

WSR 07-23-057
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed November 16, 2007, 9:01 a.m., effective November 16, 2007, 9:01 a.m.]

Effective Date of Rule: Immediately.

Purpose: To comply with the provisions of chapter 5, Laws of 2007 (2SSB 5093) which authorize medical assistance coverage for all children living in households with income at or below 250% of the federal poverty level (FPL). The law became effective July 22, 2007. This continues the emergency rule adopted under WSR 07-16-022 while the permanent rule-making process is completed.

Citation of Existing Rules Affected by this Order: Amending WAC 388-416-0015, 388-418-0025, 388-450-0210, 388-478-0075, 388-505-0210, 388-505-0211, 388-542-0010, 388-542-0020, 388-542-0050, and 388-542-0300.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, and 74.09.700.

Other Authority: Chapter 5, Laws of 2007 (2SSB 5093).

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: To be compliant with state law while the permanent rule-making process, initiated under WSR 07-11-098, is completed.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 10, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 10, Repealed 0.

Date Adopted: November 7, 2007.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-24-036, filed 11/30/06, effective 1/1/07)

WAC 388-416-0015 Certification periods for categorically needy (CN) ~~((medical and state children's health insurance program (SCHIP)))~~ scope of care medical assistance programs. (1) A certification period is the period of time a person is determined eligible for a categorically needy (CN) scope of care medical program. Unless otherwise stated in this section, the certification period begins on the first day

of the month of application and continues to the last day of the last month of the certification period.

(2) For a child eligible for the newborn medical program, the certification period begins on the child's date of birth and continues through the end of the month of the child's first birthday.

(3) For a woman eligible for a medical program based on pregnancy, the certification period ends the last day of the month that includes the sixtieth day from the day the pregnancy ends.

(4) For families the certification period is twelve months with a six-month report required as a condition of eligibility as described in WAC 388-418-0011.

(5) For children, the certification period is twelve months. Eligibility is continuous without regard to changes in circumstances other than aging out of the program, moving out of state, failing to pay a required premium(s), incarceration or death. ~~((When the medical assistance unit is also receiving benefits under a cash or food assistance program, the medical certification period is updated to begin anew at each:~~

~~(a) Approved application for cash or food assistance; or
(b) Completed eligibility review.))~~

~~(6) ((For an SSI-related person the certification period is twelve months.~~

~~(7))~~ When the child turns nineteen the certification period ends even if the twelve-month period is not over. The certification period may be extended past the end of the month the child turns nineteen when:

(a) The child is receiving inpatient services (see WAC 388-505-0230) on the last day of the month the child turns nineteen;

(b) The inpatient stay continues into the following month or months; and

(c) The child remains eligible except for exceeding age nineteen.

~~((8))~~ (7) For an SSI-related person the certification period is twelve months.

(8) When the medical assistance unit is also receiving benefits under a cash or food assistance program, the medical certification period is updated to begin anew at each:

(a) Approved application for cash or food assistance; or
(b) Completed eligibility review.

(9) A retroactive certification period can begin up to three months immediately before the month of application when:

(a) The client would have been eligible for medical assistance if the client had applied; and

(b) The client received covered medical services as described in WAC 388-501-0060 and 388-501-0065.

~~((9))~~ (10) If the client is eligible only during the three-month retroactive period, that period is the only period of certification.

~~((10))~~ (11) Any months of a retroactive certification period are added to the designated certification periods described in this section.

~~((11))~~ (12) ((For a child determined eligible for SCHIP medical benefits as described in chapter 388-542 WAC:

~~(a) The certification periods are described in subsections (1), (5), and (7) of this section;~~

~~(b) There is not a retroactive eligibility period as described in subsections (8), (9), and (10); and~~

~~(c) For a child who has creditable coverage at the time of application, the certification period begins on the first of the month after the child's creditable coverage is no longer in effect, if:~~

~~(i) All other SCHIP eligibility factors are met; and~~

~~(ii) An eligibility decision is made per WAC 388-406-0035)) There is no retroactive eligibility for premium-based children's healthcare as described in WAC 388-505-0210 and chapter 388-542 WAC. If creditable coverage exists at the time of application, the certification period begins the month after creditable coverage ends.~~

AMENDATORY SECTION (Amending WSR 05-23-013, filed 11/4/05, effective 1/1/06)

WAC 388-418-0025 Effect of changes on medical program eligibility. (1) You continue to be eligible for ~~((Medicaid))~~ medical assistance until the department determines your ineligibility or eligibility for another medical program. This applies to you if, during a certification period, you become ineligible for, or are terminated from, or request termination from:

(a) A CN Medicaid program; ~~((or))~~

(b) A children's healthcare program; or

(c) Any of the following cash grants:

(i) TANF;

(ii) SSI; or

(iii) GA-X. See WAC 388-434-0005 for changes reported during eligibility review.

(2) If you become ineligible for refugee cash assistance, refugee medical assistance can be continued through the eight-month limit, as described in WAC 388-400-0035(4).

(3) If you receive a TANF cash grant or family medical, you are eligible for a medical extension, as described under WAC 388-523-0100, when your cash grant or family medical program is terminated as a result of:

(a) Earned income; or

(b) Collection of child or spousal support.

(4) A change in income during a certification period does affect eligibility for all medical programs except:

(a) Pregnant women's medical programs;

(b) Children's ~~((medical for newborns (F05)))~~ healthcare programs, except as specified in subsection (5); or

~~(c) ((Children's medical benefits (F06);~~

~~(d) Children's health program (F08); or~~

~~(e))~~ The first six months of the medical extension benefits.

(5) For a child receiving benefits under ~~((SCHIP))~~ the premium-based children's healthcare programs as described in WAC 388-505-0210 and chapter 388-542 WAC, the department must redetermine eligibility for a ~~((Medicaid))~~ nonpremium-based medical program when the family reports:

(a) Family income has decreased to less than two hundred percent federal poverty level (FPL);

(b) The child becomes pregnant;

(c) A change in family size; or

(d) The child receives SSI.

AMENDATORY SECTION (Amending WSR 05-23-013, filed 11/4/05, effective 1/1/06)

WAC 388-450-0210 Countable income for medical programs. (1) For purposes of medical program eligibility, a client's countable income is income which remains when:

(a) The income cannot be specifically excluded; and

(b) All appropriate deductions and disregards allowed by a specific program, have been applied.

(2) A client's countable income cannot exceed the income standard for the specific medical programs described in WAC 388-478-0065, 388-478-0070, 388-478-0075, 388-478-0080, or 388-513-1305, 388-513-1315, or 388-513-1395 unless the program allows for those limits to be exceeded.

(3) Unless modified by subsection (4) of this section, the TANF/SFA income rules, as described in this chapter, are used to determine a client's countable income for the following programs:

(a) Family medical program as described in WAC 388-505-0220;

(b) Medical extensions as described in chapter 388-523 WAC;

(c) Pregnant women's program as described in WAC 388-462-0015;

(d) Children's ~~((medical))~~ healthcare programs as described in WAC 388-505-0210; and

~~(e) ((Children's health program as described in WAC 388-505-0210; and~~

~~(f))~~ Psychiatric indigent inpatient (PII) program as described in WAC 388-865-0217.

(4) Exceptions to the TANF/SFA cash assistance methodology apply as follows:

(a) The financial responsibility of relatives when a client is applying for medical for families, children, pregnant women or for the psychiatric indigent inpatient program is specified in WAC 388-408-0055;

(b) Actual work-related child and dependent care expenses, which are the client's responsibility, are income deductions (the limits on this deduction in WAC 388-450-0170 (3) and (4) do not apply);

(c) Court or administratively ordered current or back support paid to meet the needs of legal dependents, are income deductions;

(d) Only income actually contributed to an alien client from the alien's sponsor is countable unless the sponsor signed the affidavit of support I-864 or I-864A. See subsection (5) of this section;

(e) TANF/SFA gross earned income limits as described in WAC 388-450-0165 do not apply;

(f) The fifty percent earned income deduction is not used to calculate countable income for CN scope of care programs with income levels based upon the federal poverty level (FPL). These programs are listed in subsections (3)(c)((-)) and (d) ~~((and (e) of this section))~~. The only work related income deductions for these programs are:

(i) Ninety dollars; and

(ii) Actual work-related child and dependent care expenses, as described in (b) of this subsection; and

(iii) Child support as described in (c) of this subsection.

