

WSR 07-02-024
PROPOSED RULES
PUBLIC WORKS BOARD

[Filed December 22, 2006, 9:15 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: Title 399 WAC.

Hearing Location(s): Radisson Hotel, 18118 International Boulevard, SeaTac, WA 98188, on February 6, 2007, at 11:30 a.m. - 12:00 p.m.

Date of Intended Adoption: February 13, 2007.

Submit Written Comments to: Bill Cole, P.O. Box 48319, Olympia, WA 98504-8319, e-mail bill.cole@pwb.wa.gov, fax (360) 664-3029, by February 2, 2007.

Assistance for Persons with Disabilities: Contact Heather Youckton by January 29, 2007.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 399-10 WAC, General provisions: Moves address of board from WAC 399-10-010 to 399-10-030. Clarifies annual schedule of board meetings, and allows for the cancellation of meetings.

Chapter 399-20 WAC, Public records: Updates RCW references to reflect changes to the public records RCW. Changes the definitions of "public records" and "writing" to be consistent with the definitions in the public records RCW. Eliminates the section for the records index. References chapter 42.56 RCW to comply with requests for public records. Eliminates adoption of form section.

Chapter 399-30 WAC, Public works loans and pledges: Eliminates references to subsections of RCW 43.155.070 relating to the Growth Management Act. Changes "makes low-interest or interest-free loans" to "provides financial assistance." Makes change to allow for electronic submittal of applications for financial assistance. Adds "technical assistance" to the purpose section of the chapter. Adds section to reference department of health WACs regarding the drinking water state revolving fund loan program. Defines eligible costs for the planning loan program. Clarifies process for approval of the construction loan program. Requires local government submittals of budget and performance measures in addition to a scope of work.

Chapter 399-40 WAC, Compliance with state Environmental Policy Act: Updates WAC reference.

Chapter 399-50 WAC, Ethics in public service: Updates RCW reference. Eliminates section that requires board members to disclose reason for recusal.

Reasons Supporting Proposal: Administrative changes to update RCW and WAC changes that have occurred since the last update to the WACs and to accurately reflect current practices of the board.

Statutory Authority for Adoption: RCW 43.155.040(4).

Statute Being Implemented: Chapter 43.155 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fis-

cal Matters: The board did not file a CR-101, due to the exemptions under RCW 34.05.310 (4)(b), (c), and (d).

Name of Proponent: Public works board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Bill Cole, 711 Capitol Way South, Suite 102, Olympia, WA 98501, (360) 586-4125.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed changes to the WAC are administrative in nature and only affect local governments applying for financial assistance from the board.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed changes to the WAC are administrative in nature, almost all of which change RCW and WAC references and clarify practices of the board.

December 18, 2006

Marie Sullivan

Director of

Intergovernmental Relations

AMENDATORY SECTION (Amending WSR 01-09-014, filed 4/6/01, effective 5/7/01)

WAC 399-10-010 Organization and operation of the public works board. (1) The public works board is a thirteen-member board appointed by the governor under RCW 43.155.030.

(2) The governor appoints one of the general public members as chair. The board may elect other officers for terms deemed necessary.

(3) The department of community, trade, and economic development provides staff support and office space to the board ((at P.O. Box 48319, Olympia, Washington 98504-8319; phone (360) 725-5000)).

AMENDATORY SECTION (Amending WSR 98-24-010, filed 11/19/98, effective 12/20/98)

WAC 399-10-020 Board meetings. (1) The board holds regular meetings on the first Tuesday of each month, except in July. In the month of August meetings are held on the first and third Tuesdays. The board may chose to cancel or move regular meetings and notice of any changes will be as provided by law.

(2) Notice of the times and places of the regular meetings will be published annually in a January edition of the Washington State Register. A copy of the schedule of regular meetings may also be obtained upon request from the board.

(3) Special meetings of the board may be called at any time by the chair of the board or by a majority of the board members. Notice of such meetings will be as provided by law.

AMENDATORY SECTION (Amending WSR 98-24-010, filed 11/19/98, effective 12/20/98)

WAC 399-10-030 Communications with the board. Any and all written communications with the board, including but not limited to requests for information or copies of agency records, or submittals of any nature, must be

addressed to the public works board, in care of ~~((the chair, as stated in WAC 399-10-010(3)). The board's telephone number and internet address are listed in the same section.))~~;

Executive Director
Public Works Board
P.O. Box 48319
Olympia, WA 98504-8319

AMENDATORY SECTION (Amending WSR 98-24-010, filed 11/19/98, effective 12/20/98)

WAC 399-20-010 Purpose. This chapter is intended to ensure that the board complies with chapter ~~((42-17))~~ 42.56 RCW, the Public ~~((Disclosure))~~ Records Act, especially RCW ~~((42-17-250))~~ 42.56.030 through ~~((42-17-348))~~ 42.56.230 and RCW 42.56.510 through 42.56.580, which address disclosure of public records.

AMENDATORY SECTION (Amending WSR 98-24-010, filed 11/19/98, effective 12/20/98)

WAC 399-20-020 Definitions. The following definitions shall apply to this chapter:

(1) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by ~~((the board))~~ any state or local agency regardless of physical form or characteristics. For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW 40.14.100 and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives.

(2) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including, but not limited to, letters, words, pictures, sounds, or symbols, or combinations thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

(3) "Board" means the public works board, created in chapter 43.155 RCW, and also refers to the board's officers and staff, where appropriate.

(4) "Department" means the department of community, trade, and economic development, and shall refer to the department's staff, where appropriate.

AMENDATORY SECTION (Amending WSR 98-24-010, filed 11/19/98, effective 12/20/98)

WAC 399-20-030 Public records available. All public records of the board are deemed to be available for public inspection and copying, except as otherwise provided by

RCW ~~((42-17-260 and 42-17-310))~~ 42.56.070 and 42.56.210 as now or hereafter amended, and by WAC 399-20-090.

AMENDATORY SECTION (Amending WSR 98-24-010, filed 11/19/98, effective 12/20/98)

WAC 399-20-040 Public records officer. The board shall designate a staff member to be the public records officer. The public records officer shall be responsible for implementation of the board's rules and regulations regarding inspection and copying of public records, and for ensuring compliance by the staff with the public records disclosure requirements of chapter ~~((42-17))~~ 42.56 RCW.

AMENDATORY SECTION (Amending WSR 98-24-010, filed 11/19/98, effective 12/20/98)

WAC 399-20-070 Requests for public records. The Public ~~((Disclosure))~~ Records Act, chapter ~~((42-17))~~ 42.56 RCW, requires agencies to prevent unreasonable invasions of privacy, to protect public records from damage or disorganization, and to prevent excessive interference with essential functions of the board. Therefore, members of the public may inspect, copy, or obtain copies of public records ~~((if they comply with the following procedures:~~

~~((1) A request must be made in writing on the form adopted by the board which shall be in WAC 399-20-120. The form is available at the board's offices, or by writing or calling the board.~~

~~((2) The form must be completed in full and presented or mailed to the public records officer at the board's offices during normal office hours.~~

~~((3))~~ in compliance with chapter 42.56 RCW. The public records officer will assist the member of the public in appropriately identifying the public record requested.

AMENDATORY SECTION (Amending WSR 98-24-010, filed 11/19/98, effective 12/20/98)

WAC 399-20-090 Exemptions. (1) The public records officer will determine whether a requested record is exempt from disclosure under chapter ~~((42-17))~~ 42.56 RCW.

(2) If a requested record is determined to be exempt in part, the public records officer will delete the exempt portions of the record before making it available for inspection or copying. The public records officer will fully justify any deletion in writing.

(3) Whenever the public records officer denies a public records request, a written statement specifying the reason for the denial shall be provided.

(4) The Public Disclosure Act requires agencies to respond promptly to requests for public records. Within five business days after receiving a public records request, the public records officer must respond by either:

- (a) Providing the record;
- (b) Acknowledging the request and stating a reasonable estimate of the time the board will need to respond; or
- (c) Denying the request.

The board may require additional time to respond for reasons consistent with RCW ~~((42-17-320))~~ 42.56.520.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 399-20-050	Records index.
WAC 399-20-120	Adoption of form.

AMENDATORY SECTION (Amending WSR 98-24-010, filed 11/19/98, effective 12/20/98)

WAC 399-30-010 Purpose. (1) The public works board (~~makes low interest or interest free loans~~) provides financial assistance to local governments from the public works assistance account or other sources to assist local governments in financing public works projects. The board may also pledge money to the repayment of all or a portion of the principal or interest on obligations issued by local governments to finance public works projects.

(2) The purpose of this chapter is to describe how local governments may apply to the board for financial assistance, and to provide for the review of the applications.

(3) The public works board provides technical assistance, including training and other services provided to local governments to help such local governments plan, apply, and qualify for loans and financing guarantees from the board, and help local governments improve their ability to plan for finance, acquire, construct, repair, replace, rehabilitate, and maintain public facilities.

AMENDATORY SECTION (Amending WSR 01-09-014, filed 4/6/01, effective 5/7/01)

WAC 399-30-030 ((~~Loan and financing guarantee~~)) Applications for construction and preconstruction financial assistance. (1) Any local government in the state of Washington may apply for (~~a loan or financing guarantee~~) financial assistance to assist in financing critical public works projects.

(2) All applicants must meet the following conditions:

(a) Applicant cities and counties must be imposing a real estate excise tax under RCW 82.46.010(2) at a rate of at least one-quarter of one percent;

(b) Applicant local governments must have developed a long-term plan for financing public works needs as further described in the loan application package under "capital facilities planning."

(3) Direct costs eligible for public works (~~loans~~) financial assistance are those costs directly attributable to a specific project and include:

(a) Work done by employees of the applicant, or by other government employees under an interlocal agreement or contract limited to: Engineering, environmental review, design activities, acquisition of rights of way or property, construction inspection activities, roadway seal coating (if bids from private sector contractors have been solicited and compared with the interlocal agreement proposal), and the cleaning, sterilization, or bacteriological testing of water system components prior to public use.

(i) Salaries and wages (at actual or average rates) covering productive labor hours of the local government employ-

ees (excluding the administrative organization of the operating unit involved). The cost of services rendered by employees generally classified as administrative are considered a direct cost only when such employees are assigned for short periods of time to perform on a full-time basis the types of services described above and when similar procedures are followed;

(ii) Employee benefits relating to direct labor are considered a direct cost of construction projects. The following items may be included as employee benefits:

- (A) F.I.C.A. (Social Security) - employer's share;
- (B) Retirement benefits;
- (C) Hospital, health, dental, and other welfare insurance;
- (D) Life insurance;
- (E) Industrial and medical insurance;
- (F) Vacation;
- (G) Holiday;
- (H) Sick leave; and
- (I) Military leave and jury duty.

Employee benefits must be calculated as a percentage of direct labor dollars. The computation of predetermined percentage rates to be applied to current labor costs must be based on the average of total employee benefits and total labor costs for the prior fiscal year and adjusted by known current year variations.

(b) Contract engineering, planning, legal, and financial planning services. The board reserves the right to declare ineligible legal costs that are unreasonable and disproportionate to the project.

(c) Right of way acquisition costs including:

(i) Purchase of land and easements acquired for and devoted to the project;

(ii) Purchase of improvements;

(iii) Adjustment or reestablishment of improvements;

(iv) Salaries, expenses or fees of appraisers, negotiators or attorneys;

(v) Removal or demolition of improvement;

(vi) Other direct costs in connection with the acquisition.

Amounts received from the sale of excess real property or improvements and from any rentals will be reduced from the direct cost.

(d) Contract construction work.

(e) Direct vehicle and equipment charges at the actual rental cost paid for the equipment or, in the case of city or county-owned equipment, at the rental rates established by the local government's "equipment rental and revolving fund" following the methods prescribed by the division of municipal corporations. However, such costs must be charged on a uniform basis to equipment used for all projects regardless of the source of funding. Cities with a population of eight thousand or less not using type of fund are allowed the same rates as used by the department of transportation.

(f) Direct materials and supplies.

(i) An overhead rate or "loading factor" is not considered an appropriate additive to the actual cost of materials and supplies used on construction projects unless the factor is readily and properly supportable by the governmental unit's accounting records.

(ii) The cost, or reasonable estimate thereof, of materials paid for as contract estimate items, but not used, will be con-

sidered a reduction of direct costs. Any material that is salvaged in connection with a project will be assigned a reasonable value and considered a reduction of direct costs.

(iii) Wetland plants and other materials used for wetland planting, wildlife habitat, or fish habitat may be provided to a public or nonprofit organization without a reduction of direct costs.

(g) Interdepartmental charges for work performed by the local government for the benefit of specific construction projects is limited to direct costs plus an allocation of indirect costs based on ten percent of direct labor dollars, excluding employee benefits.

(h) Other direct costs incurred for materials or services acquired for a specific project are eligible for participation by public works loan funds and may include, but are not limited to such items as:

- (i) Public communication plans and activities;
- (ii) Telephone charges;
- (iii) Reproduction and photogrammetry costs;
- (iv) Video and photography for project documentation;
- (v) Computer usage;
- (vi) Printing and advertising; and
- (vii) Value engineering and performance audits.

(4) Other than work identified in subsection (3)(a) of this section, no government employee labor related costs, including force account work, are eligible for financing assistance or to be considered as local match under this chapter.

(5) Applications must be submitted ~~((in writing))~~ on forms provided by the board for the current funding cycle.

(6) A responsible official of the applicant jurisdiction must ~~((sign and verify))~~ certify each application for financial assistance. The official must also provide the board with additional materials or information in support of the application when requested by the board or its staff.

NEW SECTION

WAC 399-30-031 Applications for drinking water state revolving funds and water system acquisition and rehabilitation program financial assistance. The board, the department of health, and the department of community, trade, and economic development jointly administer the drinking water state revolving fund and follow the process described in chapter 246-296 WAC.

AMENDATORY SECTION (Amending WSR 99-09-020, filed 4/14/99, effective 5/15/99)

WAC 399-30-032 What are the requirements for meeting the Growth Management Act under RCW 43.155.070 ~~((4)(d))~~? (1) "Compliance with the Growth Management Act" means that at the time of application for financial assistance:

(a) A local government that is required to or chooses to plan under RCW 36.70A.040 has adopted a comprehensive plan and development regulations in conformance with the requirements of chapter 36.70A RCW, after it is required that the comprehensive plan and development regulations be adopted; and

(b) The local government has not been found out of compliance by a growth management hearings board; or

(c) A growth management hearings board has found a local government in compliance with the requirements of chapter 36.70A RCW, after previously finding the local government was not in compliance.

(2) Exceptions based on "public health need" or "substantial environmental degradation" shall not be used as a method to provide unrestricted access to financial assistance for local governments not in compliance with the law.

AMENDATORY SECTION (Amending WSR 99-09-020, filed 4/14/99, effective 5/15/99)

WAC 399-30-033 How will the board address a "public health need" under RCW 43.155.070 ~~((4)(d))~~? "Public health need" means that a situation exists that causes or is about to cause a real, documented, acute public health need related to the state's air, water, or soil that contributes to injuries or deaths on public highways, or risk of a public health emergency due to contaminated domestic water, the failure of a sanitary sewer system, storm sewer system, or solid waste or recycling system; and the problem generally involves a discrete area including, but not limited to, a county, city, subdivision, or an area serviced by on-site wastewater disposal systems.

In determining whether a project is necessary to address a public health need, the board shall consider the following factors:

(1) For bridge or road projects - whether injury or fatal injury motor or nonmotorized vehicle traffic collisions at a specific site, roadway control section, or area have occurred at a rate to be in the top five percent of all such collisions within the applicant jurisdiction for the most recent three-year period; and whether the proposed public works project will eliminate or reduce the likelihood of such vehicle collisions. Applicants applying under this subsection may utilize jurisdiction-wide accident data, or break the data down into arterial or nonarterial roads, intersection or nonintersection, and for intersections, whether they are signalized or non-signalized.

(2) For domestic water projects - whether a drinking water system regulated by the department of health has been contaminated or is in imminent danger of being contaminated to the extent of creating a public health risk and; whether the proposed public works project will eliminate or reduce the chance of contamination.

(3) For sanitary sewer projects - whether failure of existing wastewater system or systems, including on-site systems, has resulted in contamination being present on the surface of the ground in such quantities and locations so as to create a potential for public contact; or whether contamination of a commercial or recreational shellfish bed so as to create a public health risk associated with the consumption of the shellfish, or contamination of surface water so as to create a public health risk associated with recreational use; and whether the proposed public works project will eliminate or reduce the danger of such public health risk.

(4) For storm sewer projects - whether failure of an existing storm sewer system has caused or is in imminent danger of causing localized flooding which disrupts critical public services; causes disease, illness, or attraction of rodents so as

to create a public health risk; or contamination of a commercial or recreational shellfish bed so as to create a public health risk associated with the consumption of the shellfish, or contamination of surface water so as to create a public health risk associated with recreational use and; whether the proposed public works project will eliminate or reduce the danger of localized flooding which disrupts critical public services or causes a public health risk.

(5) For solid waste or recycling projects - whether failure of an existing solid waste or recycling system has caused or is in danger of causing ground water contamination; causes disease, illness, or attraction of rodents so as to create a public health risk and; whether the proposed public works project will eliminate or reduce the danger of such public health risk.

(6) For all projects - whether more efficient operation of an existing system, changing public access, or modifying other regulatory standards (e.g., reduced speed limits, water conservation measures, rodent control, restricted shellfish harvesting) is likely to provide the same or similar level of resolution.

(7) For all projects - whether the public health problem is caused by failure to maintain or periodically replace, reconstruct, or rehabilitate a public works system.

(8) For all projects - other factors the board finds on the record are significant in light of facts and circumstances unique to the project.

(9) The factors enumerated in subsection (1) of this section must be addressed in a letter of request, with supporting documentation, addressed to the chair of the board and signed by the public official who signed the application for financial assistance.

(10) The factors enumerated in subsections (2) through (5) of this section must be addressed in a letter of request, with supporting documentation, addressed to the secretary of the Washington state department of health and signed by the public official who signed the application for financial assistance. A determination of a public health need may be made by the secretary, or designee, and addressed to the same public official. The board will consider the determination of the secretary. The board will also consider information presented on factors enumerated in subsections (6) through (8) of this section, which must be documented in a manner acceptable to the board.

AMENDATORY SECTION (Amending WSR 99-09-020, filed 4/14/99, effective 5/15/99)

WAC 399-30-034 How will the board address "substantial environmental degradation" as found in RCW 43.155.070 ((+)(+))? "Substantial environmental degradation" means a situation causes or is about to cause real, documented, substantial environmental degradation that contributes to violations of the state's air quality, water quality, or soil contaminate standards, interferes with beneficial uses of the air, water, or land, and the problem generally involves a discrete area including, but not limited to, a county, city, subdivision, or an area serviced by on-site wastewater disposal systems.

In determining whether a project is necessary to address substantial environmental degradation, the board shall consider the following factors:

(1) For bridge and road projects - whether motorized or nonmotorized vehicle traffic has caused substantial environmental degradation of the air, water, or soils of the state at the site for which a proposed public works project is the subject of a financial assistance application, and; whether the proposed public works project will eliminate or reduce the chance of such vehicle-caused critical substantial environmental degradation.

(2) For domestic water projects - whether a drinking water system regulated by the department of health has caused substantial environmental degradation of the air, water, or soil of the state including, but not limited to: Causing disease or illness to humans, the attraction of rodents, or the killing of fish and shellfish that reside in the waters of the state, and; whether the proposed public works project will eliminate or reduce the chance of substantial environmental degradation.

(3) For sanitary sewer projects - whether failure of an existing wastewater system, including individual on-site systems, has caused substantial environmental degradation of the air, water, or soil of the state including, but not limited to: Causing disease or illness to humans, the attraction of rodents, or the killing of fish and shellfish that reside in the waters of the state, and; whether the proposed public works project will eliminate or reduce such substantial environmental degradation.

(4) For storm sewer systems - whether failure of an existing storm sewer system has caused substantial environmental degradation of the air, water, or soil of the state including, but not limited to: Causing disease or illness to humans, the attraction of rodents, or the killing of fish and shellfish that reside in the waters of the state, and; whether the proposed public works project will eliminate or reduce such substantial environmental degradation.

(5) For solid waste or recycling projects - whether failure of an existing solid waste system or recycling system has caused substantial environmental degradation of the air, water, or soil of the state including, but not limited to: Causing disease or illness to humans, the attraction of rodents, or the killing of fish and shellfish that reside in the waters of the state, and; whether the proposed public works project will eliminate or reduce such substantial environmental degradation.

(6) For all projects - whether more efficient operation of an existing system, changing public access, or modifying other regulatory standards (e.g., reduced speed limits, water conservation measures, rodent control, restricted shellfish harvesting) is likely to provide the same or similar level of resolution.

(7) For all projects - whether the substantial environmental degradation is caused by failure to maintain or periodically replace, reconstruct, or rehabilitate a public works system.

(8) For all projects - other factors the board finds on the record are significant in light of facts and circumstances unique to the project. Fish passage, water quality, or water quantity issues directly impacting salmonid fish survival in a

watershed which is designated as a candidate for listing, proposed for listing, threatened listing, or endangered listing under the federal Endangered Species Act may be considered significant and unique to a project.

(9) The factors enumerated in subsections (1) through (5) of this section must be addressed in a letter of request, with supporting documentation, to the director of the Washington state department of ecology and signed by the public official who signed the application for financial assistance. A determination of substantial environmental degradation may be made by the director or designee and addressed to the same public official. The board will consider the determination of the director. The board will also consider information presented on factors enumerated in subsections (6) through (8) of this section, which must be documented in a manner acceptable to the board.

AMENDATORY SECTION (Amending WSR 01-09-014, filed 4/6/01, effective 5/7/01)

WAC 399-30-040 Application evaluation procedure and board deliberations. (1) The board will consider and prioritize, or disapprove, all applications for (~~loans or financing guarantees~~) financial assistance at regular or special meetings of the board. The applicant will be notified of meetings at which its application will be considered.

(2) Applications will be evaluated and prioritized in accordance with the following procedures:

(a) Staff will log in all applications as received.

(b) Staff will review all applications for compliance with the minimum qualification requirements of WAC 399-30-030(2). Jurisdictions whose applications do not meet the minimum qualification requirements will be notified in writing of the disqualification.

(c) Staff will perform an evaluation of all applications which meet the requirements of WAC 399-30-030(2). Applications will be scored according to the number of points awarded for responses provided in the statements of local management efforts and project need.

(i) Not less than sixty points, of a one hundred point total, will be assigned to responses to questions identified in the application as relating to local management effort.

(ii) The remaining forty points will be assigned to responses to questions identified in the application as relating to project need.

(d) Staff will provide the board with evaluation and scoring of the applications. All application materials will be available to the board for their deliberations. The board will approve a ranked list of projects based on the information provided to them by the staff and the applications.

(e) The board may adjust the ranked list in consideration of the following factors:

(i) Geographical balance;

(ii) Economic distress;

(iii) Type of projects;

(iv) Type of jurisdiction;

(v) Past management practices of the applicant, including, but not limited to, late loan payments, loan defaults, audit findings, or inability to complete projects within the time allowed by loan agreement;

(vi) Other criteria that the board considers advisable.

(f) Staff will verify critical information on each project as required by the board.

(g) In order to ensure fairness to all jurisdictions with applications pending before the board, the board will not accept oral or written testimony from any applicant while deliberating loan priorities, other than specific responses to information requests initiated by the board as provided in (h) of this subsection.

(h) The board may consult with officials of jurisdictions having projects submitted for funding on any issue it wishes to address.

(3) Applicants will be notified in writing of board decisions.

AMENDATORY SECTION (Amending WSR 01-09-014, filed 4/6/01, effective 5/7/01)

WAC 399-30-042 Application evaluation procedure and board deliberations—Capital planning support. (1) The board will consider and approve, or disapprove, all applications for capital planning support loans at regular or special meetings of the board. The applicant will be notified of meetings at which its application will be considered.

(2) Direct costs eligible for capital planning support are those costs directly attributable to: A systemic related plan, including capital facilities plans and capital improvement plans; comprehensive plans, environmental studies, including biological assessments or environmental assessments; or archeological and historic preservation activities.

(3) All applications will be evaluated in accordance with the following procedures:

(a) Staff will log in all applications as received.

(b) Staff will review all applications for compliance with the minimum qualification requirements of WAC 399-30-030(2). Jurisdictions whose applications do not meet the minimum requirements will be notified in writing of the disqualification.

(c) Staff will perform an evaluation of applications which meet the requirements of WAC 399-30-030(2) to determine if the application is consistent with the policies contained in the capital planning support loan application.

(d) Those applications found to be consistent with board policies may be recommended to the board for funding. All application materials will be available to the board for its deliberations. The board will approve a list of projects based on the information provided to it by the staff and the applications.

(e) The board may then adjust the list in consideration of the following factors:

(i) Geographical balance;

(ii) Economic distress;

(iii) Past management practices of the applicant, including, but not limited to, late loan payments, loan defaults, audit findings, or inability to complete projects within the time allowed by loan agreement;

(iv) Other criteria that the board considers advisable.

(f) Staff will verify critical information on each project as required by the board.

(g) The board may consult on any issue it wishes to address, with officials of jurisdictions having projects submitted for funding.

~~((3))~~ (4) Applicants will be notified in writing of board decisions.

AMENDATORY SECTION (Amending WSR 98-24-010, filed 11/19/98, effective 12/20/98)

WAC 399-30-050 Recommendations to the legislature for construction loans. (1) Prior to November 1, 1986, and in each subsequent year, the board will develop and submit to the appropriate fiscal committees of the senate and house of representatives a prioritized list of projects which the board recommends for funding by the legislature.

(2) In addition to the requirements of RCW 43.155.070(4), the list will include such supporting material as the board considers necessary to meet the purposes of this chapter.

(3) Before November 1 of each year, the board will develop and submit to the chairs of the appropriate fiscal committees of the senate and house of representatives a description of the emergency loans made under this program.

AMENDATORY SECTION (Amending WSR 04-09-085, filed 4/20/04, effective 5/21/04)

WAC 399-30-060 Loan and financing guarantee contracts for the construction loan program. (1) The board will only execute loan agreements or otherwise financially obligate funds from the public works assistance account after the legislature approves the list and accompanying appropriation, except for preconstruction, planning, and emergency loans.

(2) After the legislature has appropriated funds from the public works assistance account for a specific list of public works projects, the construction loan funds will be disbursed to the applicant local government through a contract. The contract will offer terms and conditions as the board determines are reasonable, based on the following standards:

(a) The local government's financial participation funds must be from locally generated ~~((revenues))~~ funding or federal or state shared revenues that can be allocated at the discretion of the local government.

(b) The interest rates, local share requirements and loan limits will be determined annually by the board.

(c) Loans must not exceed twenty years, or the useful life of the improvements, whichever is shorter.

(3) The local government and the department must execute a final contract before any funds are disbursed.

(4) The local government must ~~((complete))~~ submit for approval a scope of work ((form)), including such things as a budget and performance measures consistent with the application for ((a loan or financing guarantee and return it)) financial assistance to the department within ninety days after the department offers a loan or financing guarantee.

(5) The local government must execute any loan or financing guarantee contracts offered within ninety days after the department offers the contract.

(6) The local government must begin work on a public works project prior to October 1 of the year in which the loan or financing guarantee is offered.

(7) The local government must complete work on the public works project within the time specified in the loan agreement, unless a written request for extension is approved by the board.

(8) The board or department will not reimburse local governments for any funds spent on public works projects financed through the public works assistance account before a contract agreement has been formally executed. Funds spent before the contract is executed may be used toward local participation requirements if they are for eligible activities under WAC 399-30-030 and are consistent with the executed loan agreement.

AMENDATORY SECTION (Amending WSR 92-03-051, filed 1/13/92, effective 2/13/92)

WAC 399-40-020 Statement. Pursuant to WAC 197-11-800~~((16))~~ (14), the public works board has reviewed its authorized activities and has found them all to be exempt under the provisions of chapter 197-11 WAC.

AMENDATORY SECTION (Amending WSR 00-11-021, filed 5/9/00, effective 6/9/00)

WAC 399-50-010 Definitions. (1) Unless another definition is given, words used in this chapter have the same meaning as in chapter 42.52 RCW, Ethics in public service.

(2) "Annual construction roster" means the prioritized list of projects recommended for funding, which is developed and submitted to the legislature before November 1 of each year under RCW 43.155.070(4).

(3) "Beneficial interest" means the right to enjoy profit, benefit, or advantage from a contract or other property and also has the meaning given to it in Washington case law. Ownership interest in a mutual fund or similar investment pooling fund in which the owner has no management powers does not constitute a beneficial interest in the entities in which the fund or pool invests.

(4) "Project" means public works project as defined in RCW 43.155.020~~((5))~~ (6).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 399-50-040 Disclosure of recusal.

