

WSR 08-02-022
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed December 21, 2007, 1:11 p.m., effective February 1, 2008]

Effective Date of Rule: February 1, 2008.

Purpose: The department is repealing the existing chapter 388-101 WAC, Certified community residential services and support and is adopting new chapter 388-101 WAC, Certified community residential services and support.

The purpose of adopting these rules was to:

- (1) Comply with the Governor's Executive Order 05-03 plain talk;
- (2) Simplify language, eliminate the question and answer format, reorganize and renumber the chapter so that the requirements are clearer for certified community residential service providers to understand;
- (3) Clarify issues that have been brought to the attention of the department; and
- (4) Update rules to comply with statute changes.

The effective date of this rule is February 1, 2008.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 388-101-1010, 388-101-1020, 388-101-1101, 388-101-1106, 388-101-1111, 388-101-1116, 388-101-1121, 388-101-1126, 388-101-1131, 388-101-1136, 388-101-1141, 388-101-1146, 388-101-1180, 388-101-1190, 388-101-1200, 388-101-1205, 388-101-1210, 388-101-1220, 388-101-1230, 388-101-1240, 388-101-1250, 388-101-1260, 388-101-1400, 388-101-1410, 388-101-1420, 388-101-1430, 388-101-1440, 388-101-1460, 388-101-1470, 388-101-1480, 388-101-1490, 388-101-1500, 388-101-1510, 388-101-1520, 388-101-1530, 388-101-1540, 388-101-1550, 388-101-1600, 388-101-1610, 388-101-1620, 388-101-1630, 388-101-1640, 388-101-1650, 388-101-1660, 388-101-1670, 388-101-1680, 388-101-1690, 388-101-1700, 388-101-1710, 388-101-1720, 388-101-1730, 388-101-1740, 388-101-1750, 388-101-1760, 388-101-1770, 388-101-1780, 388-101-1790, 388-101-1800, 388-101-1810, 388-101-1820, 388-101-1830, 388-101-1840, 388-101-1850, 388-101-1860, 388-101-1870, 388-101-1880, 388-101-1890, 388-101-1900, 388-101-2000, 388-101-2010, 388-101-2020, 388-101-2030, 388-101-2040, 388-101-2050, 388-101-2060, 388-101-2070, 388-101-2080, 388-101-2090, 388-101-2100, 388-101-2110, 388-101-2120, 388-101-2130, 388-101-2140, 388-101-2150, 388-101-2160, 388-101-2300, 388-101-2330, 388-101-2340, 388-101-2350, 388-101-2360, 388-101-2370, 388-101-2380, 388-101-2400, 388-101-2410, 388-101-2420, 388-101-2430, 388-101-2440, 388-101-2450, 388-101-2460, 388-101-2470, 388-101-2480, 388-101-2490, 388-101-2500, 388-101-2510, 388-101-2520, 388-101-2530, and 388-101-2540.

Statutory Authority for Adoption: Chapter 71A.12 RCW.

Adopted under notice filed as WSR 07-18-094 on September 5, 2007.

Changes Other than Editing from Proposed to Adopted Version: The changes, other than editing changes, follow:

NEW SECTIONS

WAC 388-101-3000 Definitions.

"Group home" means a residence that is licensed as either a boarding home or an adult family home by the department under chapters 388-78A or 388-76 WAC. Group homes provide residential services community residential instruction, supports, and services to two or more clients who are unrelated to the provider.

"Qualified professional" means a person with at least three years' experience working with individuals with developmental disabilities- and as required by RCW 71A.12.-220(12).

~~**"Residential service"** means services provided to clients by a service provider.~~

"Risk assessment" means an assessment done by a qualified professional and as required by RCW 71A.12.230. ~~to determine the likelihood that a community protection program client will offend or reoffend.~~

"Service provider" means a person or entity certified by the department who delivers services and supports to meet a client's identified needs. The term includes the state operated living alternative (SOLA) program.

"Supported living" means residential services instruction, supports, and services provided by service providers to clients living in homes that are owned, rented, or leased by the client or their legal representative.

WAC 388-101-3080 The department may deny—Application. The department may deny the application for initial certification or change of ownership if any person named in the application:

- (1) Has shown a lack of understanding, ability or emotional stability to meet the identified needs of vulnerable adults;
- (2) Had a department contract, ~~or certification, or license~~ withdrawn or denied by the department, or has been subjected to enforcement actions;
- (3) Had a contract, certification, or license withdrawn or denied or was subjected to enforcement action from in another state; ~~withdrawn or denied;~~
- (4) Obtained or attempted to obtain a license or certification by fraudulent means or misrepresentation;
- (5) Has relinquished or been denied a license or license renewal to operate a home or facility that was licensed for the care of children or vulnerable adults;
- (6) Refused to permit authorized department representatives to interview clients or to have access to client records;
- (7) Has been convicted of a drug related conviction within the past five years without evidence of rehabilitation; or
- (8) Has been convicted of an alcohol related conviction within the past five years without evidence of rehabilitation.

~~**WAC 388-101-3120 Certification—Other.** If a service provider does not comply with the certification requirements, the department may provisionally certify or decertify a service provider.~~

WAC 388-101-3130 Certification evaluation. (1) The department may conduct an on-site certification evaluation of

each service provider at any time, but at least once every two years.

(2) During certification evaluations the service provider's administrator or designee must:

(a) Cooperate with department representatives during the on-site visit;

(b) Provide all contractor records, client records, and other relevant information requested by the department representatives;

(c) Ensure the service provider's administrator or designee is available during any visit to respond to questions or issues identified by department representatives; and

(d) Ensure the service provider's administrator or designee is present at the exit conference.

WAC 388-101-3150 State and federal Department access to program. The service provider must:

(1) Allow any state or federal department or agency to conduct audits, evaluations, or complaint investigations related to this program or to clients served in this program;

(2) Allow department representatives to review a client's records and activities at any time to see if the service provider continues to address the clients' needs for instruction and support activities;

(3) Allow the department representatives' access to clients, the client's legal representative and family members; and

(4) Cooperate with department representatives in the performance of official duties; ~~and-~~

(5) Allow access to clients and client records by an advocacy group if the advocacy group has access authority under state or federal law.

WAC 388-101-3200 Staffing requirements. The service provider must ensure each staff meets the following minimum requirements:

(1) Have a high school diploma or GED equivalent, unless the employees were hired before September 1, 1991;

(2) Be at least eighteen years of age or older when employed as a direct care staff, or at least twenty-one years of age or older when employed as an administrator;

(3) Have a clear understanding of job responsibilities and knowledge of individual support plans and client needs; and

(4) Passed the department ~~criminal~~ background check as required by WAC 388-101-3250; ~~and have no criminal convictions listed in RCW 43.43.830 or 43.43.842 and no state or federal findings of abandonment, abuse, neglect or financial exploitation.~~

WAC 388-101-3230 Group homes. A service provider who is a licensed adult family home or boarding home must:

(1) Provide care and services in accordance with this chapter and with licensing requirements under chapters 388-76 and 388-78A WAC respectively;

(2) Comply with client rights requirements in Chapter 70.129 RCW and this chapter;

~~(23)~~ Comply with the home's licensing requirements if there is a conflict with requirements in this chapter; and

~~(34)~~ Comply with this chapter if the requirement is over and above the home's licensing requirements.

WAC 388-101-3250 ~~Criminal history~~ Background checks. (1) The service provider must obtain ~~criminal history~~ background checks including, but not limited to background inquiries and criminal history disclosure from the department for all administrators, employees, volunteers, and subcontractors who may have unsupervised access to clients.

(2) The service provider must not allow the following persons to have unsupervised access to clients until the service provider receives successful background check results ~~from the criminal history background check~~ from the department:

(a) Administrators;

(b) Employees;

(c) Volunteers or students; and

(d) Subcontractors.

(3) Service providers or applicants who have lived in Washington state less than three years or who are otherwise required to complete a fingerprint-based background check may be hired for a one hundred twenty-day provisional period as allowed under law when:

(a) The applicant or service provider is not disqualified based on the initial result of the background check from the department; and

(b) A fingerprint-based background check is pending.

(4) The service provider must notify the person, within ten days of receiving the result, that he or she may request a copy of the background check, ~~result within ten days of receiving the result.~~

(5) The service provider must renew the background check at least every thirty-six months and keep current department background checks for each administrator, employee, volunteer or subcontractor of a service provider.

(6) Licensed boarding homes or adult family homes must adhere to the current regulations in this chapter and in the applicable licensing laws.

(7) Service providers must follow the requirements of RCW 43.43.830 through 43.43.842 and 74.15.030.

WAC 388-101-3310 Approval of staff-coverage schedules.

(1) The service provider must obtain division of developmental disabilities approval of schedules to provide twenty-four hour support, at the following times:

(a) Prior to certification review;

(b) When household configuration changes affect staff coverage; or

(c) When additional staffing is requested or needed by the client.

(2) The service provider must retain copies of the staff coverage schedules, ~~for a minimum of three months.~~

WAC 388-101-3320 Client rights. ~~(1)~~ Clients have the same legal rights and responsibilities guaranteed to all other individuals by the United States Constitution, federal and state law unless limited through legal processes.

~~(2)~~ Service providers must promote and protect all of the following client rights, including but not limited to:

~~(a1)~~ The right to be free from discrimination;

~~(b2)~~ The right to be reasonably accommodated in accordance with state and federal law; ~~the Americans with Disabilities Act;~~

(e3) The right to privacy, including the right to receive and send private mail and telephone calls;

(e4) The right to participate in an appropriate program of publicly supported education;

(e5) The right to be free from harm, including unnecessary physical restraint, isolation, excessive medication, abuse, neglect, abandonment, and financial exploitation; and

(e6) The right to refuse health services, medications, restraints, and restrictions.

~~(3) For group homes that have a boarding home or adult family home license, refer to chapter 388-78A or 388-76 WAC respectively for additional rights.~~

WAC 388-101-3370 Client health services support. The service provider must:

(1) Provide instruction and/or support as identified in the individual support plan and as required in this chapter to assist the client ~~in~~ with:

(a1) Accessing health, mental health, and dental services; ~~and~~

(b2) Medication management, administration, and assistance; ~~-~~

(23) Maintaining health records;

(34) ~~Assist the client in a~~ Arranging appointments with health professionals;

(45) Monitoring medical treatment prescribed by health professionals;

(56) Communicating directly with health professionals when needed; and

(67) ~~Ensure that the client r~~Receives an annual physical and dental examination unless the appropriate medical professional gives a written exception.

WAC 388-101-3440 Changes in client service needs—

Emergent. (1) The service provider must promptly notify the department to ask for emergency assistance when a the client's needs change and the actions or continued presence of the ~~a~~ client endangers the health, safety and/or personal property of other clients, the client, those working with the client, or other public citizens; ~~and~~

(2) If further assistance is needed following the department's initial response, the service provider must confirm in writing to the client's case manager on the first working day after initiating a verbal request for such assistance:

(a) The nature of the emergency; ~~and~~

(b) The need for immediate assistance; and

(c) ~~†~~The specific type of assistance needed.

(3) When the emergency cannot be resolved and the service provider wants to terminate services to the client, the service provider must:

(a) Notify the department in writing;

(b) Specify the reasons for terminating services to the client; and

(c) Ensure that the department receives the notice at least seventy-two hours before moving the client from the program.

WAC 388-101-3450 Service provider refusal to serve a client. ~~Before terminating services to the client, the service provider must:~~

(1) The service provider may refuse services to a client when the service provider has determined and documented:

(1) ~~Notify the department in writing ten working days before termination of services and include:~~

(a) Why the provider cannot meet the client's needs; or ~~and~~

(b) How the provider's refusal to serve the client would be in the best interest of the client or other clients.

(2) Before terminating services to the client, the service provider must ~~N~~notify the department, the client and the client's legal representative in writing ten working days before terminating services; ~~and~~

(3) Notify the department immediately if the situation is urgent and the client or other clients are at risk.

WAC 388-101-3470 Development of the individual instruction and support plan. (1) The service provider must develop and implement an individual instruction and support plan for each client that incorporates the department's residential guidelines in developing instruction and support activities.

(2) In developing the individual instruction and support plan, the service provider must:

(a) Work with the client ~~and select~~ to develop goals based on the individual support plan that will be worked on during the implementation of the individual instruction and support plan for the upcoming year;

(b) Identify how the instruction and/or support activities will be provided to meet the assessed needs of the client as described in the individual support plan;

(c) Ensure that the individual instruction and support plan contains or refers to other applicable support and/or service information; and

(d) Include the participation and agreement of the client and other individuals the client wants included.

(3) The service provider must send a copy of the individual instruction and support plan goals together with a list of applicable support and service information and where the information is located to the case manager for review.

WAC 388-101-3690 Medication refusal. (1) When a client who is receiving medication support from the service provider chooses to not take his or her medications, the service provider must:

(a) Respect the client's right to choose not to take the medication(s) including psychoactive medication(s); and

(b) Document the time, date and medication the client did not take.

(2) The service provider must take the appropriate action, including notifying the prescriber or primary care practitioner, when the client chooses to not take his or her medications and the client refusal could cause harm to the client or others.

WAC 388-101-3710 Medication organizers. (1) Service providers may allow medication organizers maintained by the individual when the organizers are filled by:

(a) The client;

(b) A licensed pharmacist;

(c) An RN; or

(d) The client's legal representative or a family member.

(2) Service providers providing medication assistance or administration to a client must ensure ~~assure~~ that the medication organizers are labeled.

(3) The client, a pharmacist, an RN, or the client's legal representative or family member may label the medication organizer.

(4) When there is a change in medications by the prescriber, the individual filling the medication organizers must replace labels with required updated information immediately.

WAC 388-101-3790 Charging for searching and duplicating records. (1) The service provider:

(1a) Must not charge the department or the client for any searching or duplication of records requested or needed; and

(2b) May charge the client's legal representative acting on behalf of the client for searching and duplication of records at a cost not to exceed twenty-five cents a page.

(2) The service provider must not charge the client's legal representative acting on behalf of the client for searching and duplication of records if the client is incapable of making the request.

WAC 388-101-3850 Functional assessment. (1) The service provider must conduct and document a functional assessment before developing and implementing a client's positive behavior support plan.

(2) The service provider must start the functional assessment when the client begins to engage in challenging behaviors that interfere with the client's ability to have positive life experiences and form and maintain relationships. ~~are considered challenging or are of concern.~~

(3) The service provider must ensure that a client's written functional assessment addresses:

(a) A description of the client and pertinent history;

(b) The client's overall quality of life;

(c) The behaviors that are considered challenging and/or are of concern;

(d) The factors or events which increase the likelihood of challenging behaviors;

(e) When and where the challenging behavior(s) occurs most frequently;

(f) The factors or events which increase the likelihood of appropriate behavior;

(g) An analysis and assessment of the possible functions or purpose the challenging behavior(s) serve for the client including what he or she obtains or avoids by engaging in the behavior(s); and

(h) A concluding summary of the functions or purpose that each challenging behavior serves for the client.

(4) The service provider must include the following sections in the format of each client's written functional assessment:

(a) Description and pertinent history;

(b) Definition of challenging behaviors;

(c) Data analysis/assessment procedures; and

(d) Summary statement(s).

WAC 388-101-3890 Restrictive procedures. (1) The service provider may:

(a) Only use restrictive procedures for the purpose of protecting the client, others, or property; and

(b) Not use restrictive procedures for the purpose of changing behavior in situations where no need for protection is present.

(12) The service provider must have documentation on the proposed intervention strategy before implementing restrictive procedures including:

(a) A description of the behavior(s) that the restrictive procedures address;

(b) A functional assessment of the challenging behavior(s);

(c) The positive behavior support strategies that will be used;

(d) A description of the restrictive procedure that will be used including:

(i) When and how it will be used; and

(ii) Criteria for termination of the procedure; and

(e) A plan to document the use of the procedure and its effect.

(23) The service provider must terminate implementation of the restrictive procedures as soon as the need for protection is over.

WAC 388-101-3920 Physical interventions. (1) The service provider must use the least restrictive intervention needed to protect each client, others, and property.

(2) The service provider may only use physical interventions with a client when positive or less restrictive techniques have been tried and determined to be insufficient to:

(a) Protect the client;

(b) Protect others; or

(c) Prevent property damage.

(3) The service provider must:

(a) Terminate the intervention for the client as soon as the need for protection is over; and

(b) Only use restrictive physical interventions for the client as part of a positive behavior support plan except:

(i) In an emergency when a client's behavior presents an immediate risk to the health and safety of the client or others, or a threat to property; or

(ii) When an unknown, unpredicted response from a client jeopardizes the client's or others safety.

WAC 388-101-3960 Monitoring physical and mechanical restraints. (1) The service provider must ensure that monitor any client who is being physically or mechanically restrained is continuously observed to ensure that risks to the client's health and safety are minimized.

(2) The service provider must keep documentation that includes:

(a) A description of events immediately preceding the client's behavior which led to the use of the restraint;

(b) The type of restraint used;

(c) Length of time the client was restrained;

(d) The client's reaction to the restraint;

(e) Staff that were involved; and

(f) Injuries sustained by anyone during the intervention.

WAC 388-101-4030 Community protection—Client transportation. In addition to the other client transportation requirements defined in this chapter, community protection service providers must provide or ensure supervised transportation as needed, including but not necessarily limited to, medical emergencies, appointments, to and from the day program site, and community activities. ~~supervision of the client during transportation.~~

WAC 388-101-4150 Mandated reporting to the department. Service providers, administrators, owners, and staff:

(1) Are mandated reporters and must meet the requirements of chapter 74.34 RCW;

(2) Must make mandated reports to the department's centralized toll free complaint telephone number or FAX number immediately when:

(a) There is reasonable cause to believe that a vulnerable adult, as defined in chapter 74.34 RCW, has been abandoned, abused, neglected, or financially exploited; or

(b) There is a reason to suspect physical or sexual assault.

(3) Must also make written and oral reports to the department as specified in the provider's residential services contract;

(4) Must protect the alleged victim and others from further abuse, neglect, abandonment, and financial exploitation; and

(5) May have their certification and/or contract terminated if they fail to report such incidents.

WAC 388-101-4160 Mandated reporting to law enforcement. ~~The S~~service providers, administrators, owners, and ~~staff~~ must immediately report to the appropriate law enforcement agency if there is reason to suspect that any of the following has occurred:

(1) Sexual Assault: Any alleged or suspected sexual assault;

(2) Physical Assault (nonclient to client): Any suspected physical assault as well as any act that causes fear of imminent harm; and

(3) Physical Assault (client to client): Any suspected physical assault that causes bodily injury requiring more than first aid, or in the event of:

(a) Injuries that appear on the back, face, head, neck, chest, breasts, groin, inner thigh, buttock, genital, or anal area;

(b) Fractures;

(c) Choking attempts;

(d) Patterns of physical assault between the same vulnerable adults or involving the same vulnerable adults;

(e) A reasonable cause to believe that an act has caused fear of imminent harm; and

(f) Any incident, regardless of injury, if requested by the client, his/her legal representative, or family member.

WAC 388-101-4180 Investigation of reports. ~~(1) The department will determine whether a report of client abandonment, abuse, neglect, or financial exploitation needs to be investigated.~~

~~(2) The department investigation will include an investigation of allegations about one or more of the following:~~

~~(a) A service provider;~~

~~(b) Anyone associated with a service provider; or~~

~~(c) A client receiving services under this chapter.~~

~~(3) If, after completing an investigation under this chapter, the department concludes that it is more likely than not that the alleged perpetrator abandoned, abused, neglected, or financially exploited a client, the department will make a preliminary finding against the perpetrator, as defined in WAC 388-101-4270 through 388-101-4340.~~

WAC 388-101-4265 Investigation of reports. (1) The department may investigate allegations of abandonment, abuse, neglect, or financial exploitation of a client.

(2) The department investigation may include an investigation of allegations about one or more of the following:

(a) A service provider;

(b) Anyone associated with a service provider; or

(c) A client receiving services under this chapter.

WAC 388-101-4270 Notice of preliminary finding. ~~The department will:~~

~~(1) The department will N~~otify the alleged perpetrator in writing within ten working days of making a preliminary finding of abandonment, abuse, neglect or financial exploitation of a client. ~~The written notice:~~

~~(a) w~~Will not include the identities of the alleged victim, reporter and witnesses; ~~and~~

~~(b) Will include the necessary information for the alleged perpetrator to ask for an administrative hearing to challenge the preliminary finding.~~

~~(2) The department must M~~ake a reasonable, good faith effort to determine the last known address of the alleged perpetrator; ~~and~~

~~(3) The department will S~~erve notice of the preliminary finding as provided in chapter 388-02 WAC.

~~(4) The department may extend the time frame for written notification beyond ten working days for good cause. ~~to include the time needed to translate the notification letter or make provisions for the safety of the alleged victim.~~~~

WAC 388-101-4280 Reporting preliminary findings. (1) In a manner consistent with confidentiality requirements concerning the client, witnesses, and reporter, the department may provide notification of a preliminary finding to:

(a) Other divisions within the department;

(b) The agency or program identified under RCW 74.34.068 with which the alleged perpetrator is associated as an employee, volunteer or contractor;

(c) The employer or program that is currently associated with the individual alleged to have abandoned, abused, neglected, or financially exploited a client, if known;

~~(ed)~~ Law enforcement; and

~~(de)~~ Other investigative authorities consistent with chapter 74.34 RCW.

(2) The notification will identify the finding as a preliminary finding.

WAC 388-101-4290 Disputing a preliminary finding. (1) An alleged perpetrator of abandonment, abuse, neglect, or financial exploitation of a client may request an administrative hearing to challenge a preliminary finding made by the department.

(2) The request must be made in writing to the office of administrative hearings.

(3) The office of administrative hearings must receive the alleged perpetrator's written request for a hearing within thirty calendar days of the date written on the individual was served with the notice of the preliminary finding.

(4) The written request for a hearing must include:

(a) The full legal name, current address and phone number of the alleged perpetrator;

(b) A brief explanation of why the alleged perpetrator disagrees with the preliminary finding;

(c) A description of any assistance needed in the administrative appeal process by the alleged perpetrator, including a foreign language or sign language interpreter or any reasonable accommodation for a disability; and

(d) The alleged perpetrator's signature.

WAC 388-101-4300 Disclosure of investigative and finding information. (1) Confidential information about clients and mandated reporters received from ~~provided by~~ the department may only be used by ~~to~~ the alleged perpetrator ~~may only be used~~ to challenge preliminary findings through the appeal process.

(2) Confidential information such as the name and other personal identifying information of the reporter, witnesses, or the client will be redacted from documents unless release of that information is otherwise ordered by the administrative law judge consistent with chapter 74.34 RCW and other applicable state and federal laws.

WAC 388-101-4340 Reporting final findings. (1) The department will report a final finding of abandonment, abuse, neglect and financial exploitation within ten working days to the following:

(a) The perpetrator;

(b) The service provider that was associated with the perpetrator during the time of the incident;

(c) The service provider that is currently associated with the perpetrator, if known;

(d) The appropriate licensing, contracting, or certification authority; and

(e) The federal or state department's or agency list of findings of individuals found to have abandoned, ment, abused, neglected, or and financially exploited ~~ation~~ a vulnerable adult.

(2) The findings may be disclosed to the public upon request subject to applicable public disclosure laws.

| SUMMARY OF COMMENTS RECEIVED | THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW. |
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| WAC 388-101-3000 Definitions. | |
| (1) Delete the term "qualified professional" because it is never used in the chapter. | (1) No change was made in response to this comment. The term "qualified professional" was used twice, once in the definition of "risk assessment" and once in WAC 388-101-4010. |
| (2) The definition for "qualified professional" is too broad and is not consistent with statutory guidance in RCW 71A.12.220(12). This definition would allow any person with three years experience working with people with developmental disabilities to evaluate potential community protection clients. The proposed rules definition does not include any requirement that the person have any specialized knowledge, training, expertise, or credentials as required by the statute. | (2) A change was made in response to this comment. The definition of "qualified professional" was changed to clarify that the requirements of RCW 71A.12.220(12) apply. |
| (3) The definition of "risk assessment" in the proposed rules does not reflect or include the statutory requirements found in RCW 71A.12.230. The proposed definition focuses on the client's risk of reoffending but the statute requires that the risk assessment contain a determination by the qualified professional whether a person can be managed successfully in the community with reasonably available safeguards and that lesser restrictive residential placement alternatives have been considered and would not be reasonable for the person seeking services. The definition of "risk assessment" should be changed to conform to the governing statute. | (3) A change was made in response to this comment. The definition of "risk assessment" was changed to clarify that the assessment meets the requirements of RCW 71A.12.230. |
| (4) The definition for "residential service" is too broad. | (4) Changes were made in response to this comment. In response to a review of the definitions referred to, it was found that the term "residential services" was used in two definitions. For clarity, the term "residential services" has been deleted. In addition, we have clarified the definitions for "group home" and "supported living" to be consistent with terms used within the chapter. |

| SUMMARY OF COMMENTS RECEIVED | THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW. |
|--|---|
| WAC 388-101-3080 The department may deny—Application. | |
| (1) In subsection (1), who determines if a potential provider "has shown a lack of understanding, ability or emotional stability" and on what basis is the determination made? Clarify or remove this subsection. | (1) and (3) No changes were made in response to these comments. The department's processes for applications include a review of all information received in order to make an informed decision about whether or not to certify the applicant. Chapter 43.43 RCW directs the department to assess an applicant's background and history to determine the applicant's ability to meet the needs of vulnerable adults. |
| (2) Amend subsection (3) to give DSHS discretion to deny certification for applicants who have been subjected to intermediate enforcement actions by other states. This change would achieve consistency with subsection (3). | (2) Changes were made in response to this comment. Subsections (2) and (3) were clarified to provide consistency in the information the department considers for in state and out of state applicants for certification. |
| (3) In subsections (7) and (8), what is considered "evidence of rehabilitation"? Clarify or remove these subsections. | (3) See the response under (1) above. |
| WAC 388-101-3120 Certification—Other. | |
| (1) This section is a repeat of WAC 388-101-3110(2) and should be removed. | (1) A change was made in response to this comment. This section was duplicative of WAC 388-101-3110(2) and was deleted. |
| WAC 388-101-3130 Certification evaluation. | |
| (1) The term "all records" in subsection (2)(b) needs to be clarified. As written, it exposes providers to voluminous requests for irrelevant information. Clarify by specifying "relevant" or "necessary" records. | (1) A change was made in response to this comment. The department changed subsection (2)(b) to clarify that contractor records, client records, and other relevant information be available to department representatives during certification evaluations. The change provided greater consistency with requirements found in the community residential services contract. |
| WAC 388-101-3150 Department access to program. | |
| (1) Amend the section title to reflect the content of the proposed rule. The rule provides access authority for state and federal agencies which is broader than the "department." | (1) A change was made in response to this comment. The department amended the title of this section to more accurately and clearly reflect the content of the proposed rule. |
| The rule should also be expanded to reference the federal authority of Disability Rights of Washington to have program and client access. | A subsection was added to clarify that any advocacy group must be given access to clients and client records if the advocacy group has state or federal authority for that access. |
| WAC 388-101-3160 Plan of correction. | |
| (1) Two comments both stated that a plan of correction should not be required until after the resolution of any dispute regarding evaluation findings. | (1) No changes were made in response to this comment. Under the department's current certification evaluation process, providers must complete a plan of correction for all findings on the final day of the on-site evaluation. |
| WAC 388-101-3170 Group training home. | |
| (1) Why is this section limited only to nonprofit providers? This could exclude for-profit providers from receiving contracts. It is a potential loss of revenue for providers. The requirement should be removed. | (1) No changes were made in response to this comment. RCW 71A.22.020(2) specifies that group training homes must be nonprofit. |
| WAC 388-101-3190 Service provider responsibilities. | |
| (1) The individual support plan (ISP) is not functioning as directed in WAC. Providers might have to provide more supports than intended by the division of developmental disabilities (DDD) or the supports intensity scale assessment. Thousands of hours could be added to clients who might not want | (1) No changes were made in response to this comment. The proposed rule is consistent with current WAC 388-101-1870 which states that the individual service plan or plan of care (now called the "individual support plan"): 1) outlines the support needs and interests of the client; and 2) identifies |

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| the services identified in the ISP. (This comment included no specific recommendation.) | the service provider responsibilities to support the client. The proposed rule clarified the intent of the existing regulation and is consistent with the DDD assessment implemented in July 2007. |
| WAC 388-101-3200 Staffing requirements. | |
| (1) Two comments requested that this section be amended to allow provisional hires as allowed in proposed WAC 388-101-3250. This proposed rule would have a negative fiscal impact on providers already plagued by high staff turnover. | (1) A change was made in response to this comment. The change clarified that background checks must occur in accordance with WAC 388-101-3250 which spelled out specific background check requirements and delineated when an applicant may be hired provisionally. This change was consistent with current WAC and with chapter 43.43 RCW. |
| WAC 388-101-3240 Policies and procedures. | |
| (1) A substantive policy cannot be developed describing how to protect clients when there have been allegations of abandonment (subsection (1)(d)). The requirement to protect clients under WAC 388-101-4150 is sufficient. | (1) No change was made in response to this comment. The proposed rule was consistent with the provider's obligation to protect each client's health and safety. It was also consistent with the current community residential services contract requirements found in attached DDD Policy 6.12, Residential Reporting Requirements Including Abuse/Neglect Reporting. |
| (2) It is not necessary to have a blanket policy for monitoring clients who are self-medicating. It's not clear how a provider is expected to monitor clients who take their own medication. It will have a fiscal impact because DDD does not include this activity in the provider's payment rate. Clarify or delete this requirement. | (2) No change was made in response to this comment. This requirement was taken directly from DDD Policy 6.19, Residential Medication Management, currently attached to the community residential services contract. |
| (3) This rule should require providers to have policies and train staff about their obligations to document incidents that they must report to DDD. This is necessary so DDD can obtain incident reports for quality assurance programs required under the <i>Allen</i> settlement and coordinate changes to services that may be necessary to protect the client from further abuse or neglect. | (3) No change was made in response to this comment. The community residential services contract by attached DDD Policy 6.12, Residential Reporting Requirements Including Abuse/Neglect Reporting, requires providers to have written policies and procedures for reporting incidents to DDD. |
| WAC 388-101-3250 Criminal history background checks. | |
| (1) Staffing and background check requirements should go beyond criminal history to include findings of abandonment, abuse, neglect, or financial exploitation. | (1) Changes were made in response to this comment. To clarify that background checks included more than criminal history, the title was changed to "Background check." Terminology within the section was revised as needed to reflect that findings of abandonment, abuse, neglect, or financial exploitation are part of the department's background check process. |
| (2) Remove volunteers from subsection (1) of this section. Some volunteers do not have client contact. Volunteers are correctly covered under the requirements of subsection (2). | (2) A change was made in response to this comment. To be consistent with current WAC and Chapter 43.43 RCW, the change clarified that volunteers who will have unsupervised access to clients must have background checks. |
| WAC 388-101-3270 Staff training before working alone with clients. | |
| (1) Staff should receive training on client rights before working alone with clients. This should include the right to be free from unnecessary physical restraint, isolation, excessive medication, abuse, neglect, abandonment, and financial exploitation. WAC 388-101-3280 is not sufficient to protect | (1) No changes were made in response to this comment. WAC 388-101-3320 requires service providers to promote and protect all client rights at all times. WAC 388-101-3260(3) requires that service providers provide staff training sooner than required by WAC if it is necessary to meet the client's |