(g) When determining medically needy (MN) or MN scope of care coverage for children or pregnant women for

the programs described in subsections (3)(c)(~~(i)~~) and (d), (~~and (e)~~); the exception described in subsection (4)(f) is not used as the MN income standards are not based on the FPL;

(h) A nonrecurring lump sum payment is considered as follows:

(i) For TANF-related medical, as income in the month the client receives payment, and a resource if the client receives the payment after the month of receipt; or

(ii) For SSI-related medical, see WAC 388-475-0300(4).

(i) Diversion cash assistance (DCA), is not countable income;

(j) Effective April 1, 2002, the department will disregard an increase in earned income when:

(i) A family is receiving benefits under the family medical program; and

(ii) The increase occurs during the second or third month of eligibility. The disregard stops the last day of the third month of eligibility for a family medical program.

(5) When an alien's sponsor has signed the affidavit of support I-864 or I-864A, the sponsor's income and resources are counted as described in WAC 388-450-0155, 388-450-0156, 388-450-0160, and 388-470-0060.

(6) Except when this state has adopted more liberal rules, SSI income rules are used to determine a client's countable income for the following programs:

(a) SSI-related CN or MN; and

(b) Medicare savings programs. Refer to chapter 388-475 WAC.

AMENDATORY SECTION (Amending WSR 06-16-026, filed 7/24/06, effective 8/24/06)

WAC 388-478-0075 Medical programs—Monthly income standards based on the federal poverty level (FPL). (1) Each year, the federal government publishes new federal poverty level (FPL) income standards in the Federal Register found at <http://aspe.hhs.gov/poverty/index.shtml>. The income standards for the following medical programs change on the first of April every year based on the new FPL:

(a) ~~((Children's health program is one hundred percent of FPL;~~

~~(b))~~ Pregnant women's program up to one hundred eighty-five percent of FPL;

~~((e))~~ (b) Children's ~~((categorically needy))~~ healthcare programs up to two hundred percent of FPL;

~~((d))~~ (c) Healthcare for workers with disabilities (HWD) up to two hundred twenty percent of FPL; and

~~((e) The state children's health insurance program (SCHIP) is)~~ (d) Premium-based coverage under the children's healthcare programs over two hundred percent of FPL but not over two hundred fifty percent of FPL.

(2) The department uses the FPL income standards to determine:

(a) The mandatory or optional Medicaid status of an individual; and

(b) Premium amount, if any, for a ~~((Medicaid))~~ child.

(3) There are no resource limits for the programs under this section.

AMENDATORY SECTION (Amending WSR 05-23-013, filed 11/4/05, effective 1/1/06)

WAC 388-505-0210 Children's ~~((medical eligibility))~~ healthcare programs. ~~((1) A child under the age of one is eligible for categorically needy (CN) medical assistance when:~~

~~(a) The child's mother was eligible for and receiving coverage under a medical program at the time of the child's birth; and~~

~~(b) The child remains with the mother and resides in the state;~~

~~(2) Children under the age of nineteen are eligible for CN medical assistance when they meet the requirements for:~~

~~(a) Citizenship or U.S. national status as defined in WAC 388-424-0001 or "qualified alien" status as described in WAC 388-424-0006 (1) or (4);~~

~~(b) State residence as described in chapter 388-468 WAC;~~

~~(c) A Social Security number as described in chapter 388-476 WAC; and~~

~~(d) Family income does not exceed two hundred percent federal poverty level (FPL) as described in WAC 388-478-0075 at each application or review.~~

~~(3) Children under the age of nineteen are eligible for the state children's health insurance program (SCHIP), as described in chapter 388-542 WAC, when:~~

~~(a) They meet the requirements of subsection (2)(a), (b), and (c) of this section;~~

~~(b) They do not have other creditable health insurance coverage; and~~

~~(c) Family income exceeds two hundred percent of the federal poverty level (FPL), but does not exceed two hundred fifty percent of the FPL as described in WAC 388-478-0075.~~

~~(4) Children under the age of twenty-one are eligible for CN medical assistance when they meet:~~

~~(a) Citizenship or immigrant status, state residence, and social security number requirements as described in subsection (2)(a), (b), and (c) of this section;~~

~~(b) Income levels described in WAC 388-478-0075; and~~

~~(c) One of the following criteria:~~

~~(i) Reside, or are expected to reside, in a medical hospital, intermediate care facility for mentally retarded (ICF/MR), or nursing facility for thirty days or more;~~

~~(ii) Reside in a psychiatric or chemical dependency facility for ninety days or more;~~

~~(iii) Are in foster care; or~~

~~(iv) Receive subsidized adoption services.~~

~~(d) For a child meeting the criteria (c)(i) of this subsection, the only parental income the department considers available to the child is the amount the parent chooses to contribute.~~

~~(e) For a child meeting the criteria in (c)(ii) of this subsection, parental income is counted as described in WAC 388-408-0055 (1)(e).~~

~~(5) Children are eligible for CN medical assistance if they:~~

~~(a) Receive Supplemental Security Income (SSI) payments based upon their own disability; or~~

~~(b) Received SSI cash assistance for August 1996, and except for the August 1996 passage of amendments to federal~~

disability definitions, would be eligible for SSI cash assistance:

(6) Children under the age of nineteen are eligible for medically needy (MN) medical assistance as defined in chapter 388-500 WAC when they:

(a) Meet citizenship or immigrant status, state residence, and social security number requirements as described in subsection (2)(a), (b), and (c); and

(b) Have income above two hundred fifty percent federal poverty level (FPL) as described in WAC 388-478-0075.

(7) A child is eligible for SSI-related MN when the child:

(a) Meets the blind and/or disability criteria of the federal SSI program or the condition in subsection (5)(b); and

(b) Has countable income above the level described in WAC 388-478-0070(1).

(8) Noncitizen children under the age of eighteen, including visitors or students from another country, undocumented children and "qualified alien" children as defined in WAC 388-424-0001 who are ineligible due to the five-year bar as described in WAC 388-424-0006(3), are eligible for the state-funded children's health program, if:

(a) The department determines the child ineligible for any CN or MN scope of care medical program;

(b) Family income does not exceed one hundred percent federal poverty level (FPL) as described in WAC 388-478-0075;

(c) They meet state residence as described in chapter 388-468 WAC; and

(d) Program limits established by the legislature would not result in an overexpenditure of funds.

(9) There are no resource limits for children under CN, MN, SCHIP, or children's health coverage.

(10) Children may also be eligible for:

(a) Family medical as described in WAC 388-505-0220; or

(b) Medical extensions as described in WAC 388-523-0100.

(11) Except for a client described in subsection (4)(e)(i) and (ii), an inmate of a public institution, as defined in WAC 388-500-0005, is not eligible for CN or MN medical coverage.) Funding for children's healthcare coverage may come through Title XIX (Medicaid) or Title XXI for the Social Security Act (SCHIP), or through state-funded programs. There are no resource limits for children's medical programs, but children must meet the eligibility criteria below to qualify for these programs.

(1) Newborns are eligible for federally matched categorically needy (CN) coverage through their first birthday when:

(a) The child's mother was eligible for and receiving medical assistance at the time of the child's birth; and

(b) The child remains with the mother and resides in the state.

(2) Children under the age of nineteen who are U.S. citizens, U.S. nationals, or qualified aliens as described in WAC 388-424-0001 and WAC 388-424-0006 (1) and (4) are eligible for federally matched CN coverage under children's healthcare programs when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC;

(b) A social security number or application as described in chapter 388-476 WAC;

(c) Proof of citizenship or immigrant status and identity as required by WAC 388-490-0005(11);

(d) Family income is at or below two-hundred percent federal poverty level (FPL), as described in WAC 388-478-0075 at each application or review;

(e) They received supplemental security income (SSI) cash payments in August 1996 and would continue to be eligible for those payments except for the August 1996 passage of amendments to federal disability definitions; or

(f) They are eligible for SSI-related CN or MN coverage.

(3) Noncitizen children under the age of nineteen, who do not meet qualified alien status as described in WAC 388-424-0006 (1) or (4), or are ineligible due to the five-year ban as described in WAC 388-424-0006(3), are eligible for state-funded CN coverage under children's healthcare programs when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC; and

(b) Family income is at or below two hundred percent FPL at each application or review.

(4) Children under the age of nineteen are eligible for premium-based CN coverage under children's healthcare programs as described in chapter 388-542 WAC when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC;

(b) Family income is over two-hundred percent FPL, as described in WAC 388-478-0075, but not over two-hundred fifty percent FPL at each application or review;

(c) They do not have other creditable health insurance as described in WAC 388-542-0050; and

(d) They pay the required monthly premiums as described in WAC 388-505-0211

(5) Children under age nineteen are eligible for the medically needy (MN) Medicaid program when they meet:

(a) Citizenship or immigrant status, state residence, and social security number requirements as described in subsection (2)(a), (b), and (c); and

(b) They are ineligible for other federal Medicaid programs; and

(c) Meet their spenddown obligation as described in WAC 388-519-0100 and 388-519-0110.