WSR 07-02-031
WITHDRAWAL OF PROPOSED RULES
PUGET SOUND
CLEAN AIR AGENCY

[Filed December 26, 2006, 9:42 a.m.]

The Puget Sound clean air agency board of directors has elected to withdraw the subject proposal (WSR 06-19-053)

which was filed on September 18, 2006. This proposal was to amend Regulation I, Section 9.16 regarding spray-coating operations.

If you have any questions, please call David S. Kircher at (206) 689-4050 or e-mail to davek@pscleanair.org.

David S. Kircher, Manager
Air Resources Department

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

December 22, 2006
Steve Van Slyke
Supervisory Engineer

WSR 07-02-048
PROPOSED RULES
PUGET SOUND
CLEAN AIR AGENCY

[Filed December 27, 2006, 1:48 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Amend Regulation I, Section 9.16 (Spray-Coating Operations).

Hearing Location(s): Puget Sound Clean Air Agency, 110 Union Street, Suite 500, Seattle, WA 98101, on February 22, 2007, at 9:15 a.m.

Date of Intended Adoption: February 22, 2007.

Submit Written Comments to: Lynn Sykes, Puget Sound Clean Air Agency, 110 Union Street, #500, Seattle, WA 98101, e-mail lynns@pscleanair.org, fax (206) 343-7522, by February 21, 2007.

Assistance for Persons with Disabilities: Contact Agency Receptionist, (206) 689-4010, by February 15, 2007, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To provide clarification regarding the differences between air quality requirements for mobile spray-coating operations and those for stationary auto-body repair work as it relates to motor vehicle coating.

Reasons Supporting Proposal: This clarification will ensure that each type of motor vehicle repair is done in the appropriate location and following the appropriate air quality control measures.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Puget Sound clean air agency, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Van Slyke, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4052; Implementation and Enforcement: Jim Nolan, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4053.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

AMENDATORY SECTION

REGULATION I SECTION 9.16 SPRAY-COATING OPERATIONS

(a) Applicability. This section applies to indoor and outdoor spray-coating operations ~~((at facilities subject to Article 5 (Registration) or Article 7 (Operating Permits) of this regulation, where))~~ when a coating that protects or beautifies a surface is applied with spray-coating equipment, except as exempted in Section 9.16(b) of this regulation. Mobile spray-coating operations for motor vehicles or motor vehicle components are subject to Section 9.16(e) of this regulation.

(b) Exemptions. The following activities are exempt from the provisions of Sections 9.16 (c) and (d) of this regulation. Persons claiming any of the following ~~((spray-coating))~~ exemptions shall have the burden of demonstrating compliance with the claimed exemption.

(1) Application of architectural or maintenance coatings to stationary structures (e.g., bridges, water towers, buildings, stationary machinery, or similar structures);

(2) Aerospace coating operations subject to 40 CFR Part 63, Subpart GG. This includes all activities and materials listed in 40 CFR 63.741(f);

(3) Use of high-volume, low-pressure (HVLP) spray guns when:

(A) spray-coating operations do not involve motor vehicles or motor vehicle components;

(B) the gun cup capacity is 8 fluid ounces or less;

(C) the spray gun is used to spray-coat less than 9 square feet per day per facility;

(D) coatings are purchased in containers of 1 quart or less; and

(E) spray-coating is allowed by fire department, fire marshal, or other government agency requirements.

(4) Use of air-brush spray equipment with 0.5 to 2.0 CFM airflow and a maximum cup capacity of 2 fluid ounces;

(5) Use of hand-held aerosol spray cans with a capacity of 1 quart or less; or

(6) Indoor application of automotive undercoating materials using organic solvents having a flash point in excess of 100°F.

(c) General Requirements for Indoor Spray-Coating Operations. It shall be unlawful for any person subject to the provisions of this section to cause or allow spray-coating inside a structure, or spray-coating of any motor vehicles or motor vehicle components, unless all of the following requirements are met:

(1) ~~((the-s))~~ Spray-coating is conducted inside an enclosed spray area;((-))

(2) The enclosed spray area ~~((shall))~~ employs either properly seated paint arresters, or water-wash curtains with a continuous water curtain to control the overspray; and((.))

(3) All emissions from the spray-coating operation ~~((shall be))~~ are vented to the atmosphere through an unobstructed vertical exhaust vent.

(d) General Requirements for Outdoor Spray-Coating Operations. It shall be unlawful for any person subject to the provisions of this section to cause or allow spray-coating outside an enclosed structure unless reasonable precautions are employed to minimize the overspray. Reasonable precautions include, but are not limited to the use of:

(1) Enclosures and curtailment during high winds; and

(2) High-volume low-pressure (HVLP), low-volume low-pressure (LVLP), electrostatic, or air-assisted airless spray equipment. Airless spray equipment may be used where low viscosity and high solid coatings preclude the use of higher-transfer efficiency spray equipment.

(e) General Requirements for Mobile Spray-Coating Operations. It shall be unlawful for any person to cause or allow the spray-coating of any motor vehicle or motor vehicle component outside of a structure required by Section 9.16(c) of this regulation, unless all the following requirements are met:

(1) Conduct all spray-coating in a portable frame-and-fabric shelter consisting of a fabric roof and three fabric sides or similar portable shelter consisting of a roof and three sides.

(A) Disassemble and remove the portable shelter from the site at the end of each day.

(B) Do not conduct mobile spray-coating operations for more than 3 consecutive calendar days at any site and not more than 14 days during any calendar month at the same site.

(2) Do not apply more than 8 ounces of coating to any single vehicle.

(3) Do not apply coating to more than 9 square feet of any single vehicle.

(4) Do not prepare a surface area for spray-coating greater than 9 square feet per any single vehicle. The measured surface area prepared for spray-coating shall include, but is not limited to all areas that are filled, ground, sanded, or inside masking.

(5) Do not apply more than 20 ounces of coatings (base coat and clear coat combined) at one site during any calendar day.

(6) Use only HVLP spray guns or spray equipment with equivalent transfer efficiency (greater than or equal to 65%).

(7) Minimize evaporative emissions by collecting all organic solvents used for cleanup of equipment in a closed-loop or contained system; keeping all containers of paints and organic solvents closed except when materials are being added, mixed, or removed; and storing solvent rags in closed containers.

(8) Post a sign that is visible to the public and shows the name of the company and current telephone contact information for complaints. Record information regarding complaints received and investigate complaints regarding odor, overspray, or nuisance as soon as possible, but no later than 1 hour after receipt of a complaint. As part of the investigation, determine the wind direction during the time of the complaint. If the cause of a valid complaint cannot be corrected within 2 hours of the time the complaint was received, shut down the operation until corrective action is completed.

(9) Complete the following records for each vehicle when finished with that vehicle:

(A) Customer identification, address where work was performed, date, time, and the name of the person completing the record;

(B) Identification of each vehicle and vehicle component repaired; and

(C) Quantity (in ounces) of each VOC-containing material used on each vehicle.

All records must be kept current, must be retained for at least 2 years, and must be made available to Agency representatives upon request.

(10) Provide a copy of the current Agency registration document to each customer prior to starting work at a site.

(f) ((e)) Compliance with Other Regulations. Compliance with this regulation does not exempt any person from compliance with Regulation I, Section 9.11 and all other applicable regulations including those of other agencies.

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

WSR 07-02-065

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed December 29, 2006, 8:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-09-013.

Title of Rule and Other Identifying Information: Amending WAC 388-845-0205 Basic waiver services and 388-845-0210 Basic Plus waiver services.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on February 6, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than February 7, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on February 6, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by February 2, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The division of developmental disabilities (DDD) has received approval from the federal Centers for Medicare and Medicaid Services (CMS) to increase the dollar maximum for certain services in the Basic and Basic Plus waivers within the home and community based service (HCBS) waivers.

Reasons Supporting Proposal: Approval from CMS.

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

Statute Being Implemented: Title 71A RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Brink, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail brinksc@dshs.wa.gov, (360) 725-3416, fax (360) 407-0955; Implementation: Shannon Manion, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail maniosk@dshs.wa.gov, (360) 725-3445, fax (360) 407-0955; and Enforcement: Don Clintsman, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail clintdl@dshs.wa.gov, (360) 725-3421, fax (360) 407-0955.

No small business economic impact statement has been prepared under chapter 19.85 RCW. DDD has determined that these rules do not affect small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These rules relate only to client medical or financial eligibility and are exempt from a cost-benefit analysis pursuant to RCW 34.05.328 (5)(b)(vii).

December 26, 2006

Andy Fernando, Manager
Rules and Policies Assistance Unit

BASIC WAIVER	SERVICES	YEARLY LIMIT
	EMPLOYMENT/DAY PROGRAM SERVICES: Community access Person-to-person Prevocational services Supported employment	May not exceed \$(6500) <u>6631</u> per year
	Sexual deviancy evaluation	Limits are determined by DDD
	Respite care	Limits are determined by respite assessment
	Personal care	Limits are determined by CARE assessment
	MENTAL HEALTH STABILIZATION SERVICES: Behavior management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits are determined by a mental health professional or DDD
	Emergency assistance is only for services contained in the Basic waiver	\$6000 per year; Preauthorization required

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0205 Basic waiver services.

BASIC WAIVER	SERVICES	YEARLY LIMIT
	AGGREGATE SERVICES: Behavior management and consultation Community guide Environmental accessibility adaptations Occupational therapy Physical therapy Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	May not exceed \$(1425) <u>1454</u> per year on any combination of these services

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0210 Basic Plus waiver services.

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	AGGREGATE SERVICES: Behavior management and consultation Community guide Environmental accessibility adaptations Occupational therapy Physical therapy Skilled nursing Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services	May not exceed \$(6070) <u>6192</u> per year on any combination of these services

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	Staff/family consultation and training Transportation	
	EMPLOYMENT/DAY PROGRAM SERVICES: Community access Person-to-person Prevocational services Supported employment	May not exceed \$((9500)) <u>9691</u> per year
	Adult foster care (adult family home) Adult residential care (boarding home)	Determined per department rate structure
	MENTAL HEALTH STABILIZATION SERVICES: Behavior management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits determined by a mental health professional or DDD
	Personal care	Limits determined by the CARE assessment
	Respite care	Limits are determined by respite assessment
	Sexual deviancy evaluation	Limits are determined by DDD
	Emergency assistance ((†)) is only for services contained in the Basic Plus waiver	\$6000 per year; Preauthorization required

Vocational rehabilitation services for individuals with disabilities. See Reviser's Note below.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on February 27, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than February 28, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on February 27, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by February 23, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: See Reviser's Note below.

Reasons Supporting Proposal: See Reviser's Note below.

Statutory Authority for Adoption: RCW 74.29.020, 74.08.090.

Statute Being Implemented: August 1998 Amendments to the Rehabilitation Act of 1973; 34 C.F.R. Part 361 and 34 C.F.R. Part 363; chapter 74.29 RCW.

Rule is necessary because of federal law, August 1998 Amendments to the Rehabilitation Act of 1973; 34 C.F.R. Part 361 and 34 C.F.R. Part 363.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Michael Cunningham, Program Administrator, Division of Vocational Rehabilitation, P.O. Box 45340, Olympia, WA 98504-5340, e-mail cunnim@dshs.wa.gov, (360) 725-3621; Implementation and Enforcement: Lynnae Ruttledge, Director, Division of Vocational Rehabilitation, P.O. Box 45340, Olympia, WA 98504-5340, (360) 725-3618.

No small business economic impact statement has been prepared under chapter 19.85 RCW. DSHS/division of vocational rehabilitation has analyzed the proposed rule changes and concludes that they will impose no new or disproportionate costs on small businesses. The preparation of a comprehensive small business economic impact statement is not required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Michael Cunningham, Program Administrator, Division of Vocational Rehabilitation, P.O. Box 45340, Olympia, WA 98504-4350[5340], phone (360) 725-3621, fax (360) 407-3942, e-mail cunnim@dshs.wa.gov.

December 22, 2006

Andy Fernando, Manager
Rules and Policies Assistance Unit

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 07-03 issue of the Register.

WSR 07-02-067
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Division of Vocational Rehabilitation)

[Filed December 29, 2006, 8:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-19-077.

Title of Rule and Other Identifying Information: Chapter 388-890 WAC, Rehabilitation services for individuals with disabilities (independent living program—Title VII, Part B); and relevant sections of chapter 388-891 WAC,

WSR 07-02-087
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
[Filed January 3, 2007, 8:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-14-145 and 05-17-136.

Title of Rule and Other Identifying Information: WAC 388-550-2650 Base community psychiatric hospitalization payment method for Medicaid and non-Medicaid clients (the permanent rule will replace emergency WAC 388-550-2650) and WAC 388-550-2800 Inpatient payment methods and limits.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on February 6, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than February 7, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on February 6, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by February 2, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To comply with the requirements of the 2005 legislature, the department is adding a new WAC section (permanent rule replaces current emergency rule) to adopt two separate base community psychiatric hospital payments. One is for Medicaid clients and the other is for non-Medicaid clients. The new rule also clarifies that both Involuntary Treatment Act (ITA)-certified hospitals and hospitals that have ITA-certified beds that have been used to treat ITA patients are included in the base community psychiatric hospitalization payment method for Medicaid and non-Medicaid clients. The amendment incorporates into rule that the department is adding certain newborn screening tests to the newborn metabolic screening panel and clarifies that the department pays hospitals an additional flat fee to cover the cost of the tests; the amendment also clarifies language regarding inpatient payment methods and limits concerning inpatient hospital services for Medicaid clients. HRSA intends to propose additional future rule-making actions using WSR 05-17-136.

Reasons Supporting Proposal: See Purpose statement above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.500.

Statute Being Implemented: RCW 74.08.090, 74.09.-500, section 204, chapter 518, Laws of 2005.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1342; Implementation and Enforcement: Larry Linn, P.O. Box 45510, Olympia, WA 98504-5510, (360) 725-1856.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rule and concluded that no new costs will be imposed on businesses affected by them. The preparation of a comprehensive small business economic impact statement is not required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Larry Linn, P.O. Box 45510, Health and Recovery Services Administration, Olympia, WA 98504-5510, phone (360) 725-1856, fax (360) 743-9152, e-mail linld@dshs.wa.gov.

December 28, 2006

Andy Fernando, Manager
Rules and Policies Assistance Unit

NEW SECTION

WAC 388-550-2650 Base community psychiatric hospitalization payment method for Medicaid and non-Medicaid clients. (1) Effective July 1, 2005 and in accordance with legislative directive, the department implemented two separate base community psychiatric hospitalization payment rates, one for Medicaid clients and one for non-Medicaid clients. (For the purpose of this section, a "non-Medicaid client" is defined as a client eligible under the general assistance-unemployable (GA-U) program, the Alcoholism and Drug Addiction Treatment and Support Act (ADATSA), the psychiatric indigent inpatient (PII) program, or other state-administered program, as determined by the department.)

(a) The Medicaid base community psychiatric hospital payment rate is a minimum per diem for claims for psychiatric services provided to Medicaid covered patients, paid to hospitals that accept commitments under the involuntary treatment act (ITA).

(b) The non-Medicaid base community psychiatric hospital payment rate is a minimum allowable per diem for claims for psychiatric services provided to indigent patients paid to hospitals that accept commitments under the ITA.

(2) For the purposes of this section, "allowable" means the calculated amount for payment based on the payment method before adjustments, deductions, or add-ons.

(3) To be eligible for payment under the base community psychiatric hospitalization payment method:

(a) A client's inpatient psychiatric voluntary hospitalization must:

(i) Be medically necessary as defined in WAC 388-500-0005. In addition, the department considers medical necessity to be met when:

(A) Ambulatory care resources available in the community do not meet the treatment needs of the client;

(B) Proper treatment of the client's psychiatric condition requires services on an inpatient basis under the direction of a physician;

(C) The inpatient services can be reasonably expected to improve the client's condition or prevent further regression so that the services will no longer be needed; and

(D) The client, at the time of admission, is diagnosed as having an emotional/behavioral disturbance as a result of a mental disorder as defined in the current published Diagnostic and Statistical Manual of the American Psychiatric Association. The department does not consider detoxification to be psychiatric in nature.

(ii) Be approved by the professional in charge of the hospital or hospital unit.

(iii) Be authorized by the appropriate mental health division (MHD) designee prior to admission for covered diagnoses.

(iv) Meet the criteria in WAC 388-550-2600.

(b) A client's inpatient psychiatric involuntary hospitalization must:

(i) Be in accordance with the admission criteria in chapters 71.05 and 71.34 RCW.

(ii) Be certified by a MHD designee.

(iii) Be approved by the professional in charge of the hospital or hospital unit.

(iv) Be prior authorized by the regional support network (RSN) or its designee.

(v) Meet the criteria in WAC 388-550-2600.

(4) The provider requesting payment must complete the appropriate sections of the Involuntary Treatment Act Patient Claim Information (form DSHS 13-628) in triplicate and route both the form and each claim form submitted for payment, to the County Involuntary Treatment Office.

(5) Payment for all claims is based on covered days within a client's approved length of stay (LOS), subject to client eligibility and department-covered services.

(6) The Medicaid base community psychiatric hospitalization payment rate applies only to a Medicaid client admitted to a non-state-owned free-standing psychiatric hospital located in Washington state.

(7) The non-Medicaid base community psychiatric hospitalization payment rate applies only to a non-Medicaid client admitted to a hospital:

(a) Designated by the department as an ITA-certified hospital; or

(b) That has a department-certified ITA bed that was used to provide ITA services at the time of the non-Medicaid admission.

(8) For inpatient hospital psychiatric services provided to eligible clients on and after July 1, 2005, the department pays:

(a) A hospital's department of health (DOH)-certified distinct psychiatric unit as follows:

(i) For Medicaid clients, inpatient hospital psychiatric services are paid using the department-specific non-diagnosis related group (DRG) payment method.

(ii) For non-Medicaid clients, the allowable for inpatient hospital psychiatric services is the greater of:

(A) The state-only DRG allowable (including the high cost outlier allowable, if applicable), or the department-spec-

ified non-DRG payment method if no relative weight exists for the DRG in the department's payment system; or

(B) The non-Medicaid base community psychiatric hospitalization payment rate multiplied by the covered days.

(b) A hospital without a DOH-certified distinct psychiatric unit as follows:

(i) For Medicaid clients, inpatient hospital psychiatric services are paid using:

(A) The DRG payment method; or

(B) The department-specified non-DRG payment method if no relative weight exists for the DRG in the department's payment system.

(ii) For non-Medicaid clients, the allowable for inpatient hospital psychiatric services is the greater of:

(A) The state-only DRG allowable (including the high cost outlier allowable, if applicable), or the department-specified non-DRG payment method if no relative weight exists for the DRG in the department's payment system; or

(B) The non-Medicaid base community psychiatric hospitalization payment rate multiplied by the covered days.

(c) A non-state-owned free-standing psychiatric hospital as follows:

(i) For Medicaid clients, inpatient hospital psychiatric services are paid using as the allowable, the greater of:

(A) The ratio of costs-to-charges (RCC) allowable; or

(B) The Medicaid base community psychiatric hospitalization payment rate multiplied by covered days.

(ii) For non-Medicaid clients, inpatient hospital psychiatric services are paid the same as for Medicaid clients, except the base community inpatient psychiatric hospital payment rate is the non-Medicaid rate, and the RCC allowable is the state-only RCC allowable.

(d) A hospital, or a distinct psychiatric unit of a hospital, that is participating in the certified public expenditure (CPE) payment program, as follows:

(i) For Medicaid clients, inpatient hospital psychiatric services are paid using the methods identified in WAC 388-550-4650.

(ii) For non-Medicaid clients, inpatient hospital psychiatric services are paid using the methods identified in WAC 388-550-4650 in conjunction with the non-Medicaid base community psychiatric hospitalization payment rate multiplied by covered days.

(e) A hospital, or a distinct psychiatric unit of a hospital, that is participating in the critical access hospital (CAH) program, as follows:

(i) For Medicaid clients, inpatient hospital psychiatric services are paid using the department-specified non-DRG payment method.

(ii) For non-Medicaid clients, inpatient hospital psychiatric services are paid using the department-specified non-DRG payment method.

AMENDATORY SECTION (Amending WSR 05-12-022, filed 5/20/05, effective 6/20/05)

WAC 388-550-2800 (~~Inpatient~~) Payment methods and limits-Inpatient hospital services for Medicaid clients. The term "allowable" used in this section means the cal-

culated amount for payment based on the applicable payment method before adjustments, deductions, or add-ons.

methods identified in the department's approved state plan ~~((that includes))~~ as follows:

(1) The department ~~((reimburses))~~ pays hospitals for Medicaid inpatient hospital services using the rate setting

((Method)) Payment method used for Medicaid inpatient hospital claims	((Used for)) Applicable providers/services	Process to adjust for third-party liability insurance and any other client responsibility
((Diagnoses)) <u>Diagnosis related group (DRG) negotiated conversion factor</u>	Hospitals participating in the Medicaid hospital selective contracting program under waiver from the federal government	<u>Lesser of either the DRG billed amount minus the third-party payment and any client responsibility amount, or the allowable, minus the third-party payment amount and any client responsibility amount.</u>
DRG cost-based conversion factor	Hospitals not participating in or exempt from the Medicaid hospital selective contracting program	<u>Lesser of either the DRG billed amount minus the third-party payment amount and any client responsibility amount, or the allowable, minus the third-party payment amount and any client responsibility amount.</u>
Ratio of costs-to-charges (RCC)	Hospitals or services exempt from DRG payment methods	<u>The allowable minus the third-party payment amount and any client responsibility amount.</u>
<u>Costs-to-charges rate with a "hold harmless" settlement provision</u>	<u>Hospitals eligible to be paid through the certified public expenditure (CPE) payment program</u>	<u>The allowable minus the third-party payment amount and any client responsibility amount. The payment made is the federal share only.</u>
Single case rate	((Bariatric surgery)) <u>Hospitals eligible to provide bariatric surgery to medical assistance clients</u>	<u>Single case rate minus the third-party payment amount and any client responsibility amount.</u>
Fixed per diem rate	((Acute physical medicine and rehabilitation (Acute PM&R) Level B facilities and)) <u>Long-term acute care (LTAC) hospitals</u>	<u>Per diem amount minus the third-party payment amount and any client responsibility amount.</u>
Cost settlement	((MAA)) <u>DOH-approved critical access hospitals (CAHS)</u>	<u>The allowable times the approved CAH rate, subject to retrospective cost settlement, minus the third-party payment amount and any client responsibility amount.</u>
<u>Medicaid base community psychiatric hospitalization rate</u>	<u>Non-state-owned free-standing psychiatric hospitals located in Washington state</u>	<u>Paid according to applicable payment method in WAC 388-550-2650 for Medicaid clients, minus the third-party payment amount and any client responsibility amount.</u>

See WAC 388-550-4800 for payment methods used by the department for inpatient hospital services provided to clients eligible under state-administered programs.

(2) The department's annual aggregate Medicaid payments to each hospital for inpatient hospital services provided to Medicaid clients will not exceed the hospital's usual and customary charges to the general public for the services (42 CFR ~~((§))~~ Sec. 447.271). The department recoups annual aggregate Medicaid payments that are in excess of the usual and customary charges.

(3) The department's annual aggregate payments for inpatient hospital services, including state-operated hospitals, will not exceed the estimated amounts that the department would have paid using Medicare payment principles.

(4) When hospital ownership changes, the department's payment to the hospital will not exceed the amount allowed under 42 U.S.C. Section 1395x (v)(1)(O).

(5) Hospitals participating in the department's medical assistance program must annually submit to the ~~((medical assistance administration))~~ department:

(a) A copy of the hospital's (~~(HCFR 2552)~~) CMS Medicare Cost Report (form 2552-96) that is the official "as submitted" cost report submitted to the Medicare fiscal intermediary; and

(b) A disproportionate share hospital (DSH) application if the hospital wants to be considered for DSH payments. See WAC 388-550-4900 for the requirement for a hospital to qualify for a DSH payment.

(6) Reports referred to in subsection (5) of this section must be completed according to:

- (a) Medicare's cost reporting requirements;
- (b) The provisions of this chapter; and
- (c) Instructions issued by (~~(MAA)~~) the department.

(7) The department requires hospitals to follow generally accepted accounting principles (~~(unless federally or state regulated)~~).

(8) Participating hospitals must permit the department to conduct periodic audits of their financial (~~(and)~~) records, statistical records, and any other records as determined by the department.

(9) (~~The department reimburses hospitals for claims involving clients with third party liability insurance:~~

(a) ~~At the lesser of either the DRG:~~

(i) ~~Billed amount minus the third party payment amount;~~

or
(ii) ~~Allowed amount minus the third party payment amount; or~~

(b) ~~The RCC allowed payment minus the third party payment amount.)~~ The department limits payment for private room accommodations to the semiprivate room rate. Room charges must not exceed the hospital's usual and customary charges to the general public as required by 42 C.F.R. Sec. 447.271.

(10) For a client's hospital stay that involves both Regional Support Network (RSN)-approved voluntary inpatient and involuntary inpatient hospitalizations, the hospital must bill the department for payment, unless the hospital contracts directly with the RSN. In that case, the hospital must bill the RSN for payment.

(11) The department pays hospitals to cover the cost of certain newborn screening tests that are required under chapter 70.83 RCW (see also chapter 246-650 WAC). The flat fees that are not included in the DRG rate but are related to performing the newborn screening tests are added to the DRG payment. Hospitals are responsible to bill for all newborn screening fees when submitting any claims for newborn services to the department.

(12) Refer to subsection (1) of this section for how the department adjusts inpatient hospital claims for third party payment amounts and any client responsibility amounts.

WSR 07-02-088

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed January 3, 2007, 8:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-21-093.

Title of Rule and Other Identifying Information: **Part 1 of 4**; amending WAC 388-535-1050 Dental-related definitions and 388-535-1065 Coverage limits for dental-related services provided under state-only funded programs; and new section WAC 388-535-1247 Dental-related services for clients age twenty-one and older—General.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on February 6, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than February 7, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on February 6, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by February 2, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The new and amended sections clarify and update policies for dental-related services for clients age twenty-one and older; ensure that department policies are applied correctly and equitably; replace the terms "medical assistance administration" and "MAA" with "the department"; update policy regarding prior authorization requirements; clarify policy on covered versus noncovered benefits; and clarify additional benefits and limitations associated with those services for clients age twenty-one and older.

Reasons Supporting Proposal: To clarify what new dental-related services are covered and the limitations associated with those services; to make HRSA's rules regarding covered and noncovered dental-related services for clients age twenty-one and older clearer and easier to understand for clients and dental providers; and to identify the requirements and criteria that must be met in order to obtain covered dental-related services.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.500, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.500, 74.09.520.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, 626 8th Avenue, Olympia, WA 98504-5504, (360) 725-1342; Implementation and Enforcement: Dr. John Davis, 626 8th Avenue, Olympia, WA 98504-5506, (360) 725-1748.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not create more than minor costs to small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Dr. John Davis, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1748, TYY/TDD 1-800-848-5429, fax (360) 586-1590, e-mail davisjd@dshs.wa.gov.

December 27, 2006

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-14-100, filed 7/6/04, effective 8/6/04)

WAC 388-535-1050 Dental-related definitions. The following definitions and abbreviations and those found in WAC 388-500-0005 apply to this chapter. The ~~((medical assistance administration (MAA)))~~ department also uses dental definitions found in the American Dental Association's Current Dental Terminology (CDT) and the American Medical Association's Physician's Current Procedural Terminology (CPT). Where there is any discrepancy between the CDT or CPT and this section, this section prevails. (CPT is a trademark of the American Medical Association.)

"Access to baby and child dentistry (ABCD)" is a program to increase access to dental services in targeted areas for Medicaid eligible infants, toddlers, and preschoolers up through the age of five. See WAC 388-535-1300 for specific information.

"American Dental Association (ADA)" is a national organization for dental professionals and dental societies.

~~((("Adult" for the general purposes of the medical assistance administration's (MAA) dental program, means a client twenty one years of age or older (MAA's payment structure changes at age nineteen, which affects specific program services provided to adults or children:))~~

"Anterior" ~~((means teeth))~~ refers to teeth (maxillary and mandibular incisors and canines) and tissue in the front of the mouth. Permanent maxillary anterior teeth include teeth six, seven, eight, nine, ten, and eleven. Permanent mandibular anterior teeth include teeth twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, and twenty-seven. Primary maxillary anterior teeth include teeth C, D, E, F, G, and H. Primary mandibular anterior teeth include teeth M, N, O, P, Q, and R.

~~((1) "Mandibular anterior teeth" — incisors and canines: Permanent teeth twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, and twenty-seven; and primary teeth M, N, O, P, Q, and R.~~

~~(2) "Maxillary anterior teeth" — incisors and canines: Permanent teeth six, seven, eight, nine, ten, and eleven; and primary teeth C, D, E, G, and H:))~~

"Asymptomatic" means having or producing no symptoms.

