) Programs unable to hire staff meeting standard qualifications must document written plans and efforts for professional development. Planning documents must show how staff will progress to the standard qualifications of their position(s) within five years of appointment, or by July 1, 2004, whichever is later.~~

~~(9) The following standard and provisional staff qualifications are required for program positions:~~

~~(a) Standard lead teacher qualifications:~~

~~(i) A two-year or four-year degree from an accredited public or private institution of higher education in the field of early childhood education or child development and two years of successful work experience with adults/parents and young children; or~~

~~(ii) Three years of successful, relevant, documented work experience in a preschool, child care or kindergarten setting; and~~

~~(A) A two-year or four-year degree in any field from an accredited public or private institution of higher education; and at least thirty quarter units or equivalent semester hours in the field of early childhood education or child development; or~~

~~(B) A valid Washington state elementary education teaching certificate with an endorsement in early childhood education (pre-K-Grade 3) or special education with an emphasis in early childhood education.~~

~~(b) Provisional lead teacher qualifications. Three years of successful, relevant, documented work experience in a preschool, child care or kindergarten setting; and~~

~~(i) A child development associate certificate (CDA); or~~

~~(ii) A two-year or four-year degree in any field from an accredited public or private institution of higher education; or~~

~~(iii) A valid Washington state teaching certificate, which does not include an endorsement in early childhood education or early childhood special education.~~

~~(c) Standard assistant teacher qualifications. One year of successful, relevant, documented work experience in a preschool or child care setting; and~~

~~(i) A one-year certificate in the field of early childhood education or child development from an accredited public or private technical college or institution of higher education; or~~

~~(ii) A high school diploma and child development associate (CDA) certificate.~~

~~(d) Provisional assistant teacher qualifications. One year of successful, relevant, documented work or volunteer experience in a preschool or child care setting.~~

~~(e) Standard family educator qualifications:~~

~~(i) A two-year or four-year degree in the field of adult education, human development, human services, social work, early childhood education, child development, psychology; or a related field from an accredited public or private institution of higher education and two years of successful work experience with adults/parents and young children; or~~

~~(ii) Three years of successful, relevant, documented work experience with adults/parents of young children; and~~

~~(A) A two-year or four-year degree in any field from an accredited public or private institution of higher education and thirty quarter units or the equivalent semester hours in adult education, human development, human services, social~~

work, early childhood education, child development, or a related field; or

(B) A valid Washington state elementary education teaching certificate with an endorsement in early childhood education (pre-K-Grade 3) or special education with an emphasis in early childhood education.

(f) Provisional family educator qualifications. Three years of successful, relevant, documented work experience in a preschool, child care, kindergarten or social work setting; and

(i) A child development associate certificate (CDA); or

(ii) A two-year or four-year degree in any field from an accredited public or private institution of higher education; or

(iii) A valid Washington state teaching certificate, which does not include an endorsement in Early childhood education or early childhood special education.

(g) Standard family advocate, family service worker, and health aide qualifications:

(i) A two-year or four-year degree in the field of adult education, human development, human services, public health, health education, nursing, social work, early childhood education, child development, psychology, or a related field from an accredited public or private institution of higher education and a minimum of two years of successful, relevant, documented work experience with adults/parents and young children; or

(ii) A two-year degree in any field from an accredited public or private institution of higher education, and at least thirty quarter units or the equivalent semester hours in the fields of adult education, human development, human services, social work, nursing, public health, health education, early childhood education, child development or a related field and three years of successful work experience with adults/parents of young children.

(h) Provisional family advocate, family service worker, and health aide qualifications. Two years or more of successful, relevant, documented work or volunteer experience working with families of young children in an early childhood family support program setting.

(i) Standard health professional qualifications:

(i) Four-year degree in the field of public health, nursing, or health education and two or more years experience in public health, nursing, health education, or management of a health program serving children and families; or

(ii) A registered nurse with a two-year degree in nursing, health education, or the management of health programs, and two or more years experience in health programs serving children and families.