(6) Children under the age of twenty-one who reside or expect to reside in a medical institution, intermediate care facility for the mentally retarded (ICF/MR), hospice care center, nursing home, or psychiatric facility may be eligible for medical coverage. See WAC 388-505-0230 "Family related institutional medical" and WAC 388-513-1320 "Determining institutional status for long-term care."

(7) Children who are in foster care under the legal responsibility of the state, or a federally recognized tribe located within the state, are eligible for federally matched CN Medicaid coverage through the month of their:

(a) Eighteenth birthday;

(b) Twenty-first birthday if children's administration determines they remain eligible for continued foster care services; or

(c) Twenty-first birthday if they were in foster care on their eighteenth birthday and that birthday was on or after July 22, 2007.

(8) Children who receive subsidized adoption services are eligible for federally matched CN Medicaid coverage.

(9) Children under age of nineteen may also be eligible for:

(a) Family medical as described in WAC 388-505-0220;

(b) Medical extensions as described in WAC 388-523-0100; or

(c) SSI-related MN if they:

(i) Meet the blind and/or disability criteria of the federal SSI program, or the condition of subsection (2)(e); and

(ii) Have countable income above the level described in WAC 388-478-0070(1).

(10) Children who are ineligible for other children's healthcare programs due to citizenship or immigrant status requirements may be eligible for the alien emergency medical program (AEM) if they meet the following criteria:

(a) They have a documented emergent medical condition as defined in WAC 388-500-0005;

(b) They meet the other AEM program requirements as described in WAC 388-438-0110; and

(c) They have income that exceeds children's healthcare program standards.

(11) Except for a client described in subsection (6), an inmate of a public institution, as defined in WAC 388-500-0005, is not eligible for children's healthcare programs.

AMENDATORY SECTION (Amending WSR 04-16-064, filed 7/30/04, effective 8/30/04)

WAC 388-505-0211 Premium requirements for ((SCHHP)) premium-based children's healthcare programs. (1) For the purposes of this chapter, "premium" means an amount paid for medical coverage.

(2) ~~((For a child found eligible for the state children's health insurance program (SCHHP) under WAC 388-505-0210(3), payment of a premium is required as a condition of eligibility.))~~ Payment of a premium is required as a condition of eligibility for premium-based children's healthcare coverage, as described in WAC 388-505-0210(4), unless the child is:

(a) Pregnant; or

(b) An American Indian or Alaska native.

(3) ~~((A child is exempt from the premium requirement if the child meets one of the following:~~

~~(a) The child is pregnant; or~~

~~(b) The child is an American Indian or Alaska native.~~

(4)) The premium requirement begins the first of the month following the determination of eligibility. There is no premium requirement for medical coverage received in a month or months before the determination of eligibility.

~~((5))~~ (4) The premium amount for the assistance unit is based on the net available income as described in WAC 388-450-0005. If the household includes more than one assistance unit, the premium amount billed for the assistance units may be different amounts.

~~((6))~~ (5) The premium amount for each ((SCHHP)) eligible child is fifteen dollars per month per child, up to a maximum of forty-five dollars per month, per household.

~~((7))~~ The department bills the family for the lesser of:

~~(a) A maximum of forty five dollars per month; or~~

~~(b) The total of the highest premiums, for up to three children in the assistance unit.~~

~~(8) Premium payment is a condition of eligibility for assistance units that include SCHHP children.))~~ (6) All ((SCHHP)) children in an assistance unit are ineligible for medical coverage when the head of household((s)) fails to pay required premium payments ((are)) for three consecutive months ((in arrears)). ~~((Three months in arrears means a balance exists for three months.))~~

~~((9))~~ (7) When the department terminates the medical coverage of a ((SCHHP)) child due to nonpayment of premiums, the child has a three-month period of ineligibility beginning the first of the following month. The three-month period of ineligibility is rescinded only when the:

(a) Past due premiums are paid in full prior to the begin date of the period of ineligibility; or

(b) ~~((SCHHP child has a change in circumstances such that))~~ The child becomes eligible for ~~((Medicaid))~~ a nonpremium-based medical program. The department ~~((cannot))~~ will not rescind the three-month period of ineligibility for reasons other than the criteria described in this subsection.

~~((10))~~ (8) The department writes off past-due premiums after twelve months.

~~((11))~~ (9) When the designated three-month period of ineligibility is over, all past due premiums that are an obligation of the head of household must be paid or written off before a child can become eligible for ~~((SCHHP))~~ premium-based children's healthcare.

~~((12))~~ (10) A family cannot designate partial payment of the billed premium amount as payment for a specific child in the assistance unit. The full ~~((amount of the))~~ premium ((bill)) amount is the obligation of the head of household of the assistance unit. A family can decide to request medical coverage only for certain children in the assistance unit, if they want to reduce premium obligation.

~~((13))~~ (11) A change that affects the premium amount is effective the month after the change is reported and processed.

~~((14))~~ (12) A sponsor or other third party may pay the premium on behalf of the child or children in the assistance unit. The premium payment requirement remains the obligation of head of household of the assistance unit. The failure of a sponsor or other third party to pay the premium does not eliminate the:

(a) Establishment of the period of ineligibility described in subsection ~~((9))~~ (7) of this section; or

(b) Obligation of the head of household to pay past-due premiums.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 06-15-134, filed 7/19/06, effective 8/19/06)

WAC 388-542-0010 Purpose and scope of ((SCHHP)) premium-based children's healthcare programs. ((+)) The department administers ((the state children's health insurance program (SCHHP) to provide access to)) premium-based children's healthcare through a combination of state and federal funding sources as described below:

((a) Medical care for children whose family income exceeds the limit for Medicaid eligibility but is not greater than two hundred fifty percent of the federal poverty level (FPL); and

(b) Prenatal care and medical services for a pregnant woman;

(i) Who is ineligible for Medicaid due to immigration status; and

(ii) Whose family income is at or below one hundred eighty five percent FPL)) (1) Federally-matched healthcare coverage as authorized by Title XXI of the social security act (SCHIP) and RCW 74.09.450 for citizen and federally qualified immigrant children whose family income is above two hundred percent of the federal poverty level (FPL) but is not above two hundred fifty percent of the FPL.

(2) ((SCHIP is authorized by Title XXI of the Social Security Act and by RCW 74.09.450)) State funded healthcare coverage for noncitizen children with family income above two hundred percent FPL, but not above two hundred fifty percent FPL, who are ineligible for Title XXI federally matched children's healthcare coverage due to immigration issues.

AMENDATORY SECTION (Amending WSR 06-07-014, filed 3/3/06, effective 4/3/06)

WAC 388-542-0020 Other rules that apply to ((SCHHP)) premium-based children's healthcare programs. In addition to the rules of this chapter, ((SCHHP)) premium-based children's healthcare clients are subject to the following rules:

(1) Chapter 388-538 WAC, Managed care (except WAC 388-538-061, 388-538-063, and 388-538-065) if the child is covered under federally matched CN coverage;

(2) WAC 388-505-0210 ((3) and (8)) (4), Children's ((medical)) healthcare program eligibility;

(3) WAC 388-505-0211, Premium requirements for ((SCHHP children)) premium-based children's healthcare programs;

(4) WAC 388-416-0015((10)) (12), Certification periods for categorically needy (CN) scope of care medical assistance programs; and

(5) WAC 388-418-0025 ((4) and (5)), ((Change of circumstance)) Effect of changes on medical program eligibility.

AMENDATORY SECTION (Amending WSR 04-16-064, filed 7/30/04, effective 8/30/04)

WAC 388-542-0050 Definitions for ((SCHHP terms)) premium-based children's healthcare programs. The following definitions, as well as those found in WAC 388-538-

050 and in 388-500-0005 Medical definitions, apply to ((the state children's health insurance program (SCHHP))) premium-based children's healthcare programs.

"**Creditable coverage**" means most types of public and private health coverage, except Indian health services, that provides access to physicians, hospitals, laboratory services, and radiology services. This term applies to the coverage whether or not the coverage is equivalent to that offered under ((SCHHP)) premium-based children's healthcare programs. "Creditable coverage" is described in 42 U.S.C. Sec. 1397jj.

"**Employer-sponsored dependent coverage**" means creditable health coverage for dependents offered by a family member's employer or union, for which the employer or union may contribute in whole or part towards the premium. Extensions of such coverage (e.g., COBRA extensions) also qualify as employer-sponsored dependent coverage as long as there remains a contribution toward the premiums by the employer or union.