"Base metal" means dental alloy containing little or no precious metals.

"Behavior management" means using the assistance of one additional dental professional staff to manage the behavior of ~~((a developmentally disabled client or))~~ a client ~~((age eighteen or younger))~~ to facilitate the delivery of dental treatment.

"By report" - a method of reimbursement in which ~~((MAA))~~ the department determines the amount it will pay for a service when the rate for that service is not included in ~~((MAA's))~~ the department's published fee schedules. Upon request the provider must submit a "report" which describes the nature, extent, time, effort and/or equipment necessary to deliver the service.

"Caries" means carious lesions or tooth decay through the enamel or decay of the root surface.

~~((("Child" for the general purposes of the medical assistance administration's (MAA) dental program, means a client twenty years of age or younger. (MAA's payment structure changes at age nineteen, which affects specific program services provided to children or adults:))~~

"Comprehensive oral evaluation" means a thorough evaluation and ~~((recording))~~ documentation of a client's dental and medical history to include extra-oral and intra-oral hard and soft tissues, dental caries, missing or unerupted teeth, restorations, occlusal relationships, periodontal conditions (including periodontal charting), hard and soft tissue anomalies, and oral cancer screening.

"Conscious sedation" is a drug-induced depression of consciousness during which a client(s) responds purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, spontaneous ventilation is adequate, and cardiovascular function is maintained.

"Core buildup" refers to building up of clinical crowns, including pins.

"Coronal" is the portion of a tooth that is covered by enamel ~~((; and is separated from the root or roots by a slightly constricted region, known as the cemento-enamel junction)).~~

"Coronal polishing" is a mechanical procedure limited to the removal of plaque and stain from exposed tooth surfaces.

"Crown" means a restoration covering or replacing ~~((the major))~~ part ~~((;))~~ or the whole ~~((of, the))~~ clinical crown of a tooth.

"Current dental terminology (CDT)" is a systematic listing of descriptive terms and identifying codes for reporting dental services and procedures performed by dental practitioners. CDT is published by the Council on Dental Benefit Programs of the American Dental Association (ADA).

"Current procedural terminology (CPT)" ~~((means a description of medical procedures and is available from the American Medical Association of Chicago, Illinois))~~ is a systematic listing of descriptive terms and identifying codes for reporting medical services, procedures, and interventions performed by physicians and other practitioners who provide physician-related services. CPT is copyrighted and pub-

lished annually by the American Medical Association (AMA).

"Decay" is a term for caries or carious lesions and means decomposition of tooth structure.

"Deep sedation" is a drug-induced depression of consciousness during which a client cannot be easily aroused, ventilatory function may be impaired, but the client responds to repeated or painful stimulation.

"Dental general anesthesia" see "general anesthesia."

"Dentures" means an artificial replacement for natural teeth and adjacent tissues, and includes complete dentures, immediate dentures, overdentures, and partial dentures.

"Denturist" means a person licensed under chapter 18.30 RCW to make, construct, alter, reproduce, or repair a denture.

"Endodontic" means ~~((disease and injuries to the pulp requiring root canal therapy and related follow-up))~~ the etiology, diagnosis, prevention and treatment of diseases and injuries of the pulp and associated periradicular conditions.

"EPSDT" means the department's early and periodic screening, diagnosis, and treatment program for clients twenty years of age and younger as described in chapter 388-534 WAC.

"Extraction" see "simple extraction" and "surgical extraction."

"Flowable composite (~~(resin)~~)" is a ~~((low viscosity resin))~~ diluted resin-based composite dental restorative material that is used in cervical ~~((lesions))~~ restorations and ~~((other))~~ small, low stress bearing occlusal restorations.

"Fluoride varnish, rinse, foam or gel" ~~((means))~~ is a substance containing dental fluoride~~(s)~~ which is applied to teeth.

"General anesthesia" is a drug-induced loss of consciousness during which a client~~(s are)~~ is not arousable even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Clients may require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

"High noble metal" ~~((means))~~ is a dental alloy containing at least sixty percent pure gold.

"Limited oral evaluation" ~~((means))~~ is an evaluation limited to a specific oral health condition or problem. Typically a client receiving this type of evaluation has a dental emergency, such as trauma or acute infection.

"Limited visual oral assessment" ~~((means a screening of the hard and soft tissues in the mouth))~~ is an assessment by a dentist or dental hygienist to determine the need for fluoride treatment and/or when triage services are provided in settings other than dental offices or dental clinics.

"Major bone grafts" ~~((means))~~ is a transplant of solid bone tissue(s).

"Medically necessary" see WAC 388-500-0005.

"Minor bone grafts" ~~((means))~~ is a transplant of non-solid bone tissue(s), such as powdered bone, buttons, or plugs.

"Noble metal" ~~((means))~~ is a dental alloy containing at least twenty-five percent but less than sixty percent pure gold.

"Oral evaluation" see "comprehensive oral evaluation."

"Oral hygiene instruction" means instruction for home oral hygiene care, such as tooth brushing techniques or flossing.

"Oral prophylaxis" ~~((means))~~ is the ~~((preventive))~~ dental procedure of scaling and polishing which includes removal of calculus, ~~((soft deposits,))~~ plaque, and stains from teeth ~~((and tooth implants)).~~

"Partials" or "partial dentures" ~~((means))~~ are a removable prosthetic appliance ~~((replacing one or more))~~ that replaces missing teeth in one arch~~((, and receiving its support and retention from both the underlying tissues and some or all of the remaining teeth)).~~

"Periodic oral evaluation" ~~((means))~~ is an evaluation performed on a patient of record to determine any changes in the client's dental or medical status since a previous comprehensive or periodic evaluation. ~~((This includes a periodontal charting at least once per year.))~~

"Periodontal maintenance" ~~((means))~~ is a procedure ~~((for clients who have previously been treated for periodontal disease and starts after completion of active (surgical or non-surgical) periodontal therapy. It includes removal of the supra and subgingival microbial flora and calculus from teeth and tooth implants))~~ performed for clients who have previously been treated for periodontal disease with surgical or nonsurgical treatment. It includes the removal of supragingival and subgingival microorganisms and deposits with hand and mechanical instrumentation, an evaluation of periodontal conditions, and a complete periodontal charting as appropriate.

"Periodontal scaling and root planing" ~~((means instrumentation of the crown and root surfaces of the teeth or tooth implants))~~ is a procedure to remove plaque, calculus, ~~((microbial flora, and bacterial toxins))~~ microorganisms, and rough cementum and dentin from tooth surfaces. This includes hand and mechanical instrumentation, an evaluation of periodontal conditions, and a complete periodontal charting as appropriate.

"Posterior" ~~((means))~~ refers to the teeth ~~(maxillary and mandibular premolars and molars)~~ and tissue towards the back of the mouth. Permanent maxillary posterior teeth include teeth one, two, three, four, five, twelve, thirteen, fourteen, fifteen, and sixteen. Permanent mandibular posterior teeth include teeth seventeen, eighteen, nineteen, twenty, twenty-one, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two. Primary maxillary posterior teeth include teeth A, B, I, and J. Primary mandibular posterior teeth include teeth K, L, S, and T.

~~((1) "Mandibular posterior teeth" — molars and premolars: Permanent teeth seventeen, eighteen, nineteen, twenty, twenty-one, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two; and primary teeth K, L, S, and T.~~

~~(2) "Maxillary posterior teeth" — molars and premolars: Permanent teeth one, two, three, four, five, twelve, thirteen, fourteen, fifteen, and sixteen; and primary teeth A, B, I, and J.)~~

"Proximal" (~~(means)~~) is the surface of the tooth near or next to the adjacent tooth.

"Radiograph" is an image or picture produced on a radiation sensitive film emulsion or digital sensor by exposure to ionizing radiation.

"Reline" means to resurface the tissue side of a denture with new base material or soft tissue conditioner in order to achieve a more accurate fit.

"Root canal" is ~~((a portion of the pulp cavity inside the root of a tooth and))~~ the chamber within the root of the tooth that contains the pulp.

"Root canal therapy" is the treatment of ~~((disease and injuries of))~~ the pulp and associated periradicular conditions.

"Root planing" is a procedure to remove ~~((microbial flora, bacterial toxins))~~ plaque, calculus, ~~((and diseased))~~ microorganisms, and rough cementum ~~((or dentin on the root))~~ and dentin from tooth surfaces ~~((and pockets, including tooth implants)).~~ This includes hand and mechanical instrumentation.

"Scaling" is a procedure to remove plaque, calculus, and stain deposits from tooth surfaces ~~((including tooth implants)).~~

"Sealant" is a dental material applied to teeth to prevent dental caries.

"Simple extraction" (~~(means)~~) is the routine removal of a tooth ~~((structure)).~~

"Standard of care" means what reasonable and prudent practitioners would do in the same or similar circumstances.

"Surgical extraction" (~~(means)~~) is the removal of a tooth ~~((structure with))~~ by cutting of the gingiva and bone ~~((including)).~~ This includes soft tissue extractions, partial boney extractions, and complete boney extractions.

"Symptomatic" means having symptoms (e.g., pain, swelling, and infection).

"Temporomandibular joint dysfunction (TMJ/TMD)" (~~(means)~~) is an abnormal functioning of the temporomandibular joint or other areas secondary to the dysfunction.

"Therapeutic pulpotomy" (~~(means)~~) is the surgical removal of a portion of the pulp (inner soft tissue of a tooth), to retain the healthy remaining pulp.

"Usual and customary" means the fee that the provider usually charges non-Medicaid customers for the same service or item. This is the maximum amount that the provider may bill ~~((MAA))~~ the department.

"Wisdom teeth" (~~(means)~~) are the third molars, teeth one, sixteen, seventeen, and thirty-two.

"Xerostomia" (~~(means)~~) is a dryness of the mouth due to decreased saliva.

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

AMENDATORY SECTION (Amending WSR 04-14-100, filed 7/6/04, effective 8/6/04)

WAC 388-535-1065 Coverage limits for dental-related services provided under ~~((state-only funded))~~ the GA-U and ADATSA programs. (1) Clients who receive medical care services under the following ~~((state-funded only))~~ programs may receive ~~((only the limited coverage))~~

the dental-related services described in ~~((subsection (2) of))~~ this section:

(a) General assistance unemployable (GA-U); and

(b) Alcohol and drug abuse treatment and support act (ADATSA) ~~((GA-W)).~~

(2) The ~~((medical assistance administration (MAA)))~~ department covers the following dental-related services ~~((described and limited in this chapter))~~ for a client(s) eligible ~~((for))~~ under the GA-U or ~~((GA-W only when those services are provided as part of a medical treatment for))~~ ADATSA program:

(a) ~~((Apical abscess verified by clinical examination and radiograph(s), and treated by))~~ Services provided only as part of dental treatment for:

(i) Limited oral evaluation;

(ii) Periapical or bite-wing radiographs that are medically necessary to diagnose only the client's chief complaint;

(iii) Palliative treatment ~~((e.g., open and drain, open and broach))~~ to relieve dental pain;

~~((ii))~~ Tooth extraction; or

(iii) Root canal therapy for permanent anterior teeth only;

(b) Tooth fractures (limited to extraction);

(c) Total dental extraction prior to and because of radiation therapy for cancer of the mouth))

(iv) Pulpal debridement to relieve dental pain; or

(v) Endodontic (root canal only) treatment for maxillary and mandibular anterior teeth (cuspids and incisors) when prior authorized.

(b) Tooth extraction when at least one of the following apply:

(i) The tooth has a radiograph apical lesion;

(ii) The tooth is endodontically involved, infected, or abscessed;

(iii) The tooth is not restorable; or

(iv) The tooth is not periodontally stable.

(3) Tooth extractions require prior authorization when:

(i) The extraction of a tooth or teeth results in the client becoming edentulous in the maxillary arch or mandibular arch; and

(ii) A full mouth extraction is necessary because of radiation therapy for cancer of the head and neck.

(4) Each dental-related procedure described under this section is subject to the coverage limitations listed in chapter 388-535 WAC for clients through age twenty.

(5) The department does not cover any dental-related services not listed in this section for clients eligible under the GA-U or ADATSA program, including any type of removable prosthesis (denture).

NEW SECTION

WAC 388-535-1247 Dental-related services for clients age twenty-one and older-General. (1) The department pays for dental-related services and procedures provided to clients age twenty-one and older when the services and procedures:

(a) Are within the scope of an eligible client's medical care program;

(b) Are medically necessary as defined in WAC 388-500-0005;

(c) Meet the department's prior authorization requirements, if any;

(d) Are within accepted dental or medical practice standards;

(e) Are consistent with a diagnosis of dental disease or condition;

(f) Are reasonable in amount and duration of care, treatment, or service; and

(g) Are listed as covered in the department's published rules, billing instructions and fee schedules.

(2) Clients who are eligible for services through the division of developmental disabilities may receive dental-related services under the provisions of WAC 388-535-1099.

(3) The department evaluates a request for dental-related services:

(a) That are in excess of the dental program's limitations or restrictions, according to WAC 388-501-0169; and

(b) That are listed as noncovered under the provisions in WAC 388-501-0160.

WSR 07-02-089

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed January 3, 2007, 8:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-21-093.

Title of Rule and Other Identifying Information: **Part 2 of 4**; amending WAC 388-535-1255 Covered dental-related services—Adults; and new sections WAC 388-535-1257 Covered dental-related services for clients age twenty-one and older—Preventive services, 388-535-1259 Covered dental-related services for clients age twenty-one and older—Restorative services, and 388-535-1261 Covered dental-related services for clients age twenty-one and older—Endodontic services.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on February 6, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than February 7, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on February 6, 2007.

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Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The new and amended sections clarify and update policies for dental-related services for clients age twenty-one and older; ensure that department policies are applied correctly and equitably; replace the terms "medical assistance administration" and "MAA" with "the department"; update policy regarding prior authorization requirements; clarify policy on covered versus noncovered benefits; and clarify additional benefits and limitations associated with those services for clients age twenty-one and older.

Reasons Supporting Proposal: To clarify what new dental-related services are covered and the limitations associated with those services; to make HRSA's rules regarding covered and noncovered dental-related services for clients age twenty-one and older clearer and easier to understand for clients and dental providers; and to identify the requirements and criteria that must be met in order to obtain covered dental-related services.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.500, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.500, 74.09.520.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, 626 8th Avenue, Olympia, WA 98504-5504, (360) 725-1342; Implementation and Enforcement: Dr. John Davis, 626 8th Avenue, Olympia, WA 98504-5506, (360) 725-1748.

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A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Dr. John Davis, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1748, TTY/TDD 1-800-848-5429, fax (360) 586-1590, e-mail davisjd@dshs.wa.gov.

December 27, 2006

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 03-19-079, filed 9/12/03, effective 10/13/03)

WAC 388-535-1255 Covered dental-related services—Adults. ~~(((1) The medical assistance administration (MAA) pays for covered dental and dental-related services for adults listed in this section only when they are:~~

~~(a) Within the scope of an eligible client's medical care program;~~

~~(b) Medically necessary; and~~

~~(c) Within accepted dental or medical practice standards and are:~~

~~(i) Consistent with a diagnosis of dental disease or condition; and~~

(ii) Reasonable in amount and duration of care, treatment, or service.

(2) MAA covers the following dental-related services for eligible adults, subject to the restrictions and limitations in this section and other applicable WAC:

(a) Medically necessary services for the identification of dental problems or the prevention of dental disease, subject to the limitations of this chapter.

(b) A comprehensive oral evaluation once per provider as an initial examination, that must include:

(i) A complete dental and medical history and a general health assessment;

(ii) A complete thorough evaluation of extra-oral and intra-oral hard and soft tissue; and

(iii) The evaluation and recording of dental caries, missing or unerupted teeth, restorations, occlusal relationships, periodontal conditions (including periodontal charting), hard and soft tissue anomalies, and oral cancer screening.

(c) Periodic oral evaluations once every six months to include a periodontal screening/charting at least once per year. There must be six months between the comprehensive oral evaluation and the first periodic oral evaluation.

(d) Limited oral evaluations only when the provider is not providing prescheduled dental services for the client. The limited oral evaluation must be:

(i) To provide limited or emergent services for a specific dental problem; and/or

(ii) To provide an evaluation for a referral.

(e) Radiographs, as follows:

(i) Intraoral, complete series (including bitewings), allowed only once in a three-year period;

(ii) Panoramic film, allowed only once in a three-year period and only for oral surgical purposes (see subsection (3) of this section for clients of the division of developmental disabilities);

(iii) Periapical radiographs as needed (periapical radiographs and bitewings taken on the same date of service cannot exceed MAA's fee for a complete intraoral series); and

(iv) Bitewings, up to four allowed every twelve months.

(f) Fluoride treatment as follows (see subsection (3) of this section for clients of the division of developmental disabilities):

(i) Topical application of fluoride gel or fluoride varnish for adults age nineteen through sixty-four with xerostomia (requires prior authorization); and

(ii) Topical application of fluoride gel or fluoride varnish for adults age sixty-five and older for:

(A) Rampant root surface decay; or

(B) Xerostomia.

(g) Oral prophylaxis treatment, which is:

(i) Allowed once every twelve months for adults age nineteen and older, including nursing facility clients, and for clients of the division of developmental disabilities as provided in subsection (3) of this section;

(ii) Not reimbursed when oral prophylaxis treatment is performed on the same date of service as periodontal sealing and root planing, gingivectomy, or gingivoplasty; and

(iii) Reimbursed only if periodontal maintenance is not billed for the same client within the same twelve-month period.

(h) Restoration of teeth and maintenance of dental health, subject to the limitations in WAC 388-535-1265 and the following:

(i) Amalgam and composite restorations are allowed once for the same surface of the same tooth per client, per provider;

(ii) Multiple restorations involving the proximal and occlusal surfaces of the same tooth are considered to be a single multisurface restoration. Payment is limited to that of a single multisurface restoration.

(iii) Proximal restorations that do not involve the incisal angle in the anterior teeth are considered to be a two-surface restoration. Payment is limited to a two-surface restoration.

(iv) Proximal restorations that involve the incisal angle are considered to be either a three- or four-surface restoration. All surfaces must be listed on the claim for payment.

(v) MAA pays for a maximum of six surfaces for a posterior tooth, which is allowed once per client, per provider, in a two-year period.

(vi) MAA pays for a maximum of six surfaces for an anterior tooth, which is allowed once per client, per provider, in a two-year period.

(vii) MAA pays for a core buildup on an anterior or a posterior tooth, including any pins, which is allowed once per client, per provider, in a two-year period, subject to the following:

(A) MAA does not pay for a core buildup when a permanent or temporary crown is being placed on the same tooth.

(B) MAA does not pay for a core buildup when placed in combination with any other restoration on the same tooth.

(viii) MAA pays for flowable composites as a restoration only, when used with a cavity preparation for a carious lesion that penetrates through the enamel:

(A) As a small Class I (occlusal) restoration; or

(B) As a Class V (buccal or lingual) restoration.

(i) Endodontic (root canal) therapy for permanent anterior teeth only.

(j) Periodontal sealing and root planing, which is:

(i) Allowed for clients of the division of developmental disabilities as provided in subsection (3) of this section;

(ii) Allowed for clients age nineteen and older;

(iii) Allowed only when the client has radiographic evidence of periodontal disease. There must be supporting documentation in the client's record, including complete periodontal charting and a definitive periodontal diagnosis;

(iv) Allowed once per quadrant in a twenty-four month period;

(v) Allowed only when the client's clinical condition meets existing periodontal guidelines; and

(vi) Not allowed when performed on the same date of service as oral prophylaxis, periodontal maintenance, gingivectomy or gingivoplasty. Refer to subsection (2)(g) of this section for limitations on oral prophylaxis. Refer to subsection (2)(k) of this section for limitations on periodontal maintenance.

(k) Periodontal maintenance, which is:

(i) Allowed for clients of the division of developmental disabilities as provided in subsection (3) of this section;

(ii) Allowed for clients age nineteen and older;

(iii) Allowed only when the client has been previously treated for periodontal disease, including surgical or nonsurgical periodontal therapy;

(iv) Allowed when supporting documentation in the client's record includes a definitive periodontal diagnosis and complete periodontal charting;

(v) Allowed when the client's clinical condition meets existing periodontal guidelines;

(vi) Allowed when periodontal maintenance starts at least twelve months after completion of periodontal scaling and root planing or surgical treatment and paid only at twelve month intervals;

(vii) Not reimbursed when the periodontal maintenance is performed on the same date of service as periodontal sealing and root planing, gingivectomy, or gingivoplasty; and

(viii) Reimbursed only if oral prophylaxis is not billed for the same client within the same twelve-month period.

(l) Dentures and partial dentures according to WAC 388-535-1290.

(m) Simple extractions (includes local anesthesia, suturing, and routine postoperative care).

(n) Surgical extractions, subject to the following:

(i) Includes local anesthesia, suturing, and routine postoperative care; and

(ii) Requires documentation in the client's file to support soft tissue, partially bony, or completely bony extractions.

(o) Medically necessary oral surgery when coordinated with the client's managed care plan (if any).

(p) Palliative (emergency) treatment of dental pain and infections, minor procedures, which is:

(i) Allowed once per client, per day.

(ii) Reimbursed only when performed on a different date from:

(A) Any other definitive treatment necessary to diagnose the emergency condition; and

(B) Root canal therapy.

(iii) Reimbursed only when a description of the service is included in the client's record.

(q) Behavior management that requires the assistance of one additional dental professional staff for clients of the division of developmental disabilities. See subsection (3) of this section.

(3) For clients of the division of developmental disabilities, MAA allows services as follows:

(a) Fluoride application, either varnish or gel, three times per calendar year;

(b) One of the following combinations of preventive or periodontal procedures, subject to the limitations listed:

(i) Prophylaxis or periodontal maintenance, three times per calendar year;

(ii) Periodontal scaling and root planing, two times per calendar year; or

(iii) Prophylaxis or periodontal maintenance, two times per calendar year, and periodontal scaling and root planing, once per calendar year.

(c) Gingivectomy or gingivoplasty, allowed for four or more contiguous teeth or bounded teeth spaces per quadrant, once every three years.

(d) Nitrous oxide;

(e) Behavior management that requires the assistance of one additional dental professional staff. A description of behavior management must be documented in the client's record;

(f) Panoramic radiographs;

(g) General anesthesia or conscious sedation with parenteral or multiple oral agents when medically necessary for providing treatment; and

(h) Limited visual oral assessment (does not replace an oral evaluation) when the assessment includes appropriate referrals, charting of patient data and oral health status and informing the client's parent or guardian of the results, and when at least one of the following occurs:

(i) The provision of triage services;

(ii) An intraoral screening of soft tissues by a public health dental hygienist to assess the need for prophylaxis, fluoride varnish, or referral for other dental treatments by a dentist; or

(iii) In circumstances where the client will be referred to a dentist for treatment, the referring provider will not provide treatment or provide a full evaluation at the time of the assessment.

(4) MAA covers dental services that are medically necessary and provided in a hospital under the direction of a physician or dentist for:

(a) The care or treatment of teeth, jaws, or structures directly supporting the teeth if the procedure requires hospitalization;

(b) Short stays when the procedure cannot be done in an office setting. See WAC 388-550-1100(6); and

(c) A hospital call, including emergency care, allowed one per day, per client, per provider.

(5) MAA covers general anesthesia and conscious sedation with parenteral or multiple oral agents for medically necessary dental services as follows:

(a) For treatment of clients who are eligible under the division of developmental disabilities;

(b) For oral surgery procedures;

(c) When justification for administering the general anesthesia instead of a lesser type of sedation is clearly documented in the client's record;

(d) When the anesthesia is administered by:

(i) An oral surgeon who has a current conscious sedation permit or a current general anesthesia permit from DOH;

(ii) An anesthesiologist;

(iii) A dental anesthesiologist who has a current conscious sedation permit or a current general anesthesia permit from DOH;

(iv) A certified registered nurse anesthetist (CRNA), if the performing dentist has a current conscious sedation permit or a current general anesthesia permit from the department of health (DOH); or

(v) A dentist who has a current conscious sedation permit or a current general anesthesia permit from DOH.

(e) When the provider meets the prevailing standard of care and at least the requirements in WAC 246-817-760, Conscious sedations with parenteral or multiple oral agents and WAC 246-817-770, General anesthesia.

(6) MAA pays for anesthesia services according to WAC 388-535-1350.

(7) MAA covers dental-related services for clients residing in nursing facilities or group homes as follows:

(a) Dental services must be requested by the client or the client's surrogate decision maker as defined in WAC 388-97-055, or a referral for services must be made by the attending physician, the director of nursing, or the nursing facility supervisor, as appropriate, allowed once per day (not per client and not per facility), per provider; and

(b) Nursing facilities must provide dental-related necessary services according to WAC 388-97-012, Nursing facility care)) The department covers dental-related diagnostic services only as listed in this section for clients age twenty-one and older (for dental-related services provided to clients eligible under the GA-U or ADATSA program, see WAC 388-535-1065).

(1) **Clinical oral evaluations.** The department covers:

(a) Oral health evaluations and assessments. The services must be documented in the client's record in accordance with WAC 388-502-0020;

(b) Periodic oral evaluations as defined in WAC 388-535-1050, once every twelve months. Twelve months must elapse between the comprehensive oral evaluation and the first periodic oral evaluation;

(c) Limited oral evaluations as defined in WAC 388-535-1050, only when the provider performing the limited oral evaluation is not providing routine scheduled dental services for the client. The limited oral evaluation:

(i) Must be to evaluate the client for a:

(A) Specific dental problem or oral health complaint;

(B) Dental emergency; or

(C) Referral for other treatment.

(ii) When performed by a dentist, is limited to the initial examination appointment. The department does not cover an additional limited oral examination by a dentist for the same client until three months after the removable prosthesis has been seated.

(d) Comprehensive oral evaluations as defined in WAC 388-535-1050, once per client, per provider or clinic, as an initial examination. The department covers an additional comprehensive oral evaluation if the client has not been treated by the same provider or clinic within the past five years;

(e) Limited visual oral assessments as defined in WAC 388-535-1050, up to two per client, per year, per provider only when the assessment is:

(i) Not performed in conjunction with other clinical evaluation services;

(ii) Performed to determine the need for fluoride treatment and/or when triage services are provided in settings other than dental offices or clinics; and

(iii) Provided by a licensed dentist or licensed dental hygienist.

(2) **Radiographs (X-rays).** The department:

(a) Covers radiographs that are of diagnostic quality, dated, and labeled with the client's name. The department requires original radiographs to be retained by the provider as part of the client's dental record, and duplicate radiographs to be submitted with prior authorization requests or when copies of dental records are required.

(b) Uses the prevailing standard of care to determine the need for dental radiographs.

(c) Covers intraoral complete series (includes four bitewings), once in a three-year period only if the department has not paid for a panoramic radiograph for the same client in the same three-year period.

(d) Covers periapical radiographs that are not included in a complete series. Documentation supporting the medical necessity for these must be in the client's record.

(e) Covers up to four bitewing radiographs once in a twelve month period.

(f) Covers panoramic radiographs in conjunction with four bitewings, once in a three-year period, only if the department has not paid for an intraoral complete series for the same client in the same three-year period.

(g) May cover panoramic radiographs for preoperative or postoperative surgery cases more than once in a three-year period, only on a case-by-case basis and when prior authorized.

NEW SECTION

WAC 388-535-1257 Covered dental-related services for clients age twenty-one and older-Preventive services. The department covers dental-related preventive services only as listed in this section for clients age twenty-one and older (for dental-related services provided to clients eligible under the GA-U or ADATSA program, see WAC 388-535-1065).

(1) **Dental prophylaxis.** The department covers dental prophylaxis:

(a) Which includes scaling and polishing procedures to remove coronal plaque, calculus, and stains once every twelve months;

(b) Only when the service is performed twelve months after periodontal scaling and root planing, or periodontal maintenance services;

(c) Only when not performed on the same date of service as periodontal scaling and root planing, or periodontal maintenance, gingivectomy or gingivoplasty; and

(d) For clients of the division of development disabilities according to WAC 388-535-1099.

(2) **Topical fluoride treatment.** The department covers:

(a) Fluoride rinse, foam or gel, once within a twelve month period;

(b) Fluoride varnish, rinse, foam or gel for clients who are age sixty-five and older, or clients who reside in alternative living facilities, up to three times within a twelve-month period;

(c) Additional topical fluoride applications when prior authorized; and

(d) Topical fluoride treatment for clients of the division of developmental disabilities according to WAC 388-535-1099.

NEW SECTION

WAC 388-535-1259 Covered dental-related services for clients age twenty-one and older-Restorative services. The department covers dental-related restorative services

only as listed in this section for clients age twenty-one and older (for dental-related services provided to clients eligible under the GA-U or ADATSA program, see WAC 388-535-1065).