(j) Standard dietitian qualifications. Two years successful, relevant, documented work experience in a community nutrition program serving children and families and a four-year degree in nutrition science, public health nutrition, dietetics, or other related fields and current registration with the American Dietetic Association as dietitian or be eligible, registered and scheduled for the registration exam.

(k) Standard mental health professionals qualifications:

(i) Certified or licensed mental health professional; or

(ii) School counselor; or

(iii) A registered mental health professional working in a licensed facility; or

(iv) Licensed psychologist with experience and expertise serving young children and their families.

(10) Programs must implement and maintain a system for training and development of staff and families of enrolled children. Staff and families must be involved in the system design and implementation process.)) Contractors must provide adequate staff to comply with all ECEAP performance standards. Contractors must have written policies and procedures for recruitment and selection of staff, including procedures for advertising all position openings to the public.

(2) All persons serving in the role of lead teacher must meet one of the following qualifications:

(a) An associate or higher degree with the equivalent of thirty college quarter credits of early childhood education. These thirty credits may be included in the degree or in addition to the degree; or

(b) A valid Washington state teaching certificate with an endorsement in early childhood education (pre-K-grade 3) or early childhood special education.

(3) All persons serving in the role of assistant teacher must meet one of the following qualifications:

(a) Employment as an early childhood education and assistance program assistant teacher in the same agency before July 1, 1999;

(b) The equivalent of twelve college quarter credits in early childhood education; or

(c) A Child Development Associate (CDA) credential awarded by the Council for Early Childhood Professional Recognition.

(4) All persons serving in the role of family support specialist must meet one of the following qualifications:

(a) Employment as an early childhood education and assistance program family service worker in the same agency before July 1, 1999; or

(b) An associate's or higher degree with the equivalent of thirty college quarter credits of adult education, human development, human services, family support, social work, early childhood education, child development, psychology, or another field directly related to their job responsibilities. These thirty credits may be included in the degree or in addition to the degree.

(5) All persons serving in the role of family support aide or health aide must meet one of the following qualifications:

(a) Employment as an early childhood education and assistance program family support aide or health aide in the same agency before July 1, 1999; or

(b) The equivalent of twelve college quarter credits in family support, public health, health education, nursing, or another field directly related to their job responsibilities.

(6) The early childhood education and assistance program health professional must meet one of the following qualifications:

(a) Licensed in Washington state as a registered nurse; or

(b) A bachelor's or higher degree in public health, nursing, health education, or related field.

(7) The early childhood education and assistance program dietitian must meet all of the following qualifications:

(a) A bachelor's or higher degree in nutrition science, public health nutrition, dietetics, or other related field; and

(b) Registered dietitian with the American Dietetic Association or certified as a dietitian under chapter 18.138 RCW.

(8) The early childhood education and assistance program mental health professional must meet one of the following qualifications:

(a) Licensed by the Washington state department of health as a mental health counselor, marriage and family therapist, social worker, psychologist, psychiatrist, or psychiatric nurse; or

(b) Credentialed by the Washington state office of the superintendent of public instruction as a school counselor, social worker, or psychologist.

(9) Contractors may provisionally hire lead teachers, assistant teachers, family service workers, family service aides, or health aides who do not fully meet the qualifications for the position if all of the following conditions are met:

(a) Contractors have attempted to recruit and hire fully qualified staff and are unable to because of a documented labor pool shortage;

(b) Contractors are able to recruit a person competent to fulfill the role and implement all related performance standards; and

(c) Contractors write a professional development plan describing how the provisional hire will obtain full qualifications within five years of appointment.

(10) Equivalent degrees and certificates from other states and countries are accepted for ECEAP staff qualifications.

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

- WAC 365-170-040 Determination of funding.
- WAC 365-170-050 Eligibility criteria for funding applicants.
- WAC 365-170-090 Program design.
- WAC 365-170-100 Administration.