AMENDATORY SECTION (Amending WSR 04-16-064, filed 7/30/04, effective 8/30/04)

WAC 388-542-0300 Waiting period for ((SCHHP)) premium-based healthcare programs coverage following employer coverage. (1) The ((medical assistance administration (MAA))) department requires applicants to serve a waiting period of four full consecutive months before ((SCHHP)) receiving premium-based children's healthcare programs coverage if the client or family:

(a) Chooses to end employer sponsored dependent coverage. The waiting period begins the day after the employment-based coverage ends; or

(b) Fails to exercise an optional coverage extension (e.g., COBRA) that meets the following conditions. The waiting period begins on the day there is a documented refusal of the coverage extension when the extended coverage is:

(i) Subsidized in part or in whole by the employer or union;

(ii) Available and accessible to the applicant or family; and

(iii) At a monthly cost to the family meeting the limitation of subsection (2)(b)(iv).

(2) ((MAA)) The department does not require a waiting period prior to ((SCHHP)) coverage under premium-based children's healthcare programs when:

(a) The client or family member has a medical condition that, without treatment, would be life-threatening or cause serious disability or loss of function; or

(b) The loss of employer-sponsored dependent coverage is due to any of the following:

(i) Loss of employment with no post-employment subsidized coverage as described in subsection (1)(b);

(ii) Death of the employee;

(iii) The employer discontinues employer-sponsored dependent coverage;

(iv) The family's total out-of-pocket maximum for employer-sponsored dependent coverage is fifty dollars per month or more;

(v) The plan terminates employer-sponsored dependent coverage for the client because the client reached the maximum lifetime coverage amount;

(vi) Coverage under a COBRA extension period expired;

(vii) Employer-sponsored dependent coverage is not reasonably available (e.g., client would have to travel to another city or state to access care); or

(viii) Domestic violence caused the loss of coverage for the victim.

WSR 07-24-019

EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 07-286—Filed November 27, 2007, 4:42 p.m., effective November 27, 2007, 4:42 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-52-040, 220-52-046, and 220-52-075.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Mandatory pick rate allowance for coastal crab will be achieved by the opening dates contained herein. The stepped opening periods/areas will also provide for fair start provisions. Pot limits will reduce the crowding effect in this restricted area. Logbooks are necessary to collect the data required by state and tribal comanagers. California Assembly Bill 2773 (effective January 1, 2007) limits the geographic area where a CA coastal Dungeness crab license is valid to the state and federal waters adjacent to the coast of California. The Washington department of fish and wildlife agreed to adopt reciprocal regulations limiting the area that Washington coastal Dungeness crab licenses are valid to the state and federal waters adjacent to the coast of Washington. There is insufficient time to promulgate permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

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

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

Date Adopted: November 27, 2007.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 220-52-04000P Commercial crab fishery. Lawful and unlawful gear, methods and other unlawful acts. (1) Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice, it is unlawful for any fisher or wholesale dealer or buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, Columbia River, Washington coastal or adjacent waters of the Pacific Ocean through January 31, 2008, from any vessel unless:

(a) A valid Washington crab vessel inspection certificate has been issued to the delivering vessel. Vessel hold inspection certificates dated from November 30, 2007 to December 27, 2007 are only valid for the area south of 46°28.00.

(b) The vessel inspection certificate numbers are recorded on all shellfish tickets completed for coastal Dungeness crab landings through January 31, 2008.

(2) Notwithstanding the provisions of WAC 220-52-040, it is lawful for a vessel not designated on a Dungeness crab coastal fishery license to transport or deploy up to 250 pots at any one time for deployment in the coastal crab fishery. The primary operator of the vessel associated with the pots being transported must be aboard the vessel while they are being deployed. All other provisions of the permanent rule remain in effect.

(3) Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice, it is unlawful for person participating in the Columbia River, Coastal or Willapa Bay commercial Dungeness crab fishery to:

(a) deploy or operate more than 400 shellfish pots if the permanent number of shellfish pots assigned to the Coastal commercial crab fishery license held by that person is 500.

(b) deploy or operate more than 250 shellfish pots if the permanent number of shellfish pots assigned to the Coastal Dungeness crab fishery license held by that person is 300.

(c) fail to maintain onboard any participating vessel the excess crab pot buoy tags assigned to the Coastal Dungeness crab fishery license being fished.

(4) Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice, it is unlawful to possess or deliver Dungeness crab unless the following conditions are met:

(a) Vessels that participated in the coastal Dungeness crab fishery from Klipsan Beach (46°28.00 North Latitude) to Point Arena, CA, including Willapa Bay and the Columbia River, may possess crab for delivery into Washington ports south of 47°00.00 N. Lat. provided the crab were taken south of Klipsan (46°28.00 N. Lat.).

(b) The vessel does not enter the area north of 47°00.00 N. Lat. unless the operator of the vessel has contacted the Washington Department of Fish and Wildlife and provides a vessel hold inspection if requested by Fish and Wildlife officers prior to entering this area. Prior to entering the area north

of 47°00.00 N. Lat., the vessel operator calls 360-249-4628, extension 253, and reports the vessel name, operator name, estimated amount of crab to be delivered in pounds, and the estimated date, time and location of delivery 24 hours prior to entering the area.

NEW SECTION

WAC 220-52-04600M Coastal crab seasons. Notwithstanding the provisions of WAC 220-52-046, effective immediately until further notice, it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided for in this section.

(1) The area from Klipsan Beach (46°28.00) to the WA/OR border (46°15.00) and Willapa Bay.

(2) Crab gear may be set beginning at 8:00 a.m., November 28, 2007.

(3) It is lawful to pull crab gear beginning at 12:01 a.m., December 1, 2007.

(3) Vessels that participate in the coastal commercial Dungeness crab fishery in the waters from Point Arena, California to Klipsan Beach, Washington (46°28.00), including Willapa Bay, before the area north of Klipsan Beach (46°28.00) opens, are prohibited from:

a. Fishing in the area between Klipsan Beach (46°28.00) and Oysterville (46°33.00) until 10 days have elapsed from the time that the area north of Klipsan Beach opens.

b. Fishing in the area between Oysterville (46°33.00) and the U.S. Canadian border until 30 days have elapsed from the time that the area north of Klipsan Beach opens.

(4) It is unlawful to fish for or possess Dungeness crabs or to set crab gear in waters of the Pacific Ocean adjacent to the states of Oregon or California without the licenses or permits required to commercially fish for Dungeness crab within the state waters of Oregon or California. Washington coastal Dungeness crab permits are valid only in Washington state waters, the Columbia River, Willapa Bay, Grays Harbor and the Pacific Ocean in federal waters north of the Washington/Oregon border (46°15.00 N. Latitude), extending 200 nautical miles westward.

(5) All other provisions of the permanent rule remain in effect.

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

NEW SECTION

WAC 220-52-07500G Shellfish harvest logs reporting requirements for the coastal Dungeness crab fishery. Notwithstanding the provisions of WAC 220-52-075, effective immediately it is unlawful for any vessel operator engaged in fishing Dungeness crab in the coastal commercial fishery to fail to complete a department-issued logbook for all fishing activity occurring in Grays Harbor, Willapa Bay, Columbia River and the Pacific Ocean waters adjacent to the state of Washington. It is unlawful for any vessel operator engaged in fishing to fail to comply with the following

method and time frame related to harvest logbook submittal and record keeping:

(a) The department must receive a copy of the completed logbook sheets within ten days following any calendar month in which fishing occurred. Completed Dungeness crab harvest logs must be sent to the following address: Washington Department of Fish and Wildlife, 48 Devonshire Rd., Montesano, WA. ATTN. COASTAL DUNGENESS CRAB MANAGER.

(b) Vessel operators engaged in fishing Dungeness crab in the coastal commercial fishery must complete a logbook entry for each day fished prior to offloading. Vessel operators responsible for submitting logs to the department must maintain a copy of all submitted logs for up to three years after the fishing activity ended.

(c) Vessel operators can obtain logbooks by contacting the WDFW coastal Dungeness crab manager at 360-249-4628.

WSR 07-24-027 EMERGENCY RULES DEPARTMENT OF EARLY LEARNING

[Filed November 28, 2007, 11:49 a.m., effective November 28, 2007, 11:49 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend WAC 170-296-0020, 170-296-0450, and 170-296-0520 to bring the department rules into compliance with an oral ruling in *DeLaO v. Arnold-Williams* and *Fernandez v. DSHS* requiring the department to place limits on the time of inspection and areas that can be inspected in licensed family home child care.