(1) **Amalgam restorations for permanent teeth.** The department:

(a) Considers tooth preparation, all adhesives (including amalgam bonding agents), liners, bases, and polishing as part of the amalgam restoration;

(b) Considers the occlusal adjustment of either the restored tooth or the opposing tooth or teeth as part of the restoration;

(c) Considers buccal or lingual surface amalgam restorations, regardless of size or extension, as a one surface restoration. The department covers only one buccal and one lingual surface per tooth;

(d) Considers multiple amalgam restorations of fissures and grooves of the occlusal surface of the same tooth as a one surface restoration;

(e) Covers two occlusal amalgam restorations for teeth one, two, three, fourteen, fifteen, and sixteen, if the restorations are anatomically separated by sound tooth structure;

(f) Covers amalgam restorations for a maximum of five surfaces per tooth for a permanent posterior tooth, once per client, per provider or clinic, in a two-year period;

(g) Covers amalgam restorations for a maximum of six surfaces per tooth for teeth one, two, three, fourteen, fifteen and sixteen, once per client, per provider or clinic, in a two-year period. See also (e) of this subsection; and

(h) Does not pay for replacement of an amalgam restoration by the same provider on a permanent posterior tooth within a two-year period unless the restoration has an additional adjoining carious surface. The department pays for the replacement restoration as one multi-surface restoration. The client's record must include radiographs and documentation supporting the medical necessity for the replacement restoration.

(2) **Resin-based composite restorations for permanent teeth.** The department:

(a) Considers tooth preparation, acid etching, all adhesives (including resin bonding agents), liners and bases, polishing, and curing as part of the resin-based composite restoration;

(b) Considers the occlusal adjustment of either the restored tooth or the opposing tooth or teeth as part of the resin-based composite restoration;

(c) Considers buccal or lingual surface resin-based composite restorations, regardless of size or extension, as a one surface restoration. The department covers only one buccal and one lingual surface per tooth;

(d) Considers resin-based composite restorations of teeth where the decay does not penetrate the DEJ to be sealants. The department does not cover sealants for clients age twenty-one and older;

(e) Considers multiple preventive restorative resins or flowable composite resins for the occlusal, buccal, lingual, mesial, and distal fissures and grooves on the same tooth as a one surface restoration;

(f) Does not cover preventive restorative resin or flowable composite resin on the interproximal surfaces (mesial

and/or distal) of posterior teeth or the incisal surface of anterior teeth;

(g) Covers two occlusal resin-based composite restorations for teeth one, two, three, fourteen, fifteen, and sixteen if the restorations are anatomically separated by sound tooth structure;

(h) Covers resin-based composite restorations for a maximum of five surfaces per tooth for a permanent posterior tooth, once per client, per provider or clinic, in a two-year period;

(i) Covers resin-based composite restorations for a maximum of six surfaces per tooth for permanent posterior teeth one, two, three, fourteen, fifteen and sixteen, once per client, per provider or clinic, in a two-year period. See also (g) of this subsection;

(j) Covers resin-based composite restorations for a maximum of six surfaces per tooth for a permanent anterior tooth, once per client, per provider or clinic, in a two-year period; and

(k) Does not pay for replacement of resin-based composite restorations by the same provider on permanent teeth within a two-year period unless the restoration has an additional adjoining carious surface. The department pays for the replacement restoration as one multi-surface restoration. The client's record must include radiographs and documentation supporting the medical necessity for the replacement restoration.

(3) **Crowns.** The department:

(a) Does not cover permanent crowns for clients age twenty-one and older, except for prefabricated stainless steel crowns for posterior permanent teeth on a case-by-case basis when prior authorized; and

(b) Covers crowns for clients of the division of developmental disabilities according to WAC 388-535-1099.

NEW SECTION

WAC 388-535-1261 Covered dental-related services for clients age twenty-one and older-Endodontic services.

The department covers dental-related endodontic services only as listed in this section for clients age twenty-one and older (for dental-related services provided to clients eligible under the GA-U or ADATSA program, see WAC 388-535-1065).

(1) **Pulpal debridement.** The department covers pulpal debridement on permanent teeth. Pulpal debridement is not covered when performed with palliative treatment or when performed on the same day as endodontic treatment.

(2) **Endodontic treatment.** The department:

(a) Covers endodontic treatment for permanent anterior teeth only;

(b) Considers the following included in endodontic treatment:

(i) Pulpectomy when part of root canal therapy;

(ii) All procedures necessary to complete treatment; and

(iii) All intra-operative and final evaluation radiographs for the endodontic procedure.

(c) Pays separately for the following services that are related to the endodontic treatment:

(i) Initial diagnostic evaluation;

- (ii) Initial diagnostic radiographs; and
- (iii) Post treatment evaluation radiographs if taken at least three months after treatment.
- (d) Requires prior authorization for endodontic retreatment and considers endodontic retreatment to include:
 - (i) The removal of post(s), pin(s), old root canal filling material, and all procedures necessary to prepare the canals;
 - (ii) Placement of new filling material; and
 - (iii) Retreatment for permanent maxillary and mandibular anterior teeth only.
- (e) Pays separately for the following services that are related to the endodontic retreatment:
 - (i) Initial diagnostic evaluation;
 - (ii) Initial diagnostic radiographs; and
 - (iii) Post treatment evaluation radiographs if taken at least three months after treatment.
- (f) Does not pay for endodontic retreatment when provided by the original treating provider or clinic.

WSR 07-02-090
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Health and Recovery Services Administration)
 [Filed January 3, 2007, 8:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-21-093.

Title of Rule and Other Identifying Information: **Part 3 of 4**; new sections WAC 388-535-1263 Covered dental-related services for clients age twenty-one and older—Periodontic services, 388-535-1266 Covered dental-related services for clients age twenty-one and older—Prosthodontics (removable), 388-535-1267 Covered dental-related services for clients age twenty-one and older—Oral and maxillofacial surgery services, and 388-535-1269 Covered dental-related services for clients age twenty-one and older—Adjunctive general services.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on February 6, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than February 7, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on February 6, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by February 2, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The new and

amended sections clarify and update policies for dental-related services for clients age twenty-one and older; ensure that department policies are applied correctly and equitably; replace the terms "medical assistance administration" and "MAA" with "the department"; update policy regarding prior authorization requirements; clarify policy on covered versus noncovered benefits; and clarify additional benefits and limitations associated with those services for clients age twenty-one and older.

Reasons Supporting Proposal: To clarify what new dental-related services are covered and the limitations associated with those services; to make HRSA's rules regarding covered and noncovered dental-related services for clients age twenty-one and older clearer and easier to understand for clients and dental providers; and to identify the requirements and criteria that must be met in order to obtain covered dental-related services.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.500, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.500, 74.09.520.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, 626 8th Avenue, Olympia, WA 98504-5504, (360) 725-1342; Implementation and Enforcement: Dr. John Davis, 626 8th Avenue, Olympia, WA 98504-5506, (360) 725-1748.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not create more than minor costs to small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Dr. John Davis, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1748, TTY/TDD 1-800-848-5429, fax (360) 586-1590, e-mail davisjd@dshs.wa.gov.

December 27, 2006

Andy Fernando, Manager
 Rules and Policies Assistance Unit

NEW SECTION

WAC 388-535-1263 Covered dental-related services for clients age twenty-one and older-Periodontic services. The department covers dental-related periodontic services only as listed in this section for clients age twenty-one and older (for dental-related services provided to clients eligible under the GA-U or ADATSA program, see WAC 388-535-1065).

(1) **Surgical periodontal services.** The department covers surgical periodontal services, including all postoperative care for clients of the division of development disabilities according to WAC 388-535-1099.

(2) **Nonsurgical periodontal services.** The department:

(a) Covers periodontal scaling and root planing once per quadrant, per client, in a two-year period when:

(i) The client has radiographic evidence of periodontal disease;

(ii) The client's record includes supporting documentation for the medical necessity, including complete periodontal charting and a definitive diagnosis of periodontal disease;

(iii) The client's clinical condition meets current published periodontal guidelines; and

(iv) Performed at least two years from the date of completion of periodontal scaling and root planing or surgical periodontal treatment.

(b) Considers ultrasonic scaling, gross scaling, or gross debridement to be included in the procedure and not a substitution for periodontal scaling and root planing.

(c) Covers periodontal scaling and root planing only when the services are not performed on the same date of service as prophylaxis, periodontal maintenance, gingivectomy, or gingivoplasty.

(d) Covers periodontal scaling and root planing for clients of the division of developmental disabilities according to WAC 388-535-1099.

(3) **Other periodontal services.** The department:

(a) Covers periodontal maintenance once per client in a twelve-month period when:

(i) The client has radiographic evidence of periodontal disease;

(ii) The client's record includes supporting documentation for medical necessity, including complete periodontal charting and a definitive diagnosis of periodontal disease;

(iii) The client's clinical condition meets existing published periodontal guidelines; and

(iv) Performed at least twelve months from the date of completion of periodontal scaling and root planing or surgical periodontal treatment.

(b) Covers periodontal maintenance only if performed on a different date of service as prophylaxis, periodontal scaling and root planing, gingivectomy, or gingivoplasty.

(c) Covers periodontal maintenance for clients of the division of developmental disabilities according to WAC 388-535-1099.

NEW SECTION

WAC 388-535-1266 Covered dental-related services for clients age twenty-one and older-Prosthodontics (removable). The department covers dental-related prosthodontics (removable) services only as listed in this section for clients age twenty-one and older (for dental-related services provided to clients eligible under the GA-U or ADATSA program, see WAC 388-535-1065).

(1) **Removable prosthodontics.** The department:

(a) Requires prior authorization requests for all removable prosthodontics and prosthodontic-related procedures listed in this subsection. Prior authorization requests must meet the criteria in WAC 535-1280. In addition, the department requires the dental provider to submit all of the following:

(i) Appropriate and diagnostic radiographs of all remaining teeth;

(ii) A dental record that identifies:

(A) All missing teeth for both arches;

(B) Teeth that are to be extracted; and

(C) Dental and periodontal services completed on all remaining teeth.

(iii) A prescription written by a dentist when a denturist's prior authorization request is for an immediate denture or cast metal partial denture.

(b) Covers a complete denture, as follows:

(i) A complete denture, including an immediate denture or overdenture, is covered when prior authorized and the complete denture meets department coverage criteria;

(ii) Post-delivery care (e.g., adjustments, soft relines, and repairs) provided within three months of the seat date of a complete denture, is considered part of the complete denture procedure and is not paid separately;

(iii) Replacement of an immediate denture with a complete denture is covered only when the replacement occurs at least six months from the seat date of the immediate denture. The replacement complete denture must be prior authorized; and

(iv) Replacement of a complete denture or overdenture is covered only when the replacement occurs at least five years from the seat date of the complete denture or overdenture being replaced. The replacement denture must be prior authorized.

(c) Covers partial dentures as follows:

(i) Department authorization and payment for a resin or flexible base partial denture for anterior and posterior teeth is based on the following criteria:

(A) The remaining teeth in the arch must have a reasonable periodontal diagnosis and prognosis;

(B) The client has established caries control;

(C) One or more anterior teeth are missing, or four or more posterior teeth per arch are missing;

(D) There is a minimum of four stable teeth remaining per arch; and

(E) There is a three-year prognosis for retention of all remaining teeth.

(ii) Post-delivery care (e.g. adjustments, soft relines, and repairs) provided after three months from the seat date of the partial denture, is considered part of the partial denture and is not paid separately; and

(iii) Replacement of a resin or flexible base denture is covered only when the replacement occurs at least three years from the seat date of the partial denture being replaced. The replacement denture must be prior authorized and meet department coverage criteria.

(d) Covers cast metal framework partial dentures as follows:

(i) A cast metal framework with resin-based denture, including any conventional clasps, rests, and teeth, is covered on a case-by-case basis when prior authorized and department coverage criteria listed in (d)(iv) of this subsection are met.

(ii) Post-delivery care (e.g., adjustments, soft relines, and repairs) provided within three months of the seat date of the cast metal partial denture, is considered part of the partial denture procedure and is not paid separately.

(iii) Replacement of a cast metal framework partial denture is covered on a case-by-case basis and only when the replacement occurs at least five years from the seat date of

the partial denture being replaced. The replacement denture must be prior authorized and meet department coverage criteria listed in (d)(iv) of this subsection.

(iv) Department authorization and payment for cast metal framework partial dentures is based on the following criteria:

(A) The remaining teeth in the arch must have a stable periodontal diagnosis and prognosis;

(B) The client has established caries control;

(C) All restorative and periodontal procedures must be completed before the request for prior authorization is submitted;

(D) There are fewer than eight posterior teeth in occlusion;

(E) There is a minimum of four stable teeth remaining per arch;

(F) There is a five-year prognosis, based on the sole discretion of the department, for retention of all remaining teeth.

(v) The department may consider resin partial dentures as an alternative if the criteria for cast metal framework partial dentures listed in (d)(iv) of this subsection do not meet department specifications.

(e) Requires the provider to bill for covered removable prosthetic procedures only after the seating of the prosthesis, not at the impression date. Refer to (2)(c) and (d) of this subsection if the removable prostheses is not delivered and inserted.

(f) Requires a provider to submit the following with prior authorization requests for removable prosthetics for a client residing in a nursing home, group home, or other facility:

(i) The client's medical diagnosis and prognosis;

(ii) The attending physician's request for prosthetic services;

(iii) The attending dentist's or denturist's statement documenting medical necessity;

(iv) A written and signed consent from the client's legal guardian when a guardian has been appointed; and

(v) A completed copy of the Denture/Partial Appliance Request for Skilled Nursing Facility Client form (DSHS 13-788) available from the department.

(g) Limits removable partial dentures to resin based partial dentures for all clients who reside in one of the facilities listed in (f) of this subsection. The department may consider cast metal partial dentures if the criteria in (d) of this subsection are met.

(h) Requires a provider to deliver services and procedures that are of acceptable quality to the department. The department may recoup payment for services that are determined to be below the standard of care or of an unacceptable product quality.

(2) **Other services for removable prosthetics.** The department covers:

(a) Repairs to complete and partial dentures;

(b) A laboratory relin or rebase to a complete or cast metal partial denture, once in a three-year period when performed at least six months after the seat date; and

(c) Laboratory fees, subject to all of the following:

(i) The department does not pay laboratory and professional fees for complete and partial dentures, except as stated in (ii) of this subsection;

(ii) The department may pay part of billed laboratory fees when the provider has obtained prior authorization from the department, and:

(A) At the time of delivery of the prosthesis, the patient is no longer an eligible medical assistance client (see also WAC 388-535-1280(3));

(B) The client moves from the state; or

(C) The client dies.

(iii) A provider must submit copies of laboratory prescriptions and receipts or invoices for each claim when billing for laboratory fees.

NEW SECTION

WAC 388-535-1267 Covered dental-related services for clients age twenty-one and older-Oral and maxillofacial surgery services. The department covers oral and maxillofacial surgery services only as listed in this section for clients age twenty-one and older (for dental-related services provided to clients eligible under the GA-U or ADATSA program, see WAC 388-535-1065).

(1) **Oral and maxillofacial surgery services.** The department:

(a) Requires enrolled dental providers who do not meet the conditions in WAC 388-535-1070(3) to bill claims for services that are listed in this subsection using only the Current Dental Terminology (CDT) codes.

(b) Requires enrolled providers (oral and maxillofacial surgeons) who meet the conditions in WAC 388-535-1070(3) to bill claims using Current Procedural Terminology (CPT) codes unless the procedure is specifically listed in the department's current published billing instructions as a CDT covered code (e.g., extractions).

(c) Does not cover oral surgery services described in WAC 388-535-1267 that are performed in a hospital operating room or ambulatory surgery center.

(d) Requires the client's record to include supporting documentation for each type of extraction or any other surgical procedure billed to the department. The documentation must include:

(i) An appropriate consent form signed by the client or the client's legal representative;

(ii) Appropriate radiographs;

(iii) Medical justification with diagnosis;

(iv) Client's blood pressure, when appropriate;

(v) A surgical narrative;

(vi) A copy of the post-operative instructions; and

(vii) A copy of all pre- and post-operative prescriptions.

(e) Covers routine and surgical extractions.

(f) Covers debridement of a granuloma or cyst that is five millimeters or greater in diameter. The department includes debridement of a granuloma or cyst that is less than five millimeters as part of the global fee for the extraction.

(g) Covers biopsy, as follows:

(i) Biopsy of soft oral tissue or brush biopsy do not require prior authorization; and

(ii) All biopsy reports must be kept in the client's record.

(h) Covers alveoloplasty:

(i) Only when three or more teeth are extracted per arch.; and

(ii) That is not performed in conjunction with extractions only on a case-by-case basis and when prior authorized.

(i) Covers surgical excision of soft tissue lesions only on a case-by-case basis and when prior authorized.

(j) Covers only the following excisions of bone tissue in conjunction with placement of immediate, complete, or partial dentures when prior authorized:

(i) Removal of lateral exostosis;

(ii) Removal of torus palatinus or torus mandibularis; and

(iii) Surgical reduction of soft tissue or osseous tuberosity.

(2) **Surgical incision-related services.** The department covers the following surgical incision-related services:

(a) Uncomplicated intraoral and extraoral soft tissue incision and drainage of abscess. The department does not cover this service when combined with an extraction or root canal treatment. Documentation supporting medical necessity must be in the client's record; and

(b) Removal of foreign body from mucosa, skin, or subcutaneous alveolar tissue when prior authorized. Documentation supporting medical necessity must be in the client's record.

NEW SECTION

WAC 388-535-1269 Covered dental-related services for clients age twenty-one and older-Adjunctive general services. The department covers dental-related adjunctive general services only as listed in this section for clients age twenty-one and older (for dental-related services provided to clients eligible under the GA-U or ADATSA program, see WAC 388-535-1065).

(1) **Adjunctive general services.** The department:

(a) Covers palliative (emergency) treatment, not to include pulpal debridement, for treatment of dental pain, limited to once per day, per client, as follows:

(i) The treatment must occur during limited evaluation appointments;

(ii) A comprehensive description of diagnosis and services provided must be documented in the client's record; and

(iii) Appropriate radiographs must be in the client's record to support medical necessity for the treatment.

(b) Covers local anesthesia and regional blocks as part of the global fee for any procedure being provided to clients.

(c) Covers office based oral or parenteral sedation:

(i) For services listed as covered in WAC 388-535-1267;

(ii) For all current published Current Procedural Terminology (CPT) dental codes;

(iii) When the provider's current valid anesthesia permit is on file with the department; and

(iv) For clients of the division of developmental disabilities according to WAC 388-535-1099.

(d) Covers office based general anesthesia for:

(i) Extraction of three or more teeth;

(ii) Services listed as covered in WAC 388-535-1267

(1)(h) and (j);

(iii) For all current published CPT dental codes;

(iv) When the provider's current valid anesthesia permit is on file with the department; and

(v) For clients of the division of developmental disabilities, according to WAC 388-535-1099.

(e) Covers inhalation of nitrous oxide, once per day.

(f) Requires providers of oral or parenteral conscious sedation, or general anesthesia to meet:

(i) The prevailing standard of care;

(ii) The provider's professional organizational guidelines;

(iii) The requirements in chapter 246-817 WAC; and

(iv) Relevant department of health (DOH) medical, dental, and nursing anesthesia regulations;

(g) Pays for anesthesia services according to WAC 388-535-1350;

(h) Covers professional consultation/diagnostic services as follows:

(i) A dentist or a physician other than the practitioner providing treatment must provide the services; and

(ii) A client must be referred by the department for the services to be covered.

(2) **Nonemergency dental services.** The department covers nonemergency dental services performed in a hospital or ambulatory surgical center for clients of the division of developmental disabilities according to WAC 388-535-1099.

(3) **Professional visits.** The department covers:

(a) Up to two house/extended care facility calls (visits) per facility, per provider. The department limits payment to two facilities per day, per provider.

(b) One hospital call (visit), including emergency care, per day, per provider, per client. The department does not pay for additional hospital calls if billed for the same client on the same day.

(c) Emergency office visits after regularly scheduled hours. The department limits payment to one emergency visit per day, per provider.

(4) **Drugs and/or medicaments (pharmaceuticals).** The department covers drugs and/or medicaments (pharmaceuticals) only when used with parenteral conscious sedation, deep sedation, or general anesthesia. The department's dental program does not pay for oral sedation medications.

(5) **Miscellaneous services.** The department covers:

(a) Behavior management that requires the assistance of one additional dental staff other than the dentist only for clients of the division of developmental disabilities. See WAC 388-535-1099.

(b) Treatment of post-surgical complications (e.g., dry socket). Documentation supporting the medical necessity for the service must be in the client's record.

WSR 07-02-091

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed January 3, 2007, 8:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-21-093.

Title of Rule and Other Identifying Information: **Part 4 of 4**; new section WAC 388-535-1271 Dental-related services not covered for clients age twenty-one and older; amending WAC 388-535-1280 Obtaining prior authorization for dental-related services—Adults; and repealing WAC 388-535-1270 Dental-related services requiring prior authorization and 388-535-1290 Dentures and partial dentures for adults.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097, on February 6, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than February 7, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on February 6, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by February 2, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The new and amended sections clarify and update policies for dental-related services for clients age twenty-one and older; ensure that department policies are applied correctly and equitably; replace the terms "medical assistance administration" and "MAA" with "the department"; update policy regarding prior authorization requirements; clarify policy on covered versus noncovered benefits; and clarify additional benefits and limitations associated with those services for clients age twenty-one and older.

Reasons Supporting Proposal: To clarify what new dental-related services are covered and the limitations associated with those services; to make HRSA's rules regarding covered and noncovered dental-related services for clients age twenty-one and older clearer and easier to understand for clients and dental providers; and to identify the requirements and criteria that must be met in order to obtain covered dental-related services.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.500, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.500, 74.09.520.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, 626 8th Avenue, Olympia, WA 98504-5504, (360) 725-1342; Implementation and Enforcement: Dr. John Davis, 626 8th Avenue, Olympia, WA 98504-5506, (360) 725-1748.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not create more than minor costs to small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Dr. John Davis, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1748, TTY/TDD 1-800-848-5429, fax (360) 586-1590, e-mail davisjd@dshs.wa.gov.

December 27, 2006

Andy Fernando, Manager
Rules and Policies Assistance Unit

NEW SECTION

WAC 388-535-1271 Dental-related services not covered for clients age twenty-one and older. (1) The department does not cover the following for clients age twenty-one and older (see WAC 388-535-1065 for dental-related services for clients eligible under the GA-U or ADATSA program):

(a) The dental-related services and procedures described in subsection (2) of this section;

(b) Any service specifically excluded by statute;

(c) More costly services when less costly, equally effective services as determined by the department are available; and

(d) Services, procedures, treatment, devices, drugs, or application of associated services:

(i) Which the department or the Centers for Medicare and Medicaid Services (CMS) considers investigative or experimental on the date the services were provided.

(ii) That are not listed as covered in one or both of the following:

(A) Washington Administrative Code (WAC).

(B) The department's published documents (e.g., billing instructions).

(2) The department does not cover dental-related services listed under the following categories of service for clients age twenty-one and older:

(a) **Diagnostic services.** The department does not cover:

(i) Detailed and extensive oral evaluations or re-evaluations;

(ii) Comprehensive periodontal evaluations;

(iii) Extraoral or occlusal intraoral radiographs;

(iv) Posterior-anterior or lateral skull and facial bone survey films;

(v) Sialography;

(vi) Any temporomandibular joint films;

(vii) Tomographic survey;

(viii) Cephalometric films;

(ix) Oral/facial photographic images;

(x) Viral cultures, genetic testing, caries susceptibility tests, adjunctive pre-diagnostic tests, or pulp vitality tests; or

(xi) Diagnostic casts.

(b) **Preventive services.** The department does not cover:

(i) Nutritional counseling for control of dental disease;

(ii) Tobacco counseling for the control and prevention of oral disease;

(iii) Oral hygiene instructions (included as part of the global fee for oral prophylaxis);

(iv) Removable space maintainers of any type;

- (v) Sealants;
- (vi) Space maintainers of any type or recementation of space maintainers; or
- (vii) Fluoride trays of any type.
- (c) **Restorative services.** The department does not cover:
 - (i) Restorative/operative procedures performed in a hospital operating room or ambulatory surgical center for clients age twenty-one and older. For clients of the division of developmental disabilities, see WAC 388-535-1099;
 - (ii) Gold foil restorations;
 - (iii) Metallic, resin-based composite, or porcelain/ceramic inlay/onlay restorations;
 - (iv) Prefabricated resin crowns;
 - (v) Temporary or provisional crowns (including ion crowns);
 - (vi) Any type of permanent or temporary crown. For clients of the division of developmental disabilities see WAC 388-535-1099;
 - (vii) Recementation of any crown, inlay/onlay, or any other type of indirect restoration;
 - (viii) Sedative fillings;
 - (ix) Preventive restorative resins;
 - (x) Any type of core buildup, cast post and core, or pre-fabricated post and core;
 - (xi) Labial veneer resin or porcelain laminate restoration;
 - (xii) Any type of coping;
 - (xiii) Crown repairs; or
 - (xiv) Polishing or recontouring restorations or overhang removal for any type of restoration.
- (d) **Endodontic services.** The department does not cover:
 - (i) Indirect or direct pulp caps;
 - (ii) Endodontic therapy on any primary teeth for clients age twenty-one and older;
 - (iii) Endodontic therapy on permanent bicuspid or molar teeth;
 - (iv) Any apexification/recalcification procedures;
 - (v) Any apicoectomy/periradicular service; or
 - (vi) Any surgical endodontic procedures including, but not limited to, retrograde fillings, root amputation, reimplantation, and hemisections.
- (e) **Periodontic services.** The department does not cover:
 - (i) Surgical periodontal services that include, but are not limited to:
 - (A) Gingival or apical flap procedures;
 - (B) Clinical crown lengthening;
 - (C) Any type of osseous surgery;
 - (D) Bone or soft tissue grafts;
 - (E) Biological material to aid in soft and osseous tissue regeneration;
 - (F) Guided tissue regeneration;
 - (G) Pedicle, free soft tissue, apical positioning, subepithelial connective tissue, soft tissue allograft, combined connective tissue and double pedicle, or any other soft tissue or osseous grafts; or
 - (H) Distal or proximal wedge procedures; or

- (ii) Nonsurgical periodontal services, including but not limited to:
 - (A) Intracoronary or extracoronary provisional splinting;
 - (B) Full mouth debridement;
 - (C) Localized delivery of chemotherapeutic agents; or
 - (D) Any other type of nonsurgical periodontal service.
- (f) **Prosthodontics (removable).** The department does not cover any type of:
 - (i) Removable unilateral partial dentures;
 - (ii) Adjustments to any removable prosthesis;
 - (iii) Chairside complete or partial denture relines;
 - (iv) Any interim complete or partial denture;
 - (v) Precision attachments; or
 - (vi) Replacement of replaceable parts for semi-precision or precision attachments.
- (g) **Oral and maxillofacial prosthetic services.** The department does not cover any type of oral or facial prosthesis other than those listed in WAC 388-535-1265.
- (h) **Implant services.** The department does not cover:
 - (i) Any implant procedures, including, but not limited to, any tooth implant abutment (e.g., periosteal implant, eposteal implant, and transosteal implant), abutments or implant supported crown, abutment supported retainer, and implant supported retainer;
 - (ii) Any maintenance or repairs to procedures listed in (h)(i) of this subsection; or
 - (iii) The removal of any implant as described in (h)(i) of this subsection.
- (i) **Prosthodontics (fixed).** The department does not cover any type of:
 - (i) Fixed partial denture pontic;
 - (ii) Fixed partial denture retainer;
 - (iii) Precision attachment, stress breaker, connector bar, coping, or cast post; or
 - (iv) Other fixed attachment or prosthesis.
- (j) **Oral and maxillofacial surgery.** The department does not cover:
 - (i) Any nonemergency oral surgery performed in a hospital or ambulatory surgical center for Current Dental Terminology (CDT) procedures;
 - (ii) Vestibuloplasty;
 - (iii) Frenuloplasty/frenulectomy;
 - (iv) Any oral surgery service not listed in WAC 388-535-1267;
 - (v) Any oral surgery service that is not listed in the department's list of covered Current Procedural Terminology (CPT) codes published in the department's current rules or billing instructions;
 - (vi) Any type of occlusal orthotic splint or device, bruxing or grinding splint or device, temporomandibular joint splint or device, or sleep apnea splint or device; or
 - (vii) Any type of orthodontic service or appliance.
- (k) **Adjunctive general services.** The department does not cover:
 - (i) Anesthesia to include:
 - (A) Local anesthesia as a separate procedure;
 - (B) Regional block anesthesia as a separate procedure;
 - (C) Trigeminal division block anesthesia as a separate procedure;

(D) Analgesia or anxiolysis as a separate procedure except for inhalation of nitrous oxide;

(E) Medication for oral sedation, or therapeutic drug injections, including antibiotic or injection of sedative; or

(F) Application of any type of desensitizing medicament or resin.