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| <p>client safety. Before working alone with clients, staff should be trained on policies related to responding to emergencies; protecting clients from abuse; and reporting to DDD, RCS, and APS.</p> | <p>identified needs, and to meet state and federal laws regarding training. This section does require service providers to train staff on emergency procedures and reporting requirements before working alone with clients.</p> |
| <p>WAC 388-101-3310 Approval of staff-coverage schedules.</p> | |
| <p>(1) Why keep copies of schedules for three months (as required in subsection (2))?</p> | <p>(1) A change was made in response to this comment. To be consistent with current WAC, the department deleted the three month time frame requirement. The service provider may need to keep copies of the schedule for other purposes.</p> |
| <p>WAC 388-101-3320 Client rights.</p> | |
| <p>(1) The subsection (2) requirement to promote and protect clients is a great idea but is simply not practical to require this level of responsibility. (2) How far is an agency expected to go to "protect all of the following client rights, including but not limited to..."? This rule has the potential for legal fees and countless hours of staff support to fight any perceived violation of a client's rights. Remove the requirement to "protect" and clarify the subsection.</p> | <p>(1) and (2) No changes were made in response to these comments. Current law, under RCW 71A.10.030 and [71A.10].040 requires that a client be protected from discrimination and not deprived of any civil rights. Service providers must comply with state and federal laws to the extent that they are involved with the client. Service providers are not responsible for the behavior and actions of outside entities or businesses.</p> |
| <p>(3) It is demeaning and unnecessary to list specific rights of developmentally disabled citizens as it infers their rights are different. Delete subsection (2).</p> | <p>(3) No changes were made in response to this comment. The list provided examples of typical rights granted by current state and/or federal law that must be followed.</p> |
| <p>(4) Subsection (3) may wrongly imply that only adult family home and boarding home residents have the "additional rights" that are referenced. To avoid confusion and unequal protection of group home residents, the rule should eliminate reference to "additional rights" and include all the rights listed in those regulations or state that the additional rights apply to all group home residents receiving services from service providers.</p> | <p>(4) A change was made in response to this comment. In order to clarify, the department deleted subsection (3) because adult family home and boarding home requirements were already covered under proposed WAC 388-101-3230.</p> |
| <p>(5) One comment suggested that this rule should advise providers of additional client rights related to personal choices; activities, food, and personal appearance; privacy and visitations; participation in community activities; access to services from the long term care ombudsman and DRW; and the exercise of rights without interference, coercion, or reprisal. The comment said if these rights are not listed in rule, providers and clients may not be aware that they exist.</p> | <p>(5) No changes were made in response to these comments. The residential guidelines developed by DDD include quality of life elements such as personal choices, activities, personal appearance, relationships with family and friends, and participation in community activities. WAC 388-101-3470 requires service providers to use the residential guidelines in developing instruction and support activities for each client in their individual instruction and support plan.</p> |
| <p>(6) This rule should require the provider to regularly inform clients of their rights and the processes for enforcing them as many DDD clients may have no other means of learning about their rights.</p> | <p>(6) No changes were made in response to this comment. The individual instruction and support plan, which incorporate the residential guidelines, must be reviewed at least semi-annually and include documentation of the client's agreement to the plan.</p> |

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| <p>(7) The proposed rule provides for the right to be reasonably accommodated in accordance with the Americans with Disabilities Act. The rule should be amended to also require reasonable accommodations in accordance with all state and federal laws, including but not limited to, the Rehabilitation Act, the Washington Law Against Discrimination, and the Fair Housing Act.</p> | <p>(7) A change was made in response to this comment. The department clarified subsection (2)(b) to specify that the reasonable accommodation be done in accordance with state and federal law.</p> |
| <p>WAC 388-101-3370 Client health services support.</p> | |
| <p>(1) As written, subsections (2) through (6) would be required for all clients regardless of need. Unnecessary support could be provided to clients not needing help with some activities. Attach these subsections to subsection (1) which link instruction and support to needs identified in the ISP.</p> | <p>(1) Changes were made to this section in response to the comment. The department changed language in the section to clarify that the service provider must provide health services instruction and support to the client as identified in the individual support plan and as otherwise required in this chapter.</p> |
| <p>WAC 388-101-3380 Client transportation.</p> | |
| <p>(1) The potential need to charge a client for transportation costs is not addressed by the ISP. Providers would have to provide unlimited transportation without reimbursement. This requirement should be clarified or removed.</p> | <p>(1) No changes were made in response to this comment. The language in this section clarified the ways that client transportation can be paid for. Under the WAC section, service providers would not be required to provide unlimited client transportation without reimbursement.</p> |
| <p>WAC 388-101-3390 Physical and safety requirements.</p> | |
| <p>(1) The tasks listed in subsections (2) through (5) are not specifically addressed in the ISP. Providers would have to increase hours of support to clients independent in the addressed activities. Clarify or remove the requirement.</p> | <p>(1) No changes were made in response to this comment. Service providers are currently required to ensure that the physical and safety requirements specified in this section are met for each client, unless the individual support plan says the client is capable of meeting their own physical and safety needs and no support is needed. The client always has the right to refuse services.</p> |
| <p>WAC 388-101-3420 Client refusal to participate in services.</p> | |
| <p>(1) If a client is refusing to participate in services, providers should be required to attempt and document attempts to find and offer alternative services that would be acceptable to the client so that clients do not unnecessarily forego services to ensure their health and welfare.</p> | <p>(1) No changes were made in response to this comment. The proposed rule incorporated the requirements of current WAC 388-101-1400 which required providers to notify the case manager if a client's refusal of service if the refusal adversely affects the client's health and safety. Providers must also document their efforts to give or acquire services for the client. Proposed WAC 388-101-3430 further required providers to notify the department when the client's service needs change and the current support plan does not address the client's needs.</p> |
| <p>WAC 388-101-3450 Service provider refusal to serve a client.</p> | |
| <p>(1) The language in this section does not provide adequate protection for DDD or its clients. Subsection (1) should be amended to read, "Except as provided in subsection (3) of this rule, the department will not authorize termination of client services unless the department receives written notice from the service provider 10 working days prior to the proposed termination date and the department determines that such notice demonstrates a) the provider cannot meet the client's needs; and b) the refusal to serve the client would be in the best interest of the client or other clients."</p> | <p>(1) and (2) Changes were made in response to these comments. The department made clarifying changes to this section and WAC 388-101-3440 in order to be consistent with the requirements found in the current community residential services contract. The changes incorporated current community residential services contract requirements for notification, process, and documentation that must occur before terminating client services.</p> |

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| (2) More protections should be in place to prevent service providers from terminating services to clients. | |
| (3) To clearly protect the department and clients from unwarranted immediate terminations, subsection (3) should be amended to state: "Service providers must immediately notify the department of urgent situations in which the health and safety of the client or other clients are at immediate risk. The department will only authorize immediate terminations of services in these situations if the department determines that the service provider is unable to ensure the immediate health and safety of the client or other clients and the department can provide an alternative community placement that will ensure the health and safety of the client whose services are being terminated." | (3) No changes were made in response to this comment. WAC 388-101-3440(1) requires providers to promptly notify the department to ask for emergency assistance when a client's actions or continued presence causes a health or safety danger. The purpose of these rules is to specify requirements that service providers must follow. The intent is not to define department processes. |
| (4) What if the reason for a provider terminating services is not in the client's best interest but because the client refuses to allow health or safety supports? The rule should include more than the two options given as reasons for terminating services. | (4) No change was made in response to this comment. Termination of client services involves case management processes. The service provider must meet the requirements in the community residential services contract. The proposed rule is consistent with and reflects the requirements found in that contract. |
| WAC 388-101-3460 Individual support plan. | |
| (1) The term in this section is very close to the term "individual instruction and support plan." Change it to "individual client support guidelines." | (1) No change was made in response to this comment. "Individual support plan" is the term used in Chapter 388-828 WAC, The division of developmental disabilities (DDD) assessment. |
| WAC 388-101-3470 Development of the individual instruction and support plan. | |
| (1) The ISP does not refer to goals. Clarify or remove. | (1) A change was made in response to this comment. The department clarified subsection (2)(a) to include that individual instruction and support plan goals are developed based on the information and needs identified in the individual support plan. |
| (2) The term in this section is very close to the term "individual support plan." Change in some way to make clearer and less confusing. | (2) No change was made in response to this comment. The term "individual instruction and support plan" is the term used in current WAC and DDD policies. The term has been known to and used by service providers and the department for numerous years. |
| WAC 388-101-3480 Documentation of the individual instruction and support plan. | |
| (1) What does subsection (2) mean? Required support? Needs to be more specific. | (1) No change was made in response to this comment. Subsection (2) gives service providers flexibility in the organization of individual instruction and support plan goals and information as long as those documents are available to authorized persons when needed. All goals and information do not have to be kept in a single document. |
| WAC 388-101-3510 Ongoing updating of the individual instruction and support plan. | |
| (1) The ISP does not refer to goals as indicated in subsection (2). Clarify or remove. | (1) No change was made in response to this comment. Goals have always been a part of the individual instruction and support plan. The individual support plan provided information on the client's assessed needs from which goals are to |

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| | be developed with the client. |
| WAC 388-101-3530 Individual financial plan. | |
| (1) The ISP does not indicate what portion of client funds necessary to support as referenced in subsection (1)(c). Clarify or remove. | (1) No change was made in response to this comment. The proposed rule was consistent with requirements existing in current rule. Subsection (1)(c) does not require that the individual support plan identify the specific portion of client funds where support is needed. Subsection (3) does require the individual financial plan to specify what client funds and income will be managed by the provider and which will be managed by the client and the client's legal representative. |
| WAC 388-101-3540 Managing client funds. | |
| (1) Two comments said listing staff names in the client record as required by subsection (8) is impractical. Having staff sign as needed is more reasonable. Clarify or remove. | (1) No changes were made in response to these comments. The proposed rule reflected no substantive change from current rules governing service provider management of client funds that have been in place for a number of years. |
| WAC 388-101-3690 Medication refusal. | |
| (1) Two comments stated this is not practical for every missed medication. Documentation through incident reports has been successful. Eliminate this requirement. | (1) No changes were made in response to these comments. The proposed rule did not require the service provider to report every missed medication to the prescriber. It required the service provider to take appropriate action which may include notifying the prescriber or practitioner when the client's refusal to take medication could cause harm to the client or others. |
| WAC 388-101-3700 Storage of medications. | |
| (1) It is not reasonable to monitor medication location if clients take their own medications. Remove this requirement. | (1) No change was made in response to this comment. The proposed language came directly from DDD Policy 6.19, Residential Medication Management attached to the current community residential services contract. |
| WAC 388-101-3710 Medication organizers and 388-101-3720 Medications—Documentation. | |
| (1) It is unreasonable to ask a provider to assure medication organizers are labeled when they are managed by either the client or family member. Delete this requirement. | (1) A change was made in response to this comment. The department clarified this language to be consistent with the current community residential services contract and attached DDD Policy 6.19, Residential Medication Management. |
| WAC 388-101-3750 Psychoactive medication treatment plan. | |
| (1) The proposed rules do not clearly advise providers of clients' rights to refuse psychotropic medications. | (1) A change was made in response to this comment. The department clarified WAC 388-101-3690 to indicate that the client's right to refuse medication included the right to refuse psychoactive medications. |
| WAC 388-101-3780 Confidentiality of client records. | |
| (1) The requirement in subsection (1)(c) could be costly to providers. There is no limit to what a client, family member, or the department may request. Add a reasonable limit and specify it only applies to relevant information. | (1) No change was made in response to this comment. Current WAC 388-101-1730 required service providers to make copies of client records available to the department, the client, and/or legal representative upon their request. |
| WAC 388-101-3790 Charging for searching and duplicating. | |
| (1) This section discriminates against clients who are incapable of requesting their own records and who must rely on a guardian or attorney to request records on the client's | (1) A change was made in response to this comment. The change clarified that the service provider may not charge the client's legal representative for copying records if the repre- |

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| behalf. | tentative is acting on behalf of a client incapable of making such a request. |
| WAC 388-101-3810 Contents of client records. | |
| (1) Please clarify the WAC to make sure that the provider has copies of legal guardianship papers, regardless of who provides the document. | (1) No change was made in response to this comment. The case management program has always had the responsibility for giving copies of legal guardianship papers to the service provider. |
| WAC 388-101-3850 Functional assessment. | |
| (1) The requirement for beginning a functional assessment under subsection (2) is too soon. The standard should be when behaviors "are currently interfering with the client's ability to have positive life experiences." | (1) A change was made in response to this comment. Clarifying language was added to be consistent with functional assessment requirements found in the community residential services contract and attached DDD Policy 5.14, Positive Behavior Support. |
| WAC 388-101-3920 Physical interventions. | |
| (1) Subsection (3)(b)(i) to include additional language to allow physical interventions in emergencies "only if absolutely necessary to protect the client or others from injury." This change would be consistent with federal requirements for ICF/MR facilities. | (1) A change was made in response to this comment. Clarifying language from DDD Policy 5.15 was added to say that emergency restrictive procedures may be used when a client's behavior presents an immediate risk to the health and safety of the client or others, or a threat to property. Clarifying language was also added to WAC 388-101-3890 stating that restrictive procedures may only be used for purposes of protecting clients, others, and property. These changes were consistent with the requirements of the community residential services contract and attached DDD Policy 5.15, Use of Restrictive Procedures. |
| WAC 388-101-3960 Monitoring physical and mechanical restraints. | |
| (1) When using physical or mechanical restraints, providers should be required to document checks on the client at least every thirty minutes and to allow clients the opportunity for motion and exercise for at least ten minutes every two hours. | (1) A change was made in response to this comment. The change clarified that the service provider must ensure that any client in restraints is continuously observed. The clarifying language was consistent with DDD Policy 5.15, Use of Restrictive Procedures. |
| WAC 388-101-4150 Mandated reporting to the department. | |
| (1) Subsection (4) should require documentation of what steps the provider took to protect and examples of protective measures that must be taken to protect the client from abuse, neglect, and exploitation. | (1) No changes were made in response to this comment. This proposed rule was consistent with the current residential services contract requirements and attached DDD Policy 6.12, Residential Reporting Requirements Including Abuse/Neglect Reporting. |
| (2) Providers should be required to conduct their own internal investigation of alleged abuse or neglect to ensure the health and welfare of clients. Add that provider investigations should not interfere with, substitute for, or be relied upon by external state investigations. | (2) No changes were made in response to this comment. Proposed WAC 388-101-4150(4) required providers to protect the alleged victim and others. Proposed WAC 388-101-3240 required service providers to develop, implement, and train staff on policies and procedures related to protecting clients when there's been an allegation of abuse, neglect, financial exploitation, or abandonment. In order to meet their obligation to protect, providers would need to gather sufficient information to allow them to meet their obligation to protect clients. WAC 388-101-3150 required service providers to allow the department to conduct program related audits, evaluations, |

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| | or complaint investigations; and to cooperate with department representatives in the performance of official duties. |
| WAC 388-101-4180 Investigation of mandated reports. | The specific responses to the comments are found in (1) and (2) below. After review and analysis, the department determined to move the pertinent parts of the language to a new section WAC 388-101-4265 where it is placed more appropriately under the Abuse-neglect finding - Individual. |
| (1) This section should be amended to include guidelines for determining whether a complaint should be investigated. | (1) A change was made in response to this comment. The department determined that this subsection referred to department processes which do not belong in WAC, therefore, the subsection was deleted. |
| (2) The proposed rule limits investigations to allegations about service providers, individuals associated with a service provider, and clients receiving services under this chapter. It should be amended to clarify that the department has authority to investigate all allegations involving any client receiving services from a certified provider but that the procedures in WAC 388-101-4270 through 388-101-4340 apply to allegations against the provider, anyone associated with the provider or another client. | (2) No change was made in response to this comment. This chapter applies only to the certified community residential service and support program and those associated with the program. Other areas of the department would investigate other allegations. |
| WAC 388-101-4030 Community protection—Client transportation. | |
| (1) A blanket requirement that all transportation be supervised infringes on the rights of participants to live in the least restrictive setting possible and their right to reduce current restrictions over time. | (1) A change was made in response to this comment. The change was consistent with the current community residential services contract and attached DDD Policy 15.04, Community Protection Intensive Supported Living Services. The department clarified that the provider must ensure or provide transportation supervision as needed by the CPP client. |
| WAC 388-101-3990 Community protection—Treatment team meetings, 388-101-4010 Community protection—Written individual plan, 388-101-4050 Community protection—Reducing a client's restrictions, and 388-101-4060 Community protection—Leaving the program against treatment team advice. Comments were made about the above proposed sections that included recommendations regarding rules governing the community protection program. | No changes were made in response to these comments. The purpose of these rules is to clarify the requirements that certified community residential services and support providers are responsible to follow. It is not within the scope of these rules to define the standards and requirements of the community protection program. Comments and recommendations regarding these sections have been forwarded to the appropriate Division of Developmental Disabilities program staff for review and consideration. |
| No mention of appeal rights for CPP clients. The proposed WAC includes no reference to the administrative appeal rights for CPP clients and no mention of the process for providing notice and a forum for the CPP clients to exercise these rights. | No change was made in response to this comment. This comment pertains to rules governing the community protection program and has been forwarded to appropriate Division of Developmental Disabilities program staff for review and consideration. |
| No mention of the availability of attorneys for CPP clients. The department should promulgate rules which ensure that CPP clients are informed of the availability of attorneys at critical times where their rights may be in jeopardy. | No change was made in response to this comment. This comment pertains to rules governing the community protection program and has been forwarded to appropriate Division of Developmental Disabilities program staff for review and consideration. |

A final cost-benefit analysis is available by contacting John Gaskell, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-3210, fax (360) 438-7903, e-mail gaskejw@dshs.wa.gov. The cost-benefit analysis was not changed.

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 136, Amended 0, Repealed 107.

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 136, Amended 0, Repealed 107.

Date Adopted: December 21, 2007.

Robin Arnold-Williams
Secretary

DEFINITIONS

NEW SECTION

WAC 388-101-3000 Definitions. "Abandonment" means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means:

(1) The willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult;

(2) In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish; and

(3) Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) **"Sexual abuse"** means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.

(b) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints unless the restraints are consistent with licensing and certifi-

cation requirements, and includes restraints that are otherwise being used inappropriately.

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

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

"Case manager" means the division of developmental disabilities case resource manager or social worker assigned to a client.

"Certification" means a process used by the department to determine if an applicant or service provider complies with the requirements of this chapter and is eligible to provide certified community residential services and support to clients.

"Chaperone agreement" means a plan or agreement that describes who will supervise a community protection program client when service provider staff is not present. This plan or agreement is negotiated with other agencies and individuals who support the client, including the client's legal representative and family.

"Chemical restraint" means the use of psychoactive medications for discipline or convenience and not prescribed to treat the client's medical symptoms.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020(3) and who also has been determined eligible to receive services by the division of developmental disabilities under chapter 71A.16 RCW. For purposes of informed consent and decision making requirements, the term "client" includes the client's legal representative to the extent of the representative's legal authority.

"Client services" means instruction and support services that service providers are responsible to provide as identified in the client's individual support plan.

"Crisis diversion" means temporary crisis residential services and supports provided to clients at risk of psychiatric hospitalization and authorized by the division of developmental disabilities.

"Crisis diversion bed services" means crisis diversion that is provided in a residence maintained by the service provider.

"Crisis diversion support services" means crisis diversion that is provided in the client's own home.

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

"Financial exploitation" means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage other than the vulnerable adult's profit or advantage.

"Functional assessment" means a comprehensive evaluation of a client's challenging behavior(s). This evaluation is the basis for developing a positive behavior support plan.

"Group home" means a residence that is licensed as either a boarding home or an adult family home by the department under chapters 388-78A or 388-76 WAC. Group homes provide community residential instruction, supports, and services to two or more clients who are unrelated to the provider.

"Group training home" means a certified nonprofit residential facility that provides full-time care, treatment, training, and maintenance for clients, as defined under RCW 71A.22.020(2).

"Immediate" or **"Immediately"** means within twenty-four hours for purposes of reporting abandonment, abuse, neglect, or financial exploitation of a vulnerable adult.

"Individual financial plan" means a plan describing how a client's funds will be managed when the service provider is responsible for managing any or all of the client's funds.

"Individual instruction and support plan" means a plan developed by the service provider and the client. The individual instruction and support plan:

(1) Uses the information and assessed needs documented in the individual support plan to identify areas the client would like to develop;

(2) Includes client goals for instruction and support that will be formally documented during the year; and

(3) Must contain or refer to other applicable support or service information that describes how the client's health and welfare needs are to be met (e.g. individual financial plan, positive behavior support plan, cross system crisis plan, individual support plan, individual written plan, client-specific instructions).

"Individual support plan" means a document that authorizes and identifies the division of developmental disabilities paid services to meet a client's assessed needs.

"Instruction" means goal oriented teaching that is designed for acquiring and enhancing skills.

"Legal representative" means a person's legal guardian, a person's limited guardian when the subject matter is within the scope of the limited guardianship, a person's attorney at law, a person's attorney in fact, or any other person who is authorized by law to act for another person.

"Managing client funds" means that the service provider:

(1) Has signing authority for the client;

(2) Disperses the client's funds; or

(3) Limits the client's access to funds by not allowing funds to be spent.

"Mechanical restraint" means a device or object, which the client cannot remove, applied to the client's body that restricts his/her free movement.

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

"Medication assistance" means assistance with self-administration of medication rendered by a non-practitioner to a client receiving certified community residential services and supports in accordance with chapter 69.41 RCW and chapter 246-888 WAC.

"Medication service" means any service provided by a certified community residential services and support provider related to medication administration or medication assistance provided through nurse delegation and medication assistance.

"Neglect" means:

(1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or

(2) An act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

"Physical intervention" means the use of a manual technique intended to interrupt or stop a behavior from occurring. This includes using physical restraint to release or escape from a dangerous or potentially dangerous situation.

"Physical restraint" means physically holding or restraining all or part of a client's body in a way that restricts the client's free movement. This does not include briefly holding, without undue force, a client in order to calm him/her, or holding a client's hand to escort the client safely from one area to another.

"Psychoactive" means possessing the ability to alter mood, anxiety level, behavior, cognitive processes, or mental tension, usually applied to pharmacological agents.

"Psychoactive medications" means medications prescribed to improve or stabilize mood, mental status or behavior. Psychoactive medications include anti-psychotics/neuroleptics, atypical anti-psychotics, antidepressants, stimulants, sedatives/hypnotics, and anti-mania and anti-anxiety drugs.

"Qualified professional" means a person with at least three years' experience working with individuals with developmental disabilities and as required by RCW 71A.12.220 (12).

"Restrictive procedure" means any procedure that restricts a client's freedom of movement, restricts access to client property, requires a client to do something which he/she does not want to do, or removes something the client owns or has earned.

"Risk assessment" means an assessment done by a qualified professional and as required by RCW 71A.12.230.

"Service provider" means a person or entity certified by the department who delivers services and supports to meet a client's identified needs. The term includes the state operated living alternative (SOLA) program.

"Support" means assistance a service provider gives a client based on needs identified in the individual support plan.

"Supported living" means instruction, supports, and services provided by service providers to clients living in homes that are owned, rented, or leased by the client or their legal representative.

"Treatment team" means the program participant and the group of people responsible for the development, implementation, and monitoring of the person's individualized supports and services. This group may include, but is not limited

to, the case manager, therapist, the service provider, employment/day program provider, and the person's legal representative and/or family, provided the person consents to the family member's involvement.

"Vulnerable adult" includes a person:

- (1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or
- (2) Found incapacitated under chapter 11.88 RCW; or
- (3) Who has a developmental disability as defined under RCW 71A.10.020; or
- (4) Admitted to any facility; or
- (5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or
- (6) Receiving services from an individual provider.

"Willful" means the deliberate, or non-accidental, action or inaction by an alleged perpetrator that he/she knew or reasonably should have known could cause a negative outcome, harm, injury, pain, and anguish.

"Written individual plan" means a plan developed for clients in the community protection program that includes:

- (1) An assessment of the client's emotional and behavioral issues as related to community protection risks;
- (2) Specific intervention strategies and techniques related to community protection risks;
- (3) Specific restrictions and measures, including security precautions, both in-home and out-of-home; and
- (4) Signatures of the client's case manager and the client.

CERTIFICATION AND MONITORING

NEW SECTION

WAC 388-101-3010 Certified community residential services and supports. In order for a person or entity to deliver client instruction and support services under this chapter the person or entity must:

- (1) Be certified by the department; and
- (2) Be granted a contract by the department.

NEW SECTION

WAC 388-101-3020 Compliance. The service provider must be in compliance with:

- (1) All the requirements of this chapter. Except that, the licensing requirements for adult family homes and boarding homes supersede this chapter if the requirements under respective chapters 388-76 and 388-78A WAC conflict with this chapter;
- (2) The laws governing this chapter, including chapter 71A.12 and 71A.22 RCW;
- (3) The requirements of chapter 74.34 RCW;
- (4) The department's residential services contract. Except that, the requirements of this chapter supersede any conflicting requirements with the contract, or appendices to the contract; and
- (5) Other relevant federal, state and local laws, requirements, and ordinances.

NEW SECTION

WAC 388-101-3030 Application required. (1) A person or entity must complete an application before the department will consider initial certification; and

(2) The service provider must complete an application before the department will consider a request for change of ownership as detailed in WAC 388-101-3060.

NEW SECTION

WAC 388-101-3040 Residential services contract. (1) The service provider may request a department residential services contract after approval for initial certification or for change of ownership.

(2) The service provider must have a separate contract for each region where they receive referrals to serve clients.

(3) The service provider's residential services contract will be terminated by the department upon termination of certification.

NEW SECTION

WAC 388-101-3050 Application for initial certification. (1) To apply for initial certification an applicant must submit to the department:

- (a) A letter of intent that includes:
 - (i) Contact information;
 - (ii) Geographical area of service; and
 - (iii) Type of service provided, including group home, supported living, community protection, or group training home.
 - (b) A completed and signed application on forms designated by the department;
 - (c) All attachments specified in the application and any other information the department may request including but not limited to:
 - (i) Administrator resumes;
 - (ii) Statements of financial stability;
 - (iii) Professional references;
 - (iv) Relevant experiences and qualifications of the individual or agency; and
 - (v) Assurances the applicant will not discriminate against any client or employee.
 - (d) A copy of the license if applying for certification as a group home;
 - (e) The name of the administrator of the program; and
 - (f) Department criminal history background check on forms designated by the department for the individual or individuals designated to serve as administrator of the proposed program.
- (2) The applicant must submit a revised application, if any information on the application changes before the initial certification is issued.
- (3) The department will only process a completed application.
- (4) Each person named in the application for initial certification is considered separately and jointly by the department.

(5) Based on the documentation received, the department will notify the applicant in writing regarding the department's certification decision.

(6) The applicant must comply with additional requirements identified in this chapter if intending to support community protection clients.

NEW SECTION

WAC 388-101-3060 Change of ownership. (1) To apply for a change of ownership, an applicant must submit an application and the required reports and documents to the department when there is a change of:

- (a) The business entity ownership; or
- (b) The form of legal organization.

(2) The service provider applying for a change of ownership may be required to provide any or all items listed in WAC 388-101-3050.

(3) If the applicant is not a current service provider, the applicant must apply for initial certification.

NEW SECTION

WAC 388-101-3070 Notice for change of ownership. The current service provider must notify:

- (1) The department in writing sixty days before a change of ownership; and
- (2) Clients or their legal representatives in writing thirty days before a change of ownership.

NEW SECTION

WAC 388-101-3080 The department may deny—Application. The department may deny the application for initial certification or change of ownership if any person named in the application:

- (1) Has shown a lack of understanding, ability or emotional stability to meet the identified needs of vulnerable adults;
- (2) Had a department contract, certification, or license withdrawn or denied by the department, or has been subjected to enforcement actions;
- (3) Had a contract, certification, or license withdrawn or denied or was subjected to enforcement action in another state;
- (4) Obtained or attempted to obtain a license or certification by fraudulent means or misrepresentation;
- (5) Has relinquished or been denied a license or license renewal to operate a home or facility that was licensed for the care of children or vulnerable adults;
- (6) Refused to permit authorized department representatives to interview clients or to have access to client records;
- (7) Has been convicted of a drug related conviction within the past five years without evidence of rehabilitation; or
- (8) Has been convicted of an alcohol related conviction within the past five years without evidence of rehabilitation.

NEW SECTION

WAC 388-101-3090 The department must deny—Application. The department must deny an application for initial certification or change of ownership if any person named in the application was:

- (1) Convicted of a crime against children or other persons or crimes relating to financial exploitation as defined under RCW 43.43.830 or 43.43.842;
- (2) Found by a court in a protection proceeding or in a civil damages lawsuit under chapter 74.34 RCW to have abused, neglected, abandoned or financially exploited a vulnerable adult;
- (3) Found in any dependency action under chapter 13.34 RCW to have sexually assaulted, neglected, exploited, or physically abused any minor;
- (4) Found by a court in a domestic relations proceeding under Title 26 RCW to have sexually abused, exploited, or physically abused any minor;
- (5) Found in any final decision issued by a disciplinary board to have sexually or physically abused or exploited any minor or have abused, neglected, abandoned, or financially exploited any vulnerable adult as defined under chapter 74.34 RCW; or
- (6) The subject of a stipulated finding of fact, conclusion of law, an agreed order, finding of fact, final order issued by a disciplining authority or final decision by any federal or state agency or department, a court of law, or entered into a state registry or department or agency list with a finding of abuse, neglect, financial exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW.

NEW SECTION

WAC 388-101-3100 Certification—Initial. (1) The department may approve the individual or entity for initial certification when the individual or entity complies with the requirements of this chapter. The department may:

- (a) Grant initial certification for up to one hundred and eighty days of the effective date of the residential services contract; and
 - (b) Extend initial certification for an additional period up to one hundred and eighty days.
- (2) If an applicant does not receive a residential services contract, initial certification will be valid for up to one year.

NEW SECTION

WAC 388-101-3110 Certification—Regular. (1) The department may approve the service provider for regular certification when the service provider complies with the requirements of this chapter and the residential services contract. The department may:

- (a) Grant certification to a service provider for up to two years; and
 - (b) Extend regular certification for an additional period up to one hundred and eighty days.
- (2) If a service provider does not comply with the certification requirements, the department may provisionally certify or decertify a service provider.

NEW SECTION

WAC 388-101-3130 Certification evaluation. (1) The department may conduct an on-site certification evaluation of each service provider at any time, but at least once every two years.

(2) During certification evaluations the service provider's administrator or designee must:

(a) Cooperate with department representatives during the on-site visit;

(b) Provide all contractor records, client records, and other relevant information requested by the department representatives;

(c) Ensure the service provider's administrator or designee is available during any visit to respond to questions or issues identified by department representatives; and

(d) Ensure the service provider's administrator or designee is present at the exit conference.

NEW SECTION

WAC 388-101-3140 Complaint investigation. The department may conduct unannounced complaint investigations to determine the service provider's compliance with this chapter, the residential services contract, and applicable laws and requirements.

NEW SECTION

WAC 388-101-3150 State and federal access to program. The service provider must:

(1) Allow any state or federal department or agency to conduct audits, evaluations, or complaint investigations related to this program or to clients served in this program;

(2) Allow department representatives to review a client's records and activities at any time to see if the service provider continues to address the clients' needs for instruction and support activities;

(3) Allow the department representatives' access to clients, the client's legal representative and family members;

(4) Cooperate with department representatives in the performance of official duties; and

(5) Allow access to clients and client records by an advocacy group if the advocacy group has access authority under state or federal law.