Citation of Existing Rules Affected by this Order: Amending WAC 170-296-0450 and 170-296-0520.

Statutory Authority for Adoption: Chapter 43.215 RCW.

Other Authority: Oral ruling in *DeLaO v. Arnold-Williams* and *Fernandez v. DSHS*.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: A recent federal district court ruling would invalidate portions of chapters 74.15 RCW and 170-296 WAC unless these limits on time and area were not placed into rule immediately. This would affect the ability of the department to perform inspections that ensure the health, safety, and general welfare of children in licensed care. To avoid filing emergency rules repeatedly while the department continues the negotiated rule-making process underway pursuant to WSR 07-01-068, the department intends to develop permanent rules by filing a CR-105 concurrently with this CR-103. The negotiated rule-making process will continue even after these rules are made permanent through the CR-105 process.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

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

Date Adopted: November 28, 2007.

Jone M. Bosworth
Director

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-0020 What definitions do I need to know to understand this chapter? For the purpose of this chapter:

"Accessible to children" means areas of the facility and materials that children can easily get to on their own.

"Age appropriate" means the developing stages of growth typical of children within a given age group.

"American Indian child" means any unmarried person under the age of eighteen who is:

(1) A member of or eligible for membership in a federally recognized Indian tribe, or who is Eskimo, Aleut or other Alaska Native and a member of an Alaskan native regional Corporation or Alaska Native Village;

(2) Determined or eligible to be found to be Indian by the Secretary of the Interior, including through issuance of a certificate of degree of Indian blood;

(3) Considered to be Indian by a federally recognized Indian tribe; or

(4) A member or entitled to be a member of a Canadian tribe or band, Metis community, or nonstatus Indian community from Canada.

"Antibias" is an approach that recognizes when others are treated unfairly or oppressively based on race, color, national origin, marital status, sexual orientation, gender, class, religion, creed, disability, or age.

"Assistant" means a person fourteen years or older (whether a volunteer or an employee) who assists a licensed home provider in the operation of the family home child care and is not solely responsible for the supervision of children.

"Capacity" means the highest number of children you can care for at any time, as written on your license.

"Character, competence, and suitability assessment" means a determination of whether an applicant should be allowed access to vulnerable people if that applicant has a conviction record, pending charges and/or findings of abuse, neglect, exploitation or abandonment of a child or vulnerable adult and child protective services(CPS) adverse referral history.

"Child" means a person who has not yet reached the age of twelve years.

"Child care" means the developmentally appropriate care, protection and supervision of children that is designed to promote positive growth and educational experiences for children outside of their home for periods of less than twenty-four hours a day.

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

"Communicable disease" means an illness that can be spread from one person to another, in the child care setting, by either direct or indirect contact.

"Conditions of the license" means what you must do to keep a license.

"Confidentiality" means the protection of personal information, such as the child's records, from persons who are not authorized to see or hear it.

"Corporal punishment" means the infliction of pain by any means for the purpose of punishment, correction, discipline, instruction or any other reason.

"Cultural relevancy" means an environment in which the learning experiences, play materials and activities are meaningful, inclusive and respectful for the participating children, their families and the community at large.

"Department," "we," "us," or "our" refers to and means the state department of social and health services (DSHS), including but not limited to the division of child care and early learning (DCCEL).

"Department of health" means the state department of health.

"Developmentally appropriate" means activities and interactions that recognize and address how children learn and what they can do at each stage of development - socially, emotionally, cognitively, and physically.

"Discipline" means a process of guiding children to develop internal, positive social behaviors through methods that include consistent use of the following: Modeling appropriate behavior, positive reinforcement, active listening, limit setting, redirecting and modifying the environment.

"Division" or "DCCEL" means the division of child care and early learning within the department of social and health services (DSHS).

"Facility licensing compliance agreement" means a written notice of rule violations and the intention to initiate enforcement, including a corrective action plan.

"Family home" means a single dwelling unit and accessory buildings occupied for living purposes by a family which provides permanent provisions for living, sleeping, eating, cooking, and sanitation.

"Family home child care" means a facility licensed to provide direct care, supervision and early learning opportunities for twelve or fewer children, in the home of the licensee where the licensee resides and is the primary provider.

"Family home child care provider" means a person who provides direct care, supervision, behavior management, and early learning opportunities for twelve or fewer children in their family home living quarters for periods of less than twenty-four hours.

"I," "you," and "your" refer to and mean the licensee or applicant for a child care license.

"**Inaccessible to children**" means areas kept or items stored in a manner that makes it impossible for children to reach, enter, or use potentially hazardous items or areas. Examples of how this can be accomplished are through the use of locks, gates, or other means that are effective to prevent access by the children in your care.

"**Infant**" means a child birth through eleven months of age.

"**License**" means an official document that certifies you have been granted permission by the department to operate a family home child care in compliance with the rules.

"**Licensed space**," means the indoor and outdoor space approved by the department as useable space where children in care may be present, or space that is otherwise accessible to children.

"**Licensee**" means the person or persons named on the license as having been issued the license and who are responsible for maintaining compliance with the regulations.

"**Licensor**" means the person with authority to grant licenses.

"**Parent**" means a child's parent or legal guardian.

"**Premises**" means the buildings where the home is located and the adjoining grounds (at the same address) over which the licensee has control.

"**Preschool age child**" means a child thirty months through five years of age not attending kindergarten or elementary school.

"**Primary staff person**" means a person who has been approved by the department, age eighteen years or older, who has responsibilities for the operation of the program and the direct supervision, behavior management and care of children.

"**Provider**" means the same as licensee.

"**Repeatedly**" means a violation of a licensing regulation that is written on a facility licensing compliance agreement that occurs more than once during a twelve-month time frame.

"**Reportable communicable disease**" means an illness that can be spread from one person to another by either direct or indirect contact, and is of the type that is required by law to be reported to the department of health. Examples include Hepatitis, measles, smallpox, and tuberculosis.

"**Revocation**" means the formal act of closing your child care business and taking your license from you due to your failure to follow the rules.

"**Sanitize**" means a surface must be clean and the number of germs reduced to a level where disease transmissions by that surface are unlikely.

"**Staff**" means a child care giver or group of child care givers employed by the licensee to assist with or supervise children served at the family home child care.

"**STARS**" (Washington state training and registry system) means the entity approved by the department to determine the classes, courses, and workshops that licensees and staff may take to satisfy training requirements.

"**Summary suspension**" means the formal act of immediately stopping your license for a certain time because the health, safety or well being of a child is at risk.

"**Supervision of children**," means the knowledge of and responsibility for the activity and whereabouts of each child in care and assuring immediate intervention of staff to safeguard a child from harm.

"**Terms of the license**" means the address, number and ages of children, and the beginning and ending dates listed on the license issued by the department.

"**Toddler**" means a child twelve months through twenty-nine months of age.

"**Unsupervised access**" means not in the absence of the licensed child care provider or primary staff person. (Anyone sixteen years or older who lives at the same address as the provider must pass a complete criminal history background check.)

"**Useable space**" means the space actually available for children to engage in developmentally appropriate activities, that has been inspected and approved by the department for providing child care.

"**Weapons**" means an instrument or device of any kind that is designed to be used to inflict harm on another person. For example, BB guns, pellet guns, air rifles, stun guns, antique guns, bows and arrows, handguns, rifles, shotguns, knives.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-0450 When will my license be denied, suspended or revoked? (1) When you demonstrate that you cannot provide the required care for children in a way that promotes their safety, health and well-being we must deny, suspend or revoke your license.

(2) We must deny, suspend or revoke your license if you:

(a) Have been disqualified by your background check (see DSHS secretary's list of disqualifying convictions for ESA at http://www1.dshs.wa.gov/esa/dccel/pdf/Crime_and_Backg_Chex.pdf);

(b) Have been found to have committed or have allowed others to commit child abuse, child neglect or exploitation, or you or others you supervise treat, permit or assist in treating children in your care with cruelty, or indifference;

(c) Fail to report instances of alleged child abuse, child neglect and exploitation to children's administration intake or law enforcement when an allegation of abuse, neglect or exploitation is reported to you;

(d) Or anyone residing at the same address as you had a license denied or revoked by an agency that provided care to children or vulnerable adults;

(e) Try to get or keep a license by deceitful means, such as making false statements or leaving out important information on the application;

(f) Commit, permit or assist in an illegal act at the address of your child care business;

(g) Use illegal drugs, or excessively use alcohol or abuse prescription drugs;

(h) Knowingly allow employees or volunteers with false statements on their applications to work at your facility;

(i) Repeatedly lack the required number of qualified staff to care for the number and types of children under your care;

(j) Repeatedly fail to provide the required level of supervision for a child in care;

(k) Repeatedly care for more children than your license allows;

(l) Refuse to allow our authorized staff and inspectors requested information or access to your licensed space (~~and premises~~), child and program files, or staff and children in care during times when licensed activities are conducted; or

(m) Are unable to manage the property, fiscal responsibilities, or staff in your facility.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-0520 How long must I keep child records and what am I required to document while operating my business? (1) A child's presence in the child care must be documented, on a daily basis, by the child's parent or guardian or an authorized person by using the sign-in and sign-out procedure for each child in attendance. The parent, guardian or authorized person must use their full signature when signing the child in and out of the child care.