**WSR 06-13-057  
PERMANENT RULES  
BOARD OF**

**PILOTAGE COMMISSIONERS**

[Filed June 16, 2006, 9:30 a.m., effective August 1, 2006]

Effective Date of Rule: August 1, 2006.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: All requirements necessary to amend the existing Grays Harbor pilotage district tariff as set forth in chapter 53.08 RCW have been met.

Purpose: To establish an annual tariff for pilotage services in the Grays Harbor pilotage district.

Citation of Existing Rules Affected by this Order: Amending WAC 363-116-185.

Statutory Authority for Adoption: RCW 88.16.035.

Adopted under notice filed as WSR 06-10-037 on April 28, 2006.

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: June 8, 2006.

Peggy Larson  
Administrator

AMENDATORY SECTION (Amending WSR 05-14-029, filed 6/24/05, effective 8/1/05)

**WAC 363-116-185 ((Tariffs, and)) Pilotage rates for the Grays Harbor pilotage district.** Effective 0001 hours August 1, ((2005)) 2006, through 2400 hours July 31, ((2006)) 2007.

((CLASSIFICATION OF PILOTAGE SERVICE RATE

Fees for piloting of vessels in the inland waters and tributaries of Grays Harbor shall consist of the following:

Draft and tonnage fees:

Each vessel shall be charged according to its draft and tonnage for each vessel movement inbound to the Grays Harbor pilotage district, and for each movement outbound from the district. The draft charges shall be \$90.00 per meter (or \$27.43 per foot) and the tonnage charge shall be \$0.2583 per net registered ton. The minimum net registered tonnage charge is \$903.79. The charge for an extra vessel (in case of tow) is \$516.48.

Provided that, due to unique circumstances in the Grays Harbor pilotage district, vessels that call, and load or discharge cargo, at Port of Grays Harbor Terminal No. 2 shall be charged \$5,000 per movement for each vessel movement inbound to the district for vessels that go directly to Terminal No. 2 or that go to anchor and then go directly to Terminal No. 2, and for each vessel movement outbound from the district from Terminal No. 2, and that this charge shall be in lieu of only the draft and tonnage fees listed above.

Boarding fee:

Per each boarding/deboarding from a boat or helicopter ..... \$1000.00

**Harbor shifts:**

For each shift from dock to dock, dock to anchorage, anchorage to dock, or anchorage to anchorage .....	\$647.88
Delays per hour .....	\$154.49
Cancellation charge (pilot only) .....	\$258.22
Cancellation charge (boat or helicopter only) .....	\$774.69

**Pension charge:**

Charge per pilotage assignment, including cancellations .....	\$180.00
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**Travel allowance:**

Transportation fee per assignment .....	\$55.00
Pilot when traveling to an outlying port to join a vessel or returning through an outlying port from a vessel which has been piloted to sea shall be paid \$903.82 for each day or fraction thereof, and the travel expense incurred .....	\$903.82

**Bridge transit:**

Charge for each bridge transited .....	\$283.61
Additional surcharge for each bridge transited for vessels in excess of 27.5 meters in beam .....	\$785.22

**Miscellaneous:**

The balance of amounts due for pilotage rates not paid within 30 days of invoice will be assessed at 1 1/2% per month late charge.))

**CLASSIFICATION**

**RATE**

Fees for piloting of vessels in the inland waters and tributaries of Grays Harbor shall consist of the following:

**Draft and Tonnage Fees:**

Each vessel shall be charged according to its draft and tonnage for each vessel movement inbound to the Grays Harbor pilotage district, and for each movement outbound from the district.