NEW SECTION

WAC 388-101-3160 Plan of correction. The service provider must:

(1) Submit a signed plan of correction to the department according to established department processes and timelines; and

(2) Include in the plan of correction:

(a) What the service provider did or will do to correct each deficiency;

(b) How the service provider will prevent future problems of this type;

(c) Who will be responsible for monitoring the corrections to ensure the problems do not recur; and

(d) When lasting correction will be achieved.

NEW SECTION

WAC 388-101-3170 Group training home. After the effective date of this chapter a person or entity desiring to become a group training home must:

(1) Complete an application on forms and attachments designated by the department; and

(2) Currently be:

(a) Certified as a community residential services and support provider;

(b) Licensed as an adult family home under chapter 70.128 RCW; and

(c) A nonprofit business in accordance with state and federal law.

NEW SECTION

WAC 388-101-3180 Department approval of group training home status. The department will consider, at a minimum, the following when determining whether to approve or deny an application for group training home status:

(1) The needs of the program;

(2) Available funding;

(3) The information received from the applicant;

(4) The certification history of the applicant;

(5) The licensing history of the applicant; and

(6) The capacity of the home.

ADMINISTRATIVE REQUIREMENTSNEW SECTION

WAC 388-101-3190 Service provider responsibilities. (1) Service providers must meet the requirements of:

(a) This chapter;

(b) Each contract and statement of work entered into with the department;

(c) Each client's individual support plan when the individual support plan identifies the service provider as responsible; and

(d) Each client's individual instruction and support plan.

(2) The service provider must:

(a) Have a designated administrator and notify the department when there is a change in administrator;

(b) Ensure that clients have immediate access to staff, or the means to contact staff, at all times;

(c) Provide adequate staff within contracted hours to administer the program and meet the needs of clients;

(d) Not routinely involve clients in the unpaid instruction and support of other clients;

(e) Not involve clients receiving crisis diversion services in the instruction and support of other clients; and

(f) Retain all records and other material related to the residential services contract for six years after expiration of the contract.

NEW SECTION

WAC 388-101-3200 Staffing requirements. The service provider must ensure each staff meets the following minimum requirements:

- (1) Have a high school diploma or GED equivalent, unless the employees were hired before September 1, 1991;
- (2) Be at least eighteen years of age or older when employed as a direct care staff, or at least twenty-one years of age or older when employed as an administrator;
- (3) Have a clear understanding of job responsibilities and knowledge of individual support plans and client needs; and
- (4) Passed the department background check as required by WAC 388-101-3250.

NEW SECTION

WAC 388-101-3210 Administrative documents. The service provider must prepare and maintain written documents as follows:

- (1) A mission statement;
- (2) A program description;
- (3) An organizational chart and description showing all supervisory relationships;
- (4) Description of staff roles and responsibilities, including the person designated to act in the absence of the administrator; and
- (5) Staffing schedules.

NEW SECTION

WAC 388-101-3220 Administrator responsibilities. The service provider must ensure that the administrator delivers services to clients consistent with this chapter, and the department's residential services contract. This includes but is not limited to:

- (1) Overseeing all aspects of staffing, such as recruitment, staff training, and performance reviews;
- (2) Developing and maintaining policies and procedures that give staff direction to provide appropriate services and support as required by this chapter and the department contract; and
- (3) Maintaining and securely storing client, personnel, and financial records.

NEW SECTION

WAC 388-101-3230 Group homes. A service provider who is a licensed adult family home or boarding home must:

- (1) Provide care and services in accordance with this chapter and with licensing requirements under chapters 388-76 and 388-78A WAC respectively;
- (2) Comply with client rights requirements in chapter 70.129 RCW and this chapter;
- (3) Comply with the home's licensing requirements if there is a conflict with requirements in this chapter; and
- (4) Comply with this chapter if the requirement is over and above the home's licensing requirements.

NEW SECTION

WAC 388-101-3240 Policies and procedures. (1) The service provider must develop, implement, and train staff on policies and procedures to address what staff must do:

- (a) Related to client rights, including a client's right to file a complaint or suggestion without interference;
 - (b) Related to soliciting client input and feedback on instruction and support received;
 - (c) Related to reporting suspected abuse, neglect, financial exploitation, or abandonment;
 - (d) To protect clients when there have been allegations of abuse, neglect, financial exploitation, or abandonment;
 - (e) In emergent situations that may pose a danger or risk to the client or others, such as in the event of death or serious injury to a client;
 - (f) In responding to missing persons and client emergencies;
 - (g) Related to emergency response plans for natural or other disasters;
 - (h) When accessing medical, mental health, and law enforcement resources for clients;
 - (i) Related to notifying a client's legal representative, and/or relatives in case of emergency;
 - (j) When receiving and responding to client grievances; and
 - (k) To respond appropriately to aggressive and assaultive clients.
- (2) The service provider must develop, implement, and train staff on policies and procedures in all aspects of the medication support they provide, including but not limited to:
- (a) Supervision;
 - (b) Client refusal;
 - (c) Services related to medications and treatments provided under the delegation of a registered nurse consistent with chapter 246-840 WAC;
 - (d) The monitoring of a client who self-administers their own medications;
 - (e) Medication assistance for clients needing this support; and
 - (f) What the service provider will do in the event they become aware that a client is no longer safe to take their own medications.
- (3) The service provider must maintain current written policies and procedures and make them available to all staff; and to clients and legal representatives upon request.

NEW SECTION

WAC 388-101-3250 Background checks. (1) The service provider must obtain background checks including, but not limited to background inquiries and criminal history disclosure from the department for all administrators, employees, volunteers, and subcontractors who may have unsupervised access to clients.

- (2) The service provider must not allow the following persons to have unsupervised access to clients until the service provider receives successful background check results from the department:
- (a) Administrators;
 - (b) Employees;

- (c) Volunteers or students; and
- (d) Subcontractors.

(3) Service providers or applicants who have lived in Washington state less than three years or who are otherwise required to complete a fingerprint-based background check may be hired for a one hundred twenty-day provisional period as allowed under law when:

(a) The applicant or service provider is not disqualified based on the initial result of the background check from the department; and

(b) A fingerprint-based background check is pending.

(4) The service provider must notify the person, within ten days of receiving the result, that he or she may request a copy of the background check.

(5) The service provider must renew the background check at least every thirty-six months and keep current department background checks for each administrator, employee, volunteer or subcontractor of a service provider.

(6) Licensed boarding homes or adult family homes must adhere to the current regulations in this chapter and in the applicable licensing laws.

(7) Service providers must follow the requirements of RCW 43.43.830 through 43.43.842 and RCW 74.15.030.

NEW SECTION

WAC 388-101-3260 Staff training. The service provider must:

(1) Provide and document required training to staff;

(2) Within the first six months, ensure that staff receives a minimum of thirty-two total hours of training that meets the training requirements of this chapter;

(3) Provide staff training sooner if required by the client's identified needs; and

(4) Meet state and federal laws regarding training; such as, bloodborne pathogens training referenced in WAC 296-823-120.

NEW SECTION

WAC 388-101-3270 Staff training before working alone with clients. The service provider must train staff in the following before the employee works alone with clients:

(1) Current individual instruction and support plans of each client with whom the employee works;

(2) Emergency procedures for clients;

(3) The reporting requirements for abuse and neglect under chapter 74.34 RCW; and

(4) Client confidentiality.

NEW SECTION

WAC 388-101-3280 Staff training within four weeks of employment. The service provider must provide training within the first four weeks of employing a staff person to include:

(1) The service provider's mission statement;

(2) Policies and procedures; and

(3) On-the-job training.

NEW SECTION

WAC 388-101-3290 Staff training within six months of employment. The service provider must provide training within the first six months of employing a staff person, to include:

(1) First aid and CPR;

(2) Bloodborne pathogens with HIV/AIDS information;

(3) Client services;

(4) Residential guidelines; and

(5) Positive behavior support.

NEW SECTION

WAC 388-101-3300 Staff training to be current. The service provider must ensure that each employee keeps their first aid training, CPR certification, and bloodborne pathogens training current.

NEW SECTION

WAC 388-101-3310 Approval of staff-coverage schedules. (1) The service provider must obtain division of developmental disabilities approval of schedules to provide twenty-four hour support, at the following times:

(a) Prior to certification review;

(b) When household configuration changes affect staff coverage; or

(c) When additional staffing is requested or needed by the client.

(2) The service provider must retain copies of the staff coverage schedules.

CLIENT RIGHTS AND TREATMENT

NEW SECTION

WAC 388-101-3320 Client rights. Clients have the same legal rights and responsibilities guaranteed to all other individuals by the United States Constitution, federal and state law unless limited through legal processes. Service providers must promote and protect all of the following client rights, including but not limited to:

(1) The right to be free from discrimination;

(2) The right to be reasonably accommodated in accordance with state and federal law;

(3) The right to privacy, including the right to receive and send private mail and telephone calls;

(4) The right to participate in an appropriate program of publicly supported education;

(5) The right to be free from harm, including unnecessary physical restraint, isolation, excessive medication, abuse, neglect, abandonment, and financial exploitation; and

(6) The right to refuse health services, medications, restraints, and restrictions.

NEW SECTION

WAC 388-101-3330 Treatment of clients. Service providers must treat clients with dignity and consideration, respecting the client's civil and human rights at all times.

CLIENT SERVICESNEW SECTION

WAC 388-101-3340 Subcontracting. The service provider must not subcontract any service without prior written approval from the department. The service provider must ensure that all required terms, conditions, assurances and certifications are included in all subcontracts.

NEW SECTION

WAC 388-101-3350 Residential guidelines. The service provider must use the following department residential guidelines when providing services to each client:

- (1) Health and safety;
- (2) Personal power and choice;
- (3) Competence and self-reliance;
- (4) Positive recognition by self and others;
- (5) Positive relationships; and
- (6) Integration in the physical and social life of the community.

NEW SECTION

WAC 388-101-3360 Client services. Service providers must provide each client instruction and/or support to the degree the individual support plan identifies the service provider as responsible. Instruction and/or support to the client may include but are not limited to the following categories:

- (1) Home living activities;
- (2) Community living activities;
- (3) Life-long learning activities;
- (4) Health and safety activities;
- (5) Social activities;
- (6) Employment;
- (7) Protection and advocacy activities;
- (8) Exceptional medical support needs; and
- (9) Exceptional behavioral support needs.

NEW SECTION

WAC 388-101-3370 Client health services support. The service provider must provide instruction and/or support as identified in the individual support plan and as required in this chapter to assist the client with:

- (1) Accessing health, mental health, and dental services;
- (2) Medication management, administration, and assistance;
- (3) Maintaining health records;
- (4) Arranging appointments with health professionals;
- (5) Monitoring medical treatment prescribed by health professionals;
- (6) Communicating directly with health professionals when needed; and
- (7) Receiving an annual physical and dental examination unless the appropriate medical professional gives a written exception.

NEW SECTION

WAC 388-101-3375 Nurse delegation. (1) Service provider staff must not perform a delegated nursing task for the client before the delegating nurse has obtained consent from the client or person authorized to give consent.

(2) The service provider must not allow an employee to perform any nursing task that violates applicable statutes and rules, including:

- (a) Chapter 18.79 RCW, Nursing care;
- (b) Chapter 18.88A RCW, Nursing assistants;
- (c) Chapter 246-840 WAC, Practical and registered nursing;
- (d) Chapter 246-841 WAC, Nursing assistants; and
- (e) Chapter 246-888 WAC, Medication assistance.

NEW SECTION

WAC 388-101-3380 Client transportation. (1) The service provider must meet the client's transportation needs by:

- (a) Not charging the client for transportation costs except as specified in the client's individual support plan;
- (b) Using the client's Medicaid coupons for covered transportation, if available; and
- (c) Ensuring that other transportation is provided as specified in the client's individual support plan.

(2) The service provider must provide transportation or ensure that clients have a way to get to and from:

- (a) Emergency medical care;
 - (b) Medical appointments; and
 - (c) Therapies.
- (3) As specified in the client's individual support plan, the service provider must provide necessary assistance with transportation to and from:
- (a) School or other publicly funded services;
 - (b) Work;
 - (c) Leisure or recreation activities; and
 - (d) Client-requested activities.
- (4) A vehicle that the service provider uses to transport clients must be insured as required by chapters 46.29 and 46.30 RCW.

(5) The service provider must maintain a business automobile insurance policy on service provider owned vehicles used to transport clients.

(6) The service provider must maintain non-owned vehicle insurance coverage for vehicles not owned by the service provider but used to transport clients.

(7) Service providers, employees, subcontractors, and volunteers who transport clients must have a valid driver's license as required by chapter 46.20 RCW.

NEW SECTION

WAC 388-101-3390 Physical and safety requirements. (1) Crisis diversion support service providers are exempt from the requirements in this section.

(2) The service provider must ensure that the following home safety requirements are met for each client unless otherwise specified in the client's individual support plan:

- (a) A safe and healthy environment;

(b) Accessible telephone equipment and a list of emergency contact numbers;

(c) An evacuation plan developed and practiced with the client;

(d) Unblocked door and window for emergency exit;

(e) A safe storage area for flammable and combustible materials;

(f) An operating smoke detector, with a light-alarm for clients with hearing impairments;

(g) An accessible flashlight or other safe accessible light source in working condition; and

(h) Basic first-aid supplies.

(3) The service provider must assist clients in regulating household water temperature unless otherwise specified in the client's individual support plan as follows:

(a) Maintain water temperature in the household no higher than one hundred and twenty degrees Fahrenheit;

(b) Check water temperature when the client first moves into the household and at least once every three months from then on; and

(c) Regulate water temperature for clients who receive twenty-four hour support, and for other clients as specified in the individual support plan.

(4) The service provider must document and keep records that indicate that physical safety requirements are met for each client.

(5) A client may independently document these requirements are met when the client's individual support plan specifies this level of client involvement.

NEW SECTION

WAC 388-101-3400 Services to nonclients. Before providing services to nonclients in the same household with clients, the service provider must:

(1) Provide the department with a written description of the household composition;

(2) Obtain written approval from the division of developmental disabilities; and

(3) Obtain written consent from each client in the household or the client's legal representative if the client is unable to consent.

NEW SECTION

WAC 388-101-3410 Community protection clients and other clients in the same household. Before allowing a community protection program client to live in the same household with supported living clients who are not in the community protection program, the service provider must:

(1) Provide the department with a written description of the household composition;

(2) Participate with the treatment team during the household composition review;

(3) Obtain written approval from the division of developmental disabilities; and

(4) Obtain written consent from each client in the household or the client's legal representative if the client is unable to consent.

NEW SECTION

WAC 388-101-3420 Client refusal to participate in services. (1) The service provider must notify the case manager if the client's health and safety is adversely affected by the client's refusal to participate in services.

(2) Service providers must document each client's refusal to participate in:

(a) Physical and safety requirements, as outlined in WAC 388-101-3390; and

(b) Client health services support under WAC 388-101-3370.

(3) Service providers must document the following:

(a) A description of events relating to the client's refusal to participate in these services;

(b) That the client was informed of the benefits of these services and the possible risks of refusal;

(c) A description of the service provider's efforts to give or acquire the services for the client; and

(d) Any health or safety concerns that the refusal may pose.

(4) The service provider must:

(a) Review this documentation with the client or the client's legal representative at least every six months; and

(b) Request that the client or client's legal representative sign and date the document after reviewing it.

NEW SECTION

WAC 388-101-3430 Changes in client service needs—Nonemergent. The service provider must notify the department:

(1) When a client's service needs change and the individual support plan no longer addresses the client's needs; and

(2) May request in writing, assistance from the department's case manager in setting up an assessment meeting.

NEW SECTION

WAC 388-101-3440 Changes in client service needs—Emergent. (1) The service provider must promptly notify the department to ask for emergency assistance when a client's needs change and the actions or continued presence of the client endangers the health, safety and/or personal property of other clients, the client, those working with the client, or other public citizens.

(2) If further assistance is needed following the department's initial response, the service provider must confirm in writing to the client's case manager on the first working day after initiating a verbal request for such assistance:

(a) The nature of the emergency;

(b) The need for immediate assistance and the specific type of assistance needed; and

(c) The specific type of assistance needed.

(3) When the emergency cannot be resolved and the service provider wants to terminate services to the client, the service provider must:

(a) Notify the department in writing;

(b) Specify the reasons for terminating services to the client; and

(c) Ensure that the department receives the notice at least seventy-two hours before moving the client from the program.

NEW SECTION

WAC 388-101-3450 Service provider refusal to serve a client. (1) The service provider may refuse services to a client when the service provider has determined and documented:

(a) Why the provider cannot meet the client's needs; or
(b) How the provider's refusal to serve the client would be in the best interest of the client or other clients.

(2) Before terminating services to the client, the service provider must notify the department, the client and the client's legal representative in writing ten working days before terminating services.

INDIVIDUAL INSTRUCTION AND SUPPORT PLAN

NEW SECTION

WAC 388-101-3460 Individual support plan. The service provider must use the client's current individual support plan in the development of the individual instruction and support plan.

NEW SECTION

WAC 388-101-3470 Development of the individual instruction and support plan. (1) The service provider must develop and implement an individual instruction and support plan for each client that incorporates the department's residential guidelines in developing instruction and support activities.

(2) In developing the individual instruction and support plan, the service provider must:

(a) Work with the client to develop goals based on the individual support plan that will be worked on during the implementation of the individual instruction and support plan for the upcoming year;

(b) Identify how the instruction and/or support activities will be provided to meet the assessed needs of the client as described in the individual support plan;

(c) Ensure that the individual instruction and support plan contains or refers to other applicable support and/or service information; and

(d) Include the participation and agreement of the client and other individuals the client wants included.

(3) The service provider must send a copy of the individual instruction and support plan goals together with a list of applicable support and service information and where the information is located to the case manager for review.

NEW SECTION

WAC 388-101-3480 Documentation of the individual instruction and support plan. For each client the service provider must:

(1) Develop and keep a written record of the individual instruction and support plan that includes the elements required in WAC 388-101-3470;

(2) Include a section or page in the individual instruction and support plan that provides or references all applicable support or service information pertaining to the client;

(3) Review and update the plan to reflect changes in the assessed needs as described in the individual support plan;

(4) Sign and date the plan's documents; and

(5) Document the client's agreement with the plan as well as the client's legal representative if applicable.

NEW SECTION

WAC 388-101-3490 Implementation of the individual instruction and support plan. The service provider must:

(1) Oversee the progress made on each client's individual instruction and support plan;

(2) Coordinate with other staff, and other providers serving the client, and other interested persons as needed, in implementing the individual instruction and/or support plan; and

(3) Revise and update the plan as the client's assessed needs change.

NEW SECTION

WAC 388-101-3500 Accessibility of the individual instruction and support plan. The service provider must make the individual instruction and support plan accessible at all times to:

(1) Staff to provide direction on what they are to do to instruct and/or support the client;

(2) The client receiving service;

(3) The client's legal representative; and

(4) Representatives of the department.

NEW SECTION

WAC 388-101-3510 Ongoing updating of the individual instruction and support plan. The service provider must:

(1) Review and revise the individual instruction and support plan as goals are achieved or as client assessed needs change in order to reflect the client's current needs, goals, and preferences:

(a) At least semi-annually; and

(b) At any time requested by the client or the client's legal representative.

(2) Send an updated copy of the instruction and support goals of the individual instruction and support plan and the list of applicable support and service information and where the information is located to the case manager for review.

CLIENT FINANCES

NEW SECTION

WAC 388-101-3520 Client related funds. If the service provider does not manage the client's funds and receives

funds for the client from any source, the service provider must be able to show that all the funds received are:

- (1) Given to the client or the client's legal representative;
- (2) Deposited to the client's account; or
- (3) Used only for the client.

NEW SECTION

WAC 388-101-3530 Individual financial plan. (1) The service provider must develop and implement an individual financial plan with client participation when the client's individual support plan:

- (a) Identifies that the client needs support to manage funds; and
- (b) Designates the service provider as responsible for that support; or
- (c) Indicates the service provider manages any portion of the client's funds.

(2) The service provider must obtain signatures from the client and the client's legal representative on the individual financial plan.

(3) The service provider must include the following in the client's individual financial plan:

- (a) Client funds and income managed by the service provider;
- (b) Client funds and income managed by the client and the client's legal representative;
- (c) The type of accounts containing client funds;
- (d) A description of how the client's funds will be spent during a typical month;
- (e) Money management instruction or support provided to the client; and
- (f) If applicable, asset management including such things as personal property, burial plan, retirement funds, stock, and vehicles.

(4) The service provider must review the individual financial plan with the client at least every twelve months.

(5) The service provider must send a copy of each client's individual financial plan to:

- (a) The client's legal representative; and
- (b) The client's case manager upon request.

NEW SECTION

WAC 388-101-3540 Managing client funds. (1) Before managing a client's funds the service provider must either:

- (a) Obtain written consent from the client or the client's legal representative; or
 - (b) Become the representative payee.
- (2) For any client funds managed by the service provider, the service provider must:

- (a) Separately track each client's money, even when several clients reside together;
- (b) Maintain a current running balance of each client account;
- (c) Make deposits to the client's bank account within one week of receiving the client's money;
- (d) Prevent the client's bank account from being overdrawn;

(e) Ensure that client cash funds do not exceed seventy-five dollars per client unless specified differently in the individual financial plan; and

(f) Retain receipts for each purchase over twenty-five dollars.

(3) Social Security Administration requirements for managing the client's social security income take precedence over these rules if:

(a) The service provider is the client's representative payee; and

(b) The Social Security Administration requirement conflicts with these rules.

(4) When the service provider manages the client's funds and receives a check made out to the client, the service provider must:

(a) Get the client's signature and designation "for deposit only,"; or

(b) Get the client's "x" mark in the presence of a witness and cosign the check with the designation "for deposit only,"; and

(c) Deposit the check in the client's bank account as required under subsection (2)(c) of this section.

(5) If a check for the client is made out to a payee other than the client, the service provider must ask the payee to sign the check.

(6) The service provider must not ask the client to sign a blank check.

(7) The service provider may only assist the client to make purchases by check when the client signs the check at the time of the purchase unless:

(a) Otherwise specified in the client's individual financial plan; or

(b) The service provider is the client's representative payee.

(8) The service provider must document in the client's record the name of each staff that may assist the client with financial transactions.

NEW SECTION

WAC 388-101-3545 Using client funds for health services. The service provider must document all denials for client health services from the department's medical assistance administration, and medical insurance companies. The service provider:

(1) Must notify the case manager of the denial in writing; and

(2) May use client funds for the client's health services if no other funding is available.

NEW SECTION

WAC 388-101-3550 Reconciling and verifying client accounts. (1) For any client funds managed by the service provider, the service provider must:

(a) Reconcile the client's bank accounts to the client's bank statements each month;

(b) Reconcile the client's cash account each month; and

(c) Verify the accuracy of the reconciliation.

(2) The service provider must not allow the same staff person to do both the verification and reconciliation of the client's account.

(3) The service provider must ensure that the verification or reconciliation is done by a staff person who did not:

- (a) Make financial transactions on the client's behalf; or
- (b) Assist the client with financial transactions.

NEW SECTION

WAC 388-101-3560 Combining service provider and client funds. The service provider must not combine client funds with any service provider funds, such as agency operating funds.

NEW SECTION

WAC 388-101-3570 Client bankbooks and bankcards. (1) For clients who manage their own funds, the service provider must document in the client's record when the client asks the provider to hold the client's bankbooks and bankcards.

(2) When the service provider holds the client's bankcards or bankbooks as requested by the client:

- (a) It is not assumed that the service provider is managing the client's funds; and
- (b) The client must continue to have access to his or her own funds.

NEW SECTION

WAC 388-101-3580 Client financial records. (1) For client funds that the service provider manages, the service provider must retain documentation including documentation for bank and cash accounts.

(2) The service provider must also keep the following documentation for client financial transactions:

- (a) Monthly bank statements and reconciliations;
 - (b) Checkbook registers and bankbooks;
 - (c) Deposit receipts;
 - (d) Receipts for purchases over twenty-five dollars;
 - (e) A ledger showing deposits, withdrawals, and interest payments to each client; and
 - (f) A control journal for trust accounts.
- (3) The service provider must keep the following documentation for cash and debit transactions:
- (a) A detailed ledger signed by the staff who withdrew any of the client's money;
 - (b) A detailed accounting of the funds received on behalf of the client including:
 - (i) Cash received from writing checks over the purchase amount; and
 - (ii) A list of where the money was spent.
 - (c) Receipts for purchases over twenty-five dollars when service provider staff withdrew the money.

NEW SECTION

WAC 388-101-3590 Transferring client funds. (1) When the service provider manages a client's funds and the client changes service providers, the previous service pro-

vider must transfer all of the client's funds, except funds necessary to pay unpaid bills, to the client or designee as soon as possible but no longer than thirty days.

(2) When transferring funds, the previous provider must:

- (a) Have an agreement with the client regarding the amount of money to be withheld to pay bills;
- (b) Inform the client's case manager about any agreement in subsection (2)(a) of this section;
- (c) Give the client and the client's legal representative a written accounting of all known client funds;
- (d) When applicable, give the new service provider a written accounting of all transferred client funds;
- (e) Obtain a written receipt from the client and legal representative for all transferred funds; and
- (f) When applicable, obtain the new service provider's written receipt for the transferred funds.

(3) When the client moves to another living arrangement without supported living services or the client's whereabouts are unknown, the service provider must transfer the client's funds within one hundred eighty days to:

- (a) The client's legal representative;
- (b) The department; or
- (c) The requesting governmental entity.

(4) When the client dies, the service provider must transfer the client's funds within ninety days to:

- (a) The client's legal representative;
- (b) The requesting governmental entity; or
- (c) The department if the client does not have a legal heir.

(5) Social Security Administration requirements for managing the client's social security income take precedence over these rules for transferring client funds if:

- (a) The service provider is the client's representative payee; and
- (b) The Social Security Administration requirement conflicts with these rules.

NEW SECTION

WAC 388-101-3600 Client loans. (1) The service provider may loan funds to a client from the service provider's funds and collect the debt from the client in installments.

(2) The client's service provider must not:

- (a) Charge the client interest for any money loaned; or
- (b) Borrow funds from the client.

(3) The provider must keep the following loan documentation for each loan:

- (a) A loan agreement signed by the client or the client's legal representative;
- (b) Amount of the loan;
- (c) Payments on the loan balance; and
- (d) The current balance owed.

NEW SECTION

WAC 388-101-3610 Client reimbursement. The service provider must pay the client the total amount involved when:

- (1) The service provider or staff has stolen, misplaced, or mismanaged client funds; or

(2) Service charges are incurred on a trust account that the service provider manages for the client.

NEW SECTION

WAC 388-101-3620 Client payment. When the client performs work for the service provider, the service provider must pay the client:

- (1) At least the current minimum wage; and
- (2) According to state and federal requirements.

CLIENT MEDICATIONS

NEW SECTION

WAC 388-101-3630 Medication services—General.

(1) If the service provider is involved in assisting any client with medications, as identified in the client's individual support plan, the service provider must:

(a) Have systems in place to ensure that medications are given as ordered and in a manner that safeguards the client's health and safety;

(b) Ensure that each client receives their medication as prescribed, except as provided for in the medication refusal section or in the medication assistance section regarding altering medication; and

(c) Have a legible prescription label completed by a licensed pharmacy before providing medication assistance or medication administration to a client for prescribed medications.

(2) Group homes licensed as a boarding home or adult family home must meet the medication management requirements of chapter 388-78A or 388-76 WAC. For any difference in requirements the boarding home or adult family home medication rules take precedence over the medication rules of this chapter.

NEW SECTION

WAC 388-101-3640 Medication—Types of support.

The service provider must provide medication support as specified in the client's individual support plan. Types of client support include:

- (1) Self-administration of medication;
- (2) Medication assistance;
- (3) Nurse delegated medication administration; and
- (4) Medication administration by a practitioner.

NEW SECTION

WAC 388-101-3650 Medication—Self-administration. If a client is assessed as independent in self-administration of medications the service provider must inform the client's case manager if they have a reason to suspect that the client is no longer safe to self-administer medications.

NEW SECTION

WAC 388-101-3660 Medication assistance. If the client is assessed as needing assistance with medication, the ser-

vice provider may assist the client to take medications in any of the following ways:

(1) Communicating the prescriber's order to the client in such a manner that the client self-administers his/her medication properly;

(2) Reminding or coaching the client when it is time to take a medication;

(3) Opening the client's medication container;

(4) Handing the client the medication container;

(5) Placing the medication in the client's hand;

(6) Transferring medication from one container to another for the purpose of an individual dose (e.g., pouring a liquid medication from the container to a calibrated spoon or medication cup or using adaptive devices);

(7) Altering a medication by crushing or mixing:

(a) Only if the client is aware that the medication is being altered or added to food or beverage; and

(b) A pharmacist or other qualified practitioner has determined it is safe to alter medication; and

(c) It is documented on the prescription container or in the client's record.

(8) Guiding or assisting the client to apply or instill skin, nose, eye and ear preparations. Hand-over-hand administration is not allowed; and

(9) For group homes that have a boarding home or adult family home license, refer to chapter 388-78A or 388-76 WAC for additional tasks that may be allowed.

NEW SECTION

WAC 388-101-3670 Medication administration—Nurse delegation. If a client is assessed as requiring medication administration and the service provider is not a practitioner, the service provider must ensure the assistance is provided by a licensed health care professional or under nurse delegation as per chapter 246-840 WAC and chapter 18.79 RCW.

NEW SECTION

WAC 388-101-3680 Medication administration. (1)

If a service provider is a licensed health care professional, the licensed professional may administer the client's medication.

(2) Service providers may only administer medication under the order of a physician or a health care professional with prescriptive authority.

NEW SECTION

WAC 388-101-3690 Medication refusal. (1) When a client who is receiving medication support from the service provider chooses to not take his or her medications, the service provider must:

(a) Respect the client's right to choose not to take the medication(s) including psychoactive medication(s); and

(b) Document the time, date and medication the client did not take.

(2) The service provider must take the appropriate action, including notifying the prescriber or primary care practitioner, when the client chooses to not take his or her

medications and the client refusal could cause harm to the client or others.

NEW SECTION

WAC 388-101-3700 Storage of medications. (1) The service provider must keep a client's medications so they are not readily available to other clients.

(2) The service provider must store medications:

(a) Under proper conditions for sanitation, temperature, moisture and ventilation, and separate from food or toxic chemicals; and

(b) In the original medication containers with pharmacist-prepared or manufacturer's label, or in medication organizers which are clearly labeled with the:

(i) Name of the client for whom the medication is prescribed;

(ii) Name of the medications; and

(iii) Dosage and frequency.

(3) Group homes must:

(a) Keep all medications in locked storage; and

(b) Use medication organizers only when filled by a pharmacist.

NEW SECTION

WAC 388-101-3710 Medication organizers. (1) Service providers may allow medication organizers maintained by the individual when the organizers are filled by:

(a) The client;

(b) A licensed pharmacist;

(c) An RN; or

(d) The client's legal representative or a family member.

(2) Service providers providing medication assistance or administration to a client must ensure that the medication organizers are labeled.

(3) The client, a pharmacist, an RN, or the client's legal representative or family member may label the medication organizer.

(4) When there is a change in medications by the prescriber, the individual filling the medication organizers must replace labels with required updated information immediately.

NEW SECTION

WAC 388-101-3720 Medications—Documentation.

The service provider must maintain a written record of all medications administered to, assisted with, monitored, or refused by the client.

NEW SECTION

WAC 388-101-3730 Disposal of medications. (1) The service provider or his/her designee must properly dispose of all medications that are discontinued, out of date, or superseded by another.