(2) When the school age child arrives at or leaves the child care home due to school or off-site activities as authorized by the parent, you or your staff must sign out the child, and sign in the child on return to the home.

(3) Daily attendance records, listing the dates and hours of attendance of each child must be kept up-to-date and maintained in the licensed space of the family home child care for five years.

(4) When a child is no longer enrolled, the date of the child's withdrawal must be recorded in the child's file. You must maintain the child's file for at least five years from the child's last date of attendance. After five years the file may be destroyed or returned to the parent. The child's file must be made available for review by the child's parents and us during this period.

(5) You must call and report, within twenty-four hours to:

(a) Children's administration intake an incident or injury that required the services of a medical professional, including a dentist, that occurred while the child was in attendance.

(b) DCCEL and to animal control any incident where a child is bitten by an animal while in attendance.

(c) DCCEL any fire on your premises that required the use of a fire extinguisher or the services of a fire department.

(6) You must submit a written incident report to the child's parent and to your licenser within two working days of the same incident or injury as described in subsection (3) of this section.

(7) You must acquire written parental permission for field trips. You must notify parents in advance when you plan to use vehicles to transport children. Parents may grant general authorization for walking field trips.

(8) You must maintain all records and reports required by these regulations in an up-to-date manner (~~(at)~~) in the licensed space of the facility. The records and reports are subject to inspection and you must allow us access to them (~~(at the time we request them)~~) during all hours in which licensed activities are conducted.

WSR 07-24-029

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed November 28, 2007, 1:37 p.m., effective November 28, 2007, 1:37 p.m.]

Effective Date of Rule: Immediately.

Purpose: The department is creating WAC 388-828-9000, 388-828-9020, 388-828-9040, 388-828-9060, 388-828-9100, 388-828-9120 and 388-828-9140, to combine three family support programs into one individual and family services program as directed by the legislature.

Citation of Existing Rules Affected by this Order: Amending WAC 388-828-5360.

Statutory Authority for Adoption: RCW 71A.12.30 [71A.12.030].

Other Authority: Title 71A RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Chapter 283, Laws of 2007 (2SSB 5467) directs the department to create the individual and family services programs for persons with developmental disabilities by July 1, 2007. DDD must incorporate rules for the algorithm used to determine a personal award amount into chapter 388-828 WAC. DDD is also amending WAC 388-828-5360 to correct the backup caregiver availability table, which is part of the individual and family services algorithm.

An initial public notice was filed June 29, 2007, as WSR 07-15-081. Stakeholder work is being completed and the rules are expected to be formally proposed in February 2008.

This emergency rule will replace the emergency rule filed as WSR 07-22-016.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 7, Amended 1, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 7, Amended 1, Repealed 0.

Date Adopted: November 28, 2007.

Stephanie E. Schiller
Rules Coordinator

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 08-01 issue of the Register.

WSR 07-24-067
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed December 4, 2007, 2:51 p.m., effective December 4, 2007, 2:51 p.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of the emergency rule is to correct language in WAC 296-46B-995, regarding appeals. The emergency language will amend the burden of proof from the appellant to the department for appeals heard before the office of administrative hearings (OAH) or directly by the electrical board. If there is an appeal from an OAH decision, the party aggrieved is responsible for the burden of proof.

Citation of Existing Rules Affected by this Order: Amending WAC 296-46B-995.

Statutory Authority for Adoption: Chapter 19.28 RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The general welfare of the public is at risk if a violator is able to continue working due to a technicality in the rule. Licensing/certification revocation/suspension hearings and unsafe installation and electrical power disconnection hearings are heard directly by the electrical board. With the current language, the department will likely lose any case brought directly to the board for appeal. This could result in a contractor or electrician who is unqualified or makes unsafe electrical installations to continue doing business and placing the general public and workers in jeopardy due to their unsafe installations. A constitutional argument can also be made that appeals taken to the OAH could be lost on the same basis and ultimately have the same safety consequence.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

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

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

Date Adopted: December 4, 2007.

Judy Schurke
 Director

AMENDATORY SECTION (Amending WSR 06-24-041, filed 11/30/06, effective 12/31/06)

WAC 296-46B-995 Electrical board—Appeal rights and hearings. General.

(1) Chapter 19.28 RCW provides the authority for the duties and responsibilities of the electrical board. Except as provided in chapter 19.28 RCW and this chapter, all proceedings will be conducted according to chapter 34.05 RCW the Administrative Procedure Act and chapter 10-08 WAC, Model rules of procedure. See chapter 34.05 RCW the Administrative Procedure Act for specific definitions not described in this chapter.

(2) See RCW 19.28.311 for the composition of the electrical board.

(3) The board adopts the current edition of the "*Roberts' Rules of Order, Newly Revised*."

(4) The board will hold regular meetings on the last Thursday of January, April, July, and October of each year per RCW 19.28.311.

(5) The director or the chairperson of the board may call a special meeting at any time.

(6) Each board member must be notified in writing of the agenda, date, time, and place of each regular and special meeting. "Writing" includes by electronic mail, also known as "e-mail," if the member has provided an e-mail address for such notice.

(7) The board or department may elect to have an appeal heard by the office of administrative hearings either tape recorded or transcribed by a court reporter; and the board may so elect regarding hearings or board reviews heard by the board as a whole.

(8) A majority of the board constitutes a quorum for purposes of rendering any decision.

(a) If a majority does not attend a hearing or board review on an appeal, the board may either continue the hearing or board review to a date certain or may hear the testimony and arguments.

(b) If the board hears the testimony and arguments, the members of the board who are absent may make their decisions after hearing the tape recording or reading the transcript, of the hearing or board review.

(c) If the board selects the method in subsection (8)(b) of this section, at the time of the hearing, the board shall set a date certain for the absent members to complete review of the record and for the board as a whole to vote on the decision. The vote in subsection (8)(b) and (c) of this section may occur by U.S. mail, facsimile or by electronic mail and shall be determined by the board at the hearing; the members' votes shall be public record.

(9) All filings and documents for any matter before the board must be submitted to the chief electrical inspector, as secretary to the board, 7273 Linderson Way, P.O. Box 44460, Olympia, WA 98504-4460. The filings may be submitted by ordinary mail, certified or registered mail, or by personal delivery.

(10) All hearings before the board as a whole shall be held on regularly scheduled meeting dates, as listed in subsection (4) of this section, unless the board determines that an alternate date is necessary. All notices of appeal, with a certified check payable to the department in the sum of two hun-

dred dollars if required, must be received in the office of the chief electrical inspector, as secretary to the board, at least thirty days before the regularly scheduled board meeting at which the hearing would occur. The appellant must submit any written argument, briefs testimony or documents for the board's consideration at least twenty days prior to the scheduled hearing.

Appeals

(11) Appeals of penalties issued by the department.

(a) A party may appeal a penalty issued by the department, pursuant to chapter 19.28 RCW and this chapter, to the board. The appeal shall be assigned to the office of administrative hearings.

(b) The appeal must be filed within twenty days after the notice of the decision or penalty is given to the assessed party either by personal service or by certified mail, return receipt requested, sent to the last known address of the assessed party and shall be made by filing a written notice of appeal with the chief electrical inspector, as secretary to the board. The request for an appeal must be accompanied with a certified check payable to the department in the sum of two hundred dollars.

(12) Appeals of proposed decisions issued by the office of administrative hearings.

(a) A party may appeal a proposed decision issued by the office of administrative hearings pursuant to chapter 19.28 RCW to the board. The appeal must be filed within twenty days after service of the decision and must be made by filing a written notice of appeal with the chief electrical inspector, as secretary to the board.

(b) The notice of appeal of a proposed decision must be received in the office of the chief electrical inspector, as secretary to the board, at least thirty days before a regularly scheduled board meeting. All parties must submit any written argument, briefs testimony or documents for the board's consideration at least twenty days prior to the scheduled hearing.