<u>Draft</u>	<u>\$92.70 per meter</u>
	<u>or</u>
	<u>\$28.25 per foot</u>
<u>Tonnage</u>	<u>\$0.266 per net registered ton</u>
<u>Minimum Net Registered Tonnage</u>	<u>\$930.00</u>
<u>Extra Vessel (in case of tow)</u>	<u>\$520.00</u>

Provided that, due to unique circumstances in the Grays Harbor pilotage district, vessels that call, and load or discharge cargo, at Port of Grays Harbor Terminal No. 2 shall be charged \$5,150.00 per movement for each vessel movement inbound to the district for vessels that go directly to Terminal No. 2, or that go to anchor and then go directly to Terminal No. 2, or because Terminal No. 2 is not available upon arrival that go to layberth at Terminal No. 4 (without loading or discharging cargo) and then go directly to Terminal No. 2, and for each vessel movement outbound from the district from Terminal No. 2, and that this charge shall be in lieu of only the draft and tonnage fees listed above.

**Boarding Fee:**

<u>Per each boarding/deboarding from a boat or helicopter</u>	<u>\$1,000.00</u>
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**Harbor Shifts:**

<u>For each shift from dock to dock, dock to anchorage, anchorage to dock, or anchorage to anchorage</u>	<u>\$647.88</u>
<u>Delays per hour</u>	<u>\$154.49</u>
<u>Cancellation charge (pilot only)</u>	<u>\$258.22</u>
<u>Cancellation charge (boat or helicopter only)</u>	<u>\$774.69</u>

**Pension Charge:**

<u>Charge per pilotage assignment, including cancellations</u>	<u>\$171.00</u>
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**Travel Allowance:**

<u>Transportation fee per assignment</u>	<u>\$55.00</u>
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**CLASSIFICATION**

**RATE**

Pilot when traveling to an outlying port to join a vessel or returning through an outlying port from a vessel which has been piloted to sea shall be paid \$903.82 for each day or fraction thereof, and the travel expense incurred.

**Bridge Transit:**

Charge for each bridge transited \$283.61

Additional surcharge for each bridge transited for vessels in excess of 27.5 meters in beam \$785.22

**Miscellaneous:**

The balance of amounts due for pilotage rates not paid within 30 days of invoice will be assessed at 1 1/2% per month late charge.

**WSR 06-13-067  
PERMANENT RULES  
GAMBLING COMMISSION**

[Order 456—Filed June 19, 2006, 3:06 p.m., effective July 20, 2006]

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

Purpose: The change allows deployed armed service personnel to renew their individual licenses at the regular annual renewal rate for up to six months after returning from deployment without additional costs. The licensee will simply renew their license and provide proof of return from active military service within the previous six months.

Citation of Existing Rules Affected by this Order: Amending WAC 230-04-204.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 06-08-101 on April 5, 2006, with a published date of April 19, 2006.

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: June 16, 2006.

Susan Arland  
Rules Coordinator

**AMENDATORY SECTION** (Amending Order 417, filed 12/6/02, effective 6/30/03)

**WAC 230-04-204 Fees—Individuals.** Individuals shall submit the following fees to the commission when applying for gambling licenses, permits, miscellaneous changes, or when assessed the cost of special investigation procedures by the commission:

LICENSE TYPE	DEFINITION	FEE
1. CHARITABLE OR NON-PROFIT GAMBLING MANAGER	Original	\$ 171
	Renewal	\$ 82
	Change of Employer	\$ 82
2. LINKED BINGO PRIZE PROVIDER REPRESENTATIVE	Original	\$ 239
	Renewal	\$ 146
3. COMMERCIAL GAMBLING MANAGER	Original	\$ 175
	Renewal	\$ 84
	Change of Employer	\$ 84
4. DISTRIBUTOR'S OR GAMBLING SERVICES SUPPLIER REPRESENTATIVE	Original	\$ 239
	Renewal	\$ 146
5. MANUFACTURER'S REPRESENTATIVE	Original	\$ 239
	Renewal	\$ 146
6. PUBLIC CARD ROOM EMPLOYEE	Original	\$ 175
	Renewal	\$ 84
CLASS A - Performs duties as defined in WAC 230-02-415 in a class E card room.		
	Original	\$ 175
	Renewal	\$ 84
CLASS B - Performs duties as defined in WAC 230-02-415 in enhanced and house-banked card rooms.		
	Original, in-state	\$ 237
	Original, out-of-state	\$ 295
	Renewal	\$ 146
	Transfer/Additional Employee/Conversion/ Emergency Waiver Request	\$ 57
7. OTHER FEES		
	CHANGE OF NAME (See WAC 230-04-310)	\$ 26
	DUPLICATE LICENSE (See WAC 230-04-290)	\$ 26
	OUT-OF-STATE RECORDS INQUIRY (See WAC 230-04-240)	As required
8.	<u>If a license expires while an individual is on active military service, the individual may apply to have their license reissued at the renewal fee. The application must be received within six months after completing their active military service. The applicant shall provide evidence of the completion date of active military service.</u>	