(2) When disposing client medications the service provider must list the:

(a) Medication;

(b) Amount; and

(c) Date that it was disposed.

(3) Two people, one of whom may be the client, must verify the disposal by signature.

(4) For group homes that have a boarding home or adult family home license, refer to chapters 388-78A or 388-76 WAC for medication disposal requirements.

PSYCHOACTIVE MEDICATIONS

NEW SECTION

WAC 388-101-3740 Psychoactive medication assessment. If a client displays symptoms of mental illness and/or persistent challenging behavior, the service provider must:

(1) Refer the client for a professional assessment;

(2) Prior to the referral, prepare a psychiatric referral summary, including the frequency and severity of the symptoms or behaviors, and take or send this document to the treatment professional conducting the assessment;

(3) Respect the client's preference to visit the treatment professional independently; and

(4) If drugs are prescribed, have the prescribing professional assess the client at least annually to review the continued need for the medication(s) and possible dosage reduction.

NEW SECTION

WAC 388-101-3750 Psychoactive medication treatment plan. (1) If the assessing treatment professional recommends psychoactive medications, the prescribing professional or service provider must document this in the client's psychoactive medication treatment plan. The service provider must ensure the plan includes the following:

(a) A description of the behaviors, symptoms or conditions for which the medication is prescribed and a mental health diagnosis, if available;

(b) The name, dosage, and frequency of the medication and subsequent changes in dosage must be documented in the person's medical record;

(c) The length of time considered sufficient to determine if the medication is effective;

(d) The behavioral criteria to determine whether the medication is effective and what changes in behavior, mood, thought, or functioning are considered evidence that the medication is effective; and

(e) The anticipated schedule of visits with the prescribing professional.

(2) The service provider must make sure the treatment plan is updated when there is a change in psychoactive medication type, including intraclass changes.

(3) The service provider must:

(a) Review the name, purpose, potential side effects and any known potential drug interactions of the psychoactive medication(s) with the client and his/her legal representative and document the review in the client record; and

(b) Have available to staff and clients an information sheet for each psychoactive medication that is being used by each client served by the provider.

(4) The service provider must assist the client in obtaining and taking the medication when:

(a) The client's legal representative if any, is unavailable; and

(b) In the prescribing professional's opinion, medication is needed and no significant risks are associated with the use of the medication.

(5) If a client takes psychoactive medications to reduce challenging behaviors or to treat symptoms of a mental illness that are interfering with the client's ability to have positive life experiences and form and maintain relationships, the service provider must develop and implement a positive behavior support plan.

NEW SECTION

WAC 388-101-3760 Psychoactive medication monitoring. The service provider must:

(1) Monitor the client to help determine if the medication is effective based on criteria identified in the psychoactive medication treatment plan; and

(2) Report to the prescribing professional when:

(a) The medication does not appear to have the desired effects; and

(b) Any changes in client behavior or health that might be adverse side effects of the medication(s).

NEW SECTION

WAC 388-101-3770 Psychoactive medications—Other. If psychoactive medications are used for diagnoses other than mental illness or persistent challenging behavior, the service provider must follow the general medication requirements in WAC 388-101-3630 through 388-101-3730.

CLIENT AND PROGRAM RECORDS

NEW SECTION

WAC 388-101-3780 Confidentiality of client records.

(1) The service provider must:

(a) Keep all client record information confidential;

(b) Ensure the department's right to have access to and copies of any records as requested or needed; and

(c) Provide access to and copies of client records to the client, or the client's legal representative upon their request.

(2) The service provider must have an authorized release of information form for any transfer or inspection of records, other than those specified in subsection (1) of this section. The authorization form must:

(a) Be specific to the type of information about the transfer or inspection; and

(b) Be signed by the client or client's legal representative.

(3) A signed release of information is valid for up to one year from the date of signature.

NEW SECTION

WAC 388-101-3790 Charging for searching and duplicating records. (1) The service provider:

(a) Must not charge the department or the client for any searching or duplication of records requested or needed; and

(b) May charge the client's legal representative acting on behalf of the client for searching and duplication of records at a cost not to exceed twenty-five cents a page.

(2) The service provider must not charge the client's legal representative acting on behalf of the client for searching and duplication of records if the client is incapable of making the request.

NEW SECTION

WAC 388-101-3800 Retention of client records. (1) While supporting a client, a service provider must keep all of the client's records for at least four years.

(2) After a client's participation with a service provider ends, the service provider must keep the client's records for at least six years.

NEW SECTION

WAC 388-101-3810 Contents of client records. (1) Crisis diversion service providers are exempt from the client record requirements specified in this section.

(2) Service providers must keep, in each client's record, information including but not limited to the following:

(a) Client's name, address, and Social Security number;

(b) Name, address, and telephone number of the client's involved family members, guardian or legal representative;

(c) Copies of legal guardianship papers, if provided;

(d) Client health records, including:

(i) Name, address, and telephone number of the client's physician, dentist, mental health service provider, and any other current health care service provider;

(ii) Current health care service providers' instructions about health care needed, including appointment dates and date of next appointment if appropriate;

(iii) Written documentation that the health care service providers' instructions have been followed; and

(iv) Record of major health events and surgeries when known.

(e) Copy of the client's most recent individual support plan;

(f) Client's individual instruction and support plan including:

(i) Instruction and support activities for each client as a basis for review and evaluation of client's progress;

(ii) Semiannual review of the individual instruction and support plan;

(iii) Consultation with other service providers and other interested persons;

(iv) Individual instruction and support plan revisions and changes; and

(v) Other activities relevant to the client that the client wants included.

(g) Progress notes and incident reports;

(h) The client's financial records for funds managed by the service provider, including:

(i) Receipts, ledgers and records of the client's financial transactions; and

(ii) Client's related bankbooks, checkbooks, bank registers, tax records and bank statements.

(i) Burial plans and wills.

NEW SECTION

WAC 388-101-3820 Client's property records. (1) Crisis diversion support service providers are exempt from the requirements in this section.

(2) The service provider must assist clients in maintaining current, written property records unless otherwise specified in the individual support plan. The record must consist of:

(a) A list of personal possessions with a value of at least twenty-five dollars that the client owns when moving into the program;

(b) A list of personal possessions with a value of seventy-five dollars or more per item after the client moves into the program;

(c) Description and identifying numbers, if any, of the property;

(d) The date the client purchased the items after moving into the program;

(e) The date and reason for addition or removal from the record; and

(f) The signature of the staff or client making the entry.

NEW SECTION

WAC 388-101-3830 Record entries. The service provider must ensure that all record entries are:

(1) Documented in ink;

(2) Written legibly at the time of or immediately following the occurrence of the event recorded; and

(3) Signed and dated by the person making the entry.

POSITIVE BEHAVIOR SUPPORTSNEW SECTION

WAC 388-101-3840 Positive behavior support. Positive behavior support means a recognized approach to supporting clients with challenging behaviors. Positive behavior support focuses on changing the client's environment, skills, and other factors that contribute to the client's challenging behavior(s). Positive behavior support uses a functional assessment to help build respectful plans for clients with challenging behavior(s).

NEW SECTION

WAC 388-101-3850 Functional assessment. (1) The service provider must conduct and document a functional assessment before developing and implementing a client's positive behavior support plan.

(2) The service provider must start the functional assessment when the client begins to engage in challenging behaviors that interfere with the client's ability to have positive life experiences and form and maintain relationships.

(3) The service provider must ensure that a client's written functional assessment addresses:

(a) A description of the client and pertinent history;

(b) The client's overall quality of life;

(c) The behaviors that are considered challenging and/or are of concern;

(d) The factors or events which increase the likelihood of challenging behaviors;

(e) When and where the challenging behavior(s) occurs most frequently;

(f) The factors or events which increase the likelihood of appropriate behavior;

(g) An analysis and assessment of the possible functions or purpose the challenging behavior(s) serve for the client including what he or she obtains or avoids by engaging in the behavior(s); and

(h) A concluding summary of the functions or purpose that each challenging behavior serves for the client.

(4) The service provider must include the following sections in the format of each client's written functional assessment:

(a) Description and pertinent history;

(b) Definition of challenging behaviors;

(c) Data analysis/assessment procedures; and

(d) Summary statement(s).

NEW SECTION

WAC 388-101-3860 Positive behavior support plan.

(1) The service provider must develop, train to, and implement a written individualized positive behavior support plan for each client when:

(a) The client takes psychoactive medications to reduce challenging behavior or treat a mental illness currently interfering with the client's ability to have positive life experiences and form and maintain personal relationships; or

(b) Restrictive procedures, including physical restraints, identified in the residential services contract are planned or used.

(2) The service provider must:

(a) Base each client's positive behavior support plan on the functional assessment required in WAC 388-101-3850; and

(b) Complete and implement the client's positive behavior support plan within ninety days of identifying the client's symptoms and challenging behavior.

(3) The service provider must develop and implement a positive behavior support plan that is consistent with the client's cross system crisis plan, if any.

(4) The service provider must include the following sections in the format of each client's written positive behavior support plan:

(a) Prevention strategies;

(b) Teaching and training supports;

(c) Strategies for responding to challenging behaviors; and

(d) Data collection and monitoring methods.

(5) If data indicates that progress is not occurring after a reasonable time, but not longer than six months, the service provider must:

(a) Evaluate the positive behavior support plan and the data collected;

(b) Conduct a new functional assessment when necessary; and

(c) Develop and implement revisions as needed.

NEW SECTION

WAC 388-101-3870 Client protection. While the functional assessment and positive behavior support plan are being developed, the service provider must:

- (1) Protect the client and others; and
- (2) Document in the client's record how the protection is being done.

RESTRICTIVE INTERVENTIONSNEW SECTION

WAC 388-101-3880 Group home providers. (1) When considering restrictive procedures, group home providers licensed as boarding homes must comply with all requirements in chapter 388-78A WAC regarding restraints.

(2) When considering restrictive procedures, group home providers licensed as adult family homes must comply with all requirements in chapter 388-76 WAC regarding restraints.

NEW SECTION

WAC 388-101-3890 Restrictive procedures. (1) The service provider may:

- (a) Only use restrictive procedures for the purpose of protecting the client, others, or property; and
- (b) Not use restrictive procedures for the purpose of changing behavior in situations where no need for protection is present.
- (2) The service provider must have documentation on the proposed intervention strategy before implementing restrictive procedures including:
 - (a) A description of the behavior(s) that the restrictive procedures address;
 - (b) A functional assessment of the challenging behavior(s);
 - (c) The positive behavior support strategies that will be used;
 - (d) A description of the restrictive procedure that will be used including:
 - (i) When and how it will be used; and
 - (ii) Criteria for termination of the procedure; and
 - (e) A plan to document the use of the procedure and its effect.
- (3) The service provider must terminate implementation of the restrictive procedures as soon as the need for protection is over.

NEW SECTION

WAC 388-101-3900 Restrictive procedures approval. (1) The service provider must have documentation of the proposed intervention strategy that:

- (a) Lists the risks of the challenging behavior(s);
- (b) Lists the risks of the proposed restrictive procedure(s);
- (c) Explains why less restrictive procedures are not recommended;

(d) Indicates non-restrictive alternatives to the recommendation that have been tried but were unsuccessful; and

(e) Includes space for the client and/or the client's legal representative to write comments and opinions regarding the plan and the date of those comments.

(2) The service provider must consult with the division of developmental disabilities if:

(a) The client and/or the client's legal representative disagree with parts of the proposed restrictive procedure; and

(b) An agreement cannot be reached.

(3) Before the service provider implements restrictive procedures they must be approved in writing by:

(a) The service provider's administrator; or

(b) Someone designated by the service provider to have approval authority; and

(c) Someone designated by the division of developmental disabilities, when required by the residential services contract.

NEW SECTION

WAC 388-101-3910 Physical intervention systems.

Service providers who are using physical interventions with clients must have a physical intervention techniques system that includes at least the following:

- (1) Discussion of the need for positive behavior support;
- (2) Communication styles that help the client to calm down and resolve problems;
- (3) Techniques to prevent escalation of behavior before it reaches the stage of physical assault;
- (4) Techniques for staff to use in response to clients and their own fear, anger, aggression, or other negative feelings;
- (5) Cautions that physical intervention technique(s) may not be changed except as needed for individual disabilities, medical, health, and safety issues. A healthcare professional and a program trainer must approve all modifications;
- (6) Evaluation of the safety of the physical environment;
- (7) Issues of respect and dignity of the client;
- (8) Use of the least restrictive physical interventions depending upon the situation;
- (9) Identification of division of developmental disabilities approved and prohibited physical intervention techniques;
- (10) The need to release clients from physical restraint as soon as possible;
- (11) Instruction on how to support physical interventions as an observer, recognizing signs of:
 - (a) Distress by the client; and
 - (b) Fatigue by the staff; and
- (12) Discussion of the importance of complete and accurate documentation.

NEW SECTION

WAC 388-101-3920 Physical interventions. (1) The service provider must use the least restrictive intervention needed to protect each client, others, and property.

(2) The service provider may only use physical interventions with a client when positive or less restrictive techniques have been tried and determined to be insufficient to:

- (a) Protect the client;

- (b) Protect others; or
- (c) Prevent property damage.
- (3) The service provider must:

(a) Terminate the intervention for the client as soon as the need for protection is over; and

(b) Only use restrictive physical interventions for the client as part of a positive behavior support plan except:

(i) In an emergency when a client's behavior presents an immediate risk to the health and safety of the client or others, or a threat to property; or

(ii) When an unknown, unpredicted response from a client jeopardizes the client's or others safety.

NEW SECTION

WAC 388-101-3930 Restrictive physical interventions. Prior to implementing restrictive physical interventions with a client, the provider must:

(1) Provide documentation to the division of developmental disabilities regarding the proposed intervention;

(2) Involve the client and the client's legal representative in discussion regarding the need for physical intervention;

(3) Determine the kind of notification the client's legal representative wants to receive when physical interventions are used; and

(4) Comply with the requirements defined under WAC 388-101-3890.

NEW SECTION

WAC 388-101-3940 Physical intervention training.

(1) Before using physical interventions with a client, the provider must train all staff who will be implementing those interventions in:

- (a) The use of physical interventions;
- (b) Crisis prevention techniques; and
- (c) Positive behavior support.

(2) Each staff designated to supervise or observe restraint use must be trained in:

(a) The observation and supervision of physical restraints; and

(b) The recognition of potential risks or negative outcomes related to the use of physical restraints.

(3) The service provider must ensure that staff receiving physical intervention techniques training:

- (a) Complete the course of instruction;
- (b) Demonstrate competency before being authorized to use the techniques with clients; and
- (c) Review de-escalation and physical intervention techniques annually.

NEW SECTION

WAC 388-101-3950 Mechanical and chemical restraints. (1) The service provider must protect each client's right to be free from mechanical and chemical restraints and involuntary seclusion.

(2) The service provider must use the least restrictive alternatives needed to protect the client, others, or property.

(3) If needed, mechanical restraints may only be used for needed medical or dental treatment and only under the direction of a licensed physician or dentist.

(4) Restraints used as allowed by subsection (3) of this section must be justified and documented in the client's record.

NEW SECTION

WAC 388-101-3960 Monitoring physical and mechanical restraints. (1) The service provider must ensure that any client who is being physically or mechanically restrained is continuously observed to ensure that risks to the client's health and safety are minimized.

(2) The service provider must keep documentation that includes:

(a) A description of events immediately preceding the client's behavior which led to the use of the restraint;

(b) The type of restraint used;

(c) Length of time the client was restrained;

(d) The client's reaction to the restraint;

(e) Staff that were involved; and

(f) Injuries sustained by anyone during the intervention.

COMMUNITY PROTECTION

NEW SECTION

WAC 388-101-3970 Community protection—Approval. In order to provide support to community protection clients, the community protection service provider must, in addition to the other requirements in this chapter:

(1) Be approved by the division of developmental disabilities to serve community protection clients;

(2) Have security precautions reasonably available to enhance protection of neighbors, children, vulnerable adults, animals, and others;

(3) Have for each client an integrated treatment plan with goals, objectives, and therapeutic interventions to assist the client to avoid offending or re-offending; and

(4) Collaborate and coordinate between division of developmental disabilities staff, the treatment team, and community agencies and members.

NEW SECTION

WAC 388-101-3980 Community protection—Policies and procedures. A community protection service provider must, in addition to other policy and procedure requirements listed in this chapter, develop, train to, and implement the following procedures:

(1) Client security and supervision;

(2) Use of a chaperone agreement that describes who will supervise the client when the client is not under the direct supervision of the community protection service provider;

(3) Compliance with state laws requiring sex offender registration with law enforcement;

(4) Reporting to the division of developmental disabilities the client's refusal to comply with the treatment plan; and

(5) Reporting to the division of developmental disabilities and law enforcement client actions that violate the law or a court order.

NEW SECTION

WAC 388-101-3990 Community protection—Treatment team meetings. The community protection service provider must participate in treatment team meetings quarterly or more frequently as needed.

NEW SECTION

WAC 388-101-4000 Community protection—Staff training. In addition to the staff training requirements in this chapter and the residential services contract, the community protection service provider must ensure that community protection program staff receive training specific to:

- (1) Community protection within ninety calendar days of working with a community protection client; and
- (2) The needs, supports, and services for clients to whom they are assigned.

NEW SECTION

WAC 388-101-4010 Community protection—Written individual plan. (1) The community protection service provider must develop and implement a client's written individual plan as required in the residential services contract and that is based on:

- (a) A qualified professional's risk assessment of emotional and behavioral issues related to community protection risks; or
- (b) A written risk assessment and treatment recommendations by:
 - (i) A sexual offender treatment provider or sexual offender treatment provider affiliate if the client has a sexual offense history; or
 - (ii) A licensed psychologist or psychiatrist with specialized training in the treatment of or three or more years' experience treating violent or aggressive behavior when the person being assessed has demonstrated violent, dangerous, or aggressive behavior.

(2) In addition to the requirements in WAC 388-101-3460 through 388-101-3510, the community protection service provider must include the following in the client's written individual plan:

- (a) Intervention strategies and techniques related to community protection risks;
 - (b) Restrictions and measures, including security precautions; and
 - (c) A therapist's approval of the written individual plan.
- (3) For community protection clients with a history of sexual offending, the assessment by a certified sexual offender treatment provider or sexual offender treatment provider affiliate may serve as the functional assessment and treatment recommendations related to the sexual behaviors.

NEW SECTION

WAC 388-101-4020 Community protection—Client records. In addition to all other client record requirements in this chapter community protection service providers must include the following in the client's record:

- (1) Psychosexual and/or psychological evaluations and risk assessments;
- (2) Plans and assessments including:
 - (a) The written individual plan;
 - (b) The functional assessment;
 - (c) The positive behavior support plan; and
 - (d) A therapist approved treatment plan.
- (3) The client's sex offender registration with law enforcement authorities when required by law;
- (4) Notice to the division of developmental disabilities of the client's sex offender registration; and
- (5) Agreements, requirements, and plans, including the chaperone agreement, with individuals who support the client.

NEW SECTION

WAC 388-101-4030 Community protection—Client transportation. In addition to the other client transportation requirements defined in this chapter, community protection service providers must provide or ensure supervised transportation as needed, including but not necessarily limited to, medical emergencies, appointments, to and from the day program site, and community activities.

NEW SECTION

WAC 388-101-4040 Community protection—Program residential location. Before securing and using a residence to provide support to the community protection program client, the community protection service provider must:

- (1) Conduct and document site checks of the proposed residence at different days and times of the week;
- (2) Consider the client's specific offense patterns;
- (3) Determine appropriate and necessary restrictive procedures, including security precautions; and
- (4) Obtain written approval for the residential site from the division of developmental disabilities.

NEW SECTION

WAC 388-101-4050 Community protection—Reducing a client's restrictions. The community protection service provider must participate in any treatment team meetings held to review and consider a reduction in client restrictions.

NEW SECTION

WAC 388-101-4060 Community protection—Leaving the program against treatment team advice. (1) The community protection service provider must immediately notify the division of developmental disabilities when the client leaves the community protection program against treatment team advice; and

- (2) Document the client's departure in the client's record.

CRISIS DIVERSION BED AND SUPPORT SERVICESNEW SECTION

WAC 388-101-4070 Crisis diversion—Access to services. The crisis diversion services provider must:

- (1) Be approved by the department to provide crisis diversion services; and
- (2) Make crisis diversion services available to clients twenty-four hours per day.

NEW SECTION

WAC 388-101-4080 Crisis diversion bed services—Location. The crisis diversion bed services provider must:

- (1) Provide those services in a residence that is maintained by the crisis diversion bed services provider;
- (2) Provide a private, furnished bedroom for each crisis diversion client; and
- (3) Support only one client in each residence.

NEW SECTION

WAC 388-101-4090 Crisis diversion bed services—Services and activities. The crisis diversion bed services provider must provide the following services and activities:

- (1) Support staff, twenty-four hour per day, seven days a week, to meet the client's needs as identified in the client's assessment;
- (2) Access to the instruction and support services identified in the client's individual support plan;
- (3) Three meals per day plus snacks;
- (4) The following items at no cost to the client:
 - (a) Toiletries and personal care items;
 - (b) Bedding and towels;
 - (c) Access to laundry facilities; and
 - (d) Access to local telephone calls.
- (5) Therapeutic interventions aimed at improving the client's functioning;
- (6) Medication monitoring as needed;
- (7) Transportation to and from the crisis diversion bed location and other necessary appointments or services;
- (8) Referral to health care services as needed;
- (9) Supports for performing personal hygiene routines and activities of daily living if needed by the client; and
- (10) An accessible site for clients with physical disabilities.

NEW SECTION

WAC 388-101-4100 Crisis diversion bed services—Treatment plan. (1) Crisis diversion bed services providers must develop a crisis services treatment plan within forty-eight hours of the client's placement.

- (2) The treatment plan must include:
 - (a) The supports and services that must be provided; and
 - (b) Client discharge goals.

NEW SECTION

WAC 388-101-4110 Crisis diversion bed and support service providers—Client records. (1) Crisis diversion bed and support service providers must keep the following information in client records:

- (a) Client's name, address, and Social Security number;
- (b) Name, address, and telephone number of the client's relative or legal representative; and
- (c) Progress notes and incident reports on clients.

NEW SECTION

WAC 388-101-4120 Crisis diversion bed services—Client records. (1) Crisis diversion bed services providers must maintain a record for each client admitted to the crisis diversion bed.

- (2) The client record must include the following information when available:
 - (a) Basic demographic information;
 - (b) Referral process and intake information;
 - (c) Medication records;
 - (d) Psychiatric records;
 - (e) Crisis diversion bed services provider notes;
 - (f) The crisis services treatment plan;
 - (g) Cross systems crisis plan;
 - (h) Disposition at the client's discharge;
 - (i) Dates of admission and discharge;
 - (j) Incident reports;
 - (k) Copies of legal representative and guardianship papers;
 - (l) Health records including the name, address, and telephone number of the client's:
 - (i) Physician;
 - (ii) Dentist;
 - (iii) Mental health service provider; and
 - (iv) Any other health care service providers.
 - (m) Health care service providers' instructions, if any, about health care tasks and date of next appointment;
 - (n) Written documentation that the health care service providers' instructions have been followed; and
 - (o) A record of known major health events, including surgeries.

NEW SECTION

WAC 388-101-4130 Crisis diversion support services—Location. The crisis diversion support services provider must provide those services in the client's own home.

NEW SECTION

WAC 388-101-4140 Crisis diversion support services—Services and activities. The crisis diversion support services provider must provide the following services and activities:

- (1) Therapeutic interventions to help stabilize the client's behavioral symptoms;
- (2) Assistance with referral to mental health services if needed; and

(3) Technical assistance to the client's caregivers on support strategies.

INCIDENT REPORTING

NEW SECTION

WAC 388-101-4150 Mandated reporting to the department. Service providers, administrators, owners, and staff:

(1) Are mandated reporters and must meet the requirements of chapter 74.34 RCW;

(2) Must make mandated reports to the department's centralized toll free complaint telephone number or FAX number immediately when:

(a) There is reasonable cause to believe that a vulnerable adult, as defined in chapter 74.34 RCW, has been abandoned, abused, neglected, or financially exploited; or

(b) There is a reason to suspect physical or sexual assault.

(3) Must also make written and oral reports to the department as specified in the provider's residential services contract;

(4) Must protect the alleged victim and others from further abuse, neglect, abandonment, and financial exploitation; and

(5) May have their certification and/or contract terminated if they fail to report such incidents.

NEW SECTION

WAC 388-101-4160 Mandated reporting to law enforcement. Service providers, administrators, owners, and staff must immediately report to the appropriate law enforcement agency if there is reason to suspect that any of the following has occurred:

(1) Sexual Assault: Any alleged or suspected sexual assault;

(2) Physical Assault (nonclient to client): Any suspected physical assault as well as any act that causes fear of imminent harm; and

(3) Physical Assault (client to client): Any suspected physical assault that causes bodily injury requiring more than first aid, or in the event of:

(a) Injuries that appear on the back, face, head, neck, chest, breasts, groin, inner thigh, buttock, genital, or anal area;

(b) Fractures;

(c) Choking attempts;

(d) Patterns of physical assault between the same vulnerable adults or involving the same vulnerable adults;

(e) A reasonable cause to believe that an act has caused fear of imminent harm; and

(f) Any incident, regardless of injury, if requested by the client, his/her legal representative, or family member.

NEW SECTION

WAC 388-101-4170 Mandating reporting policies and procedures. (1) The service provider must develop, train on and implement written policies and procedures for:

(a) Immediately reporting mandated reporting incidents to:

(i) The department and law enforcement;

(ii) Appropriate persons within the service provider's agency as designated by the service provider; and

(iii) The alleged victim's legal representative.

(b) Protecting clients;

(c) Preserving evidence when necessary; and

(d) Initiating an outside review or investigation.

(2) The service provider must not have or implement any policies or procedures that interfere with a mandated reporter's obligation to report.

REMEDIES

NEW SECTION

WAC 388-101-4190 Provisional certification. (1) The department may impose a provisional certification, not to exceed one hundred eighty days, if any service provider does not comply with requirements of this chapter, other applicable laws and rules, or the residential services contract.

(2) At the end of provisional certification the department may:

(a) Approve the service provider for regular certification if the service provider has complied with certification requirements; or

(b) Revoke the service provider's certification and terminate the residential services contract if the service provider has not complied with all certification requirements.

NEW SECTION

WAC 388-101-4200 Decertification. The department may revoke any service provider's certification at any time for noncompliance with the requirements of this chapter, the department's residential services contract, the requirements of chapter 74.34 RCW or other relevant federal, state and local laws, requirements or ordinances.

NEW SECTION

WAC 388-101-4210 Community protection program—Circumstances resulting in enforcement remedies. (1) This section applies only to service providers providing services to community protection clients.

(2) The department is authorized to impose the enforcement remedies described in chapter 71A.12 RCW when the service provider has:

(a) Failed or refused to comply with the requirements of chapter 71A.12 RCW and the rules adopted under the chapter;

(b) Failed or refused to comply with the certification process;

(c) Prevented or interfered with the department's certification evaluation or complaint investigation by the department;

(d) Failed to comply with any applicable requirements regarding vulnerable adults under chapter 74.34 RCW; or

(e) Knowingly, or with reason to know, made a false statement of material fact related to certification or contract-

ing with the department, or in any matter under investigation by the department.

NEW SECTION

WAC 388-101-4220 Community protection program—Authorized enforcement remedies. (1) This section applies only to service providers providing services to community protection clients.

(2) Whenever circumstances in WAC 388-101-4210 are present the department may impose any enforcement remedies authorized by chapter 71A.12 RCW and any rules adopted under it. The department may:

(a) Decertify or refuse to renew the certification of a service provider;

(b) Impose conditions on a service provider's certification status;

(c) Suspend department referrals to the service provider;

(d) Require a service provider to implement a plan of correction developed by the department and to cooperate with subsequent monitoring of the service provider's progress;

(e) Impose civil penalties of not more than one hundred fifty dollars per day per violation in the event a service provider fails to implement the plan of correction developed by the department or fails to cooperate with any subsequent monitoring; and

(f) Impose a separate violation each day during which the same or similar action or inaction occurs.

(2) The provisions of chapter 34.05 RCW apply to enforcement actions under this section. Except for the imposition of civil penalties, the effective date of enforcement actions will not be delayed or suspended pending any hearing or informal review.

(3) The enforcement actions and penalties authorized in this section are not exclusive or exhaustive and nothing in this section prohibits the department from taking any action authorized in statute or rule or under the terms of a contract with the service provider.

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 388-101-4230 Community protection program—Considerations for imposing remedies. (1) This section applies only to service providers providing services to community protection clients.

(2) When determining the appropriate enforcement action under WAC 388-101-4220, the department will select actions in proportion to the seriousness of the harm or threat of harm to clients being served by the service provider.

(3) The department may take enforcement actions that are more severe for violations that are uncorrected, repeated, or pervasive or which present a serious threat of harm to the health, safety or welfare of clients served by the service provider.

INFORMAL DISPUTE RESOLUTION AND APPEALS

NEW SECTION

WAC 388-101-4240 Informal dispute resolution. (1) When a service provider disagrees with the department's finding of a violation or certification action under this chapter, the service provider may request an informal dispute resolution meeting with the department.

(2) The service provider must make a written request to the department for an informal dispute resolution meeting within ten working days of receipt of the written notice of the department's final report of findings and/or certification action.

(3) The service provider must submit a written statement identifying the challenged action, and include specifically the issues and regulations involved.

NEW SECTION

WAC 388-101-4250 Administrative review. (1) A service provider may request an administrative review of a certification action within twenty-eight days of receipt of the written notice of the department's certification action.

(2) The service provider must make the request in writing and must:

(a) Sign the request;

(b) Identify the challenged decision and the date it was made;

(c) State specifically the issues and regulations involved and the grounds for the disagreement; and

(d) Include with the request copies of any supporting documentation for the service provider's position.

NEW SECTION

WAC 388-101-4260 Appeal rights. (1) A service provider:

(a) May contest a decision made by the department pursuant to chapter 71A.12 RCW and according to the provisions of chapter 34.05 RCW and chapter 388-02 WAC;

(b) Must file any request for a hearing with the office of administrative hearings at the mailing address specified in the notice of imposition of an enforcement remedy; and

(c) Must make the request within twenty-eight days of receipt of the written notice of the department's certification action.

(2) Certification actions are effective immediately upon notice and will continue pending any hearing.

ABUSE-NEGLECT FINDING - INDIVIDUAL

NEW SECTION

WAC 388-101-4265 Investigation of reports. (1) The department may investigate allegations of abandonment, abuse, neglect, or financial exploitation of a client.

(2) The department investigation may include an investigation of allegations about one or more of the following:

(a) A service provider;

(b) Anyone associated with a service provider; or

(c) A client receiving services under this chapter.

NEW SECTION

WAC 388-101-4270 Notice of preliminary finding.

(1) The department will notify the alleged perpetrator in writing within ten working days of making a preliminary finding of abandonment, abuse, neglect or financial exploitation of a client. The written notice:

(a) Will not include the identities of the alleged victim, reporter and witnesses; and

(b) Will include the necessary information for the alleged perpetrator to ask for an administrative hearing to challenge the preliminary finding.

(2) The department must make a reasonable, good faith effort to determine the last known address of the alleged perpetrator.

(3) The department will serve notice of the preliminary finding as provided in chapter 388-02 WAC.

(4) The department may extend the time frame for written notification beyond ten working days for good cause.