(13) Appeals of suspension, revocation, or nonrenewal.

(a) An appeal of the suspension or revocation of a license or certificate of competency under RCW 19.28.241 and 19.28.341 or of nonrenewal of a license or certificate of competency under this chapter will be heard by the board in accordance with chapter 34.05 RCW and not assigned to the office of administrative hearings. The board will conduct the hearing and may elect to have the assistance of an administrative law judge in the proceeding.

(b) The notice of appeal, with the certified check payable to the department in the sum of two hundred dollars for appeals of a revocation or suspension of a contractor's or administrator's license, must be filed within twenty days after the notice of suspension or revocation is served on the subject of said action, either by personal service or by certified mail, return receipt requested, sent to the last known address of the subject and shall be filed by written notice of appeal with the chief electrical inspector, as secretary to the board.

(14) Appeals of decisions on installation.

(a) A party may seek board review for disputes relating to the interpretation and application of electrical/telecommunications installation or maintenance standards under RCW 19.28.111, 19.28.480, and 19.28.531. The board will conduct

the hearing and may elect to have the assistance of an administrative law judge in the proceeding.

(b) The notice of appeal, with the certified check payable to the department in the sum of two hundred dollars, must be received in the office of the chief electrical inspector, as secretary to the board, at least thirty days before a regularly scheduled board meeting. All parties must submit any written argument, briefs testimony or documents for the board's consideration at least twenty days prior to the scheduled hearing.

(15) Appeals of a continuing education class or instructor for denials or revocations.

A party may appeal a decision issued by the department, pursuant to WAC 296-46B-970 (3)(e)(vi), if the department acts as the contractor pursuant to WAC 296-46B-970 (2)(i) to the superior court per RCW 34.05.542(3).

(16) Appeals pertaining to engineer approval or electrical testing laboratory recognition and accreditation.

(a) A party may appeal a decision issued by the department pursuant to WAC 296-46B-997 or 296-46B-999. The appeal will be heard by the board in accordance with chapter 34.05 RCW and not assigned to the office of administrative hearings. The board will conduct the hearing and may elect to have the assistance of an administrative law judge in the proceeding.

(b) The notice of appeal, with the certified check payable to the department in the sum of two hundred dollars for appeals pertaining to engineer approval or recognition and accreditation of an electrical testing laboratory, must be filed within twenty days after the notice of the department's decision is served on the subject of said action, either by personal service or by certified mail, return receipt requested, sent to the last known address of the subject and shall be filed by written notice of appeal with the chief electrical inspector, as secretary to the board.

(17) Judicial review of final decisions of the board.

A party may seek judicial review of a final order of the board within thirty days after service of the decision. Appeals of final decisions and orders must be done in accordance with chapter 34.05 RCW.

(18) If appeal(s) according to subsections (11), (12), (13), and (15) of this section are not filed or the appeal is not filed timely, the proposed decision or action becomes final with no further action on the part of the department or the board.

(19) Appeals - general requirements.

(a) Appeals according to subsections (11), (12), or (15) of this section must specify the contentions of the appellant, and must for subsection (12) of this section specify to which conclusions of law and findings of fact the party takes exception. The appeal will be based on the record of the hearing. The board shall not grant a hearing de novo.

(b) In appeals under subsections (12), (13), (14), and (15) of this section, the issues to be adjudicated must be made as precise as possible, in order that the board may proceed promptly to conduct the hearing on relevant and material matter only.

(c) In all appeals of chapter 19.28 RCW and this chapter heard before the office of administrative hearings or directly by the board, the ((appellant)) department has the burden of proof by a preponderance of the evidence.

(d) In all appeals of a decision by the office of administrative hearings to the board, the party aggrieved by the decision of the office of administrative hearings has the burden of proof by a preponderance of the evidence.

Appearance and practice before board.

(20) No party may appear as a representative in proceedings other than the following:

(a) Attorneys at law qualified to practice before the supreme court of the state of Washington;

(b) Attorneys at law qualified to practice before the highest court of record of another state, if the attorneys at law of the state of Washington are permitted to appear as representatives before administrative agencies of the other state, and if not otherwise prohibited by Washington law; or

(c) An owner, officer, partner, or full-time employee of a firm, association, organization, partnership, corporation, or other entity who appears for the firm, association, organization, partnership, corporation or other entity.

(21) All persons appearing in proceedings as a representative must conform to the standards of ethical conduct required of attorneys before the courts of Washington. If a person does not conform to these standards, the board may decline to permit the person to appear as a representative in any proceeding before the board.

WSR 07-24-089

EMERGENCY RULES

SECRETARY OF STATE

[Filed December 5, 2007, 10:13 a.m., effective December 5, 2007, 10:13 a.m.]

Effective Date of Rule: Immediately.

Purpose: To permit use of the state seal on clothing items.

Citation of Existing Rules Affected by this Order: Amending WAC 434-04-020, 434-04-040, and 434-04-060.

Statutory Authority for Adoption: RCW 43.04.040(4).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Amendment of the rule promotes the general welfare by making available items with the state seal at a time when they will be most in demand.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 3, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 5, 2007.

Steve Excell

Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 89-20-031, filed 9/29/89, effective 10/30/89)

WAC 434-04-020 General permitted uses. (1) Use of the state seal shall be permitted without the written authorization of the secretary in the following circumstances:

(a) Use and display of the seal by state agencies and state elected officials in connection with official state business, including use on wearing apparel. However, no state agency nor state elected official other than the secretary shall have authority to permit a contractor or other entity associated with a state agency or state elected official to use the seal for commercial purposes;

(b) Use of the seal for illustrative purposes by the news media for a publication or broadcast or for a characterization used in a political cartoon;

(c) Use of the seal on the state flag.

(2) Other uses of the seal shall require written authorization from the secretary.

AMENDATORY SECTION (Amending WSR 89-20-031, filed 9/29/89, effective 10/30/89)

WAC 434-04-040 General prohibitions. The seal shall never be used:

(1) In any advertising or other promotion for a business, organization, product, article or service, except as provided by license;

(2) In a manner which, in the judgement of the secretary, could mislead the public to believe that a business, organization, product, article or service carries official state sanction or state approval;

(3) In a political campaign to assist or defeat a candidate;

(4) In a manner which is deceptively similar in appearance to the seal;

(5) ~~((On wearing apparel including, but not limited to, hats, shirts, sweaters, jackets, shorts, sweatpants and socks, except:~~

~~(a) By state agencies and state elected officials in connection with official state business;~~

~~(b) As approved by the secretary for civic purposes such as by organizations officially representing the state.~~

~~(6))~~ In a manner such that any mark, insignia, letter, word, figure, design, picture, or drawing of any nature is placed upon it or on any part of it;

~~((7))~~ (6) In any gambling activity except:

(a) When an item is to be used in a raffle which is approved and conducted in accordance with chapter 9.46 RCW and the use is approved under WAC 434-04-040; or

(b) When an item is to be used for official state business.

AMENDATORY SECTION (Amending WSR 89-20-031, filed 9/29/89, effective 10/30/89)

WAC 434-04-060 Approval and denial of use—

Applications. (1) In determining whether to grant authorization for use of the seal, the secretary shall consider the information provided by the applicant and shall apply the following standards:

(a) Whether the appearance of the seal on the product could mislead the public to believe that the product carries official state sanction or approval;

(b) Whether the use of the seal would tend to mislead the public into believing that a person, meeting, project or event carries official state sanction or approval;

(c) In addition, in the case of wearing apparel other than apparel worn by state officers or state employees in connection with official state business, whether the appearance of the seal on the product, or when worn on or in conjunction with other apparel, would tend to mislead the public to believe that the wearer has any official authority or status, including but not limited to authority or status as a law enforcement officer:

(d) Whether the dignity of the seal will be compromised if approval is granted;

~~((e))~~ (e) Whether the use of the seal is prohibited as otherwise stated in this chapter and in chapter 43.04 RCW.

(2) A written letter of approval or denial from the secretary shall be sent through first-class mail;

(3) Approval shall be in the form of a nontransferable letter of authority. The letter shall set forth, at a minimum, provisions which stipulate:

(a) The limitation on the manufacture, manner of use, display and other employment;

(b) That the seal may not be used or be construed to be operated in any way as an endorsement by the state of Washington;

(c) That the state, in granting authority to use the seal, does not assume any liability in connection with the use of the seal.

(4) As condition to the letter of authority, applicants for commercial use of the seal shall execute a renewable, nonexclusive licensing agreement. Educational uses of the seal which are to be commercially distributed shall not be subject to a licensing agreement.

mation that local taxing officials need to value classified farm and agricultural land during assessment year 2008.