**WSR 06-13-068**

**PERMANENT RULES**

**GAMBLING COMMISSION**

[Order 457—Filed June 19, 2006, 3:07 p.m., effective July 20, 2006]

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

Purpose: This new rule allows licensed manufacturers and distributors to transport, display and take orders for authorized gambling devices at trade shows and conventions. The target audience of the trade show or convention must be operators of authorized gambling activities.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 06-07-112 on March 17, 2006, with a published date of April 5, 2006.

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 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, 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: June 16, 2006.

Susan Arland  
Rules Coordinator

NEW SECTION

**WAC 230-12-337 Manufacturers and distributors transporting and displaying gambling devices—Trade shows and conventions.** A manufacturer or distributor licensed by the Washington state gambling commission to sell gambling devices authorized by state or federal law may transport, display and accept orders for the sale or lease of those devices at trade shows and conventions, under the following restrictions:

(1) The target audience of the trade show or convention must be operators of authorized gambling activities in Washington state;

(2) The commission must be notified in writing of the nature, date, and location ten days before the trade show or convention; and

(3) All gambling devices purchased or leased at the trade show or convention must be delivered to the operator's authorized location.

**WSR 06-13-069**

**PERMANENT RULES**

**GAMBLING COMMISSION**

[Order 600—Filed June 19, 2006, 3:10 p.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: The change allows deployed armed service personnel to renew their individual licenses at the regular annual renewal rate for up to six months after returning from deployment without additional costs. The licensee will simply renew their license and provide proof of return from active military service within the previous six months.

Citation of Existing Rules Affected by this Order: Amending WAC 230-05-035.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 06-08-101 on April 5, 2006, with a published date of April 19, 2006.

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: June 16, 2006.

Susan Arland  
Rules Coordinator

AMENDATORY SECTION (Amending Order 457, filed 3/22/06, effective 1/1/08)

**WAC 230-05-035 Individuals license fees.** Individuals must pay the following fees to us when they apply for gambling licenses, permits, miscellaneous changes:

**1. Charitable or nonprofit gambling manager**

License	Fee
Original	\$171
Renewal	\$82
Change of employer	\$82

**2. Linked bingo prize provider representative**

License	Fee
Original	\$239
Renewal	\$146

**3. Commercial gambling manager**

License	Fee
Original	\$175

License	Fee
Renewal	\$84
Change of employer	\$84

**4. Distributor's or gambling services supplier's representative**

License	Fee
Original	\$239
Renewal	\$146

**5. Manufacturer's representative**

License	Fee
Original	\$239
Renewal	\$146

**6. Public card room employee**

License	Fee
<b>Class A</b> - Performs card room employee duties in a Class E card room	
Original	\$175
Renewal	\$84
<b>Class B</b> - Performs card room employee duties in enhanced and house-banked card rooms	
Original, in-state	\$237
Original, out-of-state	\$295
Renewal	\$146
Transfer/additional employee/conversion/emergency waiver request	\$57

**7. Other fees**

Change of name	\$26
Duplicate license	\$26

**8. Military personnel returning from service**

If a license expires while an individual is on active military service, the individual may apply to have their license reissued at the renewal fee. The application must be received within six months after completing their active military service. The applicant must provide evidence of the completion date of active military service.