NEW SECTION

WAC 388-101-4280 Reporting preliminary findings.

(1) In a manner consistent with confidentiality requirements concerning the client, witnesses, and reporter, the department may provide notification of a preliminary finding to:

(a) Other divisions within the department;

(b) The agency or program identified under RCW 74.34.068 with which the alleged perpetrator is associated as an employee, volunteer or contractor;

(c) The employer or program that is currently associated with the individual alleged to have abandoned, abused, neglected, or financially exploited a client, if known;

(d) Law enforcement; and

(e) Other investigative authorities consistent with chapter 74.34 RCW.

(2) The notification will identify the finding as a preliminary finding.

NEW SECTION

WAC 388-101-4290 Disputing a preliminary finding.

(1) An alleged perpetrator of abandonment, abuse, neglect, or financial exploitation of a client may request an administrative hearing to challenge a preliminary finding made by the department.

(2) The request must be made in writing to the office of administrative hearings.

(3) The office of administrative hearings must receive the alleged perpetrator's written request for a hearing within thirty calendar days of the date written on the notice of the preliminary finding.

(4) The written request for a hearing must include:

(a) The full legal name, current address and phone number of the alleged perpetrator;

(b) A brief explanation of why the alleged perpetrator disagrees with the preliminary finding;

(c) A description of any assistance needed in the administrative appeal process by the alleged perpetrator, including

a foreign language or sign language interpreter or any reasonable accommodation for a disability; and

(d) The alleged perpetrator's signature.

NEW SECTION

WAC 388-101-4300 Disclosure of investigative and finding information.

(1) Confidential information about clients and mandated reporters received from the department may only be used by the alleged perpetrator to challenge preliminary findings through the appeal process.

(2) Confidential information such as the name and other personal identifying information of the reporter, witnesses, or the client will be redacted from documents unless release of that information is consistent with chapter 74.34 RCW and other applicable state and federal laws.

NEW SECTION

WAC 388-101-4310 Hearing procedures to dispute a preliminary finding.

(1) Chapters 34.05 and 74.34 RCW, chapter 388-02 WAC, and the provisions of this chapter govern any appeal regarding a preliminary finding. In the event of a conflict between the provisions of this chapter and chapter 388-02 WAC, the provisions of this chapter shall prevail.

(2) The administrative law judge shall determine whether a preponderance of the evidence supports the preliminary finding that the alleged perpetrator abandoned, abused, neglected, or financially exploited a vulnerable adult, and shall issue a preliminary order.

NEW SECTION

WAC 388-101-4320 Appeal of the administrative law judge's preliminary order on a finding.

(1) If the alleged perpetrator or the department disagrees with the administrative law judge's decision, either party may challenge this decision by filing a petition for review with the department's board of appeals under chapter 34.05 RCW and chapter 388-02 WAC.

(2) If the department appeals the administrative law judge's decision, the department will not modify the finding in the department's records until a final hearing decision is issued.

NEW SECTION

WAC 388-101-4330 Finalizing a preliminary finding.

(1) A preliminary finding becomes a final finding when:

(a) The department gives the alleged perpetrator notice of the preliminary finding pursuant to WAC 388-101-4270 and the alleged perpetrator does not request an administrative hearing;

(b) The administrative law judge:

(i) Dismisses the hearing following withdrawal of the appeal or default; or

(ii) Issues a preliminary order upholding the finding and the alleged perpetrator fails to appeal the preliminary order to the department's board of appeals; or

(c) The board of appeals issues a final order upholding the finding.

(2) The final finding is permanent and will only be removed from the department's records if:

(a) It is rescinded following judicial review; or

(b) The department may decide to remove the single finding of neglect from its records based upon a written petition by the alleged perpetrator provided that no further findings have occurred, and at least one calendar year has passed since the finding was finalized and recorded.

NEW SECTION

WAC 388-101-4340 Reporting final findings. (1) The department will report a final finding of abandonment, abuse, neglect and financial exploitation within ten working days to the following:

(a) The perpetrator;

(b) The service provider that was associated with the perpetrator during the time of the incident;

(c) The service provider that is currently associated with the perpetrator, if known;

(d) The appropriate licensing, contracting, or certification authority; and

(e) The federal or state department or agency list of individuals found to have abandoned, abused, neglected, or financially exploited a vulnerable adult.

(2) The findings may be disclosed to the public upon request subject to applicable public disclosure laws.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-101-1010 What is the purpose of this chapter?
- WAC 388-101-1020 What definitions apply to this chapter?
- WAC 388-101-1101 Abuse and neglect reporting requirements.
- WAC 388-101-1106 Investigation of mandated reports.
- WAC 388-101-1111 Notice of an initial finding.
- WAC 388-101-1116 Reporting initial findings.
- WAC 388-101-1121 Disputing an initial finding.
- WAC 388-101-1126 Disclosure of investigative and finding information.
- WAC 388-101-1131 Hearing procedures to dispute an initial finding.
- WAC 388-101-1136 Appeal of the administrative law judge's initial order on a finding.
- WAC 388-101-1141 Finalizing an initial finding.
- WAC 388-101-1146 Reporting final findings.

- WAC 388-101-1180 What are residential services?
- WAC 388-101-1190 Who certifies residential services?
- WAC 388-101-1200 Where are residential services provided?
- WAC 388-101-1205 Where are crisis diversion services provided?
- WAC 388-101-1210 Who may receive residential services?
- WAC 388-101-1220 What physical and safety requirements exist for residential services?
- WAC 388-101-1230 How must service providers assist clients in regulating water temperature?
- WAC 388-101-1240 What are supported living services?
- WAC 388-101-1250 What are crisis diversion services?
- WAC 388-101-1260 What are group homes?
- WAC 388-101-1400 When must a service provider document a client's refusal to participate in services?
- WAC 388-101-1410 May a service provider offer services to nonclients in the same household as clients?
- WAC 388-101-1420 Who pays for a client's residential services?
- WAC 388-101-1430 When may a service provider receive initial set-up funds from DSHS?
- WAC 388-101-1440 What are the different types of certification?
- WAC 388-101-1460 When may RCS grant initial certification to an agency?
- WAC 388-101-1470 How does an agency apply for initial certification?
- WAC 388-101-1480 What happens after an agency receives initial certification?
- WAC 388-101-1490 May initial certification be extended for a service provider?
- WAC 388-101-1500 How does a service provider receive regular certification?
- WAC 388-101-1510 How often are reviews and evaluations done for service providers?

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| WAC 388-101-1520 | What occurs during review and evaluation? | WAC 388-101-1750 | What information do service providers need to keep in client records? |
| WAC 388-101-1530 | May service providers disagree with evaluation findings? | WAC 388-101-1760 | What information do crisis diversion service providers need to keep in client records? |
| WAC 388-101-1540 | May a service provider receive provisional certification? | WAC 388-101-1770 | Do service providers need to keep client's property records? |
| WAC 388-101-1550 | When may RCS decertify a service provider? | WAC 388-101-1780 | Are there requirements for record entries? |
| WAC 388-101-1600 | What are administrators of service providers required to do? | WAC 388-101-1790 | Who must service providers notify in emergencies? |
| WAC 388-101-1610 | What type of administrative documents are service providers required to have? | WAC 388-101-1800 | What are client services? |
| WAC 388-101-1620 | What are the requirements for personnel policies? | WAC 388-101-1810 | What health and safety support may a service provider offer to a client? |
| WAC 388-101-1630 | What nondiscrimination requirements must agencies and service providers meet? | WAC 388-101-1820 | What support may a service provider offer to a client to increase personal power and choices? |
| WAC 388-101-1640 | What staffing requirements must service providers meet? | WAC 388-101-1830 | What support may a service provider offer to increase a client's competence and self-reliance? |
| WAC 388-101-1650 | May clients instruct and support other clients? | WAC 388-101-1840 | How may service providers assist clients in gaining positive recognition? |
| WAC 388-101-1660 | Who needs background checks? | WAC 388-101-1850 | What support may a service provider offer to increase the positive relationships in the client's life? |
| WAC 388-101-1670 | What are the minimum requirements for staff employed by service providers? | WAC 388-101-1860 | How may a service provider assist clients with becoming integrated into their community? |
| WAC 388-101-1680 | What staff training is required? | WAC 388-101-1870 | What is an individual service plan/plan of care (ISP/POC) for clients? |
| WAC 388-101-1690 | How often must performance reviews be conducted for staff of service providers? | WAC 388-101-1880 | Who is responsible for completing and overseeing a client's ISP/POC? |
| WAC 388-101-1700 | When must service providers have staff-coverage schedules approved by DDD? | WAC 388-101-1890 | Who may participate in creating a client's ISP/POC? |
| WAC 388-101-1710 | What happens when a service provider's ownership changes? | WAC 388-101-1900 | How often must the ISP/POC be reviewed? |
| WAC 388-101-1720 | When may a client's service provider change? | WAC 388-101-2000 | What plans must crisis diversion service providers develop? |
| WAC 388-101-1730 | Are clients' records considered confidential? | | |
| WAC 388-101-1740 | How long does a service provider need to keep client records? | | |

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| WAC 388-101-2010 | What is an individual instruction and support plan (IISP) for clients? | WAC 388-101-2350 | May an administrative review conference be conducted by telephone? |
| WAC 388-101-2020 | Who may participate in developing the IISP for each client? | WAC 388-101-2360 | What happens during the administrative review conference? |
| WAC 388-101-2030 | Who oversees the IISP for each client? | WAC 388-101-2370 | May an agency or service provider contest the decision from the administrative review conference? |
| WAC 388-101-2040 | May a service provider manage a client's funds? | WAC 388-101-2380 | Does RCS make exceptions to the requirements in this chapter? |
| WAC 388-101-2050 | May a service provider hold bankbooks and bankcards for a client? | WAC 388-101-2400 | Who may delegate nursing care tasks? |
| WAC 388-101-2060 | May a service provider combine agency and client funds? | WAC 388-101-2410 | What training is required before staff are qualified to perform delegated tasks? |
| WAC 388-101-2070 | Does the service provider need to develop an individual financial plan (IFP) for clients? | WAC 388-101-2420 | Do nursing assistants need to comply with department of health requirements? |
| WAC 388-101-2080 | What information must the IFP include? | WAC 388-101-2430 | Who is authorized to provide consent for a client's receiving health care? |
| WAC 388-101-2090 | How does a service provider manage client funds? | WAC 388-101-2440 | What rights do nursing assistants have concerning the delegation of nursing care tasks? |
| WAC 388-101-2100 | What documentation must service providers keep to protect a client's financial interests? | WAC 388-101-2450 | Are nursing assistants liable for errors while doing nursing care tasks? |
| WAC 388-101-2110 | How are a client's funds transferred when they are managed by a service provider? | WAC 388-101-2460 | What happens if unqualified staff do a nursing task? |
| WAC 388-101-2120 | How does a service provider handle loans to a client? | WAC 388-101-2470 | What technical assistance may service providers get from DSHS for nurse delegation requirements? |
| WAC 388-101-2130 | When must a service provider pay a client? | WAC 388-101-2480 | What happens when DSHS finds a service provider in violation of nurse delegation requirements? |
| WAC 388-101-2140 | What must service providers do to support a client's health? | WAC 388-101-2490 | May a service provider have a chance to correct violations before being fined? |
| WAC 388-101-2150 | May a client refuse health care services? | WAC 388-101-2500 | May civil fines be imposed during technical assistance visits? |
| WAC 388-101-2160 | When may client funds be used for health services? | WAC 388-101-2510 | How does DSHS impose a civil fine? |
| WAC 388-101-2300 | Client transportation. | WAC 388-101-2520 | When is payment due for a civil fine? |
| WAC 388-101-2330 | May an agency or service provider contest a RCS decision? | | |
| WAC 388-101-2340 | When does an administrative review conference occur? | | |

- WAC 388-101-2530 May a service provider disagree with DSHS findings of a violation?
- WAC 388-101-2540 May a service provider contest a civil fine?

WSR 08-04-005**PERMANENT RULES****DEPARTMENT OF AGRICULTURE**

[Filed January 24, 2008, 9:52 a.m., effective February 24, 2008]

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

Purpose: This rule-making order creates a new chapter in WAC titled "Brassica seed production district" that:

- (1) Establishes two *Brassica* seed production districts;
- (2) Specifies general requirements for growing, transporting or processing *Brassica* seed crops within any *Brassica* seed production district;
- (3) In response to local conditions, specifies requirements for producing different categories of *Brassica* seed crops in each of the *Brassica* seed production districts or sub-districts; and
- (4) Establishes a continuing *Brassica* work group.

Statutory Authority for Adoption: Chapters 15.51 and 34.05 RCW.

Adopted under notice filed as WSR 07-24-080 on December 5, 2007.

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 6, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 6, 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 6, Amended 0, Repealed 0.

Date Adopted: January 24, 2008.

Valoria H. Loveland
Director

Chapter 16-326 WAC**BRASSICA SEED PRODUCTION DISTRICT**NEW SECTION

WAC 16-326-010 What are the boundaries of the regulated areas, also called the *Brassica* seed production districts? (1) For purposes of descriptions of boundaries, any highway designation is measured from the center line of the

highway, as determined by Washington department of transportation maps.

(2) *Brassica* seed production district 1 includes areas of five counties as follows:

(a) In Whatcom County, the area bounded as follows: From two miles west of the Interstate 5 intersection with the Canadian border, a southward line extends parallel to, and two miles west of, Interstate 5 to its intersection with State Highway 542. The line then extends generally northeastward along State Highway 542 to the city limits of Kendall. At Kendall, the line continues due north to the Canadian border. The line then extends westward along the Canadian border to its point of origin.

(b) All of mainland Skagit County is included. On Fidalgo Island, the area on its eastern side bounded by a line three miles west of and parallel to the Swinomish Channel, extending from Padilla Bay to Smilk Bay, is included. All of Samish Island is included. The remaining portion of Fidalgo Island and all other islands in Skagit County are excluded from *Brassica* seed production district 1.

(c) In Snohomish County, the area bounded as follows: From Puget Sound east along State Highway 531 (also known as Lakewood Rd.), the line extends through Interstate 5 Exit #206 (the Smokey Point exit) to the intersection of State Highway 531 and State Highway 9 in Arlington. From there the line extends generally northward along State Highway 9 to the county line, and then west along the county line to Puget Sound.

(d) In Island County, all of Camano Island and the portion of Whidbey Island north of an east-west line extending through Greenbank.

(e) In Clallam County, the area bounded as follows: From the westernmost city limit of Port Angeles, a line extends due south to a location five miles south of State Highway 101. From there, the boundary continues east along a line parallel to, and five miles south of, State Highway 101 to the Clallam/Jefferson County line. The boundary turns north along the Clallam/Jefferson County line until it reaches the Straits of Juan de Fuca and then continues along the Straits to its point of origin.

(3) *Brassica* seed production district 2 is divided into two subdistricts, designated district 2A and district 2B. For purposes of descriptions of boundaries relating to *Brassica* seed production district 2, all references to canals pertain to Columbia Basin Irrigation Project structures. *Brassica* seed production district 2 includes portions of Grant and Adams counties bounded as follows:

(a) Beginning at the Grant/Douglas County boundary, the line proceeds continuously due east along existing portions of Road 13NW to its intersection with the West Canal. The line follows the West Canal in a northeasterly direction through portions of the city of Ephrata, then around the northern end of Soap Lake and easterly to the intersection of the West Canal and the East Low Canal. The line follows the East Low Canal in a southerly, then easterly direction to its intersection with State Highway 26. Then it turns west and follows State Highway 26 to the Columbia River. The line continues due west until it intersects the county boundary in the Columbia River. The line then turns north and follows the county boundary to the point of origin.

(b) *Brassica* seed production district 2A is the northwestern portion of *Brassica* seed production district 2. It is bounded on the north and west by the boundaries of *Brassica* seed production district 2. Its eastern boundary line commences at the intersection of Rd. 13 NW and K NW. The line extends south along K NW to its intersection with the I-90 North Frontage Rd. The line extends west along North Frontage Rd. to State Highway 281N, and along State Highway 281N to Q SW. It extends north along Q SW to 5 NW and west along 5 NW to the western boundary of *Brassica* seed production district 2.

(c) *Brassica* seed production district 2B consists of the portion of *Brassica* seed production district 2 that is not encompassed in *Brassica* seed production district 2A.

NEW SECTION

WAC 16-326-020 What are the general requirements for growing, transporting or processing *Brassica* seed within any *Brassica* seed production district? (1) Growing, transportation or processing of *Brassica* seed is regulated under provisions of this section only within the borders of a *Brassica* seed production district, as described in WAC 16-326-010.

(2) No *Brassica* seed crop grown for any purpose is regulated as part of a *Brassica* seed production district, if it is harvested or mowed before flowering or otherwise handled so that pollen production is prevented. Note that other regulatory requirements, such as the provisions of the crucifer seed quarantine rule found in WAC 16-301-490 through 16-301-580, are applicable.

(3) *Brassica* seed crops, including seed grown for planting and seed grown for crushing or extraction for fuel or oil, may only be grown in locations that have been identified in a timely manner through the pinning process.

(a) Pinning for *Brassica* seed production in *Brassica* seed production district 1 will be held at least once a year at the WSU Northwestern Washington Research and Extension Center, 16650 State Route 536, Mt. Vernon, Washington 98237. Contact the WSU Skagit County Extension office at 360-428-4270 for information about pinning events for district 1.

(b) Pinning for *Brassica* seed production district 2 will be held at least once a year at the WSU Grant County Extension office, 35 C St. N.W., Ephrata, Washington 98823. Contact the WSU Grant County Extension office at 509-754-2011, ext. 413 for information about pinning events for district 2.

(c) Dates, times, locations and other information about pinning events will vary.

(d) Pinning for *Brassica* seed crops produced for planting must be performed by an authorized representative of the contractor for the crop. If the seed produced for planting is not being produced for a contractor, or if the contractor waives the pinning privilege, then the grower is responsible for pinning the location of the crop.

(e) Pinning for *Brassica* seed crops produced for fuel or oil must be performed by an authorized representative of the grower.

(4) Transportation and handling of *Brassica* seed within any *Brassica* seed production district must be performed in a way to prevent inadvertent spread of seed or production of volunteer plants. All shipments of viable seed must be in covered containers from which the seed cannot leak.

(5) Volunteer *Brassica* plants must be controlled as soon as feasible, but always prior to pollen production or blossoming.

NEW SECTION

WAC 16-326-030 What are the requirements to grow *Brassica* seed in *Brassica* seed production district 1? (1) *Brassica* seed crops intended for oil or fuel production and/or associated by-products, forage, or cover crops may only be planted or grown in compliance with a *Brassica* production agreement, as described in RCW 15.51.040.

(2) *Brassica* seed crops of species generally known as rapeseed or canola, that are intended for producing seed for planting, may only be planted or grown under conditions of a *Brassica* production agreement, as described in RCW 15.51.040.

NEW SECTION

WAC 16-326-040 What are the requirements for growing *Brassica* seed in all of *Brassica* seed production district 2, which is composed of two subdistricts designated districts 2A and 2B? (1) A minimum isolation distance of two miles must be preserved from the nearest edge of any *Brassica* seed crop to any other *Brassica* seed crop. The location pinned first has priority and establishes a basis for the isolation distance for other *Brassica* seed crops. Any person subsequently pinning any other location for a *Brassica* seed crop is responsible for maintaining the two-mile minimum isolation distance. Exceptions to this two-mile minimum distance can occur only in the following three situations:

(a) An exception that allows an isolation distance of less than two miles will occur when a written agreement between two or more contractors and/or growers complies with the conditions specified in subsection (2) of this section. All locations to be planted under such a written agreement between the parties must be pinned.

(b) An exception to the minimum isolation distance may be allowed under conditions of a *Brassica* production agreement, as described in RCW 15.51.040. All locations to be planted under such a *Brassica* production agreement must be pinned.

(c) *Brassica* seed crops grown for forage or cover crops may be planted or grown within the two-mile minimum isolation distance, if the forage or cover crop is not allowed to bloom or to produce pollen from April 1 through August 15 of any year. Forage or cover crops that comply with requirements of this subsection are not required to be pinned.

(2) Written agreements between parties to voluntarily allow planting of locations, any portion of which are within the minimum isolation distance of two miles (as referenced in subsection (1)(a) of this section), must comply with all of the following conditions:

(a) The agreement must be signed by authorized representatives of the contractors for the *Brassica* seed crops grown for planting, and by the growers of *Brassica* seed crops grown for fuel or oil. If one or more of the affected *Brassica* seed crops for planting is not being produced under contract, or if the contractor waives signature authority for this agreement, the grower of the crop must enter into the agreement instead.

(b) The agreement must, at a minimum, specify:

- The date of the agreement;
- The approximate dates during which the affected crops will be in the field;
- The name, business name (if applicable), telephone number and address of each affected grower;
- The location and acreage of each planting affected by the agreement;
- The contractor (if applicable) for each location; and
- *Brassica* seed crop species and variety for each location.

(c) These written agreements cannot extend beyond one harvest per agreement.

(d) Copies of the written agreement must be retained by each person who signs it for a minimum of three years.

(3) Pinning for *Brassica* seed crops intended to produce seed for planting starts each year on the first business day **after** January 31 for summer annual species or varieties (such as mizuna and Chinese cabbage) and on the first business day **after** May 31 for overwintered species or varieties (such as cabbage, broccoli, and turnip). Pinning for *Brassica* seed crops to produce seed intended for oil or fuel starts the first business day **after** June 30.

NEW SECTION

WAC 16-326-050 What are the differences between restrictions on *Brassica* seed production in *Brassica* seed production districts 2A and 2B? WAC 16-326-040 establishes restrictions that apply throughout all of *Brassica* seed production district 2 (including the two subdistricts designated districts 2A and 2B in WAC 16-326-010(3)), regarding the production of *Brassica* seed crops. Additional specific restrictions apply to district 2A. The differences between the subdistricts are:

(1) *Brassica* seed production in *Brassica* seed production district 2A is limited primarily to production of any species of *Brassica* seed for planting. Within *Brassica* seed production district 2A, *Brassica* seed crops intended for oil or fuel production may only be planted or grown under conditions of a *Brassica* production agreement, as described in RCW 15.51.040.

(2) *Brassica* seed production in *Brassica* seed production district 2B includes production of any species of *Brassica* seed for planting, oil or fuel production.

NEW SECTION

WAC 16-326-060 What is the *Brassica* work group and how often does it meet? The *Brassica* work group is an advisory group composed of representatives of the vegetable seed, canola, and biofuels production industries, as well as other interested persons. The Washington state department

of agriculture will continue to convene the work group as needed, but at least once a year, for the purpose of advising the department regarding the provisions of chapter 16-326 WAC, any necessary revisions, and the needs of affected growers and industries.

WSR 08-04-009

PERMANENT RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed January 24, 2008, 11:41 a.m., effective February 24, 2008]

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

Purpose: To change the WAC to address correctly what the full-time equivalent is for a kindergartener.

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-122.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 07-23-006 on November 14 [8], 2007.

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

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

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

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

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

Date Adopted: January 24, 2008.

Dr. Terry Bergeson
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending Order 97-06, filed 10/27/97, effective 11/27/97)

WAC 392-121-122 Definition—Full-time equivalent student. As used in this chapter, "full-time equivalent student" means each enrolled student in the school district as of one of the enrollment count dates for at least the minimum number of hours set forth in subsection (1) of this section, inclusive of class periods and normal class change passing time, but exclusive of noon intermissions: Provided, That each hour counted shall contain at least 50 minutes of instruction or supervised study provided by appropriate instructional staff. The purpose of recognizing "50 minute hours" is to provide flexibility to school districts which utilize block periods of instruction so long as students are ultimately under the jurisdiction of school staff for the equivalent of 60 minute hours: Provided further, That the hours set forth below shall

be construed as annual average hours for the purposes of compliance with this chapter.

(1) The minimum hours for each grade are as follows:

(a) Kindergarten (~~((full day))~~): 20 hours each week, or 4 hours (240 minutes) for ~~((90))~~ each scheduled school day~~((s))~~;

~~(b) ((Kindergarten (half day)): 10 hours each week, or 2 hours (120 minutes) each scheduled school day;~~

~~((e))~~ Primary (grades 1 through 3): 20 hours each week, or 4 hours (240 minutes) each scheduled school day;

~~((d))~~ (c) Elementary (grades 4 through 6): 25 hours each week, or 5 hours (300 minutes) each scheduled school day;

~~((e))~~ (d) Secondary (grades 7 through 12): 25 hours each week, or 5 hours (300 minutes) each scheduled school day.

(2) ~~Except as limited by WAC 392-121-136,~~ a student enrolled for less than the minimum hours shown in subsection (1) of this section shall be counted as a partial full-time equivalent student equal to the student's hours of enrollment divided by the minimum hours for the student's grade level set forth in subsection (1) of this section.

(3) The full-time equivalent of a student's running start enrollment pursuant to RCW 28A.600.300 through 28A.600.400 shall be determined pursuant to chapter 392-169 WAC. If a running start student is enrolled both in high school courses provided by the school district and in running start courses provided by the college, the high school full-time equivalent and the running start full-time equivalent shall be determined separately.

(4) The full-time equivalent of University of Washington transition school students shall be determined pursuant to chapter 392-120 WAC.

(5) The full-time equivalent of a student's alternative learning experience shall be determined pursuant to WAC 392-121-182.

WSR 08-04-010

PERMANENT RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed January 24, 2008, 11:43 a.m., effective February 24, 2008]

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

Purpose: Revisions to rules are required to update rules for 1.6 combined FTE split between the resident high school and the skills center. Revision to allow for state funded full-day kindergarten students be able to be reported for up to a 1.0 AAFTE.

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-136.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 07-23-040 on November 14, 2007.

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 2, 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: January 24, 2008.

Dr. Terry Bergeson
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending Order 97-06, filed 10/27/97, effective 11/27/97)

WAC 392-121-136 Limitation on enrollment counts.

Enrollment counts pursuant to WAC 392-121-106 through 392-121-133 are subject to the following limitations:

(1) Except as provided in (a) ~~((and))~~, (b) and (c) of this subsection, no student, including a student enrolled in more than one school district, shall be counted as more than one full-time equivalent student on any count date or more than one annual average full-time equivalent student in any school year.

(a) School districts operating approved vocational skills center programs during the summer vacation months may claim additional full-time equivalent students based upon actual enrollment in such vocational skills centers on the first school day of July of each year. Each district operating an approved vocational skills center program shall be entitled to claim one annual average full-time equivalent student for each 900 hours of planned student enrollment for the summer term based upon the July enrollment data.

(b) Enrollment count limitations apply separately to a student's running start, skills center and high school enrollments.

(c) Subject to (b) of this subsection, a student enrolled in a skill center program during the regular school year may be claimed for up to a combined 1.6 full-time equivalent student.

A student can be claimed for a maximum of a 1.0 full-time equivalent for the skills center enrollment and a maximum of a 1.0 full-time equivalent for the student's high school enrollment.

(2) Running start enrollment counts are limited as provided in chapter 392-169 WAC and specifically as provided in WAC 392-169-060.

(3) The full-time equivalent reported for a five year old preschool student with a disability is limited as provided in WAC 392-121-137.

(4) No kindergarten student, including a student enrolled in more than one school district, shall be counted as more than one-half of an annual average full-time equivalent student in any school year.

(5) A student reported as full-time on Form SPI E-672 pursuant to WAC 392-122-275 for institutional education funding shall not be reported by a school district for basic education funding on that enrollment count date.

(6) A student reported as part-time on Form SPI E-672 shall not be reported by a school district for more than part-time basic education funding on that enrollment count date and the total enrollment reported by one or more school districts for basic education and on Form SPI E-672 must not exceed one full-time equivalent.

(7) Districts providing an approved state-funded full-day kindergarten program as provided in chapter 28A.150 RCW (from E2SSB 5841) may claim up to an additional 0.50 FTE based upon student enrolled hours in excess of the 0.50 FTE provided under subsection (4) of this section.

WSR 08-04-011
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed January 24, 2008, 11:44 a.m., effective February 24, 2008]

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

Purpose: The WAC is being modified by taking out the word secondary so that it will apply to all education levels.

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-138.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 07-23-044 on November 14, 2007.

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

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

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

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

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

Date Adopted: January 24, 2008.

Dr. Terry Bergeson
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 98-07-060, filed 3/17/98, effective 4/17/98)

WAC 392-121-138 Full-time equivalent enrollment of vocational education students. For the purpose of enhanced funding for vocational education, full-time equivalent enrollment in vocational (~~secondary~~) and skills center

programs shall be based upon the actual hours of enrollment in state approved vocational courses. Vocational full-time equivalent enrollment shall be determined pursuant to WAC 392-121-122 and shall be reported on the same monthly basis as the enrollment for students eligible for basic support.

WSR 08-04-013
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed January 24, 2008, 3:21 p.m., effective February 24, 2008]

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

Purpose: The purpose of these changes is to comply with passed legislation in SB 5269.

Citation of Existing Rules Affected by this Order: Amending WAC 181-78A-700.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 07-24-074 on December 4, 2007.

A final cost-benefit analysis is available by contacting Nasue Nishida, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

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

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

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

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

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

Date Adopted: January 16, 2007 [2008].

Nasue Nishida
Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 07-12-005, filed 5/24/07, effective 6/24/07)

WAC 181-78A-700 First peoples' language((+)), culture, and oral tribal traditions certification program—Findings, purposes and intent—Definitions—Program established—Tribal eligibility to participate—Program requirements—Assignment of teachers—Reports. (1) **FINDINGS.** The professional educator standards board endorses the following:

(a) Teaching first peoples' languages can be a critical factor in successful educational experiences and promoting cultural sensitivity for all students. The effect is particularly strong for native American students;

(b) First peoples' languages are falling silent. Despite tribal efforts, first peoples' languages are not fully incorporated into the school systems. This is a loss to the cultural heritage of the affected tribes and to the cultural resources of Washington state;

(c) Recognition of native American languages under RCW 28A.230.090(3) and 28B.80.350(2), as satisfying state or local graduation requirements and minimum college admission requirements, while concentrating on promoting a positive impact on student learning through state policies, is insufficient to meet the educational needs of native American students;

(d) The potential to have a positive impact on student learning is in part dependent on the willingness of the local education agency to collaborate with the sovereign tribal government's language/culture program;

(e) It is within the statutory authority of the professional educator standards board to enhance the learning opportunities for all students by helping prevent the loss of first peoples' languages through assisting the state's sovereign neighbors to sustain, maintain or recover their linguistic heritage, history and culture;

(f) From the Multi-Ethnic Think Tank position statement, June 2001:

(i) "...A culturally inclusive pedagogy will ensure the success of all students, who will develop greater appreciation of other cultures and worldviews;"

(ii) "All students have prior experiences that frame their worldview; learn from childbirth and are lifelong learners; can academically achieve at high levels when they are appropriately taught; and are entitled to learn in a multicultural context;"

(g) Research has shown that students who study another language may benefit in the following ways: Greater academic success in other areas of study, including reading, social studies, and mathematics; a clearer understanding of the English language including function, vocabulary and syntax; and an increase on standardized test scores, especially in verbal areas;

(h) From the Native American Languages Act, Public Law 101-477, Section 102, 1990:

(i) "The traditional languages of Native Americans are an integral part of their cultures and identities and form the basic medium for the transmission, and thus survival, of Native American cultures, literatures, histories, religions, political institutions, and values;"

(ii) "Languages are the means of communication for the full range of human experiences and are critical to the survival of cultural and political integrity of any people"; and

(i) There are many sovereign tribal nations in the state of Washington and they serve the needs of many groups of first peoples, each possessing unique languages, cultures and worldviews.