(ii) Other general services including, but not limited to:

(A) Fabrication of athletic mouthguard, occlusal guard, or nightguard;

(B) Occlusion analysis;

(C) Occlusal adjustment or odontoplasties;

(D) Enamel microabrasion;

(E) Dental supplies, including but not limited to, tooth-brushes, toothpaste, floss, and other take home items;

(F) Dentist's or dental hygienist's time writing or calling in prescriptions;

(G) Dentist's or dental hygienist's time consulting with clients on the phone;

(H) Educational supplies;

(I) Nonmedical equipment or supplies;

(J) Personal comfort items or services;

(K) Provider mileage or travel costs;

(L) Missed or late appointment fees;

(M) Service charges of any type, including fees to create or copy charts;

(N) Office supplies used in conjunction with an office visit; or

(O) Teeth whitening services or bleaching, or materials used in whitening or bleaching.

AMENDATORY SECTION (Amending WSR 03-19-080, filed 9/12/03, effective 10/13/03)

WAC 388-535-1280 Obtaining prior authorization for dental-related services(~~—Adults~~) for clients age twenty-one and older. ((When the medical assistance administration (MAA) authorizes dental-related services for adults, that authorization indicates only that the specific service is medically necessary; it is not a guarantee of payment. The client must be eligible for covered services at the time those services are provided.))

(1) The department uses the determination process described in WAC 388-501-0165 for covered dental-related services for clients age twenty-one and older that require prior authorization.

(2) ((MAA)) The department requires a dental provider who is requesting prior authorization to submit sufficient objective clinical information to establish medical necessity. The request must be submitted in writing on an American Dental (~~Association~~) Association (ADA) claim form, which may be obtained by writing to the American Dental Association, 211 East Chicago Avenue, Chicago, Illinois 60611. ((The request must include at least all of the following:

(a) ~~The client's patient identification code (PIC);~~

(b) ~~The client's name and address;~~

(c) ~~The provider's name and address;~~

(d) ~~The provider's telephone and fax number (including area code);~~

(e) ~~The provider's MAA-assigned seven-digit provider number;~~

(f) ~~The physiological description of the disease, injury, impairment, or other ailment;~~

(g) ~~The most recent and relevant radiographs that are identified with client name, provider name, and date the radiograph was taken;~~

(h) ~~The treatment plan;~~

(i) ~~Periodontal when radiographs do not sufficiently support the medical necessity for extractions;~~

(j) ~~Study model, if requested; and~~

(k) ~~Photographs, if requested.~~

(2) ~~MAA considers requests for services according to WAC 388-535-1270.~~

(3) ~~MAA denies a request for dental services when the requested service is:~~

(a) ~~Not listed in chapter 388-535 WAC as a covered service;~~

(b) ~~Not medically necessary;~~

(c) ~~A service, procedure, treatment, device, drug, or application of associated service that the department or the Centers for Medicare and Medicaid Services (CMS) consider investigative or experimental on the date the service is provided; or~~

(d) ~~Covered under another department program or by an agency outside the department.~~

(4) ~~MAA may require second opinions and/or consultations before authorizing any procedure.~~

(5) ~~Authorization is valid only if the client is eligible for covered services on the date of service))~~

(3) The department may request additional information as follows:

(a) Additional radiographs (x-rays) (refer to WAC 388-535-1255(2));

(b) Study models;

(c) Photographs; and

(d) Any other information as determined by the department.

(4) The department may require second opinions and/or consultations before authorizing any procedure.

(5) When the department authorizes a dental-related service for a client, that authorization indicates only that the specific service is medically necessary, it is not a guarantee of payment. The authorization is valid for six months and only if the client is eligible for covered services on the date of service.

(6) The department denies a request for a dental-related service when the requested service:

(a) Is covered by another department program;

(b) Is covered by an agency or other entity outside the department; or

(c) Fails to meet the program criteria, limitations, or restrictions in chapter 388-535 WAC.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-535-1270	Dental-related services requiring prior authorization—Adults.
WAC 388-535-1290	Dentures and partial dentures for adults.

WSR 07-02-096**PROPOSED RULES****CENTRAL WASHINGTON UNIVERSITY**

[Filed January 3, 2007, 8:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-20-054.

Title of Rule and Other Identifying Information: Parking rules and regulations, chapter 106-116 WAC.

Hearing Location(s): Barge 304, on February 6, 2007, at 10:00 a.m.

Date of Intended Adoption: February 6, 2007.

Submit Written Comments to: Judy B. Miller, President's Office, 400 East University Way, Ellensburg, WA 98926-7501, e-mail miller@cwu.edu, fax (509) 963-3206, by February 1, 2007.

Assistance for Persons with Disabilities: Contact Disability Support Services by February 4, 2007, TTY (509) 963-2143.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarify parking rules consistent with current administrative practice and provide online reference information.

Reasons Supporting Proposal: Modifications will provide more information to the public and amend the rules consistent with current administrative practice.

Statutory Authority for Adoption: RCW 28B.10.528 and 28B.35.120(12).

Name of Proponent: Judy B. Miller, public.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kevin Higgins, 400 East University Way, Ellensburg, 98926-7527, (509) 963-2959.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Changes are in response to changes in internal processes and do not impact small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Complies with federal law, RCW 34.05.328 (5)(b)(iv).

January 2, 2006 [2007]

Libby M. Street

Executive Assistant to the
President for Policy and Planning

AMENDATORY SECTION (Amending WSR 02-18-077, filed 8/30/02, effective 9/30/02)

WAC 106-116-201 Permitted parking areas. University-owned parking areas are posted with permitting requirements. Permit requirements will be enforced Monday through Friday, 7:30 a.m. to 4:30 p.m., unless otherwise posted. No parking is permitted from 2:00 a.m. to 6:00 a.m. where posted. During quarter breaks, parking services may designate a specific lot for parking vehicles that will remain parked in a university parking lot for the quarter break.

AMENDATORY SECTION (Amending Order CWU AO 72, filed 5/2/94, effective 6/2/94)

WAC 106-116-202 No parking areas. The university reserves the right to close specific lots to permit holders and designate parking lot use for special events (i.e., sports events, concerts, camps, etc.).

Parking is permitted only in areas designated and marked for parking in accordance with all signs posted in the designated parking area.

For example, prohibited areas include fire hydrants, fire lanes, yellow curb zones, crosswalks, driveways, service drives, or any area not expressly permitted by sign or these regulations. Vehicles are not permitted to be parked on any undeveloped university property without the approval of the chief of the public safety and police services. This section will be enforced twenty-four hours a day.

AMENDATORY SECTION (Amending WSR 04-17-067, filed 8/12/04, effective 9/12/04)

WAC 106-116-203 Specific parking prohibitions. (1) Parking in areas and places normally used for moving traffic is a specific violation of these regulations.

(2) Parking in such a position with relation to other parked cars or marked parking spaces as to impede, restrict, or prevent free ingress or egress by other automobiles violates these regulations.

(3) Parking in areas marked for a special permit or clearly designated by signing for special use not available to the general public or regular permit holders is prohibited. Examples: Parking in a space marked "disability permit only," or "health center permit only," or "psychology permit only."

(4) Parking and/or driving on sidewalks is prohibited.

(5) Parking or driving on lawns or flower beds is prohibited.

(6) Compact car zones are placed there for safety reasons. These spaces are to be used by small cars only. This ~~((does not include pickups (of any size)))~~ restriction includes any size of the following vehicles: Pickups, sport utility vehicles, station wagons or any other large vehicles.

AMENDATORY SECTION (Amending WSR 98-23-022, filed 11/9/98, effective 12/10/98)

WAC 106-116-205 Apartment residents. ~~((Residents of Brooklane Village, Roy P. Wahle Complex, Student Village Apartments, and Getz Short))~~ Apartment(s) residents

may be required to display resident parking identification permits to park in the parking area adjacent to their respective apartments but must register their vehicles with the housing office.

AMENDATORY SECTION (Amending WSR 98-23-022, filed 11/9/98, effective 12/10/98)

WAC 106-116-207 ((Faculty-))Staff parking. ((Faculty and)) Staff parking zones are posted and require ((faculty-))staff permits.

AMENDATORY SECTION (Amending WSR 04-17-067, filed 8/12/04, effective 9/12/04)

WAC 106-116-305 General permits. (1) Daily parking permits are available from the automatic ticket dispensers and cashier's office. These permits must be displayed in clear view on the dash of the vehicle or as instructed on the permit, readable from outside the vehicle.

(2) Thirty-minute "load/unload permits" are available for loading and unloading. Load/unload permits are available to vendors conducting business on campus, service vehicles, and student vehicles. Load/unload permits are available at the public safety and police services department and the parking kiosk.

(3) No permits are available for inoperative or disabled vehicles. Public safety and police services should be contacted if your vehicle becomes disabled in a university-owned parking lot.

(4) Quarterly, academic year, and calendar year permits are available to ((faculty-)) staff(=) and students through the cashier's(=) office and parking services.

AMENDATORY SECTION (Amending WSR 02-18-077, filed 8/30/02, effective 9/30/02)

WAC 106-116-308 Replacement of parking permit. Lost or stolen parking permits must be reported to the public safety and police services department. A replacement request must be completed at parking services. Upon verification, the permit may be replaced for a \$10.00 processing fee.

AMENDATORY SECTION (Amending WSR 02-18-077, filed 8/30/02, effective 9/30/02)

WAC 106-116-514 Election to forfeit or contest. The notice of infraction issued pursuant to WAC 106-116-513 of these regulations shall inform the alleged violator that he/she may elect either to forfeit the monetary penalty to the infraction(s) charged or to contest the matter(s).

(1) If the alleged violator chooses to forfeit the penalty, he/she may do so by paying the appropriate amount to the cashier's office, Barge Hall. Payment will be in cash, check, certified check, credit or debit card, or by money order. Such payment may also be made by mail (other than cash payment). Such forfeiture shall constitute a waiver of a right to a hearing.

(2) If the alleged violator chooses to contest, he/she may do so by contacting parking services, where parking infraction appeal forms are available upon request or you may

obtain an appeal form or complete an appeal form on the parking web site, <http://www.cwu.edu/~parking/appealprocess.html>. The completed form stating the reasons for challenging the validity of the assessed obligation must be filed in the parking office within fifteen days of the date of the infraction notice. The appeal must be reviewed by the university parking appeal board. The parking appeal board will render a decision in good faith.

(3) A person charged with a parking infraction who deems himself or herself aggrieved by the final decision of the university parking appeal board may, within ten days after written notice of the final decision, appeal by filing a written notice thereof with the public safety and police services department. Documents relating to the appeal shall immediately be forwarded to the lower Kittitas County district court which shall have jurisdiction over such offense and such appeal shall be heard de novo.

AMENDATORY SECTION (Amending WSR 04-17-067, filed 8/12/04, effective 9/12/04)

WAC 106-116-603 Monetary penalty schedule.

((Offense	Penalty
(1) Improper display of permit	\$ 15.00
(2) Parking faculty staff area	25.00
(3) Parking yellow stripe or curb	25.00
(4) Parking outside designated parking area	25.00
(5) Obstructing traffic	30.00
(6) Parking at improper angle or using more than one stall	15.00
(7) Violation of the bicycle parking rules in WAC 106-116-901	15.00
(8) Reserved parking area	25.00
(9) No parking area	25.00
(10) Overtime parking	15.00
(11) Using counterfeit, falsely made, or altered permit	150.00 to 250.00
(12) Illegal use of permit	150.00 to 250.00
(13) No current permit	15.00
(14) Parking service drive	25.00
(15) Parking/driving sidewalks, malls	25.00
(16) Parking/driving lawns	25.00
(17) Parking fire lane	30.00
(18) Parking fire hydrant	30.00
(19) Driving, walking, leading, etc., certain animals on campus without permit (WAC 106-116-10401)	15.00
(20) Other violations of the CWU parking and traffic regulations	15.00 to 250.00
(21) Parking in a space marked "disabled person permit only"	250.00

((Offense	Penalty
((22) Continuous parking.....	25.00 to 200.00
((23) No parking 2:00 a.m. to 6:00 a.m.	25.00))

A monetary penalty schedule is available on-line at <http://www.cwu.edu/~parking/wacrules.html#monetary>.

Failure to respond within twenty-eight days will result in doubling of the original monetary penalty and ~~((a \$5.00))~~ an administrative fee. However, in accordance with RCW 46.63.110~~((3))~~ (4), the penalty for failure to respond shall not exceed \$25.00 for any single infraction. Further failure to respond may result in one or more of the following sanctions:

- ~~((a))~~ (1) Withholding of transcripts;
- ~~((b))~~ (2) Deduction from payroll checks;
- ~~((c))~~ (3) Withholding of parking permits; and/or
- ~~((d))~~ (4) Referral to collection agency.

WSR 07-02-098
PROPOSED RULES
DEPARTMENT OF HEALTH
 (Board of Psychology)
 [Filed January 3, 2007, 9:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 98-22-087.

Title of Rule and Other Identifying Information: Creating two new sections in chapter 246-924 WAC, WAC 246-924-445 Parenting evaluation—Standards and 246-924-467 Limited services related to parenting evaluations.

Hearing Location(s): Department of Health, 310 Israel Road S.E., Point Plaza East, Room 152, Tumwater, WA 98501, on February 16, 2007, at 9:00 a.m.

Date of Intended Adoption: February 16, 2007.

Submit Written Comments to: Betty Moe, Department of Health, P.O. Box 47869, Olympia, WA 98504-7869, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4909, by February 2, 2007.

Assistance for Persons with Disabilities: Contact Betty Ingram by February 2, 2007, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Establishing these proposed rules will provide clear standards for the psychologists to follow when completing evaluation, assessing their clients and reporting their findings. The proposed rule will help psychologists create/develop/conduct parenting evaluations that are more consistent and reliable, increasing public and court confidence. Psychologists will know what the minimum standard is for conducting these evaluations and clients will be better informed about the evaluation process. These new rules may reduce the number of complaints.

Reasons Supporting Proposal: The proposal should help minimize the number of complaints and/or disciplinary actions against the psychologist's license if the guidelines are followed. The proposals will also provide consistent evaluation standards.

Statutory Authority for Adoption: RCW 18.83.050.

Statute Being Implemented: RCW 18.130.050 and 18.130.180.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of health, psychology board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Betty Moe, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4912.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

PROPOSED NEW SECTIONS: WAC 246-924-445 Parenting evaluations—Standards and 246-924-467 Limited services related to parenting evaluations.

1. Briefly describe the proposed rule. Chapter 18.83 RCW regulates the practice of licensed psychologists in the state of Washington. The intentions of this regulation are to protect the public from being misled by incompetent, unethical and/or unauthorized psychologists; to assure the availability of psychology services of high quality to persons in need; and to assure the highest degree of professional conduct and competency in the delivery of these services.

Under RCW 18.83.050, the examining board of psychology is authorized to define and establish qualifications and standards for education, examination, licensure, and practice of psychologists in the state of Washington. Ultimately, the board establishes rules that it considers are appropriate for the protection of the consumers of psychology services, the people of the state of Washington.

The board has identified potential risks to families who may be harmed by psychologists using inconsistent and unconventional data collection techniques, evaluation methods and reporting formats when conducting parenting evaluations. These potential risks may result in evaluations that are viewed by the parties as unfair, biased or inaccurate.

By establishing new specific criteria and standards for the parenting plan evaluation process and formalizing them into enforceable rules, the board anticipates the evaluation process will improve by becoming more consistent, reliable, effective, and fair. And, because these proposed requirements cannot be placed into policy, and since enforcement is required, rule amendment is the only method to incorporate these new requirements. In the end, psychologists, clients and other related parties will be better informed about the evaluation process, potentially reducing the number of misleading reports filed, and improving the overall effectiveness of utilizing parenting plan evaluations when determining child custody.

The primary objective of these proposed rules is to enhance the quality of care provided by psychologists licensed by the state of Washington. Without these rules there could be licensed psychologists providing potentially inaccurate, biased, or even damaging parenting plan evaluations - which could lead to substandard care of the public and potentially harmful outcomes of child custody disputes. In addition, the department believes that the proposed rules will likely cause a reduction in the number of complaints filed with the board on this topic.

The examining board of psychology is proposing new rules that will ultimately impose new requirements on parenting plan evaluations. The new rules will:

- Add clarity and consistency to the methodology and practice of parenting plan evaluations.
- Increase awareness of parenting plan evaluations, stressing the importance of consistent, standardized evaluations in determining child custody.
- Reduce potential risks for inaccurate, deleterious and inconsistent parenting plan evaluations.
- Reduce the number of complaints and reports of unprofessional or incompetent practice in the area of parenting plan evaluations.
- Improve the overall effectiveness of using parenting plan evaluations when determining child custody.
- Attempt to ensure that all licensed psychologists are competent and capable of carrying out their professional duties including authoring accurate and standardized parenting plan evaluations.
- Improve the overall quality of services and care provided by psychologists.
- The proposed rules add new requirements for psychologists in performing and documenting parenting plan evaluations.

- The rules require psychologists to properly and completely assess and document all areas of the evaluation process including but not limited to the following:
 - Preevaluation agreements and assessments that are consistent.
 - Data collection methods and elements that are legitimate and complete.
 - Complete and thorough assessment involving all parties involved.
 - Complete and thorough written reporting, consistent with chapter 26.09 RCW.
- The rules define and outline in detail terminology, requirements, limits and processes of parenting plan evaluations. The rules affect all psychologists by adding new enforceable requirements to their existing methods and standards of practice.
- The rules reiterate the fact that outcomes of these evaluations should be in the best interest of the children involved.

2. Is a small business economic impact statement (SBEIS) required for this rule? Yes.

3. Which industries are affected by this rule? In preparing this SBEIS, the department of health used the following SIC codes.

SIC Industry Code and Title	No. of Businesses	No. of Employees	Average No. of Employees For Smallest Businesses	Average No. of Employees for 10% of Largest Businesses
8051 Skilled nursing facilities	281	26,407	15	144
8063 Psychiatric hospitals	6	3,177	0	147
8221 Colleges and universities	124	43,952	7	3454
8322 Individual and family services	1,261	29,061	31	181

4. What are the costs of complying with this rule for small businesses (those with fifty or fewer employees) and for the largest 10% of businesses affected? The estimated average hourly rate charged by psychologists for parental access/child custody evaluations is \$100.00 per hour. A complete assessment usually costs approximately \$500.00. On the other hand, a psychological parenting evaluation may take 11-12 hours and range in costs from \$850.00 to \$1200.00.

Some psychologists will need to conduct additional data gathering and spend additional time on report writing. Furthermore, since psychologists practice as individuals and are licensed as individuals rather than entities with multiple persons, businesses affected by the proposed rule amendments cannot be adequately compared to determine a disproportionate impact to small business.

5. Does the rule impose a disproportionate impact on small businesses? Psychology is a service-for-fee profession, we can assume that costs can eventually be shifted to consumers, and is not a real cost to psychologists. Therefore, this proposal could not impose disproportionate economic impacts on small businesses, since all of the affected businesses are of similar, minimal size. It must also be noted that these costs will only be imposed on those psychologists who

are not currently conducting evaluations as addressed in the proposed rule.

6. If the rule imposes a disproportionate impact on small businesses, what efforts were taken to reduce that impact (or why is it not "legal and feasible" to do so)? Not applicable.

7. How are small businesses involved in the development of this rule? Many social service agencies are small businesses. They have been regularly informed of the rule development and invited to participate in the rule-making process through the distribution of board meeting agendas and minutes. There were also additional rule-writing workshops and opportunity for interested parties who attended and the board to dialogue regarding those pertinent issues identified by the board and jointly developed guiding principles for drafting the proposed rules.

A copy of the statement may be obtained by contacting Betty Moe, P.O. Box 47869, Olympia, WA 98504-7869, phone (360) 236-4912, fax (360) 236-4909, e-mail Betty.Moe@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Betty Moe, P.O. Box 47869, Olym-

pia, WA 98504-7869, phone (360) 236-4940, fax (360) 236-4909, e-mail Betty.Ingram@doh.wa.gov.

January 2, 2007
Betty Moe
Program Manager

NEW SECTION

WAC 246-924-445 Parenting evaluations—Standards. Psychologists may be called upon to evaluate members of a family to assist in determining an appropriate residential arrangement, parental duties, or parental relationship with respect to a minor child. These rules establish minimum standards for conducting parenting evaluations. The psychologist must perform the evaluation focusing on the best interest of the child. In the event that there is more than one child in the family, these rules apply to each child in the family.

(1) The psychologist shall assess relevant ethnic and cultural issues and shall consider the following factors:

(a) The relative strength, nature, and stability of the child's relationship with each parent;

(b) Which parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;

(c) Each parent's past and potential ability to perform parenting functions; and

(d) The emotional needs and developmental level of the child.

(2) The psychologist may consider the following:

(a) Any voluntary agreements of the parties;

(b) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;

(c) The wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule; and

(d) Each parent's employment schedule.

(3) In conducting parenting evaluations, the psychologist shall not discriminate based on age, gender, race, ethnicity, national origin, religion, sexual orientation, disability, socioeconomic status, or any basis prohibited by law.

(4) The psychologist may make recommendations regarding the primary residential parent, shared residential time, decision-making authority or other variables involving more than one of the parties. If recommendations are made, the parenting evaluation must include an assessment of each of the relevant parties being considered and their ability to function as a parent.

(5) Recommendations and conclusions, if any, reached in an evaluation must be based on information from more than one source and must be supported by the data collected. Those sources may include:

(a) Face-to-face interviews with the parties;

(b) Collateral contact interviews;

(c) An opportunity for each party to express concerns or issues in writing;

(d) A review of pleadings;

(e) Written input from collateral sources;

(f) Written documentation from the parties;

(g) Direct observation of the parties with their children;

(h) Psychological testing of the parties and/or their children;

(i) A review of relevant records (e.g., school or counseling records, CPS records);

(j) Prior criminal convictions;

(k) Current involvement of law enforcement;

(l) Face-to-face interviews with the children; and

(m) In reaching a conclusion or making a recommendation, the psychologist shall consider the existence of limiting factors as outlined in RCW 26.09.191(6). The psychologist shall be familiar with or obtain consultation regarding the psychological aspects of child abuse, domestic violence, substance abuse, and family conflict.

(6) If the psychologist uses psychological testing as part of the evaluation, the psychologist must interpret the test(s) consistent with current research or standards of practice.

(7) The psychologist shall not have provided therapeutic services to any party involved in the evaluation. Unless there are mitigating circumstances, the psychologist shall decline to perform a parenting evaluation. Providing service in a rural or underserved area with limited professional options is an example of a possible mitigating circumstance.

(8) The psychologist shall avoid multiple relationships when conducting parenting evaluations. If the previous or current relationship is substantially likely to impair objectivity, the psychologist shall decline the appointment or withdraw. The psychologist shall disclose multiple relationships to the parties or their legal representatives and document the disclosure in the client records.

(9) Relevant comments about a person not personally evaluated may be included if the report clearly identifies the source for the comment and states that the person to which the comment relates was not evaluated by the psychologist.

(10) Psychologists shall maintain a written record of the evaluation. At a minimum, the written record shall include the following:

(a) Court order or signed consent from all parties to conduct the evaluation;

(b) Written retainer agreement;

(c) Appropriate court order or signed authorizations for release of information;

(d) Documentation of dates of service, nature of service and fee charged;

(e) A copy of the evaluation report; and

(f) The information and sources used for the evaluation.

(11) The psychologist shall disclose the following specific information to the parties in writing at the outset of the evaluation assignment. All requests for records must be processed in accordance with chapter 70.02 RCW.

(a) The entity or individual that has requested the evaluation if it is done at the request of a third party;

(b) The entity or individual that is responsible for the bill;

(c) Fee structure;

(d) The entity, agency or individual that will receive the results or the report;

(e) Limits on confidentiality; and

(f) General procedures to be followed.

(12) The psychologist shall make available upon request to the clients or their counsel:

(a) The documents the psychologist relied upon during the evaluation process;

(b) The identity of collateral contacts;

(c) Notes taken during all interviews of the parties or collaterals;

(d) If, however, the psychologist believes that release of information provided by the child, may be harmful to the child, the psychologist may withhold those notes unless directed to do otherwise by the court. The psychologist shall document the reasons for withholding the information in the file;

(e) Dates of evaluation procedures and charges;

(f) All correspondence associated with the case;

(g) The psychologist shall not provide raw test data including test questions, answer sheets, profile scores, computer generated interpretations, or copyrighted materials to nonpsychologists. The psychologist may provide this information to another psychologist or another individual who is qualified to interpret it, with proper authorization from the client or the client's attorney. Protected test materials and raw data may be provided as directed by the court.

NEW SECTION

WAC 246-924-467 Limited services related to parenting evaluations. (1) A psychologist may perform limited evaluative services related to, but not intended to be, a full parenting evaluation. Examples of these services include:

(a) Evaluating the parenting ability of a party;

(b) Evaluating substance abuse status of a party;

(c) Assessing psychological functioning of a party;

(d) Performing a sexual deviance evaluation;

(e) Conducting a domestic violence assessment assessing allegations of sexual or physical abuse of a child; and

(f) Performing a vocational assessment of a party. The evaluator shall limit conclusions and recommendations to the scope of the requested assessment.

(2) With an appropriate authorization, a psychologist who has provided therapeutic services may provide information to the court or an evaluator regarding a client. Relevant information may include, but is not limited to:

(a) Diagnosis, clinical and personality assessment;

(b) Treatment plan, or prognosis.

a provider, 246-930-040 Experience required prior to certification as a provider, 246-930-075 Supervision of affiliates, 246-930-320 Standards for assessment and evaluation reports and 246-930-330 Standards and documentation of treatment; repealing WAC 246-930-050 Education required for affiliate prior to examination; and new sections WAC 246-930-065 Requirements for certification, 246-930-332 Treatment methods and monitoring, 246-930-334 Planning and interventions, 246-930-336 Contacts with victims and children by clients, 246-930-338 Completion of court ordered treatment, and 246-930-350 Evaluation and treatment experience credit.

Hearing Location(s): Department of Health, Point Plaza East, Room 139, 310 Israel Road S.E., Tumwater, WA 98501, on February 8, 2007, at 10:00 a.m.

Date of Intended Adoption: February 28, 2007.

Submit Written Comments to: Leann Yount, Program Manager, P.O. Box 47869, Olympia, WA 98504-7869, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4918, by February 8, 2007.

Assistance for Persons with Disabilities: Contact Leann Yount by February 1, 2007, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal is in response to 2004 legislation and will amend the definition of evaluation, clarify the professional experience requirements for certification prior to affiliates taking the examination, and add additional time for completion of the requirements. The proposal will also clarify and amend the educational, and affiliate supervision requirements, and the standards for assessment, evaluation and treatment. Reference to court ordered clients is removed to allow affiliate providers the ability to evaluate and treat all types of clients.

Reasons Supporting Proposal: Legislation was adopted in 2004 creating statutory authority, RCW 18.155.030, for affiliate sex offender treatment providers (SOTP), placing restrictions on the affiliate provider's ability to evaluate and treat level III sex offenders. Additional 2004 legislation, RCW 9.94A.670, allows the treatment provider that provides a court ordered evaluation to be the same provider that provides treatment during the court ordered sentence if the court enters findings that treatment is in the best interest of the victim and that successful treatment of the offender would otherwise be impractical.

Statutory Authority for Adoption: RCW 18.155.040.

Statute Being Implemented: RCW 18.155.030.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Karen Kelley, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4950; Implementation and Enforcement: Leann Yount, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4856.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not necessary under RCW 19.85.030. These rules do not impose additional costs on affiliate and certified sex offender treatment providers.

WSR 07-02-099

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed January 3, 2007, 9:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-13-158 and 04-13-159.

Title of Rule and Other Identifying Information: Chapter 246-930 WAC, Sex offender treatment provider program; amending WAC 246-930-010 General definitions, 246-930-030 Education required prior to certification as an affiliate or

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Leann Yount, Sex Offender Treatment Provider, P.O. Box 47869, Olympia, WA 98504-7869, phone (360) 236-4856, fax (360) 236-4918, e-mail leann.yount@doh.wa.gov.

January 2, 2007
Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 94-13-179, filed 6/21/94, effective 7/22/94)

WAC 246-930-010 General definitions. In these rules, the following terms shall have the definition described below, unless another definition is stated:

(1) "Affiliate sex offender treatment provider" or "affiliate" means an individual who has satisfactorily passed the examination, met the education requirements, and has been issued a certificate to evaluate and treat sex offenders under chapter 18.155 RCW, and under the supervision of a certified sex offender treatment provider in accordance with the supervision requirements set forth in WAC 246-930-075.