The department filed a CR-105 notice of expedited rule making on October 18, 2007, with the intention of adopting a permanent rule after December 24, see WSR 07-21-096. The department still anticipates adopting a permanent rule at that time. The department is adopting this rule, which is the same as that proposed in WSR 07-21-096. The department still anticipates adopting a permanent rule at that time. The department is adopting this rule, which is the same as that proposed in WSR 07-21-096, on an emergency basis at this time to satisfy [the] RCW 84.34.065 requirement that an adopted rule providing the rate of interest be published in the state register not later than January 1.

Citation of Existing Rules Affected by this Order: Amending WAC 458-30-262 Agricultural land valuation—Interest rate—Property tax component.

Statutory Authority for Adoption: RCW 84.34.065 and 84.34.141.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: RCW 84.34.065 requires the department to annually determine a rate of interest and property tax component. This information is to be set forth in a rule that is to be published in the state register no later than January 1 each year for use in that assessment year.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

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

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

Date Adopted: December 5, 2007.

Janis P. Bianchi
Assistant Director
Interpretation and Technical
Advice Division

WSR 07-24-096

EMERGENCY RULES

DEPARTMENT OF REVENUE

[Filed December 5, 2007, 11:44 a.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: The purpose of this rule is to provide county assessors with the rate of interest and property tax component used in valuing farm and agricultural land classified under chapter 84.34 RCW, the open space program. The rule is being amended to update the interest rate and property tax component used to value farm and agricultural land classified under chapter 84.34 RCW. The amendments provide infor-

AMENDATORY SECTION (Amending WSR 07-01-011, filed 12/7/06, effective 1/1/07)

WAC 458-30-262 Agricultural land valuation—Interest rate—Property tax component. For assessment year ~~((2007))~~ 2008, the interest rate and the property tax component that are to be used to value classified farm and agricultural lands are as follows:

- (1) The interest rate is ~~((7.18))~~ 7.60 percent; and
- (2) The property tax component for each county is:

COUNTY	PERCENT	COUNTY	PERCENT
Adams	((1.28)) <u>1.26</u>	Lewis	((1.15)) <u>1.04</u>
Asotin	((1.39)) <u>1.33</u>	Lincoln	((1.29)) <u>1.24</u>
Benton	((1.28)) <u>1.25</u>	Mason	((1.24)) <u>1.14</u>
Chelan	((1.33)) <u>1.26</u>	Okanogan	((1.18)) <u>1.07</u>
Clallam	((0.99)) <u>0.86</u>	Pacific	((1.39)) <u>1.31</u>
Clark	((1.20)) <u>1.03</u>	Pend Oreille	((1.13)) <u>0.97</u>
Columbia	((1.30)) <u>1.17</u>	Pierce	((1.32)) <u>1.17</u>
Cowlitz	((1.25)) <u>1.15</u>	San Juan	((0.69)) <u>0.61</u>
Douglas	((1.33)) <u>1.22</u>	Skagit	((1.12)) <u>0.99</u>
Ferry	((0.90)) <u>0.96</u>	Skamania	((0.92)) <u>0.89</u>
Franklin	((1.38)) <u>1.42</u>	Snohomish	((1.11)) <u>0.99</u>
Garfield	((1.47)) <u>1.17</u>	Spokane	((1.44)) <u>1.28</u>
Grant	((1.37)) <u>1.35</u>	Stevens	((1.09)) <u>0.95</u>
Grays Harbor	((1.38)) <u>1.33</u>	Thurston	((1.21)) <u>1.12</u>
Island	((0.89)) <u>0.75</u>	Wahkiakum	((1.03)) <u>0.96</u>
Jefferson	((0.98)) <u>0.93</u>	Walla Walla	((1.46)) <u>1.38</u>
King	((1.04)) <u>1.00</u>	Whatcom	((1.15)) <u>1.05</u>
Kitsap	((1.07)) <u>0.96</u>	Whitman	((1.54)) <u>1.44</u>
Kittitas	((1.00)) <u>0.92</u>	Yakima	1.22
Klickitat	((1.08)) <u>1.09</u>		

WSR 07-24-097

EMERGENCY RULES

DEPARTMENT OF REVENUE

[Filed December 5, 2007, 11:45 a.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: The purpose of this rule is to provide information about the rate of inflation that is used by county officials to calculate interest on deferred special benefit assessments when farm and agricultural or timber land is removed or withdrawn from classification under chapter 84.34 RCW, the open space program.

Special benefit assessments for certain local improvements to farm and agricultural or timber land classified under chapter 84.34 RCW may be deferred by the land owner. If a

land owner has chosen to defer these assessments, when the land is subsequently removed or withdrawn from classification the deferred special benefit assessments become due and payable with interest. WAC 458-30-590 provides the rate of inflation used in calculating the interest that is added to the deferred amount of special benefit assessments.

The department filed a CR-105 notice of expedited rule making on October 18, 2007, with the intention of adopting a permanent rule after December 24, see WSR 07-21-095. The department still anticipates adopting a permanent rule at that time. The department is adopting this rule, which is the same as that proposed in WSR 07-21-095, on an emergency basis at this time to satisfy [the] RCW 84.34.310 requirement that an adopted rule providing the rate of inflation be published in the state register not later than January 1.

Citation of Existing Rules Affected by this Order: Amending WAC 458-30-590 Rate of inflation—Publication—Interest rate—Calculation.

Statutory Authority for Adoption: RCW 84.34.360.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: RCW 84.34.310(6) authorizes the department to determine the rate of inflation and to publish this rate no later than January 1 each year for use in that assessment year.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

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

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

Date Adopted: December 5, 2007.

Janis P. Bianchi
Assistant Director
Interpretation and Technical
Advice Division

AMENDATORY SECTION (Amending WSR 07-01-012, filed 12/7/06, effective 1/1/07)

WAC 458-30-590 Rate of inflation—Publication—Interest rate—Calculation. (1) **Introduction.** This section sets forth the rates of inflation discussed in WAC 458-30-550. It also explains the department of revenue's obligation to annually publish a rate of inflation and the manner in which this rate is determined.

(2) **General duty of department—Basis for inflation rate.** Each year the department determines and publishes a rule establishing an annual rate of inflation. This rate of inflation is used in computing the interest that is assessed when farm and agricultural or timber land, which are exempt from special benefit assessments, is withdrawn or removed from current use classification.

(a) The rate of inflation is based upon the implicit price deflator for personal consumption expenditures calculated by the United States Department of Commerce. This rate is used to calculate the rate of interest collected on exempt special benefit assessments.

(b) The rate is published by December 31st of each year and applies to all withdrawals or removals from farm and agricultural or timber land classification that occur the following year.

(3) **Assessment of rate of interest.** An owner of classified farm and agricultural or timber land is liable for interest on the exempt special benefit assessment. Interest accrues from the date the local improvement district is created until the land is withdrawn or removed from classification. Interest accrues and is assessed in accordance with WAC 458-30-550.

(a) Interest is assessed only for the time (years and months) the land remains classified under RCW 84.34.020 (2) or (3).

(b) If the classified land is exempt from the special benefit assessment for more than one year, the annual inflation rates are used to calculate an average rate of interest. This average is determined by adding the inflation rate for each year the classified land was exempt from the special benefit assessment after the local improvement district was created. The sum of the inflation rates is then divided by the number of years involved to determine the applicable rate of interest.

(c) Example. A local improvement district for a domestic water supply system was created in January 1990 and the owner used the statutory exemption provided in RCW 84.34.320. On July 1, 1997, the land was removed from the farm and agricultural classification. An average interest rate was calculated using the inflation rates for 1990 through 1997. The owner was then notified of the amount of previously exempt special benefit assessment, plus the average interest rate.

(4) **Rates of inflation.** The rates of inflation used to calculate the interest as required by WAC 458-30-550 are as follows:

YEAR	PERCENT	YEAR	PERCENT
1976	5.6	1977	6.5
1978	7.6	1979	11.3
1980	13.5	1981	10.3
1982	6.2	1983	3.2
1984	4.3	1985	3.5
1986	1.9	1987	3.7
1988	4.1	1989	4.8
1990	5.4	1991	4.2
1992	3.3	1993	2.7
1994	2.2	1995	2.3
1996	2.2	1997	2.1
1998	0.85	1999	1.42
2000	2.61	2001	1.89
2002	1.16	2003	1.84
2004	2.39	2005	2.54
2006	3.42	<u>2007</u>	<u>2.08</u>