(2) **PURPOSES.** The purpose of this section of the established first peoples' language(~~(/)~~), culture, and oral tribal traditions program is to accomplish the following goals:

(a) To honor the sovereign status of tribal governments in their sole expertise in the transmission of their indigenous languages, heritage, cultural knowledge, customs, traditions

and best practices for the training of first peoples' language(~~(/)~~), culture, and oral tribal traditions teachers;

(b) Contribute to a positive impact on student learning by promoting continuous improvement of student achievement of the sovereign tribal government's language/culture learning goals, as established by each sovereign tribal government's language/culture program, and by supporting the goals for multicultural education included in the 2001 position statement developed by the Washington state Multi-Ethnic Think Tank;

(c) Contribute to the preservation, recovery, revitalization, and promotion of first peoples' languages and cultures;

(d) Meaningfully acknowledge that language is inherently integral to native American culture and ways of life;

(e) Implement in a tangible way the spirit of the 1989 Centennial Accord and the 2000 Millennium Accord between Washington state and the sovereign tribal governments in the state of Washington;

(f) Provide a mechanism for the professional educator standards board to recognize tribally qualified language/culture teachers as eligible to receive a Washington state first peoples' language/culture teaching certificate; and

(g) Provide the opportunity for native American students to learn first peoples' languages and cultures while at school and provide another avenue for students to learn core curricula through first peoples' worldviews.

(3) **INTENT.** It is the intent of the professional educator standards board to work in collaboration with the sovereign tribal governments of Washington state to establish a Washington state first peoples' language(~~(/)~~), culture, and oral tribal traditions teacher certification program in order to:

(a) Act in a manner consistent with the policy as specified in the Native American Languages Act, P.L. 101-477 Sec. 104(1) "preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages";

(b) Act in a manner consistent with Washington state's government-to-government relationship with Washington state sovereign tribal governments and use the Washington state first peoples' language(~~(/)~~), culture, and oral tribal traditions certification programs to model effective government-to-government relationships;

(c) Act in a manner consistent with the goal of the state Basic Education Act under RCW 28A.150.210;

(d) Act in a manner consistent with the following purposes of Public Law 107-110, "No Child Left Behind Act":

(i) "Holding schools, local education agencies, and States accountable for improving the academic achievement of all students, and identifying and turning around low-performing schools that have failed to provide a high-quality education to their students, while providing alternatives to students in such schools to enable the students to receive a high-quality education," [Sec. 1002(4)];

(ii) "Providing children an enriched and accelerated educational program, including the use of schoolwide programs or additional services that increase the amount and quality of instructional time," [Sec. 1002(8)];

(iii) "Promoting schoolwide reform and ensuring the access of children to effective, scientifically based instruc-

tional strategies and challenging academic content," [Sec. 1002(9)];

(iv) "...Supporting local education agencies, Indian tribes, organizations, postsecondary institutions and other entities to meet the unique education, culturally related academic needs of American Indian and Alaskan Native Students" [Sec. 7102(a)];

(e) Act on its involvement with and adoption of the 1991 joint policy statement on Indian education:

"K-12 American Indian dropout prevention is a priority of schools. Effective education needs to be implemented throughout the K-12 school system if the American Indian student is to achieve academic and personal success";

(f) Acknowledge that there is a public responsibility to make available to all students in the state of Washington an accurate and balanced study of the American Indian experiences with and contributions to life on this continent;

(g) Act on the following professional educator standards board beliefs:

(i) In order to meet the needs of all students, highly qualified teachers are required;

(ii) All professional educator standards board policies and activities should meet the needs of the state's diverse student population;

(iii) In order for all students to achieve at high levels, multiple learning styles and needs must be supported; and

(h) Act on the following goals from the professional educator standards board's 2002-05 work plan:

(i) Professional education and certification requirements are aligned with education reform and support a positive impact on student learning;

(ii) All students shall be provided equitable educational opportunities.

(4) DEFINITIONS.

(a) "Positive impact on student learning" shall mean:

(i) The same as under WAC 181-78A-010(8) and 180-16-220 (2)(b); and

(ii)(A) Supporting the goal of basic education under RCW 28A.150.210, "...to provide students with the opportunity to become responsible citizens, to contribute to their own economic well-being and to that of their families and communities, and to enjoy productive and satisfying lives...";

(B) Promoting continuous improvement of student achievement of the state learning goals and the sovereign tribal government's language/culture learning goals as established by each sovereign tribal government's language/culture program;

(C) Recognizing nonacademic student learning and growth related, but not limited, to: Oral traditions, community involvement, leadership, interpersonal relationship skills, teamwork, self-confidence, resiliency, and strengthened unique cultural identities;

(iii) Developing greater appreciation of other cultures and worldviews;

(b) A "culturally sensitive environment" honors the unique history, culture, values, learning styles, and community of the student. For example, to demonstrate the value of the language and culture, the homeroom teacher participates in the language/culture classroom. A "culturally sensitive environment" also includes those provisions as outlined in

the Washington state joint policy on equity in education, revised in May 2000.

(c) For the purpose of this section, "highly qualified teachers" shall mean those teachers who meet the standards of the sovereign tribal government's language/culture program.

(5) **PROGRAM ESTABLISHED.** A Washington state first peoples' language(~~(/)~~), culture, and oral tribal traditions teacher certification program is established in January 2007. First peoples' language(~~(/)~~), culture, and oral tribal traditions teacher certificates issued prior and subsequent to June 30, 2006, shall be kept valid per subsection (~~((7))~~) (8)(d)(iv) of this section.

(6) **TRIBAL ELIGIBILITY TO PARTICIPATE.** Any sovereign tribal government in the state of Washington shall be eligible to participate individually on a government-to-government basis in the (~~(pilot)~~) program.

(7) CERTIFYING AUTHORITY.

(a) Only a participating sovereign tribal government may certify individuals who meet the tribe's criteria for certification as a teacher in the Washington state first peoples' language, culture, and oral tribal traditions teacher certification program.

(b) The office of the superintendent of public instruction shall not authorize or accept a certification or endorsement in Washington state first peoples' language, culture, and oral tribal traditions without certification from a participating sovereign tribal government.

(8) PROGRAM REQUIREMENTS.

(a) Each sovereign tribal government will certify individuals who meet the tribe's criteria for certification as instructors in the Washington state first peoples' language(~~(/)~~), culture, and oral tribal traditions program.

(b) Each sovereign tribal government's language/culture program shall submit to the superintendent of public instruction the following information for each eligible language/culture teacher desiring to participate in the program:

(i) Written documentation that each designated teacher has completed the sovereign tribal government's language/culture teacher certification program;

(ii) Written documentation that each designated teacher has completed the background check required under RCW 28A.410.010 and WAC 181-79A-150 (1) and (2);

(iii) Written documentation that each designated teacher has completed a course on issues of abuse as required by RCW 28A.410.035 and WAC 181-79A-030(6);

(iv) Designation of which language(s), or dialects thereof, shall be listed on the Washington state first peoples' language(~~(/)~~), culture, and oral tribal traditions certificate;

(c) After meeting the requirements of (b) of this subsection, the office of the superintendent of public instruction shall issue each teacher a Washington state first peoples' language(~~(/)~~), culture, and oral tribal traditions teaching certificate;

(d) Tribes will individually determine the continuing education and first peoples' language(~~(/)~~), culture, and oral tribal traditions certificate renewal requirements for their tribal language endorsement. As such, each tribe will do the following. Notify the certification division of the office of superintendent of public instruction when:

(i) A teacher has met the requirements for renewal/continuing education; or

(ii) A teacher has not met the requirements for renewal/continuing to hold a first peoples' language((/)), culture, and oral tribal traditions certificate; or

(iii) A tribe, at any time, withdraws a teacher certification for any reason.

(iv) Every five years, the tribes will provide documentation that the certificate holder continues to meet the requirements of (a) of this subsection;

(e) To support a positive impact on student learning, the local education agency in consultation with the sovereign tribal government's language/culture program is strongly encouraged to provide:

(i) A minimum of one contact hour per day, five days a week;

(ii) Access to the same students from year to year, to the extent possible, so that students who receive instruction during the first year of the program can continue to receive instruction throughout the first year of the program;

(iii) A culturally sensitive environment as defined in subsection (4)(b) of this section; or

(iv) Some combination of (e)(i), (ii), and (iii) of this subsection which will allow a positive impact on student learning;

(f) To document a positive impact on student learning, the sovereign tribal government's language/culture program is encouraged to provide written documentation of how teaching the first peoples' language/culture has supported the promotion of continuous improvement of student achievement of the program learning goals as established by each sovereign tribal government's language/culture program;

(g) To support a greater understanding of the government-to-government relationship, the professional educator standards board is strongly encouraged to make site visits and attend meetings with the local education agency and the sovereign tribal government's language/culture program;

(h) Nothing in this section shall be interpreted as precluding any eligible tribe in consultation with the state or in consultation with any local education agency from entering into an inter-governmental agreement or compact related to the teaching of first peoples' languages and cultures in order to address unique issues related to individual sovereign tribal governments.

~~((8))~~ **(9) ASSIGNMENT OF TEACHERS.**

(a) The holder of a Washington state first peoples' language((/)), culture, and oral tribal traditions teacher certificate shall be deemed qualified to be a teacher of first peoples' language((/)), culture, and oral tribal traditions with the ability to meet individual tribal competency criteria for language/culture, history, and English.

(b) A Washington state first peoples' language((/)), culture, and oral tribal traditions teacher certificate holder shall accept a teaching position in a public school district.

(c) The holder of a Washington state first peoples' language((/)), culture, and oral tribal traditions teacher certificate who does not also hold an initial, residency, continuing or professional certificate shall be assigned to teach only the language(s)/culture(s) designated on the certificate, and no other subject.

(d) The Washington state first peoples' language((/)), culture, and oral tribal traditions teacher certificate is recognized by the state of Washington for as long as the teacher holds a valid language/culture certificate from a participating sovereign tribal government.

(e) A Washington state first peoples' language((/)), culture, and oral tribal traditions teacher certificate will serve as the sole endorsement in first peoples' language((/)), culture, and oral tribal traditions for anyone holding an initial, residency, continuing or professional certificate.

~~((9))~~ **(10) TRIBAL PREPARATION PROGRAM REVIEW.**

(a) Every five years, the joint committee of the professional educator standards board and the first peoples' language/culture committee shall prepare a report that includes:

(i) Reports from each participating tribe related to progress in meeting program objectives, with particular emphasis on positive impact on students;

(ii) Appraisal of the government-to-government relationship; and

(iii) Any relevant recommendations for continued program success.

(b) In order to promote understanding and collaboration, beginning with the second year of the program, the professional educator standards board may accept invitations from participating tribes to visit at least two tribal programs per year as identified and invited by the individual tribal programs.

(c) Annually, the professional educator standards board will commit to ensuring a professional educator standards board member(s) and staff attends the first peoples' language/culture committee meeting. The professional educator standards board will proactively identify opportunities to share information about the first peoples' language/culture program in order to support its growth and development.

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

WSR 08-04-021

PERMANENT RULES

PUBLIC DISCLOSURE COMMISSION

[Filed January 28, 2008, 11:49 a.m., effective February 28, 2008]

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

Purpose: To provide guidance to county auditors and provide uniformity in calculating the count of registered voters for the purposes under chapter 42.17 RCW.

Statutory Authority for Adoption: RCW 42.17.370.

Adopted under notice filed as WSR 08-01-061 on December 14, 2007.

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

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

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

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

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

Date Adopted: January 24, 2008.

Vicki Rippie
Executive Director

NEW SECTION

WAC 390-05-225 Registered voters—Count or number of. In accordance with RCW 29A.08.130, for purposes of chapter 42.17 RCW and Title 390 WAC, the count or number of registered voters shall not include inactive voters.

WSR 08-04-022

PERMANENT RULES

PUBLIC DISCLOSURE COMMISSION

[Filed January 28, 2008, 3:00 p.m., effective February 28, 2008]

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

Purpose: To amend existing dollar limits for inflation in accordance with RCW 42.17.690 and include adjustments to limits on contributions to candidates seeking election to port districts and county offices in jurisdictions having over 200,000 registered voters. Also, adjusting limits on contributions to candidates seeking any judicial office in accordance with RCW 42.17.645.

Citation of Existing Rules Affected by this Order: Amending WAC 390-05-400 Changes in dollar amounts.

Statutory Authority for Adoption: RCW 42.17.370(1), 42.17.690, and 42.17.645.

Adopted under notice filed as WSR 08-01-132 on December 19, 2007.

Changes Other than Editing from Proposed to Adopted Version: In determining the inflationary adjustment, we miscalculated the amounts resulting in inaccurate limit projections for candidates for statewide offices, candidates for special purpose districts and judicial candidates. Initially, the current \$1,400 per election limit was calculated to increase to \$1,500. The correct amount is \$1,600.

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

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

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

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

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

Date Adopted: January 24, 2008.

Vicki Rippie
Executive [Director]

AMENDATORY SECTION (Amending WSR 07-07-005, filed 3/8/07, effective 4/8/07)

WAC 390-05-400 Changes in dollar amounts. Pursuant to the requirement in RCW 42.17.690 that the commission biennially revise the dollar amounts found in Initiative 134 and RCW 42.17.645 to reflect changes in economic conditions, the following revisions are made:

| Code Section | Subject Matter | Amount Enacted or Last Revised | ((2006)) 2008 Revision |
|--------------|---|--|--|
| .020 | Definition of "Independent Expenditure" | \$ ((675)) <u>700</u> | \$ ((700)) <u>800</u> |
| .125 | Reimbursement of candidate for loan to own campaign | \$ ((4,000)) <u>4,300</u> | \$ ((4,300)) <u>4,700</u> |
| .180(1) | Report— Applicability of provisions to Persons who made contributions Persons who made independent expenditures | \$ ((13,500)) <u>14,500</u> \$ ((675)) <u>700</u> | \$ ((14,500)) <u>16,000</u> \$ ((700)) <u>800</u> |
| .640(2) | Contribution Limits— Candidates for state leg. office <u>Candidates for county office</u> Candidates for other state office <u>Candidates for special purpose districts</u> | \$ 700 <u>\$ 700</u> \$ 1,400 <u>\$ 1,400</u> | \$ <u>800</u> <u>\$ 800</u> \$ <u>1,600</u> \$ <u>1,600</u> |
| .640(3) | Contribution Limits— State official up for recall or pol comm. | | |

| Code Section | Subject Matter | Amount Enacted or Last Revised | ((2006)) <u>2008</u> Revision |
|----------------|---|--------------------------------|--|
| | supporting recall— | | |
| | State Legislative Office | \$ 700 | <u>\$ 800</u> |
| | Other State Office | \$ 1,400 | <u>\$ 1,600</u> |
| .640(4) | Contribution Limits— | | |
| | Contributions made by political parties and caucus committees | | |
| | State parties and caucus committees | .70 per voter | <u>.80 per registered voter</u> |
| | County and leg. district parties | .35 per voter | <u>.40 per registered voter</u> |
| | Limit for all county and leg. district parties to a candidate | .35 per voter | <u>.40 per registered voter</u> |
| .640(5) | Contribution Limits— | | |
| | Contributions made by pol. parties and caucus committees to state official up for recall or committee supporting recall | | |
| | State parties and caucuses | .70 per voter | <u>.80 per registered voter</u> |
| | County and leg. district parties | .35 per voter | <u>.40 per registered voter</u> |
| | Limit for all county and leg. district parties to state official up for recall or pol. comm. supporting recall | .35 per voter | <u>.40 per registered voter</u> |
| .640(7) | Limits on contributions to political parties and caucus committees | | |
| | To caucus committee | \$ 700 | <u>\$ 800</u> |
| | To political party | \$ 3,500 | <u>\$ 4,000</u> |
| <u>.645(1)</u> | <u>Candidates for judicial office</u> | <u>\$ 1,400</u> | <u>\$ 1,600</u> |
| .740 | Contribution must be made by written instrument | \$ ((65)) <u>70</u> | \$ ((70)) <u>80</u> |

**WSR 08-04-027
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed January 29, 2008, 12:27 p.m., effective February 29, 2008]

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

Purpose: These rules are part of the state funding formula for K-12 education. These revisions will provide for the correct calculation of the school district's K-12 staff/student ratio compliance for the 2007-08 school year and thereafter. These revisions will implement the updated special education excess cost accounting methodology provided in the August 17, 2007, addendum to OSPI Bulletin 025-07 and guidance in section 507 (2)(b) of the 2007 supplemental operating budget.

Citation of Existing Rules Affected by this Order: Amending WAC 392-127-045, 392-127-065, and 392-127-070.

Statutory Authority for Adoption: RCW 28A.150.-290(1).

Adopted under notice filed as WSR 07-23-042 on November 14, 2007.

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 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: January 29, 2008.

Dr. Terry Bergeson
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending Order 10, filed 6/1/90, effective 7/2/90)

WAC 392-127-045 FTE basic education certificated instructional employee—Definition. As used in this chapter, "full-time equivalent basic education certificated instructional employee" means (~~for a basic education certificated instructional employee as defined in WAC 392-121-210~~) the full-time equivalent calculated pursuant to WAC 392-121-215 for:

(1) A basic education certificated instructional employee as defined in WAC 392-121-210; and

(2) A special education certificated instructional employee, in program 21, as determined by the following:

(a) The total special education, program 21, certificated instructional staff assigned to grades kindergarten through twelve;

(b) Times the annual percentage used in determination of a district's 3121 revenue—the special education cost accounting method required pursuant to section 507 (2)(b) of the 2007 supplemental operating budget.

AMENDATORY SECTION (Amending WSR 00-02-064, filed 1/3/00, effective 2/3/00)

WAC 392-127-065 Supplemental FTE staff—Definition. As used in this chapter, "supplemental full-time equivalent staff" means the net change in full-time equivalents for basic education certificated instructional employees, as determined in WAC 392-127-045, after October 1 of the school year and not reflected in Report S-275. Supplemental full-time equivalent staff are determined as follows:

(1) Determine the basic education certificated instructional FTE that would be reported for each employee for the school year on Report S-275 if the current date were substituted for the October 1 snapshot date as required in S-275 instructions and subtract the basic education certificated instructional FTE as of October 1 actually reported for the employee on the school district's most current Report S-275.

(2) Include decreases as well as increases in staff after October 1 and not reflected in Report S-275. Decreases include terminations, retirements, unpaid leave, and reassignment of staff.

AMENDATORY SECTION (Amending WSR 00-02-064, filed 1/3/00, effective 2/3/00)

WAC 392-127-070 Basic education certificated instructional staff ratio—Definition. As used in this chapter, "basic education certificated instructional staff ratio" means the following calculation:

(1) Add the full-time equivalent basic education certificated instructional employees, as determined in WAC 392-127-045, as reported on the S-275 and any supplemental full-time equivalent staff reported to the superintendent of public instruction;

(2) Divide the result obtained in subsection (1) of this section by the full-time equivalent enrollment for October or that period selected by the school district; and

(3) Multiply the result obtained in subsection (2) of this section by one thousand.

WSR 08-04-028
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed January 29, 2008, 12:28 p.m., effective February 29, 2008]

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

Purpose: These rules are part of the state funding formula for K-12 education. These revisions will provide for the correct calculation of the school district's funded K-4 staff/student ratio for the 2007-08 school year and thereafter. These revisions will implement the updated special education excess cost accounting methodology provided in the August 17, 2007, addendum to OSPI Bulletin 025-07 and guidance in section 507 (2)(b) of the 2007 supplemental operating budgeting.

Citation of Existing Rules Affected by this Order: Amending WAC 392-140-903, 392-140-904, and 392-140-910.

Statutory Authority for Adoption: RCW 28A.150-.290(1).

Adopted under notice filed as WSR 07-23-043 on November 14, 2007.

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 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: January 29, 2008.

Dr. Terry Bergeson
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 05-17-179, filed 8/23/05, effective 9/23/05)

WAC 392-140-903 K-4 Staff enhancement—Definitions. As used in WAC 392-140-900 through 392-140-913:

(1) "Report S-275" means the school district personnel report as defined in WAC 392-121-225.

(2) "Form SPI 1158" means the form provided by the superintendent of public instruction on which school districts report a net change in K-12 full-time equivalent (FTE) staff and/or K-4 FTE staff after October 1.

(3) "Report 1159" means the report produced by the superintendent of public instruction displaying the calculations of K-4 certificated instructional staffing and K-4 apportionment ratios and other information as necessary.

(4) "Form SPI 1160" means the form provided by the superintendent of public instruction on which school districts

may select the period of enrollment the superintendent of public instruction shall use to calculate staffing ratios.

(5) "Form SPI 1230" means the form provided by the superintendent of public instruction on which school districts had the option of reporting 1989-90 FTE K-3 basic education classified instructional assistants before September 1, 1999.

(6) "Form SPI 1230K-4" means the form provided by the superintendent of public instruction on which school districts have the option of reporting 1989-90 FTE K-4 basic education classified instructional assistants after September 1, 1999.

(7) "FTE K-4 basic education enrollment" means the school district's K-4 full-time equivalent enrollment reported for basic education funding pursuant to WAC 392-121-122 for the month of October or such other period selected by the district on optional Form SPI 1160.

(8) "FTE basic education certificated instructional employee" means the FTE calculated pursuant to WAC 392-121-215 for a basic education certificated instructional employee assigned in whole or in part to the following programs as defined in the *Accounting Manual for Public School Districts in the State of Washington*:

- (a) Basic education, program 01;
- (b) Vocational, basic, state, program 31;
- (c) Skills center, basic, state, program 45; ~~(and)~~
- (d) District-wide support, program 97; and
- (e) Special education, program 21, as determined by the following:

(i) The total special education, program 21, certificated instructional staff assigned to grades kindergarten through four;

(ii) Times the annual percentage used in determination of a district's 3121 revenue—the special education cost accounting method required pursuant to section 507 (2)(b) of the 2007 supplemental operating budget.

(9) "FTE K-4 basic education certificated instructional employee" means for a FTE basic education certificated instructional employee the following:

(a) If the basic education certificated instructional employee serves only K-4 students, one hundred percent of the FTE assigned to basic education; or

(b) If the basic education certificated instructional employee serves K-4 students and students of one or more other grades, multiply the FTE assigned to basic education by:

(i) The proportion of time spent serving K-4 students to all time serving students;

(ii) The proportion of K-4 students served to all students served; or

(iii) Any combination of (i) or (ii) of this subsection as appropriate.

(10) "FTE K-4 basic education certificated instructional staff" means the sum of FTE K-4 basic education certificated instructional employees for a school district.

(11) "Basic education classified instructional assistant" means a person who is assigned in whole or in part to:

(a) Program 01 - basic education; 31 - vocational, basic, state; or 45 - skills center, basic, state; and

(b) Activity 27 - teaching; and

(c) Duty 910 - aide.

(12) "Basic education classified instructional assistant FTE" means the number determined for a basic education classified instructional assistant as follows:

(a) Determine the hours per year that the employee is assigned as a basic education classified instructional assistant; and

(b) Divide by 2080.

(13) "District FTE K-4 basic education classified instructional assistants" means the sum of a school district's FTE K-4 basic education classified instructional assistants.

(a) If the basic education classified instructional assistant serves only K-4 students, one hundred percent of the FTE determined pursuant to subsection (12) of this section.

(b) If the basic education classified instructional assistant serves K-4 students and students of one or more other grades, multiply the FTE determined pursuant to subsection (12) of this section by:

(i) The proportion of time spent serving K-4 students to all time serving students;

(ii) The proportion of K-4 students served to all students served; or

(iii) Any combination of (b)(i) or (ii) of this subsection as appropriate.

(14) "Actual average salary for basic education classified instructional assistants" means the dollar amount determined for a school district for a school year as follows:

(a) For each basic education certificated instructional assistant reported on Report S-275 determine the assignment salary reported;

(b) Sum the dollar amounts determined pursuant to (a) of this subsection; and

(c) Divide the result of (b) of this subsection by the sum of the school district's FTE basic education classified instructional assistants as reported on Report S-275.

AMENDATORY SECTION (Amending WSR 05-17-179, filed 8/23/05, effective 9/23/05)

WAC 392-140-904 K-4 Staff enhancement—School district reporting. School districts shall report staff information to the superintendent of public instruction as follows:

(1) Required Report S-275. School districts shall report K-4 basic education certificated instructional staff and K-4 basic education classified instructional assistants employed as of October 1 of the school year on Report S-275 pursuant to instructions provided by the superintendent of public instruction.

(2) Optional Form SPI 1158. School districts may use this form to report net changes in K-4 (~~basic education~~) certificated instructional staff in basic or special education or in K-4 basic education classified instructional assistants after October 1 determined as follows:

(a) Determine the base contract K-4 (~~basic education~~) FTE in basic or special education that would be reported for each employee for the school year on Report S-275 if the current date were substituted for the October 1 snapshot date as required in S-275 instructions and subtract the base contract K-4 (~~basic education~~) FTE in basic or special education as of October 1 actually reported for the employee on the school district's most current Report S-275.

(b) Include decreases as well as increases in FTE staff after October 1 and not reflected in Report S-275. Decreases include terminations, retirements, unpaid leave, and reassignment of staff.

(3) Optional Form SPI 1160. School districts may use this form to select an enrollment period other than October:

- (a) Enrollment for any month of the school year; or
- (b) Annual average enrollment for the school year.

(4) Optional Form SPI 1230 K-4. School districts may use this form to report 1989-90 FTE K-4 classified instructional assistants. This is a one-time form. Once filed, the information from this form is used for all subsequent years unless revised by the district.

(5) Optional report forms for a school year must be filed with the superintendent of public instruction by September 30 following the close of the school year.

AMENDATORY SECTION (Amending WSR 02-09-024, filed 4/8/02, effective 5/9/02)

WAC 392-140-910 K-4 Staff enhancement—Determination of district K-4 certificated instructional staffing ratio. The superintendent of public instruction shall calculate each school district's K-4 certificated instructional staffing ratio as follows:

(1) Add FTE K-4 (~~((basic education))~~) certificated instructional (~~((employees))~~) staff in basic or special education from Report S-275 and any net change in FTE K-4 (~~((basic education))~~) certificated instructional staff in basic or special education reported on Form SPI 1158 pursuant to WAC 392-140-903;

(2) Divide the result of subsection (1) of this section by FTE K-4 basic education enrollment; and

(3) Multiply the result obtained in subsection (2) of this section by 1000.

**WSR 08-04-038
PERMANENT RULES
OLYMPIC COLLEGE**

[Filed January 30, 2008, 4:30 p.m., effective March 1, 2008]

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

Purpose: This revised rule updates the official Olympic College seal to include reference to Mason County in addition to Kitsap County. Both counties are included in Community College District Number 3 (Olympic College). The new seal spells out the word Washington, in place of the prior abbreviated form. In addition, the rule expands the use of the seal to include Olympic College promotional uses.

Citation of Existing Rules Affected by this Order: Amending WAC 132C-104-040.

Statutory Authority for Adoption: Chapter 28B.50 RCW.

Adopted under notice filed as WSR 08-01-029 on December 10, 2007.

A final cost-benefit analysis is available by contacting Thomas Oliver, 1600 Chester Avenue, Bremerton, WA 98337, phone (360) 475-7502, fax (360) 475-7505, e-mail toliver@olympic.edu.

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 0, Repealed 0.

Date Adopted: January 29, 2008.

Thomas Oliver
Rules Coordinator

AMENDATORY SECTION (Amending Order 4433, filed 1/24/74)

WAC 132C-104-040 Seal. (1) Design. The seal of Olympic College shall be the following form and design:

~~((STRICKEN GRAPHIC~~



~~STRICKEN GRAPHIC))~~



(2) Use. The seal shall be used only in connection with the transaction of official business of Olympic College or for promotional purposes.

WSR 08-04-039
PERMANENT RULES
OLYMPIC COLLEGE

[Filed January 30, 2008, 5:21 p.m., effective March 1, 2008]

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

Purpose: This policy will provide a clear outline of Olympic College policy regarding animals on all of its campuses. To date no other written policy on this issue exists. Having a written policy will facilitate consistent treatment of animals on campuses and afford security appropriate authority when and if circumstances require action.

Statutory Authority for Adoption: Chapter 28B.50 RCW.

Adopted under notice filed as WSR 08-01-028 on December 10, 2007.

A final cost-benefit analysis is available by contacting Thomas Oliver, 1600 Chester Avenue, Bremerton, WA 98337, phone (360) 475-7502, fax (360) 475-7505, e-mail toliver@olympic.edu.

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

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

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

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

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

Date Adopted: January 29, 2008.

Thomas Oliver
Rules Coordinator

NEW SECTION

WAC 132C-10-041 Animal control policy. (1) This section governs the control of pets and other animals on and in all campuses and buildings owned or controlled by Olympic College.

(2) Except as provided herein, no person may bring an animal into a building owned or controlled by the college. This provision shall not apply to or prohibit a service animal as defined under RCW 49.60.040 (23) and (24), an animal under the control of a law enforcement officer, or an animal authorized by the college for educational purposes.

(3) Animals are permitted on the campus grounds only when under the direct control of their owners or keepers. Direct control for this purpose means control by means of a

leash, cage, bridle, or other restraining device held by the owner or keeper, except that reasonable modifications of this provision may be made to accommodate a service animal.

(4) No animal whether on the campus grounds or in a college building, shall be permitted to run at large, to disrupt the college's programs or activities, or to pose a direct threat to the health or safety of others.

(5) Any violation of this section will be cause for removal of the violator and/or animal from campus and/or disciplinary action against the violator. An animal found in violation of this section may also be subject to impoundment under city or county animal control ordinances. Violations may be reported to campus security; however, community support is urged in reminding pet owners of their obligation if a violation is observed by a community member.

(6) A student or employee who is responsible for an animal that is repeatedly in violation of this section may be subject to the disciplinary proceedings appropriate to his or her status. Visitors to campus who are responsible for an animal that repeatedly fails to comply with this section may be subject to legal process.

(7) Brief adjudicative proceedings under RCW 34.05.-482 through 34.05.494, shall be used in all matters relating to the college's enforcement of this section.

WSR 08-04-045
PERMANENT RULES
DEPARTMENT OF CORRECTIONS

[Filed January 31, 2008, 1:21 p.m., effective March 2, 2008]

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

Purpose: Clarify the process to be followed to request disclosure of public records from the agency.

Citation of Existing Rules Affected by this Order: Amending WAC 137-08-060 and 137-08-090.

Statutory Authority for Adoption: RCW 72.01.090.

Adopted under notice filed as WSR 08-01-040 on December 11, 2007.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: January 29, 2008.

Eldon Vail
Secretary

AMENDATORY SECTION (Amending WSR 07-12-073, filed 6/5/07, effective 7/6/07)

WAC 137-08-060 Public records available. ~~((+)) Requests for any identifiable public record may be initiated at any office of the department during normal business hours.~~

~~((2))~~) The department shall at all times take the most timely possible action on requests for disclosure, and shall be required to respond in writing within five working days of receipt of the request for disclosure. The department's failure to so respond shall entitle the person seeking disclosure to petition the public disclosure officer pursuant to WAC 137-08-140.

AMENDATORY SECTION (Amending Order 82-3, filed 1/26/82)

WAC 137-08-090 Request for public records. (1) ~~((Unless waived by a public disclosure coordinator, all requests for the disclosure of a public record))~~ All requests for the disclosure of a public record, other than requests by incarcerated offenders for inspection of their health record or central file must be submitted in writing directly to the Department of Corrections Public Records Officer at P.O. Box 41118, Olympia, WA 98504 or via e-mail at publicdisclosureunit@doc1.wa.gov identifying the record sought with reasonable certainty. The written request ((may)) should include:

(a) The name of the person requesting the record and their contact information;

(b) The ~~((time of day and))~~ calendar date on which the request is made~~((;))~~; and~~((;))~~

(c) The ~~((nature of the request))~~ records requested.