(2) "Certified sex offender treatment provider" or "provider" means an individual who has satisfactorily passed the examination, met the education and experience requirements, and has been issued a certificate by the department to evaluate and treat sex offenders under chapter 18.155 RCW.

(3) "Client" means a person who has been investigated by law enforcement or child protective services for committing or allegedly committing a sex offense, or who has been convicted of a sex offense.

(4) "Committee" means the sex offender treatment providers advisory committee.

(5) "Community protection contract" means the document specifying the treatment rules and requirements the client has agreed to follow in order to maximize community safety.

(6) "Co-therapy hours" means the actual number of hours the applicant spent facilitating a group session.

(7) "Credential" or its derivative means the process of licensing, registration, certification or the equivalent through which a person is legally recognized by a state agency as lawfully authorized to practice a health profession.

(8) "Department" means the department of health.

~~((2))~~ (9) "Evaluation" means a comprehensive assessment or examination of a client conducted by a provider or affiliate that examines the client's offending behavior. Evaluation results must be detailed in a written report. Examples of evaluations include forensic, SSOSA, and SSODA evaluations. Standards for assessment and evaluation reports, and evaluation experience credit are located in WAC 246-930-320 and 246-930-340.

(10) "Parties" means the defendant, the prosecuting attorney, and the supervising officer.

(11) "Secretary" means the secretary of the department of health, or designee.

~~((3))~~ "Provider" means a certified sex offender treatment provider.

~~(4) "Affiliate" means affiliate sex offender treatment provider.~~

~~(5) "Committee" means the sex offender treatment providers advisory committee.~~

~~(6) "Credential" or its derivative means the process of licensing, registration, certification or the equivalent through which a person is legally recognized by a state agency as lawfully authorized to practice a health profession.~~

~~(7) "Evaluation."~~

~~(a) For purposes of determining eligibility for certification, evaluation is defined as the direct provision of comprehensive evaluation and assessment services to persons who have been investigated by law enforcement or child protective services for commission of a sex offense, or who have been adjudicated or convicted of a sex offense. Such evaluation shall be related to a client's offending behavior. Such services shall have resulted in preparation of a formal written report. To qualify, the individual shall have had primary responsibility for interviewing the offender and shall have completed the written report. Only hours in face to face contact with a client may be counted for evaluation credit. Evaluation hours performed by affiliate providers under the supervision of fully certified providers count toward certification under this definition. Note that limited assessments for the purpose of institution classification, treatment monitoring, and reporting do not qualify for evaluation credit under this definition.~~

~~(b) Standards for evaluations of clients by certified providers as defined in RCW 9.94A.120(7)(a) and 13.40.160 are set forth in WAC 246-930-320.~~

~~(8) "Treatment" for purposes of determining eligibility for certification, treatment is defined as the provision of face-to-face individual, group, or family therapy with persons who have been investigated by law enforcement or child protective services for commission of a sex offense, or who have been adjudicated or convicted of a sex offense. The professional seeking certification has formal responsibility for providing primary treatment services, and such services shall have had direct relevance to a client's offending behavior. Face to face treatment hours performed by affiliate providers under the supervision of certified providers count toward certification under this definition. "Co-therapy hours" are defined as the actual number of hours the applicant spent facilitating a group session. Co-therapists may each claim credit for therapy hours as long as both persons have formal responsibility for the group sessions. Time spent in maintaining collateral contacts and written case/progress notes are not counted under this definition.~~

~~(9) A "certified sex offender treatment provider" is an applicant who has met the educational, experience and training requirements as specified for full certification, has satisfactorily passed the examination, and has been issued a certificate by the department to evaluate and treat sex offenders pursuant to chapter 18.155 RCW.~~

~~(10) An "affiliate sex offender treatment provider" is an applicant who has met the educational, experience and training requirements as specified for affiliate certification applicants, and has satisfactorily passed the examination. An affiliate sex offender treatment provider evaluates and treats sex offenders pursuant to chapter 18.155 RCW under the super-~~

vision of a certified sex offender treatment provider in accordance with the supervision requirements set forth in WAC 246-930-075.

(11) "SSOSA" is special sex offender sentencing alternative as defined in RCW 9.94A.120 (7)(a-)

(12) "SSODA" ((is)) means special sex offender disposition alternative ((as defined in)), authorized under RCW 13.40.160.

(13) "SSOSA" means special sex offender sentencing alternative, authorized under RCW 9.94A.670.

(14) "Supervising officer" ((means)) is the designated representative of the agency having oversight responsibility for a client sentenced under SSOSA or SSODA, ((under the sentence or disposition order,)) for example, a community corrections officer(-) or a juvenile probation officer.

((14)) (15) "Treatment" means face-to-face individual, group, or family therapy, provided by an affiliate or provider, to a client. Treatment is focused on the client's offending behavior.

(16) "Treatment plan" means ((the plan set forth in the evaluation detailing how the treatment needs of the client will be met while the community is protected)) a written statement of intended care and services as documented in the evaluation that details how the client's treatment needs will be met while protecting the community during the course of treatment.

((15) "Community protection contract" means the document specifying the treatment rules and requirements the client has agreed to follow in order to maximize community safety.

(16) "Parties" means the defendant, the prosecuting attorney, the community corrections officer and the juvenile probation officer(-)

AMENDATORY SECTION (Amending WSR 94-13-179, filed 6/21/94, effective 7/22/94)

WAC 246-930-030 Education required prior to ((examination)) certification as an affiliate or a provider.

(1) An applicant ((for full certification)) shall have completed:

(a) A master's or doctoral degree in social work, psychology, counseling, or educational psychology from a regionally accredited institution of higher education; or

(b) A medical doctor or doctor of osteopathy degree if the individual is a board certified/eligible psychiatrist; or

(c) A master's or doctoral degree in an equivalent field from a regionally accredited institution of higher education ((with)) and documentation of thirty graduate semester hours or forty-five graduate quarter hours in approved subject content listed in subsection (2) of this section.

(2) Approved subject content includes at least five graduate semester hours or seven graduate quarter hours in ((e)(i) and (ii) of this subsection)) counseling, psychotherapy, and personality theory, and five graduate semester hours or seven graduate quarter hours in at least two ((additional content areas from (e)(i) through (viii) of this subsection)) of the following content areas:

((i)) (a) Counseling and psychotherapy(-);

((ii)) (b) Personality theory(-);

((iii)) (c) Behavioral science and research(-);
 ((iv)) (d) Psychopathology/personality disorders(-);
 ((v)) (e) Assessment/tests and measurement(-);
 ((vi)) (f) Group therapy/family therapy(-);
 ((vii)) (g) Human growth and development/sexuality(-); and
 ((viii)) (h) Corrections/criminal justice.

((d) The applicant is responsible for submitting proof that the hours used to meet this requirement are in fact, equivalent.

((2)) (3) Transcripts of all ((graduate work shall)) education required under this section must be submitted ((directly)) to the department from the institution where the credits were earned.

AMENDATORY SECTION (Amending WSR 94-13-179, filed 6/21/94, effective 7/22/94)

WAC 246-930-040 ((Professional)) Experience required prior to ((examination)) certification as a provider.

(1) ((To qualify for examination,)) An applicant for certification must complete at least two thousand hours of treatment and evaluation experience, as ((defined)) required in WAC ((246-930-010)) 246-930-350. These two thousand hours shall include at least two hundred fifty hours of evaluation experience and ((at least)) two hundred fifty hours of treatment experience.

(2) All of the ((prerequisite)) claimed treatment and evaluation experience shall have been within the ((seven-year)) ten-year period preceding application for certification ((as a provider)).

NEW SECTION

WAC 246-930-065 Requirements for certification.

(1) An applicant for certification must:

(a) Be credentialed as a health professional as provided in WAC 246-930-020. The credential must be in good standing without pending disciplinary action;

(b) Successfully complete an education program as required in WAC 246-930-030;

(c) Successfully complete an examination;

(d) Be able to practice with reasonable skill and safety; and

(e) Have no sex offense convictions, as defined in RCW 9.94A.030 or convictions in any other jurisdiction of an offense that under Washington law would be classified as a sex offense as defined in RCW 9.94A.030.

(2) An applicant for certification as a provider must also complete treatment and evaluation experience required in WAC 246-930-040.

AMENDATORY SECTION (Amending WSR 94-13-179, filed 6/21/94, effective 7/22/94)

WAC 246-930-075 ((Description of)) Supervision of affiliates.

Supervision of affiliates is considerably different than consultation with other professionals. Consultation is solely advisory; consultants do not assume responsibility for those individuals ((to)) with whom they consult. Supervision of affiliates requires that the provider take full ethical and

legal responsibility for the quality of work of the affiliate. ((The following rules apply to providers and affiliates when service is being provided to SSOSA and SSODA clients:

(1) Whether providing training, consultation, or supervision, sex offender treatment providers shall avoid presenting themselves as having qualifications in areas where they do not have expertise.

(2) The supervisor shall provide sufficient training and supervision to the affiliate to insure the health and safety of the client and community. The supervisor shall have the expertise and knowledge to directly supervise the work of the affiliate.

(3) The supervisor shall insure that any person he or she supervises has sufficient education, background, and preparation for the work they will be doing.

(4) Supervision of an affiliate shall require that the supervisor and supervisee enter into a formal written contract defining the parameters of the professional relationship. This supervision contract shall be submitted to the department for approval and shall be renewed on a yearly basis. The contract shall include, but is not limited to:

(a) Supervised areas of professional activity;

(b) Amount of supervision time and the frequency of supervisory meetings. This information may be presented as a ratio of supervisory time to clinical work conducted by the affiliate;

(c) Supervisory fees and business arrangements, when applicable;

(d) Nature of the supervisory relationship and the anticipated process of supervision;

(e) Selected and review of clinical cases;

(f) Methodology for recordkeeping, evaluation of the affiliate, and feedback; and

(g) How the affiliate is represented to the public.

(5) Supervision of affiliates shall involve regular, direct, face-to-face supervision. Based on the affiliate's skill and experience levels, supervision shall include a reasonable degree of direct observation of the affiliates by means of the supervisor sitting in sessions, audio tape recording, videotape, etc. In some cases, special flexible supervision arrangements which deviate from the standard are permitted, for example, due to geography or disability; special flexible supervision contracts shall be submitted to the department for approval.

(6) The level of supervision shall insure that the affiliate is prepared to conduct professional work and provide adequate oversight. There shall be a minimum of one hour of supervision time for every ten hours of supervised professional work. Supervision meetings shall regularly occur at least every other week.

(7) A certified sex offender treatment provider shall undertake no contract which exceeds the provider's ability to comply with supervision standards. A supervisor shall not supervise more than thirty hours of SSOSA and SSODA case clinical work each week.

(8) Generally, a supervisor shall not provide supervision for more than two affiliates. However, the special needs of certain locales, particularly rural areas, are recognized. Where appropriate, deviation from the standards in subsections (4)(b), (6) and (7) of this section are permitted subject to

department approval, if quality of supervision can be maintained. Special supervisory arrangements shall be submitted for approval with the supervision contract to the department. A supervisor may adjust a supervision plan, as necessary, but shall notify the department of the amendment to the contract within thirty days.

(9) The status of the affiliate's relationship to the supervisor is to be accurately communicated to the public, other professionals, and to all clients served.

(10) An affiliate sex offender treatment provider may represent himself or herself as an affiliate only when doing clinical work supervised by the contracted sex offender treatment provider. If the affiliate is providing unsupervised clinical services to clients who are not SSOSA or SSODA cases, the individual shall not utilize the title "affiliate". This is not intended to prohibit an affiliate from describing their experience and qualifications to potential referral sources.

(11) All written reports and correspondence by the affiliate acting under SSOSA or SSODA shall be cosigned by the supervisor, indicating the supervisory relationship. The work shall be represented as conducted by the affiliate with oversight provided by the supervisor.

(12) All work relating to SSOSA and SSODA clients conducted by the affiliate is the responsibility of the supervisor. The supervisor shall have authority to direct the practice of the affiliate involving SSOSA and SSODA clients.

(13) Supervision includes, but is not limited to the following:

(a) Discussion of services provided by the affiliate;

(b) Case selection, service plan, and review of each case or work unit of the affiliate;

(c) Discussions regarding theory and practice of the work being conducted;

(d) Review of Washington statutes, rules, and criminal justice procedures relevant to the work being conducted;

(e) Discussion of the standards of practice for providers as adopted by the department and the ethical issues involved in providing professional services for sex offenders;

(f) Discussion regarding coordination of work with other professionals;

(g) Discussion of relevant professional literature and research; and

(h) Periodic review of the supervision itself.

(14) Both the supervisor and affiliate shall maintain full documentation of the work done and supervision provided.

(15) The supervisor will evaluate the affiliate's work and professional progress on an ongoing basis.

(16) It is the responsibility of the supervisor to remedy the problems or terminate the supervision contract. If the work of the supervisee does not meet sufficient standards to protect the best interests of the clients and the community. The supervisor shall notify the department and provide the department with a letter of explanation, if a supervision contract is terminated.

(17) Supervision is a power relationship and the supervisee-supervisor relationship is not to be exploited. This standard in no way precludes reasonable compensation for supervisory services.

(18) It is the responsibility of the supervisor to provide, on request, accurate and objective letters of reference and

work documentation regarding the affiliate, when requested by affiliate:

(19) If a supervisee is in the employ of a provider it is the responsibility of the supervisor to provide:

- (a) Appropriate working conditions;
- (b) Opportunities to further the supervisee's skills and professional development; and
- (c) Consultation in all areas of professional practice appropriate to the supervisee's employment.

(20) All records of both affiliate and supervisor are subject to audit to determine compliance with appropriate statutes and rules.) A provider may not supervise more than two affiliates.

(1) Supervision includes, but is not limited to:

- (a) Discussion of services provided by the affiliate;
- (b) Case selection, treatment plan, and review of each case or work unit of the affiliate;
- (c) Discussions regarding theory and practice of the work being conducted;
- (d) Review of Washington laws, rules, and criminal justice procedures relevant to the work being conducted;
- (e) Discussion of the standards of practice for providers and affiliates as adopted by the department and the ethical issues involved in providing professional services for sex offenders;

(f) Discussion regarding coordination of work with other professionals and parties;

(g) Discussion of relevant professional literature and research; and

(h) Periodic review of the contract.

(2) The provider shall:

(a) Avoid presenting himself or herself as having qualifications in areas that he or she does not have qualifications.

(b) Provide sufficient training and supervision to the affiliate to assure the health and safety of the client and community.

(c) Have expertise and knowledge to directly supervise affiliate work.

(d) Assure that the affiliate being supervised has sufficient and appropriate education, background, and preparation for the work he or she will be doing.

(3) The provider and affiliate must enter into a formal written contract that defines the parameters of the professional relationship. The contract must be submitted to the department for approval and shall include:

(a) Supervised areas of professional activity;

(b) Amount of supervision time and the frequency of supervisory meetings. This information may be presented as a ratio of supervisory time to clinical work conducted by the affiliate;

(c) Supervisory fees and business arrangements, when applicable;

(d) Nature of the supervisory relationship and the anticipated process of supervision;

(e) Selection and review of clinical cases;

(f) Methodology for recordkeeping, evaluation of the affiliate, and feedback; and

(g) How the affiliate will be represented to the public and the parties.

(4) Supervision of affiliates shall involve regular, direct, face-to-face supervision.

(a) Depending on the affiliate's skill and experience levels, the provider's supervision shall include direct observation of the affiliate by:

(i) Sitting in sessions;

(ii) Audio tape recording;

(iii) Videotaping, etc.

(b) In some cases, such as geographic location or disability, more flexible supervision arrangements may be allowed. The provider must submit requests for more flexible supervision arrangements to the department for approval.

(5) The supervisor must assure that the affiliate is prepared to conduct professional work, and must assure adequate supervision of the affiliate. The provider shall meet face-to-face with the affiliate a minimum of one hour for every ten hours of supervised professional work. Supervision meetings shall regularly occur at least every other week.

(6) A provider may not undertake a contract that exceeds the provider's ability to comply with supervision standards.

(7) The department recognizes the needs of certain locales, particularly rural areas, and may allow a variance from the standards in subsections (3)(b) and (5) of this section. The supervisor must submit any variance request to the department for approval with the supervision contract. Variances will be granted or denied in writing within thirty days.

(8) The nature of the affiliate-provider relationship must be communicated to the public, other professionals, and all clients served.

(9) An affiliate may represent himself or herself as an affiliate only when performing clinical work supervised by the contracted provider.

(10) The provider must cosign all written reports and correspondence prepared by the affiliate. The written reports and correspondence must include a statement that indicates the work has been conducted by the affiliate acting under the provider's supervision.

(11) Both the provider and affiliate shall maintain full documentation of the work done and supervision provided. The department may audit the provider's and affiliate's records to assure compliance with laws and rules.

(12) All work conducted by the affiliate is the responsibility of the provider. The provider shall have authority to direct the practice of the affiliate.

(13) It is the provider's responsibility to correct problems or end the supervision contract if the affiliate's work does not protect the interests of the clients and community. If the provider ends the contract, he or she must notify the department in writing within thirty days of ending the contract. A provider may only change or adjust a supervision contract after receiving written approval from the department.

(14) Supervision is a power relationship. The provider must not use his or her position to take advantage of the affiliate. This subsection is not intended to prevent a provider from seeking reasonable compensation for supervisory services.

(15) A provider must provide accurate and objective letters of reference and documentation of the affiliate's work at the affiliate's request.

(16) The provider shall ensure that the affiliate has completed at least one thousand hours of supervised evaluation and treatment experience before the affiliate is authorized to evaluate and treat Level III sex offenders. The provider will submit to the department documentation that the affiliate has completed a minimum of one thousand hours within thirty days of completion of the experience.

AMENDATORY SECTION (Amending WSR 94-13-179, filed 6/21/94, effective 7/22/94)

WAC 246-930-320 Standards for ((SSOSA and SSODA)) assessment and evaluation reports. (1) General considerations in evaluating clients. Providers and affiliates shall:

(a) Be knowledgeable of current assessment procedures used;

(b) Be aware of the strengths and limitations of self-report and make reasonable efforts to verify information provided by the ((~~offender~~)) client;

(c) Be knowledgeable of the client's legal status including any court orders applicable.

(d) Have a full understanding of the SSOSA and SSODA process, if applicable, and be knowledgeable of relevant criminal and legal considerations;

~~((d))~~ (e) Be impartial;

(f) Provide an objective and accurate base of data; and

~~((e))~~ (g) Avoid addressing or responding to referral questions which exceed the present level of knowledge in the field or the expertise of the evaluator.

(2) ~~((Scope of assessment data:~~

~~Comprehensive evaluations under SSOSA and SSODA shall include a compilation of data from as many sources as reasonable, appropriate, and available. These sources may include but are not limited to:~~

~~(a) Collateral information (i.e., police reports, child protective services information, criminal correctional history and victim statements);~~

~~(b) Interviews with the offender;~~

~~(c) Interviews with significant others;~~

~~(d) Previous assessments of the offender conducted (i.e., medical, substance abuse, psychological and sexual deviancy);~~

~~(e) Psychological/physiological tests;~~

~~(f) If a report fails to include information specified in (a) through (e) of this subsection, the evaluation should indicate the information not included and cite the reason the information is not included; and~~

~~(g) Second evaluations shall state whether other evaluations were considered. The decision regarding use of other evaluations prior to conducting the second evaluation is within the professional discretion of the provider. The second evaluation need not repeat all assessment or data compilation measures if it reasonably relies on existing current information. The second evaluation must address all issues outlined in subsection (3) of this section, and include conclusions, recommendations and a treatment plan if one is recommended.~~

(3) Evaluation reports:

(a) Written reports shall be accurate, comprehensive and address all of the issues required for court disposition as provided in the statutes governing SSOSA and SSODA;

(b) Written reports shall present all knowledge relevant to the matters at hand in a clear and organized manner;

(c) Written reports shall include the referral sources, the conditions surrounding the referral and the referral questions addressed; and

(d) Written reports shall state the sources of information utilized in the evaluation. The evaluation and written report shall address, at a minimum, the following issues:

~~(i) A description of the current offense(s) including, but not limited to, the evaluator's conclusion about the reasons for any discrepancy between the official and offender's versions of the offenses;~~

~~(ii) A sexual history, sexual offense history and patterns of sexual arousal/preference/interest;~~

~~(iii) Prior attempts to remediate and control offense behavior including prior treatment;~~

~~(iv) Perceptions of significant others, when appropriate, including their ability and/or willingness to support treatment efforts;~~

~~(v) Potentiators of offending behavior to include alcohol and drug abuse, stress, mood, sexual patterns, use of pornography, and social and environmental influences;~~

~~(vi) A personal history to include medical, marital/relationships, employment, education and military;~~

~~(vii) A family history;~~

~~(viii) History of violence and/or criminal behavior;~~

~~(ix) Mental health functioning to include coping abilities, adaptational styles, intellectual functioning and personality attributes; and~~

~~(x) The overall findings of psychological/physiological/medical assessment when such assessments have been conducted.~~

~~(e) Conclusions and recommendations shall be supported by the data presented in the body of the report and include:~~

~~(i) The evaluator's conclusions regarding the appropriateness of community treatment;~~

~~(ii) A summary of the clinician's diagnostic impressions;~~

~~(iii) A specific assessment of relative risk factors, including the extent of the offender's dangerousness in the community at large;~~

~~(iv) The client's amenability to outpatient treatment and conditions of treatment necessary to maintain a safe treatment environment.~~

~~(f) Proposed treatment plan shall be described in detail and clarity and include:~~

~~(i) Anticipated length of treatment, frequency and type of contact with providers, and supplemental or adjunctive treatment;~~

~~(ii) The specific issues to be addressed in treatment and a description of planned treatment interventions including involvement of significant others in treatment and ancillary treatment activities;~~

~~(iii) Recommendations for specific behavioral prohibitions, requirements and restrictions on living conditions, lifestyle requirements, and monitoring by family members and~~

others that are necessary to the treatment process and community safety;

(iv) ~~Proposed methods for monitoring and verifying compliance with the conditions and prohibitions of the treatment program; and~~

(v) ~~If the evaluator will not be providing treatment, a specific certified provider should be identified to the court. The provider shall adopt the proposed treatment plan or submit an alternative treatment plan for approval by the court, including each of the elements in WAC 246-930-330 (5)(a) through (d).~~

~~(4) The provider shall submit to the court and the parties a statement that the provider is either adopting the proposed treatment plan or submitting an alternate plan. The plan and the statement shall be provided to the court before sentencing.)~~ Providers and affiliates must complete written evaluation reports. These reports must:

(a) Be accurate, comprehensive and address all of the issues required for court or other disposition;

(b) Present all knowledge relevant to the matters at hand in a clear and organized manner;

(c) Include the referral sources, the conditions surrounding the referral and the referral questions addressed;

(d) Include a compilation of data from as many sources as reasonable, appropriate, and available. These sources may include but are not limited to:

(i) Collateral information including:

(A) Police reports;

(B) Child protective services information; and

(C) Criminal correctional history;

(ii) Interviews with the client;

(iii) Interviews with significant others;

(iv) Previous assessments of the client such as:

(A) Medical;

(B) Substance abuse; and

(C) Psychological and sexual deviancy;

(v) Psychological/physiological tests;

(e) Address, at a minimum, the following issues:

(i) A description of the current offense(s) or allegation(s) including, but not limited to, the evaluator's conclusion about the reasons for any discrepancy between the official and client's versions of the offenses or allegations;

(ii) A sexual history, sexual offense history and patterns of sexual arousal/preference/interest;

(iii) Prior attempts to remediate and control offensive behavior including prior treatment;

(iv) Perceptions of significant others, when appropriate, including their ability and/or willingness to support treatment efforts;

(v) Risk factors for offending behavior including:

(A) Alcohol and drug abuse;

(B) Stress;

(C) Mood;

(D) Sexual patterns;

(E) Use of pornography; and

(F) Social and environmental influences;

(vi) A personal history including:

(A) Medical;

(B) Marital/relationships;

(C) Employment;

(D) Education; and

(E) Military;

(vii) A family history;

(viii) History of violence and/or criminal behavior;

(ix) Mental health functioning including coping abilities, adaptation style, intellectual functioning and personality attributes; and

(x) The overall findings of psychological/physiological/medical assessment if these assessments have been conducted;

(f) Include conclusions and recommendations. The conclusions and recommendations shall be supported by the data presented in the report and include:

(i) The evaluator's conclusions regarding the appropriateness of community treatment;

(ii) A summary of the evaluator's diagnostic impressions;

(iii) A specific assessment of relative risk factors, including the extent of the client's dangerousness in the community at large; and

(iv) The client's willingness for outpatient treatment and conditions of treatment necessary to maintain a safe treatment environment.

(g) Include a proposed treatment plan which is clear and describes in detail:

(i) Anticipated length of treatment, frequency and type of contact with providers or affiliates, and supplemental or adjunctive treatment;

(ii) The specific issues to be addressed in treatment and a description of planned treatment interventions including involvement of significant others in treatment and ancillary treatment activities;

(iii) Recommendations for specific behavioral prohibitions, requirements and restrictions on living conditions, lifestyle requirements, and monitoring by family members and others that are necessary to the treatment process and community safety; and

(iv) Proposed methods for monitoring and verifying compliance with the conditions and prohibitions of the treatment program.

(3) If a report fails to include information specified in (a) through (e) of this subsection, the evaluation should indicate the information not included and cite the reason the information is not included.

(4) Second evaluations shall state whether prior evaluations were considered. The decision regarding use of other evaluations prior to conducting the second evaluation is within the professional discretion of the provider or affiliate. The second evaluation need not repeat all assessment or data compilation measures if it reasonably relies on existing current information. The second evaluation must address all issues outlined in subsection (2) of this section, and include conclusions, recommendations and a treatment plan if one is recommended.

(5) The provider or affiliate who provides treatment shall submit to the court and the parties a statement that the provider or affiliate is either adopting the proposed treatment plan or submitting an alternate plan. Any alternate plan and the statement shall be provided to the court before sentencing.

ing. Any alternate plan must include the treatment methods described in WAC 246-930-332(1).

AMENDATORY SECTION (Amending WSR 94-13-179, filed 6/21/94, effective 7/22/94)

WAC 246-930-330 Standards ~~((for))~~ and documentation of treatment. ~~((Introduction-SSOSA/SSODA offender treatment: It is recognized that))~~ Effective sexual deviancy treatment ~~((will))~~ involves a broad set of planned therapeutic experiences and interventions designed to ultimately reduce the client's risk of ~~((a client))~~ engaging in criminal sexual behavior. ~~((Such))~~ Treatment ~~((shall))~~ **must** be consistent with current professional literature and ~~((shall))~~ emphasize community safety.

~~((+))~~ **General considerations.**

~~((a))~~ (1) In most cases ~~((clients shall be seen by a certified or affiliate treatment provider a minimum of))~~ a provider or affiliate treats clients at least once per week for at least forty-five minutes for an individual or ninety minutes for a group.

~~((b))~~ (2) Changes in client circumstances or ~~((treatment))~~ provider/affiliate schedule may require ~~((a reduction in frequency or duration of contacts appropriate, provided that:~~

(i) Such changes are made on a case-by-case basis;

(ii) Any changes that constitute a permanent change in the treatment plan or that reduce community safety shall be communicated to the supervising officer, the prosecutor and the court prior to the implementation of the change; and

(iii) Other short term, temporary changes in the treatment plan due to illness, vacation, etc., should be reported in the regular progress report.

(e) Any reduction in frequency or duration of contacts which constitutes a deviation from the treatment plan shall be reported to the supervising officer, the prosecutor, and the court; and

(d) The treatment methods employed by the provider shall:

(i) Reflect concern for the well being of clients, victims and the safety of potential victims;

(ii) Take into account the legal/civil rights of clients, including the right to refuse therapy and return to court for review; and

(iii) Be individualized to meet the unique needs of each client.

(2) **Planning and interventions.** The treatment plan and the interventions used by the provider to achieve the goals of the plan shall:

(a) Address the sexual deviancy treatment needs identified;

(b) Include provisions for the protection of victims and potential victims;

(c) Give priority to those treatment interventions most likely to avoid sexual reoffense; and

(d) Take reasonable care to not cause victims to have unsafe, or unwanted contact with their offenders.

(3) **Community protection contract.** The provider shall present a contract to the client within ninety days of the start of treatment which:

(a) Details the treatment rules and requirements which the client must follow in order to preserve community safety;

(b) Outlines the client's responsibility to adhere to the contract and the provider's responsibility to report any violations;

(c) Is a separate document from any other evaluation or treatment agreements between the client and the provider; and

(d) Is signed by both client and provider, sent to the supervising officer after sentencing, and updated when conditions change throughout the course of treatment.

(4) **Treatment methods.** The methods used by the provider shall:

(a) Address clients' deviant sexual urges and recurrent deviant sexual fantasies;

(b) Educate clients and the individuals who are part of their support systems about the potential for reoffense, and risk factors;

(c) Teach clients to use self control methods to avoid sexual reoffense;

(d) Consider the effects of trauma and past victimization as factors in reoffense potential where applicable;

(e) Address clients' thought processes which facilitate sexual reoffense and other victimizing or assaultive behaviors;

(f) Modify client thinking errors and cognitive distortions;

(g) Enhance clients appropriate adaptive/legal sexual functioning;

(h) Insure that clients have accurate knowledge about the effect of sexual offending upon victims, their families, and the community;

(i) Help clients develop a sensitivity to the effects of sexual abuse upon victims;

(j) Address clients' personality traits and personality deficits which are related to increased reoffense potential;

(k) Address clients' deficits in coping skills;

(l) Include and integrate clients' families, guardians, and residential program staff into the treatment process when appropriate; and

(m) To maintain communication with other significant persons in the client's support system, when deemed appropriate by the provider.

(5) **Monitoring of treatment requirements.** The monitoring of the client's compliance with treatment requirements by the provider shall:

(a) Recognize the reoffense potential of the sex offender client, the damage that may be caused by sexual reoffense or attempted reoffense, and the limits of self report by the sex offender client;

(b) Consider multiple sources of input regarding the client's out of office behavior;

(c) As a general principle, increase monitoring during those times of increased risk and notify the supervising officer:

(i) When a client is in crisis;

(ii) When visits with victims or potential victims are authorized; and

(iii) When clients are in high risk environments.

(d) Work in collaboration with the supervising officer to verify that the client is following the treatment plan by reducing the frequency of those behaviors that are most closely related to sexual reoffense and that the client's living, work and social environments have sufficient safeguards and protection for victims and potential victims; and

(e) The provider and the supervising officer should discuss the verification methods used so that each can more fully collaborate to protect community safety and assist the client in successfully completing treatment.

~~(6) **Contacts with victims/vulnerable persons for SSOSA clients.** When authorizing SSOSA clients to have contact with victims or children, the provider shall recognize that supervision during contact with children is critical for those offenders who have had crimes against children, or have the potential to abuse children. Providers shall:~~

~~(a) Consider victim's wishes about contact and reasonably ensure that all contact is safe and in accordance with court directives;~~

~~(b) Restrict, as necessary, offender decision-making authority over victims and vulnerable children;~~

~~(c) Prior to offender contact with children, collaborate with other relevant professionals regarding contact with victims, rather than make isolated decisions;~~

~~(d) Consult with the victim's parents, custodial parents, or guardians prior to authorizing any contact between offenders and children;~~

~~(e) Include educational experiences for chaperones/supervisors of SSOSA clients; and~~

~~(f) Devise a plan/protocol for reuniting or returning SSOSA clients to homes where children reside. Such plan/protocol should emphasize child safety, and provide for some monitoring of the impact on the victim and other children.~~

~~(7) **Contacts with victims/vulnerable persons for SSODA clients.** While the rationale behind the standards for SSOSA clients in subsection (6)(a) through (f) of this section is equally relevant for juvenile SSODA clients, there are some substantial differences that warrant specific standards. The prohibitions on contact with children are not intended to prohibit reasonable peer-age social or educational contacts for juvenile SSODA clients. It is further understood that providers working with juvenile SSODA clients have limited authority over their clients, and that they have limited authority to govern the decisions or supervision of a juvenile client's parents. Reasonable and practical supervision plans/strategies for juvenile SSODA clients require the cooperation and involvement of parents, foster parents, group home staff, and the supervising officer. Providers shall work in collaboration with the supervising officer to meet the following standards:~~

~~(a) Establish reasonable guidelines for contacts with victims or vulnerable children commensurate with the offender's offending history, treatment progress, and the current disposition order.~~

~~(b) Make reasonable efforts to advise, inform, and educate adults who will be in contact with and responsible for the offender's behavior around victims or vulnerable children.~~

~~(c) Restrict, as necessary, offender decision-making authority over victims and vulnerable children.~~

~~(d) Devise plans/protocols for reuniting or returning SSODA clients to homes where the victim or other children~~

~~reside, specifically considering the victim's wishes and victim impact of reunification.~~

~~(e) Closely scrutinize victim requests for offender contact to ensure the request is free of emotional strain and is in the victim's best interests.~~

~~(8) **Documentation of treatment.** Providers shall maintain and safeguard client files in accordance with the professional standards of their individual disciplines and with Washington state law regarding health care records. Providers shall insure that the client files reflect the content of professional contact, treatment progress, sessions attended and treatment plan change information necessary for completion of the required SSOSA/SSODA reports; and~~

~~(9) **Completion of court ordered treatment.** In fulfilling the SSOSA requirements for the end of court ordered treatment hearing, the treatment provider shall:~~

~~(a) Assess and document how the goals of the treatment plan have been met, what changes in the client's reoffense potential have been accomplished, and what risk factors remain;~~

~~(b) Report to the court in a timely manner regarding the client's compliance with treatment and monitoring requirements and make a recommendation regarding modification of conditions of community supervision, and either termination of treatment or extension of treatment for up to the remaining period of community supervision.~~

~~(10) **Completion of treatment for SSODA.** Sex offender treatment providers who are treating juvenile offenders shall comply with subsection (9) of this section)) less frequent or shorter sessions. Changes to the number or duration of sessions may be made on a case-by-case basis, and must be reported to the department. A provider or affiliate must:~~

~~(a) Communicate permanent changes in the treatment plan or changes that may reduce community safety to the supervising officer, the prosecutor and the court before the changes may be implemented;~~

~~(b) Report other short term, temporary changes in the treatment plan due to illness, vacation, etc., in the regular progress report; and~~

~~(c) Report any reduction in frequency or duration of contacts that constitutes a variance from the treatment plan to the supervising officer, the prosecutor, and the court.~~

~~(3) The treatment methods employed by the provider or affiliate shall:~~

~~(a) Reflect concern for the well-being of clients, victims and the safety of potential victims;~~

~~(b) Take into account the legal/civil rights of clients, including the right to refuse therapy and return to court for review; and~~

~~(c) Be individualized to meet the unique needs of each client.~~

~~(4) Providers and affiliates shall maintain and safeguard client files consistent with the professional standards and with Washington state law regarding health care records. Providers and affiliates shall ensure that the client files include the following information for completion of required reports:~~

~~(a) Content of professional contact;~~

~~(b) Treatment progress;~~

- (c) Sessions attended; and
- (d) Any treatment plan changes.

NEW SECTION

WAC 246-930-332 Treatment methods and monitoring. (1) The treatment methods used by the provider or affiliate shall:

- (a) Address the client's deviant sexual urges and recurrent deviant sexual fantasies;
 - (b) Educate the client and the individuals who are part of the client's support system about the potential for reoffense, and risk factors;
 - (c) Teach the client to use self-control methods to avoid sexual reoffense;
 - (d) Consider the effects of trauma and past victimization as factors in reoffense potential where applicable;
 - (e) Address the client's thought processes which facilitate sexual reoffense and other victimizing or assaultive behaviors;
 - (f) Modify client thinking errors and cognitive distortions;
 - (g) Enhance the client's appropriate adaptive/legal sexual functioning;
 - (h) Assure that the client has accurate knowledge about the effect of sexual offending upon victims, their families, and the community;
 - (i) Help the client develop sensitivity to the effects of sexual abuse upon victims;
 - (j) Address the client's personality traits and personality deficits which are related to increased reoffense potential;
 - (k) Address the client's deficits in coping skills;
 - (l) Include and integrate the client's family, guardian, and residential program staff into the treatment process when appropriate; and
 - (m) Maintain communication with other significant persons in the client's support system, when deemed appropriate by the provider.
- (2) The provider or affiliate shall monitor compliance with treatment requirements by:
- (a) Recognizing the reoffense potential of the client, the damage that may be caused by sexual reoffense or attempted reoffense, and the limits of self report by the client;
 - (b) Considering multiple sources of input regarding the client's out-of-office behavior;
 - (c) Increasing monitoring during those times of increased risk and notifying the supervising officer when:
 - (i) A client is in crisis;
 - (ii) Visits with victims or potential victims are authorized; and
 - (iii) A client is in high-risk environments.
 - (d) Working in collaboration with the supervising officer, when applicable, to verify that the client is following the treatment plan by reducing the frequency of those behaviors that are most closely related to sexual reoffense and that the client's living, work and social environments have sufficient safeguards and protection for victims and potential victims; and
 - (e) Discussing with the supervising officer the verification methods used so that each can fully collaborate to protect

community safety and assist the client in successfully completing treatment.

NEW SECTION

WAC 246-930-334 Planning and interventions. (1) The treatment plan and the interventions used by the provider or affiliate to achieve the goals of the plan shall:

- (a) Address the sexual deviancy treatment needs identified;
 - (b) Include provisions for the protection of victims and potential victims;
 - (c) Give priority to those treatment interventions most likely to avoid sexual reoffense; and
 - (d) Take reasonable care not to cause victims to have unsafe, unauthorized, or unwanted contact with their offenders.
- (2) The community protection contract shall be presented to the client within ninety days of the start of treatment by the provider or affiliate that:
- (a) Details the treatment rules and requirements that the client must follow in order to preserve community safety;
 - (b) Outlines the client's responsibility to adhere to the contract, and the provider's responsibility to report any violations;
 - (c) Is a separate document from any other evaluation or treatment agreements between the client and the provider;
 - (d) Is signed by both client and provider;
 - (e) Is sent to the supervising officer after sentencing; and
 - (f) Is updated when conditions change throughout the course of treatment.

NEW SECTION

WAC 246-930-336 Contacts with victims and children by clients. (1) The provider or affiliate shall recognize that supervision during contact with children is critical for those clients who have had crimes against children, or have the potential to abuse children. When authorizing clients to have contact with victims or children, the provider or affiliate shall:

- (a) Consider the victim's wishes about contact and reasonably ensure that all contact is safe and in accordance with court directives;
 - (b) Restrict, as necessary, client decision-making authority over victims and children;
 - (c) Collaborate with other relevant professionals about contact with victims prior to authorizing client contact with children, rather than making isolated decisions;
 - (d) Consult with the victim's parents, custodial parents, or guardians prior to authorizing any contact between clients and children;
 - (e) Include educational experiences for chaperones/supervisors of clients; and
 - (f) Devise a plan/protocol for reuniting or returning clients to homes where children reside. This plan/protocol must emphasize child safety, and provide for some monitoring of the impact to the victim and other children.
- (2) While the rationale behind the standards for clients in subsection (1)(a) through (f) of this section is equally relevant for juvenile clients, there are some substantial differ-

ences that warrant specific standards. The prohibitions on contact with children are not intended to prohibit reasonable peer-age social or educational contacts for juvenile clients. Providers or affiliates working with juvenile clients have limited authority over their clients, in that they have limited authority to govern the decisions or supervision of a juvenile client's parents. Reasonable and practical supervision plans/strategies for juvenile clients require the cooperation and involvement of parents, foster parents, group home staff, and the supervising officer. Providers and affiliates shall work in collaboration with the supervising officer to:

(a) Establish reasonable guidelines for contacts with victims or children commensurate with the client's offending history, treatment progress, and the current disposition order;

(b) Make reasonable efforts to advise, inform, and educate adults who will be in contact with and responsible for the client's behavior around victims or children;

(c) Restrict, as necessary, client decision-making authority over victims and children;

(d) Devise plans/protocols for reuniting or returning clients to homes where the victim or other children reside, specifically considering the victim's wishes and victim impact of reunification;

(e) Closely scrutinize victim requests for client contact to ensure the request is free of emotional strain and is in the victim's best interests; and

(f) Follow court ordered no contact provisions, or seek modification of court ordered restrictions if appropriate.

NEW SECTION

WAC 246-930-338 Completion of court ordered treatment. In fulfilling requirements for the end of court ordered treatment hearing, if applicable, the provider or affiliate shall:

(1) Assess and document how the treatment plan goals have been met, what changes in the client's reoffense potential have been accomplished, and what risk factors remain; and

(2) Report to the court in a timely manner regarding the client's compliance with treatment and monitoring requirements, and make a recommendation regarding modification of conditions of community supervision, and either termination of treatment or extension of treatment for up to the remaining period of community supervision.

NEW SECTION

WAC 246-930-350 Evaluation and treatment experience credit. (1) Evaluation experience credit. The following can be counted for evaluation experience credit:

(a) Preparation of a written SSOSA, SSODA, self-referral or forensic evaluation;

(b) Primary or secondary responsibility for interviewing the client;

(c) Preparation of the written evaluation report;

(d) All contact with clients; and

(e) Preparation of limited assessments for the purpose of:

(i) Institution classification;

(ii) Treatment monitoring; and

(iii) Reporting.

(2) Treatment experience credit. The following can be counted for treatment experience credit:

(a) Face-to-face treatment hours performed by affiliates under the supervision of certified providers;

(b) Time spent as a co-therapist. Both therapists must have formal responsibility for the group session; and

(c) Time spent maintaining collateral contacts and written case/progress notes.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-930-050 Education required for affiliate prior to examination.

WAC 246-930-060 Professional experience required for affiliate prior to examination.

WSR 07-02-101

PROPOSED RULES

DEPARTMENT OF TRANSPORTATION

[Filed January 3, 2007, 9:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-10-070.

Title of Rule and Other Identifying Information: WAC 468-300-800 through 468-300-890, rules regulating bridge and highway toll collections in Washington state.

Hearing Location(s): Pierce County Transit, Rainer Room, 3720 96th Street S.W., Lakewood, WA 98499, on February 9, 2007, at 2:00 p.m. - 4:00 p.m.

Date of Intended Adoption: February 9, 2007.

Submit Written Comments to: R. David Pope, Tolls Systems Manager, 3214 50th Street Court N.W., Suite 302, Gig Harbor, WA 98335-8583, e-mail Poped@wsdot.wa.gov, fax (253) 534-4679, by February 9, 2007.

Assistance for Persons with Disabilities: Contact Jeniece Kelly, TTY (800) 833-6388, ask to be connected to (360) 705-7097 or (253) 534-4671.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In order to effectively implement the tolling statutes contained in chapters 47.46, 47.56, and 47.63 RCW, the Washington state department of transportation (department or WSDOT) is proposing administrative rules that:

(1) Support a uniform but flexible toll collection system for the department's toll transportation projects;

(2) Regulate toll collections within the state's uniform toll collection system;

(3) To the extent that technology and resources permit, establish an open standard electronic toll collection system using automatic vehicle identification technology (AVI) that is compatible with:

- Washington state ferry fare collection;
- WSDOT commercial vehicle information systems and networks (CVISN) program;
- Other public transportation systems using various electronic payment methods; or
- Other toll collection systems using AVI technology; and

(4) Allow multiple vendors to provide, as technology permits, electronic payment devices and transponders.

Reasons Supporting Proposal: The department's proposed toll rules will establish:

(1) An open standard for the transponders used in the AVI technology systems that are part of the department's toll projects. An open standard will allow compatibility and interoperability between agencies and transportation systems using AVI technology or some other electronic toll payment/collection device. Such an electronic toll system will increase access and ease of use for consumers of public transportation services, including ferries, bus, rail, freight and tolled public roads and bridges, by using a payment device recognized and accepted throughout the state. Finally, an electronic toll system that allows electronic payment devices to be provided by multiple vendors will help create a competitive environment, reduce costs to the users of those devices and allow the department to take advantage of advances in technology as they occur.

(2) A set of regulations governing toll collections on current (Tacoma Narrows Bridge and HOT lanes) and future department tolling projects.

(3) Are written in a clear and readable style that allows users to more easily understand and apply the department's tolling regulations; and

(4) Use tables to clearly and succinctly present information wherever possible and appropriate.

Statutory Authority for Adoption: RCW 47.46.105 Toll collections, 46.63.160 Electronic toll collection, photo enforcement and 47.56.403 High-occupancy toll lane project HOT lanes.

Statute Being Implemented: RCW 47.46.105 Toll collections, 46.63.160 Electronic toll collection, photo enforcement and 47.56.403 High-occupancy toll lane project HOT lanes.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state department of transportation, governmental.

Name of Agency Personnel Responsible for Drafting: Lucinda Broussard, 3214 50th Street Court N.W., Suite 302, Gig Harbor, WA 98335-8583, (253) 534-4699; Implementation and Enforcement: R. David Pope, 3214 50th Street Court N.W., Suite 302, Gig Harbor, WA 98335-8583, (253) 534-4673.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has considered this rule and determined that it does not affect more than 10% or 20% of all industry.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of transportation is not a listed agency under RCW 34.05.328 (5)(a)(i).

January 3, 2007

P. J. Hammond

for John F. Conrad

Assistant Secretary for

Engineering and Regional Operations

BRIDGE AND HIGHWAY TOLL COLLECTIONS IN WASHINGTON STATE

NEW SECTION

WAC 468-300-801 What is the purpose of these rules? The purpose of these rules is to explain how the Washington state department of transportation (WSDOT) will operate its tolling programs including electronic toll collection and enforcement and specifically to:

(1) Establish a uniform toll collection system for transportation facilities in Washington state;

(2) Regulate toll collections within the state's uniform toll collection system; and

(3) To the extent that technology and resources permit, establish an open standard electronic toll collection system using automatic vehicle identification technology (AVI) that is compatible with other toll systems throughout the state and country.

NEW SECTION

WAC 468-300-803 Are any vehicles exempt from the toll collection provisions of these rules? The following vehicles are exceptions from the toll collection provisions of these rules:

(1) **ALL TOLL LANES:** All nonrevenue account vehicles and emergency vehicles when on a bona fide emergency run (lights flashing, siren activated) are exempt from paying tolls on the Tacoma Narrows Bridge toll facility; and

(2) **HOT LANES ONLY:** Transit buses and vanpool vehicles owned and operated by any public agency and other high occupancy vehicles are exempt from paying toll charges on the SR 167 high occupancy toll (HOT) lanes pilot project.

NEW SECTION

WAC 468-300-805 What definitions are important to understanding these rules? The terms "check," "cashiers check," "bank check" and "travelers' checks" used in these toll rules are defined in RCW 62A.3-104 Negotiable instrument. In addition to the check definitions in RCW 62A.3-104, the following definitions are important to understanding these rules:

"Active account" means an open customer account with any balance from which electronic toll payments may be automatically deducted by an electronic toll collection (ETC) system.

"Automatic vehicle identification (AVI) technology" means an electronic toll collection (ETC) system using wireless radio frequency identification (RFID) transponders with

readers that automatically identify vehicles as they enter and exit a tolling facility. WSDOT uses a toll collection system based upon AVI technology named "Good To Go!™."

"Closed account" means a customer account that has been closed.

"Closed pending account" means a customer account, which is in the process of being closed at the request of the customer. Closed pending status can be maintained for no more than fifteen days; after fifteen days the customer's account is closed.

"Commission" means the transportation commission appointed by the governor. The commission is responsible for setting toll rates and schedules.

"Customer account" is a prepaid toll account used for electronic toll collection in which customers deposit funds to pay their tolls electronically and automatically.

"Department" means the Washington state department of transportation (WSDOT).

"Dishonored check" means any check returned to WSDOT by a financial institution for any reason of nonacceptance, nonpayment or stop payment unless a justifiable stop payment order exists.

"Dishonored credit card transaction" means a credit card transaction that is not approved by the entity that issued the credit card.

"Dynamic toll pricing" means varying the toll rate charged to toll customers to maintain specific performance standards of traffic management.

"Electronic toll collection (ETC) lane" means a lane in which the electronic toll collection system will read the transponder of each vehicle and automatically collect the toll without requiring the vehicle to slow its speed or stop.

"Good To Go!™" is the name of the department's electronic toll collection system.

"Good To Go!™ contract" means the terms and conditions noted on the back of the "Good To Go!™" customer application and to which the customer agrees by opening a customer account.

"Good To Go!™ customer" means a toll customer who participates in the department's "Good To Go!™" toll collection system.

"High occupancy vehicle" means a public agency bus or vanpool or a carpool vehicle with minimum occupancy requirements that may vary from two to four persons depending upon the posted roadway HOV signage.

"High-occupancy toll (HOT) lanes" means one or more lanes of a highway that charges tolls as a means of regulating access to or the use of the lanes in order to maintain travel speed and reliability. HOT lane supporting facilities include, but are not limited to, approaches, enforcement areas, improvements, buildings, and equipment.

"Inactive account" means a customer account that has had no toll transaction activity during the twenty-four-month period, which begins with the date of the customer's last transaction.

"Insufficient funds account" means an ETC customer's account with a balance less than the single toll rate in effect for the highest class of vehicle registered under the account at the time the customer's electronic toll transaction is processed.

"Insufficient funds account—Private unregistered accounts" means an ETC customer's private unregistered account with a balance less than the single toll rate in effect for Class 2 vehicles at the time the electronic toll transaction is processed.

"Independent toll collection company" means a vendor who contracts with WSDOT to collect and process tolls and detect and process toll violations.

"Low balance account" means a customer account with a balance equal to two times the toll rate normally paid by the customer or less.

"Manual payment toll customer" means a toll customer who manually pays their toll at a tollbooth.

"Nonrevenue account" means an account approved by WSDOT that exempts those account vehicles from paying a toll.

"Notice of nonsufficient funds (NSF)" means the notice sent to a toll customer who presented a nonsufficient funds check to WSDOT in payment of any toll transaction. This notice will be mailed to the toll customer at the address noted on the check returned from the financial institution.

"Notice of dishonored credit card transaction" means a transaction authorized by a toll customer that is not honored by the financial institution for any reason except for the existence of a stop payment order.

"Person" means an individual, firm, partnership, corporation, or association.

"Photo monitoring system" means a system where a sensor, working in conjunction with an electronic toll collection system, is installed in the toll lanes to produce an automatic image of the vehicle as it passes through the toll facility. The photo monitoring system may produce:

- (1) One or more photographs;
- (2) One or more microphotographs;
- (3) A videotape; or
- (4) Any other recorded images that capture each vehicle that passes through the toll facility.

"Pilot project" means a Washington state department of transportation project that serves as a tentative model for future department transportation projects.

"Prepaid account" means an open "Good To Go!™" customer account with a balance in excess of any minimum balance requirements.

"Promotional tolls" means special toll rates that are approved by the toll setting authority and are established for a specified time period and purpose. The purpose of promotional tolls is to increase public participation in WSDOT "Good To Go!™" toll collection programs.

"Registration hold" means the department of licensing may withhold a vehicle registration or renewal until the vehicle owner's unpaid toll(s) are paid or resolved.

"Shoulder hours" means the hours bracketing the weekday morning and afternoon peak commute hours.

"Toll collection system" means any system that identifies a correct toll and collects its payment. A toll collection system may include manual cash collection, electronic toll collection, and a photo monitoring video tolling (V-Toll) system.

"Toll customer" means someone who passes through a toll facility and is required to pay a toll electronically, manually or according to a video toll (V-Toll) system.

"Toll transportation facility" means a facility whose purpose is to collect and process WSDOT tolls and detect and process toll violations. A toll facility includes all traffic, bridge lanes requiring tolls and any related tollbooths and operation buildings.

"Transportation systems and facilities" means any capital-related investments and additions to the state's transportation infrastructure, including but not limited to highways, roads, bridges, vehicles, and equipment, marine-related facilities, vehicles, and equipment, park and ride lots, transit stations and equipment, transportation management systems, and other transportation-related investments.

"Toll violation" means a failure by a toll customer to pay a required toll.

"Transponder" means a radio frequency identification (RFID) unit attached to a toll customer's vehicle that transmits a radio signal to a reader mounted in the toll facility. The purpose of the transponder is to automatically identify the toll customer's vehicle as it passes through the toll facility.

"Variable pricing" means varying the toll rate by time of day or level of traffic congestion.

"Video-toll" or "V-Toll" means an alternative method of paying a toll. If a toll facility user does not pay the toll, a photo-monitoring system captures the vehicle's license plate and issues a V-Toll bill to the vehicle's registered owner. The amount charged in the V-Toll bill will equal the manual toll due plus an administrative fee.

NEW SECTION

WAC 468-300-808 What toll paying methods are available on WSDOT toll facilities? The following toll paying methods are available on WSDOT toll facilities:

(1) **HOT LANES ONLY:** All vehicles that are required to pay a toll must have an active "Good To Go!™" transponder and account to enable you to pay by electronic toll collection (ETC) via the transponder mounted on your windshield.

(2) **OTHER TOLL FACILITIES:** When you use the Tacoma Narrows Bridge or other WSDOT toll facilities you have three payment options:

(a) **ETC payment:** This electronic toll payment option uses your "Good To Go!™" account in the ETC lanes. This allows you to drive through the toll facility, using the ETC lanes, at regular traffic speed;

(b) **Manual payment:** This payment option requires that you manually pay your toll using cash or a credit or labeled debit card in the manual payment lanes at a tollbooth facility. This option also requires you to stop your vehicle at the tollbooth facility (only on TNB);

(c) **V-Toll payment (available only at Tacoma Narrows Bridge facility):** A V-Toll payment is required when you receive a V-Toll bill. A V-Toll billing will automatically occur when you do not pay the toll, whether using electronic or manual lanes.

NEW SECTION

WAC 468-300-810 Who collects the tolls charged on WSDOT toll roads and bridges? (1) To ensure that tolls at all WSDOT toll facilities are collected in a timely, effective and efficient manner, WSDOT may contract with one or more independent toll collection companies to manage the day-to-day toll collection activities at its various toll facilities.

(2) All toll related revenues collected by any independent toll collection company through WSDOT are payable to the state of Washington.

(3) Although the WSDOT may contract with independent toll collection companies to manage the day-to-day toll collection activities at its toll projects, WSDOT retains ultimate oversight authority for all toll collection operations at those facilities.

NEW SECTION

WAC 468-300-820 What is a "Good To Go!™" toll collection system? (1) "Good To Go!™" is the trademark name for WSDOT's electronic toll collection (ETC) system. This ETC system uses an electronic transmission from a transponder mounted in a toll customer's motor vehicle to record the toll charge and then debit the toll customer's account with an appropriate toll as the customer's vehicle passes through the toll facility at regular speed with no need for slowing or stopping.

(2) The purpose of such an electronic toll collection system is to help manage highway and/or bridge traffic through a toll facility.

Note: To maximize the effectiveness of electronic toll collection technology, WSDOT encourages anyone who regularly travels through a WSDOT toll facility to sign up and participate in the department's "Good To Go!™" system.

NEW SECTION

WAC 468-300-822 Is the WSDOT electronic toll collection (ETC) system compatible with electronic payment methods used by other transportation systems? (1) At the time ETC was first implemented in the United States, automatic vehicle identification (AVI) technology in general was not interoperable;

(2) To the extent that technology and resources permit, WSDOT's electronic toll collection system will use AVI devices that are:

(a) Compatible with:

(i) Other electronic payment devices; or

(ii) Transponders from the Washington state ferry system, other public transportation systems or other toll collection systems; and

(b) Provided by multiple vendors.

(3) WSDOT is committed to ensuring that its electronic toll collection system is customer friendly, cost-effective and compatible (interoperable) with electronic payment devices and/or methods used by other transportation systems. Therefore, using criteria like the following, WSDOT will regularly review its tolling technology and may change its toll collec-

tion methods to ensure customer convenience and toll collection efficiency at a reasonable cost:

- (a) Open road (nonstop) electronic toll collection capability;
- (b) Cost of transponders to customers;
- (c) Ability to meet department operational and accuracy standards; and
- (d) Compatibility with other electronic toll collection technologies that are in use or are emerging.

NEW SECTION

WAC 468-300-824 Will commercial vehicles using the CVISN program need a special transponder to use WSDOT toll facilities? WSDOT will install readers at all toll sites that will accept electronic toll payments from any commercial vehicle participating in the Washington state electronic weigh state bypass (CVISN) program.

A CVISN participant must open an active "Good To Go!™" account to use this service.

NEW SECTION

WAC 468-300-826 What is "dynamic toll pricing?" Dynamic toll pricing is a toll pricing method that changes based upon live traffic conditions, to maximize the performance of the tolled facility. For example, in a HOT lane the toll rate charged to enter the lane will be lower when more lane space is available, and higher when less lane space is available.

NEW SECTION

WAC 468-300-828 What is the purpose of the department's State Route 167 high-occupancy toll (HOT) lanes pilot project? (1) In chapter 47.56 RCW, the legislature authorized WSDOT to establish, construct and operate a HOT lane pilot project on State Route 167 within King County. The purpose of the project is to help determine if HOT lanes can more efficiently move people and vehicles within the SR 167 corridor by allowing drivers of single occupant vehicles, who pay a toll, to use SR 167 HOV lanes when excess capacity exists.