Incarcerated offenders under the authority of the department of corrections shall submit requests to inspect their own health record or central file to the records manager at the facility in which, they are currently incarcerated.

(2) A request for disclosure shall be made during customary business hours.

(3) If the public record contains material exempt from disclosure pursuant to law, including those laws cited in WAC 137-08-150, the department must provide the person requesting disclosure with a written explanation for the non-disclosure, pursuant to WAC 137-08-130.

(4) Any person continuing to seek disclosure, after having received a written explanation for nondisclosure pursuant to WAC 137-08-130, may request a review under the provisions of WAC 137-08-140.

(5) When a person's identity is relevant to an exemption, that person may be required to provide personal identification.

(6) Nothing in this section or elsewhere in this chapter shall be construed to require the department to compile statistics or other information from material contained in public records, where doing so would unduly interfere with other essential functions of the department and is not required for litigation by rules of pretrial discovery.

WSR 08-04-050
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed January 31, 2008, 3:11 p.m., effective March 2, 2008]

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

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 previously adopted an amended rule on an emergency basis to satisfy RCW 84.34.310 requirements that an adopted rule providing the rate of inflation be published in the state register not later than January 1. This rule making adopts a permanent rule, which includes the same information provided in the proposed and emergency rules.

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.

Adopted under notice filed as WSR 07-21-095 on October 18, 2007.

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

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

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

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

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

Date Adopted: January 31, 2008.

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 |

| YEAR | PERCENT | YEAR | PERCENT |
|------|---------|-------------|-------------|
| 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> |

**WSR 08-04-051
PERMANENT RULES
DEPARTMENT OF REVENUE**

[Filed January 31, 2008, 3:14 p.m., effective March 2, 2008]

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

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

The department previously adopted an amended rule on an emergency basis to satisfy 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. This rule making adopts a permanent rule, which includes the same information provided in the proposed and emergency rules.

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.

Adopted under notice filed as WSR 07-21-096 on October 18, 2007.

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

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

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

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

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

Date Adopted: January 31, 2008.

Janis P. Bianchi
Assistant Director
Interpretation and
Technical Advice Division

WSR 08-04-058
PERMANENT RULES
PUBLIC EMPLOYMENT
RELATIONS COMMISSION

[Filed January 31, 2008, 5:39 p.m., effective April 1, 2008]

Effective Date of Rule: April 1, 2008.

Purpose: To streamline, update and codify well established procedures and case precedent for representation, unit clarification, unfair labor practice, impasse resolution, grievance arbitration, and nonassociation cases. Housekeeping amendments also needed to reflect the full integration of employees covered by the Personnel System Reform Act of 2002 into the agency's jurisdiction.

Citation of Existing Rules Affected by this Order: Amending WAC 391-08-010, 391-25-051, 391-25-110, 391-25-140, 391-25-210, 391-25-350, 391-25-370, 391-25-390, 391-25-530, 391-35-020, 391-35-170, 391-35-190, 391-45-290, 391-45-310, 391-95-010, 391-95-030, 391-95-050, 391-95-070, 391-95-130, 391-95-230, and 391-95-250.

Statutory Authority for Adoption: For WAC 391-08-010, 391-25-110, 391-25-140, 391-25-210, 391-25-350, 391-25-370, 391-25-390, and 391-25-530 is RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080; for WAC 391-25-051 is RCW 41.56.060, 41.56.090, 41.58.050; for WAC 391-25-397 is RCW 41.58.050, 41.80.080; for WAC 391-35-020, 391-35-170, and 391-35-190 is RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.070; for WAC 391-35-301 is RCW 41.56.060, 41.56.090, 41.58.050; for WAC 391-45-290 and 391-45-310 is RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.120; for WAC 391-95-010 is RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.100; for WAC 391-95-030, 391-95-050, 391-95-070, 391-95-130, 391-95-220, 391-95-230, and 391-95-205 is RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060; and for WAC 391-95-036, 391-95-056, 391-95-076, and 391-95-136 is RCW 41.58.050, 41.80.100.

Adopted under notice filed as WSR 07-21-067 on October 14, 2007.

Changes Other than Editing from Proposed to Adopted Version:

WAC 391-25-051:

- Changed to clarify that rule applies to family child care providers under RCW 41.56.028.
- Substitutes the terms "employee" to the more accurate term of "provider."

WAC 391-25-350:

- Amended to clarify that briefs may be extended for complex legal or factual issues.
- A new subsection is added to permit parties to make oral motions at the end of an administrative hearing to extend briefs.

WAC 391-35-170, 391-45-290 and 391-95-230:

- Changed to clarify that briefs may be extended for complex legal or factual issues.
- A new subsection is added to permit parties to make oral motions at the end of an administrative hearing to extend briefs.

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> | | |

WAC 391-45-310:

- Clarified to state that interlocutory appeals may not challenge a preliminary ruling issued under WAC 391-45-110 or application of the six-month statute of limitation.

WAC 391-95-010:

- Rule is amended to comport with *IAFF Local 216 v. PERC*, 128 Wn.2d 375 (1996) which limits this commission's jurisdiction in union security obligation disputes to determining [determine] an employee's right to assert nonassociation.

WAC 391-95-036:

- Changed to clarify the procedure that applies to an employee asserting a right of nonassociation under chapter 41.80 RCW.

WAC 391-95-050:

- Changed to clarify that the requirements under the rule are procedural only, and do not negate an employee's union security obligation.

WAC 391-95-056:

- Changed to add the procedural element similar to WAC 391-95-050.

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 7, Amended 20, 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: January 15, 2008.

Dario de la Rosa
General Counsel

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-08-010 Appearance and practice before agency—Who may appear—Notice of appearance. (1) No person may appear in a representative capacity before the agency other than the following:

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

(b) Attorneys at law duly qualified and entitled to practice before the highest court of record of any other state, if the attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by our state law;

(c) A bona fide officer, employee or other authorized representative of: (i) Any employer subject to the jurisdiction of the agency, ~~((or))~~ (ii) any labor or employee organization, or (iii) individual.

(2) Except where the information is already listed in the agency's docket records for the particular case, a person appearing in a representative capacity shall file and serve a notice of appearance listing the representative's name, address, telephone number, fax number, and e-mail address.

AMENDATORY SECTION (Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

WAC 391-25-051 Special provision—Individual providers ~~((under))~~ of home care ~~((quality authority))~~ under RCW 74.39A.270 and 74.39A.300—Family child care providers under RCW 41.56.208—Adult family home providers under RCW 41.56.029. (1) This rule consolidates special rules applicable to:

(a) Individual providers under ~~((chapter 3, Laws of 2002, Initiative Measure No. 775 (I 775) passed by Washington voters in November of 2001. I 775 extended))~~ RCW 74.39A.270 and 74.39A.300, which extend the coverage of chapter 41.56 RCW to "individual providers" defined as a person, including a personal aide, who has contracted with the department of social and health services to provide personal care or respite care services to functionally disabled persons under the Medicaid personal care, community options program entry system, chore services program, or respite care program, or to provide respite care or residential services and support to persons with developmental disabilities under chapter 71A.12 RCW, or to provide respite care as defined in RCW 74.13.270.

~~((+))~~ (b) Family child care providers under RCW 41.56.028, which extends coverage of chapter 41.56 RCW to "child care providers" defined as persons who:

(i) Provide regularly scheduled care for a child or children in the home of the provider or in the home of the child or children for periods of less than twenty-four hours or, if necessary due to the nature of the parent's work, for periods equal to or greater than twenty-four hours;

(ii) Receive child care subsidies; and

(iii) Are either licensed by the state under RCW 74.15.030 or are exempt from licensing under chapter 74.15 RCW.

(c) Adult family home providers under RCW 41.56.029, which extends coverage of chapter 41.56 RCW to "adult family home providers" who are persons defined as a provider as defined in RCW 70.128.010 who receives payments from the Medicaid and state-funded long-term care programs.

(2) The showing of interest requirement in WAC 391-25-110 is modified for the bargaining unit affected by ~~((+775))~~ RCW 74.39A.270 and 74.39A.300, to require a ten percent showing of interest for either a petitioner or an intervenor.

~~((+))~~ (3) The posting of notice requirement in WAC 391-25-140 is inapplicable to the bargaining unit affected by ~~((+775))~~ RCW 74.39A.270, 74.39A.300, 41.56.028, and 41.56.029.

~~((3))~~ (4) A party wishing to participate as an intervenor in representation proceedings governed by this rule must file a motion to intervene no later than ten days following receipt of the petition for investigation of a question concerning representation.

(5) The description of bargaining unit requirement of WAC 391-25-190 is limited to a single, statewide unit of:

(a) Individual providers under ~~((1-775))~~ RCW 74.39A.270 and 74.39A.300; or

(b) Family child care providers under RCW 41.56.028;
or

(c) Adult family home providers under RCW 41.56.029.

~~((4))~~ (6) The description of bargaining unit requirement of WAC 391-25-210(2) is limited to a single, statewide unit of:

(a) Individual providers under ~~((1-775))~~ RCW 74.39A.270 and 74.39A.300; or

(b) Family child care providers under RCW 41.56.028;
or

(c) Adult family home providers under RCW 41.56.029.

~~((5))~~ (7) The provisions of WAC 391-25-210(3) relating to alternative units or mergers of units are inapplicable to the bargaining unit affected by ~~((1-775))~~ RCW 74.39A.270, 74.39A.300, 41.56.028, and 41.56.029.

~~((6))~~ (8) The posting requirement in WAC 391-25-220(2), relating to investigation statements, is inapplicable to the bargaining unit affected by ~~((1-775))~~ RCW 74.39A.270, 74.39A.300, 41.56.028, and 41.56.029.

~~((7))~~ (9) The posting requirement in WAC 391-25-230(2), relating to election agreements, is inapplicable to the bargaining unit affected by ~~((1-775))~~ RCW 74.39A.270, 74.39A.300, 41.56.028, and 41.56.029.

~~((8))~~ (10) The cross-check procedures in WAC 391-25-250, 391-25-391, and 391-25-410 are inapplicable to the bargaining unit affected by ~~((1-775))~~ RCW 74.39A.270, 74.39A.300, 41.56.028, and 41.56.029.

~~((9))~~ (11) The unit determination election procedures in WAC 391-25-420 are inapplicable to the bargaining unit affected by ~~((1-775))~~ RCW 74.39A.270, 74.39A.300, 41.56.028, and 41.56.029.

~~((10))~~ (12) The requirements of WAC 391-25-430, relating to posting of election notices on the employer's premises, is inapplicable to the bargaining unit affected by ~~((1-775))~~ RCW 74.39A.270, 74.39A.300, 41.56.028, and 41.56.029.

~~((11))~~ (13) Any representation election for the bargaining unit affected by ~~((1-775))~~ RCW 74.39A.270, 74.39A.300, 41.56.028, and 41.56.029 shall be conducted by mail ballot under WAC 391-25-470, with the following modifications:

(a) Together with the procedures for casting ballots, the notice supplied to ~~((individual))~~ providers may describe the collective bargaining rights established by ~~((1-775))~~ RCW 74.39A.270, 74.39A.300, 41.56.028, and 41.56.029 and agreements reached by a petitioning union and the employer concerning the election process;

(b) The notice and ballot materials supplied to ~~((individual))~~ providers shall be set forth in English ~~((and Spanish))~~ and any other language the agency deems reasonably necessary to conduct a fair election;

(c) The ballot materials supplied to ~~((individual))~~ providers shall include a card return-addressed to the commission, by which ~~((individual))~~ providers eligible voters can individually request notice and ballot materials in ~~((Cambodian, Korean, Mandarin, Russian, Tagalog, Ukrainian, or Vietnamese))~~ languages other than those received. Upon receipt of such a request ~~((from an individual provider))~~ card, the agency shall promptly supply notice and ballot materials to the ~~((individual provider))~~ eligible voter in the requested language.

(d) At least ~~((twenty-four))~~ twenty-one days shall be provided between the date on which ballot materials are mailed to ~~((individual))~~ providers and the deadline for return of cast ballots to the commission.

(e) The executive director shall have discretion to vary tally arrangements and procedures from those customarily used, because of the large size of the bargaining unit involved.

(f) The reference in ~~((WAC 391-25-470 to))~~ WAC 391-25-140 through 391-25-470 shall be interpreted in light of subsection ~~((2))~~ (3) of this section.

~~((12))~~ (14) The procedure for on-site elections in WAC 391-25-490 is inapplicable to the bargaining unit affected by ~~((1-775))~~ RCW 74.39A.270, 74.39A.300, 41.56.028, and 41.56.029.

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-110 Supporting evidence—Showing of interest confidential. (1) A petition filed by employees or an employee organization shall be accompanied by a showing of interest indicating that the petitioner has the support of thirty percent or more of the employees in the bargaining unit which the petitioner claims to be appropriate. The showing of interest shall be furnished under the same timeliness standards applicable to the petition, and shall consist of original or legible copies of individual authorization cards or letters signed and dated by employees in the bargaining unit claimed appropriate. Authorization cards or letters shall not be valid unless signed and dated during the one-year period preceding the filing of the petition.

(2) The agency shall not disclose the identities of employees whose authorization cards or letters are furnished to the agency in proceedings under this chapter.

(a) A petitioner or intervenor shall not serve its showing of interest on any other party to the proceeding.

(b) The question of whether a showing of interest requirement for a petition or for intervention has been satisfied is a matter for administrative determination by the agency and may not be litigated at any hearing.

(c) In order to preserve the confidentiality of the showing of interest and the right of employees freely to express their views on the selection of a bargaining representative, the agency shall not honor any attempt to withdraw any authorization submitted for purposes of this section.

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-140 Notice to employees—Limitations on employer actions. (1) The employer shall post a copy of the petition and a notice, in the form specified by the commission, to inform employees of the existence of proceedings under this chapter. The agency shall furnish the employer with copies of the petition and notice, and the employer shall post them in conspicuous places on its premises where notices to affected employees are usually posted. The petition and notice shall remain posted until a certification or interim certification is issued in the proceeding.

(2) Changes of the status quo concerning wages, hours or other terms and conditions of employment of employees in the bargaining unit are prohibited during the period that a petition is pending before the commission under this chapter.

(3) The employer shall not express or otherwise indicate any preference between competing organizations, where two or more employee organizations are seeking to represent its employees.

(4) Where a petition filed under this chapter involves employees who are represented for the purposes of collective bargaining, the employer shall suspend negotiations with the incumbent exclusive bargaining representative on a successor collective bargaining agreement involving employees affected by the petition. The employer and incumbent union may proceed with negotiations covering employees not affected by the petition, and shall resume negotiations on a successor agreement covering the affected employees after the question concerning representation is resolved, if the incumbent exclusive bargaining representative retains its status.

(5) When an order of dismissal issued under WAC 391-25-390 (1)(a) is served upon the parties, the obligations to maintain the status quo under subsection (2) of this section and suspend negotiations with the incumbent exclusive bargaining representative under subsection (4) of this section are lifted.

(a) If a party to the proceeding files a timely notice of appeal of the order of dismissal, then the obligations under subsections (2) and (4) of this section shall be reinstated once the parties to the proceeding are served the notice of appeal. Those obligations shall remain in effect until a final order is issued by the commission under WAC 391-25-670, unless governed by (b) of this subsection.

(b) Where a timely filed notice of appeal reinstates the obligation to maintain the status quo or suspend bargaining, any party to the proceeding may petition the commission to stay either of those obligations where the petitioning party demonstrates a need for a change in terms and conditions of employment due to circumstances that are beyond that party's control, or where the failure to resume bargaining would substantially harm the petitioned-for employees and leave them without an adequate administrative remedy. A petition filed under this subsection shall be accompanied by affidavits and evidence.

(c) Following the receipt of a petition under (b) of this subsection, the due date for any counter-affidavits from other parties is seven days following the date on which that party is served with the petition.

(d) The executive director shall forward all petitions and affidavits to the commission, who shall determine whether to stay the obligations under subsections (2) and (4) of this section at the next regularly scheduled commission meeting.

(e) If the commission uses its authority under (b) of this subsection, any party seeking review of the commission's decision shall seek relief through the courts.

AMENDATORY SECTION (Amending WSR 03-11-029, filed 5/15/03, effective 6/15/03)

WAC 391-25-210 Bargaining unit configurations. (1) In proceedings on a petition for "decertification" under WAC 391-25-070 (6)(c) or 391-25-090(2), the parties shall not be permitted to remove positions from or add positions to the existing bargaining unit;

(2) An organization which files a motion for intervention under WAC 391-25-190 shall not be permitted to seek a bargaining unit configuration different than proposed by the original petitioner.

(3) If petitions filed by two or more organizations under this chapter are pending before the agency at the same time and involve any or all of the same employees, the timeliness of the respective petitions and the sufficiency of the respective showings of interest shall be determined separately and the proceedings shall be consolidated for resolution of all issues concerning the description(s) of the bargaining unit(s). A petition filed after the issuance of a notice of election in another proceeding under WAC 391-25-430 or after the commencement of a cross-check in another proceeding under WAC 391-25-410 shall be dismissed as untimely.

(4) A party to proceedings under this chapter shall not be permitted to propose more than one bargaining unit configuration for the same employee or employees, except where a merger of bargaining units is proposed under WAC 391-25-420.

(5) Where a petitioning union seeks severance of a portion of an existing bargaining unit of classified employees at a school district or educational service district, appropriate bargaining units existing on July 25, 2005, may not be divided into more than one appropriate bargaining unit without the agreement of the employer and certified bargaining representative of the unit where severance is sought.

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-350 Hearings—Reopening of hearing—Briefs. (1) Hearings shall be public, except where a protective order is issued under WAC 10-08-200(7), and shall be limited to matters concerning the determination of a question concerning representation.

(a) The parties shall be responsible for the presentation of their cases.

(b) The hearing officer shall ascertain the respective positions of the parties, to obtain a full and complete factual record upon which the agency may discharge its responsibilities under the applicable statute. The hearing officer has authority, under WAC 10-08-200 (8) and (9), to ask questions, call witnesses, and explore matters not raised or only partially raised by the parties.

(2) Once a hearing has been declared closed, it may be reopened only upon the timely motion of a party upon discovery of new evidence which could not with reasonable diligence have been discovered and produced at the hearing.

(3) The hearing officer may allow or direct the filing of briefs as to any or all of the issues in a case. Arrangements and due dates for briefs shall be established by the hearing officer. Any brief shall be filed with the hearing officer as required by WAC 391-08-120(1), and copies shall be served on all other parties to the proceeding as required by WAC 391-08-120 (3) and (4).

(4) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, twelve-point type), unless:

(a) It files and serves a motion for permission to file a longer brief in order to address novel or complex legal and/or factual issues raised by the objections;

(b) The executive director, his or her designee, or hearing officer grants such a motion for good cause shown; and

(c) A motion for permission to file a longer brief may be made orally to the hearing officer at the end of the administrative hearing, and the hearing officer has the authority to orally grant such motion at such time.

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-370 Blocking charges—Suspension of proceedings—Request to proceed. (1) The executive director may suspend the processing of a representation petition under this chapter pending the outcome of related unfair labor practice proceedings, where:

(a) A complaint charging unfair labor practices is filed under the provisions of chapter 391-45 WAC; and

(b) It appears that the facts as alleged may constitute an unfair labor practice; and

(c) Such unfair labor practice could improperly affect the outcome of a representation election.

(2) The complainant(s) in the unfair labor practice case may file and serve, as required by WAC 391-08-120, a written request to proceed with the executive director. The request to proceed shall specify the case number of the representation proceeding, shall request that the representation petition be processed notwithstanding the pending unfair labor practice case, and shall waive the right to file objections under WAC 391-25-590 (1)(a) based on conduct alleged in the unfair labor practice case. Upon the filing of a request to proceed under this subsection, the executive director (~~shall~~) may resume the processing of the representation petition and shall summarily dismiss any objections filed in conflict with the request to proceed.

~~((3) Where a complaint charging unfair labor practices is filed after the issuance of a notice of election, the executive director shall proceed with the determination of the question concerning representation, subject to the right of any party to file objections as provided in WAC 391-25-590.))~~

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-390 Proceedings before the executive director. (1) The executive director may proceed upon the record, after submission of briefs or after hearing, as may be appropriate.

(a) The executive director shall determine whether a question concerning representation exists, and shall issue a direction of election, dismiss the petition or make other disposition of the matter.

(b) Unless otherwise provided in a direction of election, the cut-off date for eligibility to vote in an election shall be the date of issuance of the direction of election.

(2) Where the executive director determines that employee eligibility issues exist, the executive director may delegate authority to the hearing officer to decide those issues.

(3) A direction of election and other rulings in the proceedings up to the issuance of a tally are interim orders, and may only be appealed to the commission by objections under WAC 391-25-590 after the election. ~~((An exception is made for rulings on whether the employer or employees are subject to the jurisdiction of the commission, which may be appealed under WAC 391-25-660.))~~

(4)(a) A party seeking review by the commission of an interlocutory decision of the executive director, his or her designee, or hearing officer must file a motion for discretionary review with the commission and a copy with the executive director or his or her designee within seven days after the decision is issued.

(b) Discretionary review of an interlocutory decision issued by the executive director, his or her designee, or hearing officer will be accepted by the commission only:

(i) If the executive director or his or her designee has committed an obvious error which would render further proceedings useless; or

(ii) If the executive director, his or her designee, or hearing officer has committed probable error and the decision of the executive director, his or her designee, or hearing officer substantially alters the status quo or substantially limits the freedom of a party to act; or

(iii) If the executive director, his or her designee, or hearing officer has so far departed from the accepted and usual course of administrative proceedings as to call for the exercise of revisory jurisdiction by the commission.

(c) A motion for discretionary review under this rule, and any response, should not exceed fifteen pages double spaced, excluding appendices.

(d) Denial of discretionary review of a decision does not affect the right of a party to obtain later review of the executive director's, his or her designee's, or hearing officer's decision or the issues pertaining to that decision.

(5) Unless appealed to the commission under WAC 391-25-660, a decision issued under this section shall be the final order of the agency, with the same force and effect as if issued by the commission.

NEW SECTION

WAC 391-25-397 Special provision—State employees. (1) In addition to the cross-check of records permitted by WAC 391-25-391 and the procedures under WAC 391-25-410, where only one organization is seeking certification as the representative of unrepresented employees covered by chapters 41.06 and 41.80 RCW, the executive director may issue a direction of cross-check utilizing the procedures outlined in WAC 391-25-410 if the showing of interest submitted in support of the petition indicates that the petitioning organization has been authorized by a majority of the employees to act as their representative for the purposes of collective bargaining, provided: The authorization cards be submitted in support of a petition under this section must, at a minimum, contain the following:

(a) The employee's name typed or printed legibly, the employee's signature, and the date of the employee's signature;

(b) A statement that the employee designates the named labor organization as the employee's exclusive bargaining representative for purposes of collective bargaining;

(c) A statement that the showing of interest may be used for purposes of a cross-check election under this section;

(d) A statement that the employee understands that the employee's signature on the card may be used to obtain certification of the named labor organization as the exclusive bargaining representative of the employee without a secret ballot election; and

(e) A statement that the employee has the right to ask the agency to revoke the employee's authorization card for purposes of cross-check of records. The agency shall notify the petitioner of the existence and number of any such revocation(s) prior to the commencement of the cross-check, but shall not disclose the identities of the employees involved.

(2) An authorization card that fails to comply with subsection (1) of this section shall be invalid for purposes of initiating a cross-check of records under this section.

(3) A direction of cross-check and other rulings in the proceedings up to the issuance of a tally are interim orders, and may only be appealed to the commission by objections under WAC 391-25-590 after the cross-check. An exception is made for rulings on whether the employer or employees are subject to the jurisdiction of the commission, which may be appealed under WAC 391-25-660.

AMENDATORY SECTION (Amending WSR 90-06-072, filed 3/7/90, effective 4/7/90)

WAC 391-25-530 Votes needed to determine election. (1) Unit determination elections shall be decided by a majority of those eligible to vote in the election.

(2) Unless governed by WAC 391-25-531, representation elections shall be decided by a majority of those voting. Where there are only two choices on the ballot, a tie vote shall result in a certification of no representative.

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-35-020 Time for filing petition—Limitations on results of proceedings.

TIMELINESS OF PETITION

(1) A unit clarification petition may be filed at any time, with regard to:

(a) Disputes concerning positions which have been newly created by an employer.

(b) Disputes concerning the allocation of employees or positions claimed by two or more bargaining units.

(c) Disputes under WAC 391-35-300 concerning a requirement for a professional education certificate.

(d) Disputes under WAC 391-35-310 concerning eligibility for interest arbitration.

(e) Disputes under WAC 391-35-320 concerning status as a confidential employee.

(f) Disputes under WAC 391-35-330 concerning one-person bargaining units.

(2) A unit clarification petition concerning status as a supervisor under WAC 391-35-340, or status as a regular part-time or casual employee under WAC 391-35-350, is subject to the following conditions:

(a) The signing of a collective bargaining agreement will not bar the processing of a petition filed by a party to the agreement, if the petitioner can demonstrate that it put the other party on notice during negotiations that it would contest the inclusion or exclusion of the position or class through a unit clarification proceeding, and it filed the petition prior to signing the current collective bargaining agreement.

(b) Except as provided under subsection (2)(a) of this section, the existence of a valid written and signed collective bargaining agreement will bar the processing of a petition filed by a party to the agreement unless the petitioner can demonstrate, by specific evidence, substantial changed circumstances during the term of the agreement which warrant a modification of the bargaining unit by inclusion or exclusion of a position or class.

LIMITATIONS ON RESULTS OF PROCEEDINGS

(3) Employees or positions may be removed from an existing bargaining unit in a unit clarification proceeding filed within a reasonable time period after a change of circumstances altering the community of interest of the employees or positions.

(4) Employees or positions may be added to an existing bargaining unit in a unit clarification proceeding:

(a) Where a petition is filed within a reasonable time period after a change of circumstances altering the community of interest of the employees or positions; or

(b) Where the existing bargaining unit is the only appropriate unit for the employees or positions.

(5) Except as provided under subsection (4) of this section, a question concerning representation will exist under chapter 391-25 WAC, and an order clarifying bargaining unit will not be issued under chapter 391-35 WAC:

(a) Where a unit clarification petition is not filed within a reasonable time period after creation of new positions.

(b) Where employees or positions have been excluded from a bargaining unit by agreement of the parties or by a certification, and a unit clarification petition is not filed within a reasonable time period after a change of circumstances.

(c) Where addition of employees or positions to a bargaining unit would create a doubt as to the ongoing majority status of the exclusive bargaining representative.

(6) Where a petitioning union seeks severance of a portion of an existing bargaining unit of classified employees at a school district or educational service district, appropriate bargaining units existing on July 25, 2005, may not be divided into more than one appropriate bargaining unit without the agreement of the employer and certified bargaining representative of the unit where severance is sought.

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-35-170 Hearings—Reopening of hearing—Briefs. (1) Hearings shall be public, except where a protective order is issued under WAC 10-08-200(7), and shall be limited to matters concerning the clarification of the existing bargaining unit.

(a) The parties shall be responsible for the presentation of their cases.

(b) The hearing officer shall ascertain the respective positions of the parties, to obtain a full and complete factual record upon which the agency may discharge its responsibilities under the applicable statute. The hearing officer has authority, under WAC 10-08-200 (8) and (9), to ask questions, call witnesses, and explore matters not raised or only partially raised by the parties.

(2) Once a hearing has been declared closed, it may be reopened only upon the timely motion of a party upon discovery of new evidence which could not with reasonable diligence have been discovered and produced at the hearing.

(3) The hearing officer may allow or direct the filing of briefs as to any or all of the issues in a case. Arrangements and due dates for briefs shall be established by the hearing officer. Any brief shall be filed with the hearing officer as required by WAC 391-08-120(1), and copies shall be served on all other parties to the proceeding as required by WAC 391-08-120 (3) and (4).

(4) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, twelve-point type), unless:

(a) It files and serves a motion for permission to file a longer brief in order to address novel or complex legal and/or factual issues raised by the objections;

(b) The executive director, his or her designee, or hearing officer grants such a motion for good cause shown; and

(c) A motion for permission to file a longer brief may be made orally to the hearing officer at the end of the administrative hearing, and the hearing officer has the authority to orally grant such a motion at such time.

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-35-190 Proceedings before the executive director. (1) The executive director may proceed upon the

record, after submission of briefs or after hearing, as may be appropriate. The executive director shall determine the status of each position, classification or group of employees over which there is a disagreement and issue an order clarifying bargaining unit, dismiss the petition or make other disposition of the matter.

(2) Where the executive director determines that employee eligibility issues exist, the executive director may delegate authority to the hearing officer to decide those issues.

(3)(a) A party seeking review by the commission of an interlocutory decision of the executive director, his or her designee, or hearing officer must file a motion for discretionary review with the commission and a copy with the executive director or his or her designee within seven days after the decision is issued.

(b) Discretionary review of an interlocutory decision issued by the executive director, his or her designee, or hearing officer will be accepted by the commission only:

(i) If the executive director, his or her designee, or hearing officer has committed an obvious error which would render further proceedings useless; or

(ii) If the executive director or his or her designee has committed probable error and the decision of the executive director, his or her designee, or hearing officer substantially alters the status quo or substantially limits the freedom of a party to act; or

(iii) If the executive director, his or her designee, or hearing officer has so far departed from the accepted and usual course of administrative proceedings as to call for the exercise of revisory jurisdiction by the commission.

(c) A motion for discretionary review under this rule, and any response, should not exceed fifteen pages double-spaced, excluding appendices.

(d) Denial of discretionary review of a decision does not affect the right of a party to obtain later review of the executive director's, his or her designee's, or hearing officer's decision or the issues pertaining to that decision.

(4) Unless appealed to the commission under WAC 391-35-210, a decision issued under this section shall be the final order of the agency, with the same force and effect as if issued by the commission.

NEW SECTION

WAC 391-35-301 Higher education employees. A bargaining unit of higher education employees under RCW 41.56.021 shall not include any employees eligible for collective bargaining rights under RCW 41.56.022, 41.56.024, or 41.56.203, chapter 28B.52, 41.76, or 41.80 RCW. Employees whose eligibility for collective bargaining is covered by chapter 28B.52, 41.76, or 41.80 RCW are exempt from the provisions of RCW 41.56.021.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-290 Briefs. (1) Any party shall be entitled, upon request made before the close of the hearing, to file a brief. The examiner may direct the filing of briefs as to any or all of the issues in a case. Arrangements and due dates for

briefs shall be established by the examiner. Any brief shall be filed with the examiner as required by WAC 391-08-120(1), and copies shall be served on all other parties to the proceeding as required by WAC 391-08-120 (3) and (4).

(2) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, twelve-point type), unless:

(a) It files and serves a motion for permission to file a longer brief in order to address novel or complex legal and/or factual issues raised by the objections;

(b) The hearing examiner grants such a motion for good cause shown; and

(c) A motion for permission to file a longer brief may be made orally to the hearing examiner at the end of the administrative hearing, and the hearing officer has the authority to orally grant such motion at such time.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-310 Examiner decisions. (1)(a) A party seeking review by the commission of an interlocutory decision of the executive director, his or her designee, or a hearing examiner must file a motion for discretionary review with the commission and a copy with the executive director, his or her designee, or a hearing examiner, within seven days after the decision is issued.