(2) At a minimum, the pilot project must comply with the following requirements:

- (a) **The commission:**
 - Will establish the schedule of toll charges for high-occupancy toll (HOT) lanes and determine the manner in which the charges are collected.
 - Will not assess HOT lane toll charges on transit buses and vanpool vehicles owned or operated by any public agency.
 - May use dynamic pricing to vary HOT lane toll charges by time of day, level of traffic congestion within the highway facility, vehicle occupancy, or other criteria that the commission deems appropriate.
 - May vary HOT lane toll charges for single-occupant inherently low-emission vehicles, such as those powered by electric batteries, natural gas, propane, or other clean burning fuels.

• Will periodically review HOT lane toll charges to determine if they are effectively maintaining travel time, speed, and reliability on the highway facilities.

• Will remove the HOT lane toll charges four years after toll collection begins, unless reauthorized by the Washington state legislature.

(b) **The department:**

• Will, if necessary, automatically adjust HOT lane toll charges, using dynamic tolling, to limit toll-paying single-occupant vehicle users access to the HOT lanes in order to maintain average HOT lane vehicle speeds above forty-five miles per hour, at least ninety percent of the time during peak hours.

• Will monitor the pilot project and annually report to the commission and the legislature on operations and findings.

• Will modify the pilot project, if necessary, to address identified safety issues and mitigate negative impacts to high-occupancy vehicle lane users.

• Will adopt rules allowing the automatic vehicle identification transponders used for electronic toll collection on the pilot project to be compatible with other electronic payment devices or transponders from the Washington state ferry system, other public transportation systems, or other toll collection systems to the extent that technology and resources permit.

(3) A violation of the pilot project's high-occupancy toll lane restrictions is a traffic infraction.

NEW SECTION

WAC 468-300-830 How can I open a "Good To Go!™" customer account and use the electronic toll collection lanes? To open a "Good To Go!™" customer account, you must complete "Good To Go!™" account application and prepay at least the minimum fund balance into the account.

Note: The "Good To Go!™" customer contract contains a full explanation of the terms and conditions associated with the WSDOT "Good To Go!™" toll collection program.

NEW SECTION

WAC 468-300-832 What types of "Good To Go!™" customer accounts are available? The following table identifies and describes the various "Good To Go!™" customer accounts that are available:

Type of Account:	Description:
(1) Private registered	A prepaid "Good To Go!™" account that: <ul style="list-style-type: none"> • Is for a private party (not a business entity); • Includes customer-identifying information. • May be charged for cost of transponder.
(2) Private unregistered	A prepaid "Good To Go!™" account that:

Type of Account:	Description:
	<ul style="list-style-type: none"> Is for a private party (not a business entity); and Does not include customer-identifying information. Private unregistered account customers are anonymous. May be charged for cost of transponder.
(3) Commercial pre-paid	<p>A "Good To Go!™" account that:</p> <ul style="list-style-type: none"> Must be in a business name, which may be a person; Must have a business contact listed on the account; and May be charged for cost of transponder.
(4) Nonrevenue	<p>A "Good To Go!™" account that:</p> <ul style="list-style-type: none"> Must be requested by an applicant; Can only be opened after a signed authorization is obtained from WSDOT; May be charged for cost of transponder; and May be required to pay for a replacement transponder if a transponder is lost, stolen or defaced.

NEW SECTION

WAC 468-300-834 Do I need to establish a separate "Good To Go!™" account for each "Good To Go!™" toll road or bridge that I use? If you are using a "Good To Go!™" transponder issued by any "Good To Go!™" toll facility operator, you may use any "Good To Go!™" toll facility without establishing a separate toll account.

NEW SECTION

WAC 468-300-840 What is a customer service center (CSC)? (1) CSCs are established for "Good To Go!™" toll projects to:

- (a) Provide tolling information to current and prospective "Good To Go!™" toll customers;
 - (b) Enroll toll customers into the department's "Good To Go!™" program;
 - (c) Accept "Good To Go!™" payments from customers;
 - (d) Accept V-Toll payments; and
 - (e) Provide other customer related services as needed.
- (2) WSDOT may contract with an independent toll collection company to operate a CSC.

(3) To learn the location of a CSC near you and how it operates, please call 1-866-WDOT2GO (1-866-936-8246) or go on-line at wsdot.wa.gov/goodtogo.

NEW SECTION

WAC 468-300-850 What toll payment methods are available to "Good To Go!™" customers? The following table describes the payment methods available to "Good To Go!™" customers:

Forms of payment acceptable for "Good To Go!™" account replenishment fees	Payment options available to walk-in customers	Mail-in payment options available	Telephone and fax payment options available	On-line payment options available	Automatic account replenishment payment options available
Cash and cash-equivalents (U.S. currency only):					
U.S. coin and currency	Yes	No	No	No	No
Personal checks	Yes	Yes	No	No	No
Business checks	Yes	Yes	No	No	No
Travelers checks	Yes	Yes	No	No	No
Bank checks	Yes	Yes	No	No	No
Money orders	Yes	Yes	No	No	No
Vouchers	Yes	No	No	No	No
Forms of payment other than cash and cash-equivalents (U.S. currency only):					
Credit cards (Master Card, VISA, Discover, American Express)	Yes	Yes	Yes	Yes	Yes
Labeled debit cards (no pin)	Yes	Yes	Yes	Yes	Yes
Unlabeled debit cards (with pin)	Yes	No	No	No	No
Electronic Benefit Transfer	Yes	No	No	No	No
Automated Clearing House	Yes	Yes	Yes	No	Yes

NEW SECTION

WAC 468-300-852 How can my customer account be closed? Your account may be closed by:

- (1) **Customer request.**
- (2) **Automatic closure:** Your account may be automatically closed:
 - (a) After twenty-four months of showing no account activity; or
 - (b) After one day of showing a zero balance; or
 - (c) Immediately upon showing a negative balance.

NEW SECTION

WAC 468-300-853 If my registered account is closed, am I entitled to a refund? Refunds may be obtained upon closure of your registered account according to the procedures and circumstances listed in the table below. Refunds shall be in the form of original payment, when possible. For example, if deposit was made by credit card, the refund would be a credit to the same credit card.

If:	Then:
(1) Your account is changed to "closed pending" status either by your request, or automatically, by twenty-four months of inactivity:	A refund will be distributed to you within fifteen days after any outstanding toll charges are paid.
(2) You visit a customer service center and request that your account be closed:	Any cash or credit card refunds due to you will be distributed to you within fifteen days after the day that you requested that your account be closed.
(3) You request and complete refund form and return it to the customer service center.	Any refunds due you will be processed and distributed to you within fifteen days from the date WSDOT received your completed request.

NEW SECTION

WAC 468-300-860 What administrative fees may apply to WSDOT toll customers? The following table lists and explains the administrative fees that a toll customer may have to pay:

What customer services result in administrative fees being charged?	When is the administrative fee charged?	The amount of each administrative fee listed in this table is established in the "Good To Go! TM " customer contract
Mailing paper copies of "Good To Go! TM " private registered account statements	Private registered accounts will be assessed a fee for each paper statement mailed.	\$1.50 per each statement mailed
Mailing paper copies of "Good To Go! TM " commercial account statements beyond the regularly provided quarterly statement	Commercial customer accounts will be assessed a statement fee for each paper statement mailed in excess of the regular quarterly statement.	\$.50 per page

If:	Then:
(4) You request a refund for disputed charges:	(a) Your request will be submitted to WSDOT for approval.
	(b) If WSDOT approves your requested refund, it will be processed and distributed to you within fifteen days from the date your request was approved.

NEW SECTION

WAC 468-300-854 What toll payment methods are available to manual toll customers? The following table describes the forms of toll payments available to **manual toll customers** and the conditions under which toll collectors will accept those payments:

Accepted Form of Toll Payment:	Accepted Only In:
U.S. coin and currency	Staffed toll lanes and exact change lanes
Credit cards (Master Card, VISA, Discover, American Express)	Enabled toll lanes
Labeled debit cards (no pin)	Enabled toll lanes
Regional fare coordination system (RFCS) fare media (smart cards) from the Washington state ferry system and the regional transportation systems of Pierce, King, Snohomish and Thurston counties	Enabled toll lanes when implemented
Other noncash instruments authorized by the department	Enabled toll lanes

What customer services result in administrative fees being charged?	When is the administrative fee charged?	The amount of each administrative fee listed in this table is established in the "Good To Go!™" customer contract
Reprinting copies of "Good To Go!™" statements for "private registered accounts"	When a "Good To Go!™" customer requests that a reprint of a previous account statement be mailed to them.	\$1.50 per each mailed reprinted statement
"Good To Go!™" customer whose account shows a negative balance, therefore the account is closed	When that "Good To Go!™" customer incurs further toll charges.	Manual toll charge and a \$10.00 administrative fee
Processing nonsufficient fund (NSF) checks	Each time WSDOT receives notice of a NSF check.	Current fee rate for each nonsufficient check
Account collection fee	WSDOT will assess a collection fee when a toll customer's account is turned over to a collection agency.	Amount designated by the collection agency per each account
Closing an inactive "Good To Go!™" account	When a "Good To Go!™" customer account has not been used for twenty-four consecutive months. This monthly service fee will be assessed until the: (1) Customer's account balance drops below the lowest class toll rate in effect during the time the account is inactive; or (2) Customer requests that their account be closed; or (3) Customer reactivates their account by using it to pay a toll.	Inactive closing fee \$5.00
Replacing a transponder	"Good To Go!™" customers may be required to purchase a replacement transponder if it is lost, stolen or damaged.	Cost of transponder

NEW SECTION

WAC 468-300-862 What administrative services are provided to WSDOT toll customers without charge? The WSDOT provides the following administrative services to WSDOT toll customers without charge:

- (1) Electronic statements are free and are automatically available to "Good To Go!™" customers at wsdot.wa.gov/goodtogo;
- (2) Paper statements, including reprints, may be provided without charge to customer service center walk-in customers upon request;
- (3) The interactive voice response (IVR) system provides previous day account balance information and information regarding the last ten account transactions and the last five payments to call-in customers without charge at 1-866-WDOT2GO or 1-866-936-8246;
- (4) Customer service representatives will provide account balance information to call-in customers without charge; and
- (5) Paper statements will be issued to nonrevenue account customers without charge but only upon request and will be limited to no more than one statement per quarter.

NEW SECTION

WAC 468-300-870 What if I drive through a toll facility lane without paying a toll? (1) **HOT lanes customers only:** If you are required to pay a toll to use the HOT lane and use the HOT lanes without a valid "Good To Go!™" account, you will be committing a traffic infraction and may receive a traffic citation from the WSP.

(2) **Other toll facility customers:** If you use a WSDOT toll facility, whether you use the ETC lanes or the manual toll payment lanes, and do not pay your toll, your vehicle license will be photographed and a V-Toll bill will be issued consisting of the original toll amount plus an administrative fee. Payment of the V-Toll will be as follows:

- (a) If you have a valid "Good To Go!™" ETC account, the V-Toll is automatically deducted from your account.
- (b) If you have a "Good To Go!™" ETC account whether registered or unregistered that has been closed due to a negative balance at the time a new toll is charged, you will receive a V-Toll which will be sent to you by mail together with a notice of nonsufficient funds account balance and account closure.
- (c) WSDOT V-Tolls are "self-escalating." Your V-Toll bill will contain specific escalation dates for each V-Toll you commit. The following table summarizes how your V-Toll bill increases if you delay responding to the WSDOT:

Escalation stage:	Time period:	Your (toll violator) responsibility:
First stage	Day 1 through Day 7	You must pay the toll you owe plus the \$10.00 administrative fee.
Second stage	Day 8 through Day 14	You must pay your unpaid toll plus the \$20.00 administrative fee.
Third stage	Day 15 through Day 30	You must pay your unpaid toll plus the \$40.00 administrative fee.

(e) Partial payments of V-Toll bills do not stop the escalation process.

NEW SECTION

WAC 468-300-872 Who receives the V-Toll bill when the photo enforcement system photographs the vehicle and license plate of a driver who has not paid a required toll? WSDOT presumes that the registered owner of the vehicle is the driver of the vehicle; therefore, the owner of the vehicle will receive the V-Toll bill. The owner can appeal the V-Toll bill using the appeal process described in WAC 468-300-880.

NEW SECTION

WAC 468-300-876 What happens if I don't pay the V-Toll amount that I owe? (1) You will have forty-five days to pay the V-Toll amount that you owe.

(2) If you don't pay the V-Toll amount owed within forty-five days, the WSDOT may turn your unpaid V-Toll bill over to a collection agency; or

(3) If your V-Toll continues to be unpaid, the final outcome may be a hold on the renewal of your vehicle license tabs until the V-Toll and associated fees are paid.

NEW SECTION

WAC 468-300-878 How and where do I pay my V-Toll bills? All V-Toll bills must be paid to WSDOT according to the instructions located on the bill.

NEW SECTION

WAC 468-300-880 Can I appeal my V-Toll? (1) You can appeal your V-Toll for any one of the following reasons:

Type of Appeal	Basis for Appeal	Are Toll Payments Required with Your Appeal?
Form A appeals	If you can prove that: <ul style="list-style-type: none"> You are an account holder in good standing; and Your transponder was properly mounted when you incurred the V-Toll; and Your transponder was faulty or malfunctioned. 	No
Form B appeals	If you can verify that you are not responsible for the tolls incurred by the vehicle listed on the V-Toll bill due to one of the following reasons: <ol style="list-style-type: none"> (1) The photographed vehicle was leased and the vehicle's owner can provide a copy of the lease agreement page that clearly shows the lessee's name and address; or (2) The photographed vehicle was owned by a rental company and the rental company can provide a copy of the rental page contract that includes the renter's name, address and time of rental; or (3) The photographed vehicle was stolen from you and you can provide a copy of the police report; or (4) The photographed vehicle license plate identified in your V-Toll bill was stolen from you and you can provide a copy of the police report. 	No

(2) To appeal your V-Toll, you must complete the appeal form on the back of the V-Toll notice, or call the customer service center at 1-866-WDOT2GO (1-866-936-8246) and request an appeal form.

(3) Your completed appeal form must be:

(a) Returned to the customer service center within twenty-five calendar days of the mail date of the V-Toll notice. The center will automatically reject any appeal forms received later than twenty-five calendar days from the V-Toll date.

(b) Signed and dated by you.

(c) Mailed to the address on appeal form.

(4) Once the customer service center receives your completed appeal form, WSDOT has ten days to notify you regarding the status of your appeal. The department's notification will be by telephone, e-mail or written letter.

NEW SECTION

WAC 468-300-890 How does WSDOT process dishonored checks and dishonored credit card transactions?
 The process for handling dishonored checks and dishonored credit card transactions described in this section is based upon WAC 468-20-900 (Dishonored checks).

**WSR 07-02-105
 PROPOSED RULES
 DEPARTMENT OF AGRICULTURE**

[Filed January 3, 2007, 10:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-19-096 and 06-19-097.

Title of Rule and Other Identifying Information: The department is proposing to adopt motor fuel (including bio-fuel) quality and labeling standards. Specifically, this includes:

(1) Adopting the Uniform Engine Fuels, Petroleum Products, and Automotive Lubricants Regulation published in NIST Handbook 130 (with modifications in accordance with chapters 19.94 and 19.112 RCW); and

(2) Modifying the existing modifications listed in WAC 16-662-115 to the Uniform Regulation for the Method of Sale of Commodities requirements, as published in NIST Handbook 130.

This proposal does not address automotive lubricants.

Hearing Location(s): Washington State Department of Agriculture, 1111 Washington Street S.E., Natural Resources Building, 2nd Floor, Conference Room 259, Olympia, WA 98504-2560, on February 15, 2007, at 10:00 a.m.

Date of Intended Adoption: February 21, 2007.

Submit Written Comments to: Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, e-mail hgonzales@agr.wa.gov, fax (360) 902-2094, by February 15, 2007.

Assistance for Persons with Disabilities: Contact Henri Gonzales by February 8, 2007, TTY (360) 902-1996 or (360) 902-2061.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: During the 2006 legislative session, legislation was passed relative to biofuels. RCW 19.112.020 was amended to require fuel pumps offering biodiesel and ethanol blends to be identified by a label stating the percentage of biodiesel or ethanol. RCW 19.112.020(2) also states that the director may adopt rules about labeling and standards for, and identity of, motor fuels. These amendments to the rules are necessary to protect consumers, and to assist industry by providing uniformity for motor fuel quality and labeling.

Statutory Authority for Adoption: Chapters 19.112 and 34.05 RCW.

Statute Being Implemented: Chapter 19.94 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kirk Robinson, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1856.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 (1)(a) requires that an agency must prepare a small business economic impact statement (SBEIS) for proposed rules that impose a more than minor cost on businesses in an industry. The department has analyzed the economic effects of the proposed revisions and has concluded that they do not impose a more than minor cost on small businesses in the regulated industry and, therefore, a formal SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

January 3, 2007

Mary A. Martin Toohy
 Assistant Director

AMENDATORY SECTION (Amending WSR 07-01-115[A], filed 12/20/06, effective 1/20/07)

WAC 16-662-105 What national weights and measures standards are adopted by the Washington state department of agriculture (WSDA)? The WSDA adopts the following national standards:

National standard for:	Contained in the:
(1) The specifications, tolerances, and other technical requirements for the design, manufacture, installation, performance test, and use of weighing and measuring equipment	2007 Edition of <i>NIST Handbook 44 - Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices</i>
(2) The procedures for checking the accuracy of the net contents of packaged goods	Fourth Edition (January 2005) of <i>NIST Handbook 133 - Checking the Net Contents of Packaged Goods</i>
(3) The requirements for packaging and labeling, method of sale of commodities, ((and the)) examination procedures for price verification, <u>and engine fuels, petroleum products and automotive lubricants</u>	2006 Edition of <i>NIST Handbook 130 - Uniform Laws and Regulations in the areas of legal metrology and engine fuel quality</i> , specifically:
(a) Weights and measures requirements for all food and nonfood commodities in package form	<i>Uniform Packaging and Labeling Regulation</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130, 2006 Edition</i>

National standard for:	Contained in the:
(b) Weights and measures requirements for the method of sale of food and nonfood commodities	<i>Uniform Regulation for the Method of Sale of Commodities</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130</i> , 2006 Edition
(c) Weights and measures requirements for price verification	<i>Examination Procedure for Price Verification</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130</i> , 2006 Edition
(d) Definitions and requirements for standard fuel specifications; classification and method of sale of petroleum products; retail storage tanks; condemned products; product registration; and test methods and reproducibility limits	<i>Uniform Engine Fuels, Petroleum Products, and Automotive Lubricants Regulation</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130</i> , 2006 Edition

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

AMENDATORY SECTION (Amending WSR 05-10-088, filed 5/4/05, effective 6/4/05)

WAC 16-662-100 What is the purpose of this chapter? (1) This chapter establishes requirements for the state of Washington that are reasonably consistent with the uniform rules adopted by the National Conference on Weights and Measures and that are in effect in other states.

(2) This chapter applies specifically to the:

(a) Uniform specifications, tolerances and other technical requirements for weighing and measuring devices addressed in the *National Institute of Standards and Technology (NIST) NIST Handbook 44*;

(b) Uniform procedures for checking the net contents of packaged goods addressed in *NIST Handbook 133*;

(c) Uniform packaging and labeling regulation addressed in *NIST Handbook 130*;

(d) Uniform regulation for the method of sale of commodities addressed in *NIST Handbook 130*; ~~((and))~~

(e) Uniform examination procedure for price verification addressed in *NIST Handbook 130*; and

(f) Engine fuels, petroleum products, and automotive lubricants regulation addressed in *NIST Handbook 130*.

(3)(a) *NIST Handbook 44*, *NIST Handbook 130* and *NIST Handbook 133*, may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. They are also available on the National Institute of Standards and Technology web site at <http://ts.nist.gov/ts/htdocs/230/235/owmhome.htm>.

(b) For information regarding the contents and application of these publications, contact the weights and measures program at the Washington State Department of Agriculture, P.O. Box 42560, Olympia, Washington 98504-2560, telephone number 360-902-1857, or e-mail wts&measures@agr.wa.gov.

AMENDATORY SECTION (Amending WSR 05-10-088, filed 5/4/05, effective 6/4/05)

WAC 16-662-115 Does the WSDA modify *NIST Handbook 130*? The WSDA adopts the following modifications to the *Uniform Regulation for the Method of Sale of Commodities* requirements published in *NIST Handbook 130*, identified in WAC 16-662-105 (3)(b):

<u>((Modified Section:</u>	<u>Modification:</u>
<u>(1) Section 2.20 Gasoline-Oxygenate Blends</u>	<u>Delete Section 2.20 because the requirements for this subject are addressed in RCW 19.94.505 and chapter 16-657 WAC</u>
<u>(2) Section 2.23 Animal Bedding</u>	<u>Add a new subsection, which reads as follows: 2.23.1 Sawdust, Barkdust, Decorative Wood Particles, and Similar Products. As used in this subsection, "unit" means a standard volume equal to 200 cubic feet. When advertised, offered for sale, or sold within Washington state, quantity representations for sawdust, barkdust, decorative wood particles, and similar loose bulk materials must be in cubic measures or units and fractions thereof.))</u>

<u>Modified Section:</u>	<u>Modification:</u>
<u>(1) Section 2.20. Gasoline-Oxygenate Blends</u>	<u>Modify section 2.20.1. Method of Retail Sale - Type of Oxygenate must be Disclosed, to read: All automotive gasoline or automotive gasoline-oxygenate blends kept, offered, or exposed for sale, or sold at retail containing at least 1.5 mass percent oxygen shall be identified as "with" or "containing" (or similar wording) the predominant oxygenate in the engine fuel. For example, the label may read "contains ethanol." The oxygenate contributing the largest mass percent oxygen to the blend shall be considered the predominant oxygenate. Where mixtures of only ethers are present, the retailer may post the predominant oxygenate</u>

<u>Modified Section:</u>	<u>Modification:</u>
	<p><u>followed by the phrase "or other ethers." In addition, gasoline-methanol blend fuels containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This information shall be posted on the upper fifty percent of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type). Methanol at one percent or greater, by volume, in gasoline for use as motor vehicle fuel must be labeled with the maximum percentage of methanol contained in the motor vehicle fuel. Ethanol at no less than one percent and no more than ten percent, by volume, must be labeled "Contains up to 10% Ethanol." Ethanol at greater than ten percent by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "Ethanol." (Example: E85 Ethanol.)</u></p> <p><u>Modify section 2.20.2. Documentation for Dispenser Labeling Purposes, to read: At the time of delivery of the fuel, the retailer shall be provided, on an invoice, bill of lading, shipping paper, or other documentation a declaration of the predominant oxygenate or combination of oxygenates present in concentrations sufficient to yield an oxygen content of at least 1.5 mass percent in the fuel. Where mixtures of only ethers are present, the fuel supplier may identify the predominant oxygenate in the fuel (i.e., the oxygenate contributing the largest mass percent oxygen). In addition, any gasoline containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This documentation is only for dispenser labeling purposes; it is the responsibility of any potential blender to determine the total oxygen content of the engine fuel before blending. When ethanol and/or methanol is blended at one percent or greater, by volume, in gasoline for use as motor vehicle fuel, documentation must include the volumetric percentage of ethanol and/or methanol.</u></p>
(2) <u>Section 2.23. Animal Bedding</u>	<p><u>Add a new subsection, which reads: 2.23.1 Sawdust, Barkdust, Decorative Wood Particles, and Similar Products. As used in this subsection, "unit" means a standard volume equal to 200 cubic feet. When advertised, offered for sale, or sold within Washington state, quantity representations for sawdust, barkdust, decorative wood particles, and similar loose bulk materials must be in cubic measures or units and fractions thereof.</u></p>

The WSDA adopts the following modifications to the *Uniform Engine Fuels, Petroleum Products, and Automotive Lubricants Regulation* requirements published in *NIST Handbook 130*, identified in WAC 16-662-105 (3)(d):

<u>Modified Section:</u>	<u>Modification:</u>
(1) <u>Section 2.12. Motor Oil</u>	<u>Delete section 2.12.</u>
(2) <u>Section 2.13. Products for Use in Lubricating Manual Transmissions, Gears, or Axles</u>	<u>Delete section 2.13.</u>
(3) <u>Section 2.14. Products for Use in Lubricating Automatic Transmissions</u>	<u>Delete section 2.14.</u>
(4) <u>Section 3.2.6. Method of Retail Sale. Type of Oxygenate must be Disclosed</u>	<p><u>Modify section 3.2.6 to read: All automotive gasoline or automotive gasoline-oxygenate blends kept, offered, or exposed for sale, or sold at retail containing at least 1.5 mass percent oxygen shall be identified as "with" or "containing" (or similar wording) the predominant oxygenate in the engine fuel. For example, the label may read "contains ethanol." The oxygenate contributing the largest mass percent oxygen to the blend shall be considered the predominant oxygenate. Where mixtures of only ethers are present, the retailer may post the predominant oxygenate followed by the phrase "or other ethers." In addition, gasoline-methanol blend fuels containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This information shall be posted on the upper fifty percent of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type). Methanol at one percent or greater, by volume, in gasoline for use as motor vehicle fuel must be labeled with the maximum percentage of methanol contained in the motor vehicle fuel. Ethanol at no less than one percent and no more than ten percent, by volume, must be labeled</u></p>

<u>Modified Section:</u>	<u>Modification:</u>
	<u>"Contains up to 10% Ethanol." Ethanol at greater than ten percent by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol" (example: E85 Ethanol).</u>
(5) <u>Section 3.2.7. Documentation for Dispenser Labeling Purposes</u>	<u>Modify section 3.2.7 to read: The retailer shall be provided, at the time of delivery of the fuel, on an invoice, bill of lading, shipping paper, or other documentation, a declaration of the predominant oxygenate or combination of oxygenates present in concentrations sufficient to yield an oxygen content of at least 1.5 mass percent in the fuel. Where mixtures of only ethers are present, the fuel supplier may identify the predominant oxygenate in the fuel (i.e., the oxygenate contributing the largest mass percent oxygen). In addition, any gasoline containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This documentation is only for dispenser labeling purposes; it is the responsibility of any potential blender to determine the total oxygen content of the engine fuel before blending. When ethanol and/or methanol is blended at one percent or greater, by volume, in gasoline for use as motor vehicle fuel, documentation must include the volumetric percentage of ethanol and/or methanol.</u>
(6) <u>Section 3.8.2. Retail Dispenser Labeling</u>	<u>Modify section 3.8.2 to read: Each retail dispenser of not less than one percent and not more than ten percent, by volume, fuel ethanol must be labeled "Contains up to 10% Ethanol." Each retail dispenser of greater than ten percent fuel ethanol by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol" (example: E85 Ethanol).</u>
(7) <u>Section 3.9.2. Retail Dispenser Labeling</u>	<u>Modify section 3.9.2 to read: Each retail dispenser of fuel methanol shall be labeled by the capital letter M followed by the numerical value maximum volume percent and ending with the word "methanol." (Example: M85 Methanol.)</u>
(8) <u>Section 3.13. Oil</u>	<u>Delete section 3.13.</u>
(9) <u>Section 3.14. Automatic Transmission Fluid</u>	<u>Delete section 3.14.</u>
(10) <u>Section 3.15.2. Labeling of Retail Dispensers Containing between 5% and 20% Biodiesel</u>	<u>Modify section 3.15.2 to read: 3.15.2. Labeling of Retail Dispensers Containing not More Than 5% Biodiesel. Each retail dispenser of biodiesel blend containing not less than two percent and not more than five percent biodiesel must be labeled "Contains up to 5% Biodiesel." 3.15.2.1. Retail dispensers containing less than two percent biodiesel may not be labeled as dispensing biodiesel or biodiesel blends. Delete section 3.15.2.2.</u>
(11) <u>Section 3.15.3. Labeling of Retail Dispensers Containing more than 20% Biodiesel</u>	<u>Modify section 3.15.3 to read: 3.15.3. Labeling of Retail Dispensers Containing More Than 5% Biodiesel. Each retail dispenser of biodiesel or biodiesel blend containing more than five percent biodiesel must be labeled with the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either "biodiesel" or "biodiesel blend" (examples: B100 Biodiesel; B60 Biodiesel blend).</u>
(12) <u>Section 3.15.5. Exemption</u>	<u>Delete section 3.15.5.</u>
(13) <u>Section 7. Test Methods and Reproducibility Limits</u>	<u>Add a new subsection that reads: 7.3 Biodiesel Blends - The test method for determining the percent biodiesel in a blend of biodiesel and diesel fuel shall be EN 14078 "Liquid petroleum products - Determination of fatty methyl esters (FAME) in middle distillates - Infrared spectroscopy method." When ASTM develops a comparable standard test method, the ASTM method will become the standard method for purposes of this rule.</u>