(b) Discretionary review of an interlocutory decision issued by the executive director, his or her designee, or a hearing examiner will be accepted by the commission only:

(i) If the executive director, his or her designee, or a hearing examiner has committed an obvious error which would render further proceedings useless; or

(ii) If the executive director, his or her designee, or a hearing examiner has committed probable error and the decision of the interlocutory decision of the hearing examiner substantially alters the status quo or substantially limits the freedom of a party to act; or

(iii) If the executive director, his or her designee, or a hearing examiner has so far departed from the accepted and usual course of administrative proceedings as to call for the exercise of registry jurisdiction by the commission.

(c) The commission will not accept motions for discretionary review of:

(i) The scope of proceedings issued in a preliminary ruling by the executive director or his or her designee or a hearing examiner under WAC 391-45-110; or

(ii) Application of the six-month statute of limitations;

(iii) Any evidentiary ruling by a hearing examiner during the course of an administrative hearing.

(d) A motion for discretionary review under this rule, and any response, should not exceed fifteen pages double-spaced, excluding appendices.

(e) Denial of discretionary review of a decision does not affect the right of a party to obtain later review of the executive director's, his or her designee's, or hearing examiner's decision or the issues pertaining to that decision.

(2) After the close of the hearing and the filing of all briefs, the examiner shall issue a decision containing findings of fact, conclusions of law, and an order. Unless appealed to

the commission under WAC 391-45-350, a decision issued under this section shall be the final order of the agency, with the same force and effect as if issued by the commission.

AMENDATORY SECTION (Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

WAC 391-95-010 Notice of union security obligation.

(1) ((Whenever)) With respect to union security obligations contained within a collective bargaining agreement negotiated under ((the provisions of)) chapter 28B.52, 41.56, 41.59, 41.76, or 41.80 RCW ((contains a union security provision, the exclusive bargaining representative shall provide each affected employee with a copy of the collective bargaining agreement, and shall specifically advise each employee of his or her obligations under that agreement, including informing the employee of the amount owed, the method used to compute that amount, when such payments are to be made, and the effects of a failure to pay.

(2) Disputes concerning whether an employee is within the bargaining unit covered by a union security provision shall be resolved through unit clarification proceedings under chapter 391-35 WAC, and shall not be a subject of proceedings under this chapter.

(3) Disputes concerning interpretation or application of a union security provision shall be resolved through grievance arbitration or other procedures for interpretation or application of the collective bargaining agreement, and shall not be a subject of proceedings under this chapter)), this commission's jurisdiction is limited to resolving disputes regarding an employee's right to assert nonassociation.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-95-030 Assertion of right of nonassociation. An employee who ((claims)) desires to assert a right of nonassociation based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member shall provide written notice of that claim to the exclusive bargaining representative ((, and)).

An employee asserting the right of nonassociation under RCW 28B.52.045, 41.56.113, 41.56.122, 41.59.100, or 41.76.045 shall, at the same time, provide the exclusive bargaining representative with the name(s) and address(es) of one or more nonreligious charitable organizations to which the employee is prepared to make alternative payments in lieu of the payments required by the union security provision.

NEW SECTION

WAC 391-95-036 Special provision—State civil service employees. An employee who desires to assert a right of nonassociation based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member shall provide written notice of that claim to the exclusive bargaining representative.

An employee asserting the right of nonassociation under RCW 41.80.100 may provide the exclusive bargaining representative with his or her choice to receive funds paid under

the union security provision, if such a list is published by the exclusive bargaining representative.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-95-050 Response by exclusive bargaining representative. Within sixty days after it is served with written notice of a claimed right of nonassociation under WAC 391-95-030, the exclusive bargaining representative shall provide a written response to the employee, setting forth the position of the exclusive bargaining representative (~~(as to both)~~) on the matter.

(1) For employees who desire to assert the right of non-association under RCW 28B.52.045, 41.56.113, 41.56.122, 41.59.100, or 41.76.045, the response of the exclusive bargaining representative shall address:

~~((+))~~ (a) The eligibility of the employee to make alternative payments; and

~~((2))~~ (b) The acceptance or rejection of the charitable organization(s) suggested by the employee under WAC 391-95-030.

(2) The requirements of this section are procedural only, and shall not be a basis to void or negate obligations under the union security provisions of a collective bargaining agreement.

NEW SECTION

WAC 391-95-056 Special provision—State civil service employees—Response of exclusive bargaining representative. Within sixty days after it is served with written notice of a claimed right of nonassociation under WAC 391-95-036, the exclusive bargaining representative shall provide a written response to the employee, setting forth the position of the exclusive bargaining representative on the matter.

(1) For employees asserting the right of nonassociation under RCW 41.80.100, the response of the exclusive bargaining representative shall address:

(a) The eligibility of the employee to make alternative payments; and either

(b) If designated by the employee under WAC 391-95-036, acceptance or rejection of the program or charitable organization designated by an employee under WAC 391-95-036; or

(2) If the employee fails to designate a program of the exclusive bargaining representative that would be in harmony with the employees' individual conscience under WAC 391-95-036, the employee organization shall provide a list of designated program(s) of the employee organization to receive funds paid under the nonassociation provision to the employee.

(3) Within sixty days after being presented with a list under this subsection, the employee asserting a right of non-association shall provide the employee organization with written notice of his or her designation of the purpose or purposes on that list, if any, that are in harmony with his or her individual conscience. If the employee fails to timely designate a program, the labor organization may choose a program from the list, provided that the list clearly informs the

employee of this consequence. The employee may subsequently choose a different program.

(4) The requirements of this section are procedural only, and shall not be a basis to void or negate obligations under the union security provisions of a collective bargaining agreement.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-95-070 Disputes resolved by commission. ~~(If the exclusive bargaining representative:)~~

(1) Either the employee or the exclusive bargaining representative may file a petition to obtain a ruling from the commission if:

(a) The exclusive bargaining representative disputes the eligibility of the employee to ~~(make alternative payments)~~ assert the right of nonassociation; or

~~((2))~~ (b) The exclusive bargaining representative disputes the charity or charitable organization which ~~(is to receive such)~~ the employee desires to be the recipient of alternative payments; or

~~((3))~~ (c) The exclusive bargaining representative fails to make a timely response under WAC 391-95-050 ~~(either the employee or the exclusive bargaining representative may obtain a ruling from the commission)~~; or

(d) The employee claiming nonassociation fails to name a charity or charitable organization to receive alternative payments.

(2) Disputes concerning whether an employee is within the bargaining unit covered by a union security provision shall not be a subject of proceedings under this chapter.

(3) Disputes concerning interpretation or application of the collective bargaining agreement containing the union security provision shall not be a subject of proceedings under this chapter.

NEW SECTION

WAC 391-95-076 Special provision—State civil service employees—Disputes resolved by commission. (1) Either the employee or the exclusive bargaining representative may file a petition to obtain a ruling from the commission if:

(a) The exclusive bargaining representative disputes the eligibility of the employee to assert the right of nonassociation; or

(b) The exclusive bargaining representative disputes the program of the employee organization which the employee desires to be the recipient of alternative payments; or

(c) The exclusive bargaining representative fails to make a timely response under WAC 391-95-056; or

(d) The employee claiming nonassociation fails to name a program of the employee organization to receive alternative payments.

(2) Disputes concerning whether an employee is within the bargaining unit covered by a union security provision shall not be a subject of proceedings under this chapter.

(3) Disputes concerning interpretation or application of the collective bargaining agreement containing the union

security provision shall not be a subject of proceedings under this chapter.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-95-130 Escrow of disputed funds ((by employer)). Funds at issue in a nonassociation proceeding under this chapter shall be kept separate while the case remains pending before the commission. Upon being served with a copy of a petition filed under WAC 391-95-070 concerning employees asserting the right of nonassociation under RCW 28B.52.045, 41.56.113, 41.56.122, 41.59.100, or 41.76.045, the employer shall preserve the status quo by withholding and retaining the disputed dues for periods during the pendency of the proceedings before the commission. Funds held in escrow shall draw interest at the rate provided by commercial banks for regular passbook savings accounts. While the proceedings remain pending before the commission, the employer shall not honor or otherwise act upon any request for discharge or other action against the affected employee based on the employee's union security obligations. This section shall be applicable to employees covered by chapter 41.56 RCW only upon the employee submitting to the employer a signed authorization for the deduction and escrow of disputed funds.

NEW SECTION

WAC 391-95-136 Special provision—State civil service employees—Escrow of funds. Funds at issue in a non-association proceeding under this chapter shall be kept in escrow while the case remains pending before the commission.

(1) Upon being served with a copy of a petition filed under WAC 391-95-076 concerning an employee asserting the right of nonassociation under RCW 41.80.100, the employee organization shall preserve the status quo by holding the disputed funds in a separate account, and shall not request the discharge or other action against the affected employee based on the employee's union security obligations, until the proceedings under this chapter are concluded.

(2) While the nonassociation proceedings remain pending before the commission, the employer shall not honor or otherwise act upon any request for discharge or other action against the affected employee based on the employee's union security obligations.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-95-230 Hearings—Reopening of hearing—Briefs. (1) Hearings shall be public and shall be limited to the portions of a petition found to state a cause of action under WAC 391-95-150.

(2) The employee has the burden to make a factual showing, through testimony of witnesses and/or documentary evidence, of the legitimacy of his or her beliefs, as follows:

(a) In cases where the claim of a right of nonassociation is based on the teachings of a church or religious body, the claimant employee shall demonstrate:

(i) His or her bona fide religious objection to union membership; and

(ii) That the objection is based on a bona fide religious teaching of a church or religious body; and

(iii) That the claimant employee is a member of such church or religious body.

(b) In cases where the claim of a right of nonassociation is based on personally held religious beliefs, the claimant employee shall demonstrate:

(i) His or her bona fide religious objection to union membership; and

(ii) That the religious nature of the objection is genuine and in good faith.

(3) Once a hearing has been declared closed, it may be reopened only upon the timely motion of a party upon discovery of new evidence which could not with reasonable diligence have been discovered and produced at the hearing.

(4) Any party shall be entitled, upon request made before the close of the hearing, to file a brief. The examiner may direct the filing of briefs as to any or all of the issues in a case. Arrangements and due dates for briefs shall be established by the examiner. Any brief shall be filed with the examiner as required by WAC 391-08-120(1), and copies shall be served on all other parties to the proceeding as required by WAC 391-08-120 (3) and (4).

(5) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, twelve-point type), unless:

(a) It files and serves a motion for permission to file a longer brief in order to address novel or complex legal and/or factual issues raised by the objections;

(b) The executive director, his or her designee, or hearing examiner grants such a motion for good cause shown; and

(c) A motion for permission to file a longer brief may be made orally to the hearing examiner at the end of the administrative hearing, and the hearing officer has the authority to orally grant such motion at such time.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-95-250 Examiner decision. (1)(a) A party seeking review by the commission of an interlocutory decision of the hearing examiner must file a motion for discretionary review with the commission and a copy with the executive director or his or her designee within seven days after the decision is issued.

(b) Discretionary review of an interlocutory decision issued by the hearing examiner will be accepted by the commission only:

(i) If the executive director, his or her designee, or hearing examiner has committed an obvious error which would render further proceedings useless; or

(ii) If the executive director, his or her designee, or hearing examiner has committed probable error and the decision of the interlocutory decision of the hearing examiner substantially alters the status quo or substantially limits the freedom of a party to act; or

(iii) If the executive director, his or her designee, or hearing examiner has so far departed from the accepted and usual

course of administrative proceedings as to call for the exercise of revisory jurisdiction by the commission.

(c) The commission will not accept motions for discretionary review of:

(i) The issuance of a preliminary ruling by the executive director, his or her designee, or a hearing examiner under WAC 391-95-150; or

(ii) Any evidentiary ruling by a hearing examiner during the course of an administrative hearing.

(d) A motion for discretionary review under this rule, and any response, should not exceed fifteen pages double-spaced, excluding appendices.

(e) Denial of discretionary review of a decision does not affect the right of a party to obtain later review of the executive director's, his or her designee's, or hearing examiner's decision or the issues pertaining to that decision.

(2) After the close of the hearing and the filing of all briefs, the examiner shall issue a decision containing findings of fact, conclusions of law, and an order. Unless appealed to the commission under WAC 391-95-270, a decision issued under this section shall be the final order of the agency, with the same force and effect as if issued by the commission.

WSR 08-04-059
PERMANENT RULES
PUBLIC EMPLOYMENT
RELATIONS COMMISSION

[Filed January 31, 2008, 5:40 p.m., effective April 1, 2008]

Effective Date of Rule: April 1, 2008.

Purpose: To streamline, update and codify well established procedures and case precedent for representation, unit clarification, unfair labor practice, impasse resolution, grievance arbitration, and nonassociation cases.

Citation of Existing Rules Affected by this Order: Repealing WAC 391-25-076 and 391-45-056; new section WAC 391-08-190; and amending WAC 391-08-640, 391-08-820, 391-25-430, 391-25-650, 391-25-660, 391-35-210, 391-45-110, 391-45-260, 391-45-350, 391-55-070, 391-55-255, 391-55-300, 391-55-310, 391-55-315, 391-55-320, 391-55-325, 391-55-330, 391-55-335, 391-55-340, 391-55-345, 391-55-350, 391-55-355, 391-65-110, 391-65-150, and 391-95-270.

Statutory Authority for Adoption: For WAC 391-08-190, 391-08-640, 391-08-820, 391-25-430, 391-25-650, 391-25-660, 391-45-110, 391-45-260, 391-45-350, 391-65-110, 391-65-150, 391-95-220, and 391-95-270 is RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080; for WAC 391-35-210 is RCW 41.56.060, 41.56.090, 41.58.050; for WAC 391-55-070 is RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.030, 41.80.090; and for WAC 391-55-255, 391-55-300, 391-55-310, 391-55-315, 391-55-320, 391-55-325, 391-55-330, 391-55-335, 391-55-340, 391-55-345, 391-55-350, and 391-55-355 is RCW 41.58.050, 41.59.110, 41.80.090.

Adopted under notice filed as WSR 07-17-070 on August 13, 2007.

Changes Other than Editing from Proposed to Adopted Version:

WAC 391-08-190:

- Changed to allow either the union or employer the ability to individually prefile a collective bargaining agreement.
- Simplifies and clarifies the procedure utilized to amend an existing agreement prefiled with the commission.

WAC 391-08-640:

- Clarifies that amicus briefs are limited to issues on appeal.
- Adopts a process to permit the commission to extend the deadline to file an amicus brief for good cause shown.

WAC 391-25-430:

- Changed to clarify that employees may campaign on the employer's premises during nonworking times, as opposed to breaks and meal periods, provided that those activities to [do] not disrupt work.
- Clarified to state that employer's may expand the rights of employees beyond the rule, but any rule adopted by an employer regarding employee activities on an employers premises may not be discriminatory.

WAC 391-25-650, 391-25-660, 391-25-210, 391-45-350, and 391-95-270:

- Changed to permit the commission's designee to rule upon motions to extend briefs.
- Changed to permit the due date for briefs to toll during pendency of a request to extend any brief.

WAC 391-45-110:

- Codifies current agency practice of permitting a complainant twenty-one days to cure any defects in its complaint.
- Clarified to state that the preliminary ruling limits the causes of action to be heard.

WAC 391-45-260:

- Clarified to state that parties are free to explore settlement of unfair labor practice complaints without agency assistance.

WAC 391-55-070:

- Technical correction regarding which groups adopted the code of ethics.

WAC 391-55-310:

- Clarified to state that for disputes under chapter 41.80 RCW, the fact-finder may be a member of the commission staff.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 26, Repealed 2.

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: January 15, 2008.

Dario de la Rosa
General Counsel

NEW SECTION

WAC 391-08-190 Prefiling of collective bargaining agreements. The agency shall make available a procedure for parties to proceedings before the agency to prefile collective bargaining agreements with the agency in accordance with this section, and to thereafter incorporate prefiled contracts into other filings, by reference. The prefiled copy will then take the place of filing copies otherwise required by rules in Title 391 WAC.

(1) An employer and/or exclusive bargaining representative who request prefiling of their collective bargaining agreement under this section may file a written request with the agency.

(a) The requesting party or parties shall use the form prescribed by the executive director.

(b) The requesting party or parties shall attach or enclose a complete electronic copy of the collective bargaining agreement (in Adobe Acrobat, WordPerfect, or Microsoft Word format).

(c) The requesting party or parties shall attach photocopies of certain pages of the original collective bargaining agreement, as follows:

(i) The front cover or first page(s) showing the names of the parties and the identification of the bargaining unit(s) covered;

(ii) The page(s) containing the effective date and termination dates of the collective bargaining agreement; and

(iii) The page(s) containing the signatures of the parties' representatives.

(2) Upon the filing of a request conforming to subsection (1) of this section, the agency shall put the prefiled collective bargaining agreement into an electronic data base.

(a) The collective bargaining agreements contained in the electronic data base shall be open to public inspection and copying.

(b) The agency shall issue the parties a confirmation code unique to that collective bargaining agreement.

(3) After issuance of a confirmation code under subsection (2)(b) of this section, the parties are authorized to incorporate that prefiled collective bargaining agreement into any paper subsequently filed with the agency under Title 391 WAC, by referring to the confirmation code in the subsequent document.

(4) The authorization in subsection (3) of this section shall terminate on the expiration date originally stated in the prefiled collective bargaining agreement.

(5) Any amendments to the original agreement may be filed and incorporated into the original filing under subsection

(1) of this section. If either party declines to prefile an amendment to a collective bargaining agreement under this rule, a copy of any amendment must be included in any subsequent case filed with the commission.

AMENDATORY SECTION (Amending WSR 98-14-112, filed 7/1/98, effective 8/1/98)

WAC 391-08-640 Adjudicative proceedings—Appeals. Actions by the executive director and other agency staff members in adjudicative proceedings under the Administrative Procedure Act (cases under chapters 391-25, 391-35, 391-45 and 391-95 WAC) are taken under authority delegated by the commission.

(1) The parties shall have the right to appeal to the commission, as follows:

(a) Under chapter 391-25 WAC, a direction of election or direction of cross-check and other rulings in the proceedings up to the issuance of a tally are interim orders, and may only be appealed to the commission by objections under WAC 391-25-590 after the election or cross-check.

(b) Under chapter 391-25 WAC, an order issued under WAC 391-25-390 or 391-25-510 and any rulings in the proceedings up to the issuance of the order, as well as rulings that the employer or employees are subject to the jurisdiction of the commission, may be appealed to the commission under WAC 391-25-660.

(c) Under chapter 391-35 WAC, an order issued under WAC 391-35-190 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission under WAC 391-35-210.

(d) Under chapter 391-45 WAC, an order issued under WAC 391-45-110(1) or 391-45-310 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission under WAC 391-45-350.

(e) Under chapter 391-95 WAC, an order issued under WAC 391-95-150(1) or 391-95-250 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission under WAC 391-95-270.

(2) The commission will only consider amicus (friend of the forum) briefs filed in conformity with this subsection.

(a) The person or organization desiring to file an amicus brief must:

(i) Obtain a copy of the decision on appeal, the notice of appeal, and the briefs of the parties;

(ii) Limit any amicus brief to particular issues on appeal;

(iii) Limit any legal analysis to arguments that differ from those advanced by the parties;

(iv) Exclude restatement or reargument of the facts, except as necessary to legal arguments under (a)(iii) of this subsection;

(v) Limit any amicus brief to twenty-five pages in total length (double-spaced, 12-point type); and

(vi) File the amicus brief with the commission within fourteen days following filing and service of the briefs of the parties, and serve copies of any such brief on each of the original parties in the case.

(b) The commission may extend the deadline for a party wishing to file an amicus brief if the petitioning party demonstrates good cause for such extension.

(c) The original parties to the case may, within fourteen days following the filing and service of an amicus brief, file and serve written responses to the amicus brief.

(d) A person or organization that files an amicus brief does not thereby acquire any right to reply to the responses filed by the original parties to the case.

(e) A person or organization that files an amicus brief does not thereby become a party to the case for purposes of any further proceedings or appeal.

(3) The commission may, on its own motion, review any order which is subject to appeal under subsection (1) of this section, by giving written notice to all parties within thirty days following the issuance of the order.

AMENDATORY SECTION (Amending WSR 96-07-105, filed 3/20/96, effective 4/20/96)

WAC 391-08-820 Agency offices. (1) The agency maintains its principal office in the city of Olympia, Washington.

(a) The street address of the Olympia office is:

Public Employment Relations Commission
~~((603 Evergreen Plaza
 711 Capitol Way))~~ 112 Henry Street N.E., Suite 300
 Olympia, Washington 98504-0919.

(b) The mailing address of the Olympia office is:

Public Employment Relations Commission
 P.O. Box 40919
 Olympia, Washington 98504-0919.

(2) The agency maintains a branch office at:

Public Employment Relations Commission
 Suite ~~((+50))~~ 201
 9757 Juanita Drive NE
 Kirkland, Washington 98034.

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-430 Notice of election. When an election is to be conducted, the agency shall furnish the employer with appropriate notices, and the employer shall post them in conspicuous places on its premises where notices to affected employees are usually posted. The notice shall contain:

(1) The description of the bargaining unit or voting group(s) in which the election is to be conducted.

(2) The deadline for return of mail ballots or the date(s), hours and polling place(s) for an on-site election.

(3) The cut-off date, if any, or other criteria to be applied in establishing eligibility to vote in the election, including that the eligible employees are limited to those who continue to be employed within the bargaining unit ~~((on the day of the tally))~~ when they cast a ballot in an on-site election or at the deadline for return of mail ballots.

(4) A statement of the purpose of the election and the question to be voted upon or a sample ballot.

Notices of the election shall be posted for at least seven days, and shall remain posted until a tally of ballots has been issued. The day of posting shall be counted, but the day on

which the polls are opened for an on-site election shall not be counted.

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-650 Briefs and written arguments on objections. (1) The due date for any appeal brief which the party filing an objection desires to have considered by the commission shall be fourteen days following the later of:

(a) The issuance of a transcript of a hearing held under WAC 391-25-630(2); or

(b) The filing of objections under WAC 391-25-590 (1)(b).

Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(2) The due date for any responsive brief which other parties desire to have considered by the commission shall be fourteen days following the date on which that party is served with an appeal brief. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(3) The executive director or designee may extend the due date for an appeal brief or responsive brief. Such requests shall only be considered if made on or before the date the brief is due, and in compliance with WAC 391-08-180. Extensions of time shall not be routine or automatic.

(4) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief in order to address novel and/or complex issues raised by the objections; and

(b) The commission or its designee grants such a motion for good cause shown. Any motion filed under this subsection shall toll the due date for briefs under subsections (1) and (2) of this section until the commission or its designee responds to such motion.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-25-660 Appeals from orders and jurisdictional rulings. An order issued under WAC 391-25-390 or 391-25-510 and any rulings in the proceedings up to the issuance of the order, as well as rulings that the employer or employees are subject to the jurisdiction of the commission, may be appealed to the commission as follows:

(1) The due date for a notice of appeal shall be twenty days following the date of issuance of the order being appealed. The time for filing a notice of appeal cannot be extended.

(2) Where an order has been appealed, the due date for a notice of cross-appeal by other parties shall be seven days after the last date on which a notice of appeal could be timely. The time for filing a notice of cross-appeal cannot be extended.

(3) A notice of appeal or notice of cross-appeal shall identify, in separate numbered paragraphs, the specific rulings, findings of fact, conclusions of law, or orders claimed to be in error.

(4) A party which desires to cite or reassert a document previously filed in the matter shall do so by reference to the document already on file, and shall not file or attach another copy of the document to papers filed regarding an appeal.

(5) A notice of appeal or notice of cross-appeal shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(6) The due date for any appeal brief which the party filing an appeal or cross-appeal desires to have considered by the commission shall be fourteen days following the filing of its notice of appeal or notice of cross-appeal. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(7) The due date for any responsive brief which a party desires to have considered by the commission shall be fourteen days following the date on which that party is served with an appeal brief. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(8) The executive director or designee may extend the due date for an appeal brief or responsive brief. Such requests shall only be considered if made on or before the date the brief is due, and in compliance with WAC 391-08-180. Extensions of time shall not be routine or automatic.

(9) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief in order to address novel and/or complex issues raised by the appeal; and

(b) The commission or its designee grants such a motion for good cause shown. Any motion filed under this subsection shall toll the due date for briefs under subsections (1) and (2) of this section until the commission or its designee responds to such motion.

REPEALER

The following section of the Washington Administrative Code is repealed:

| | |
|----------------|--|
| WAC 391-25-076 | Special provision—State civil service employees. |
|----------------|--|

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-35-210 Appeals. An order issued under WAC 391-35-190 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission as follows:

(1) The due date for a notice of appeal shall be twenty days following the date of issuance of the order being

appealed. The time for filing a notice of appeal cannot be extended.

(2) Where an order has been appealed, the due date for a notice of cross-appeal by other parties shall be seven days after the last date on which a notice of appeal could be timely. The time for filing a notice of cross-appeal cannot be extended.

(3) A notice of appeal or notice of cross-appeal shall identify, in separate numbered paragraphs, the specific rulings, findings of fact, conclusions of law, or orders claimed to be in error.

(4) A party which desires to cite or reassert a document previously filed in the matter shall do so by reference to the document already on file, and shall not file or attach another copy of the document to papers filed regarding an appeal.

(5) A notice of appeal or notice of cross-appeal shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(6) The due date for any appeal brief which the party filing an appeal or cross-appeal desires to have considered by the commission shall be fourteen days following the filing of its notice of appeal or notice of cross-appeal. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(7) The due date for any responsive brief which a party desires to have considered by the commission shall be fourteen days following the date on which that party is served with an appeal brief. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(8) The executive director or designee may extend the due date for an appeal brief or responsive brief. Such requests shall only be considered if made on or before the date the brief is due, and in compliance with WAC 391-08-180. Extensions of time shall not be routine or automatic.

(9) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief in order to address novel and/or complex issues raised by the appeal; and

(b) The commission or its designee grants such a motion for good cause shown. Any motion filed under this subsection shall toll the due date for briefs under subsections (1) and (2) of this section until the commission or its designee responds to such motion.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-110 Deficiency notice—Preliminary ruling—Deferral to arbitration. The executive director or a designated staff member shall determine whether the facts alleged in the complaint may constitute an unfair labor practice within the meaning of the applicable statute.

(1) If the facts alleged do not, as a matter of law, constitute a violation, a deficiency notice shall be issued and served

on all parties, identifying the defects and specifying a due date for the filing and service of an amended complaint. If the defects are not cured (~~in a timely manner~~) within twenty-one days, an order shall be issued and served, dismissing the defective allegation(s) and stating the reasons for that action. Unless appealed to the commission under WAC 391-45-350, an order of dismissal issued under this subsection shall be the final order of the agency on the defective allegation(s), with the same force and effect as if issued by the commission.

(2) If one or more allegations state a cause of action for unfair labor practice proceedings before the commission, a preliminary ruling summarizing the allegation(s) shall be issued and served on all parties.

~~(The)~~ (a) A preliminary ruling forwarding a case for further proceedings is an interim order which may only be appealed to the commission by a notice of appeal filed after issuance of an examiner decision under WAC 391-45-310.

(b) The preliminary ruling limits the causes of action before an examiner and the commission. A complainant who claims that the preliminary ruling failed to address one or more causes of action it sought to advance in the complaint must, prior to the issuance of a notice of hearing, seek clarification from the person that issued the preliminary ruling.

(c) The preliminary ruling shall establish the due date for the respondent to file its answer.

(3) The agency may defer the processing of allegations which state a cause of action under subsection (2) of this section, pending the outcome of related contractual dispute resolution procedures, but shall retain jurisdiction over those allegations.

(a) Deferral to arbitration may be ordered where:

(i) Employer conduct alleged to constitute an unlawful unilateral change of employee wages, hours or working conditions is arguably protected or prohibited by a collective bargaining agreement in effect between the parties at the time of the alleged unilateral change;

(ii) The parties' collective bargaining agreement provides for final and binding arbitration of grievances concerning its interpretation or application; and

(iii) There are no procedural impediments to a determination on the merits of the contractual issue through proceedings under the contractual dispute resolution procedure.

(b) Processing of the unfair labor practice allegation under this chapter shall be resumed following issuance of an arbitration award or resolution of the grievance, and the contract interpretation made in the contractual proceedings shall be considered binding, except where:

(i) The contractual procedures were not conducted in a fair and orderly manner; or

(ii) The contractual procedures have reached a result which is repugnant to the purposes and policies of the applicable collective bargaining statute.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-260 Settlement conference. Separate from any prehearing conference concerning procedural matters held by the examiner under WAC 10-08-130, a settlement conference concerning substantive issues may be held

under WAC 10-08-200(15) ~~(on the examiner's own motion or at the request of any party to the proceeding).~~

(1) A separate case number shall be assigned, and all files and papers for the settlement conference shall be kept separate from the files and papers for the unfair labor practice proceeding.

(2) A commission staff member other than the assigned examiner shall be assigned to explore settlement between the parties on the substantive issues.

(3) Any settlement conference shall be held in advance of the scheduled hearing date on the underlying unfair labor practice proceedings.

(4) During a settlement conference, the parties will be encouraged, on factual and legal grounds including precedent on the particular subject, to resolve the unfair labor practice dispute. Participation in a settlement conference is voluntary and nothing in this rule prohibits parties from exploring settlement on their own. Refusal by a party to participate in a settlement conference shall not prejudice that party in any manner. Conversations had and offers made in a settlement conference shall not be admissible in evidence at a hearing.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-45-350 Appeals. An order issued under WAC 391-45-110(1) or 391-45-310 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission as follows:

(1) The due date for a notice of appeal shall be twenty days following the date of issuance of the order being appealed. The time for filing a notice of appeal cannot be extended.

(2) Where an order has been appealed, the due date for a notice of cross-appeal by other parties shall be seven days after the last date on which a notice of appeal could be timely. The time for filing a notice of cross-appeal cannot be extended.

(3) A notice of appeal or notice of cross-appeal shall identify, in separate numbered paragraphs, the specific rulings, findings of fact, conclusions of law, or orders claimed to be in error.

(4) A party which desires to cite or reassert a document previously filed in the matter shall do so by reference to the document already on file, and shall not file or attach another copy of the document to papers filed regarding an appeal.

(5) A notice of appeal or notice of cross-appeal shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(6) The due date for any appeal brief which the party filing an appeal or cross-appeal desires to have considered by the commission shall be fourteen days following the filing of its notice of appeal or notice of cross-appeal. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(7) The due date for any responsive brief which a party desires to have considered by the commission shall be fourteen days following the date on which that party is served

with an appeal brief. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(8) The executive director or designee may extend the due date for an appeal brief or responsive brief. Such requests shall only be considered if made on or before the date the brief is due, and in compliance with WAC 391-08-180. Extensions of time shall not be routine or automatic.

(9) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief in order to address novel or complex issues raised by the appeal; and

(b) The commission grants such a motion for good cause shown. Any motion filed under this subsection shall toll the due date for briefs under subsections (1) and (2) of this section until the commission or its designee responds to such motion.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 391-45-056 Special provision—State
civil service employees.

Chapter 391-55 WAC

IMPASSE RESOLUTION CASE RULES

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-070 Function of mediator. The mediator shall meet with the parties or their representatives, or both, either jointly or separately, and shall take any steps that the mediator deems appropriate to assist the parties in voluntarily resolving their differences and effecting an agreement. All persons providing mediation services under this chapter shall maintain compliance with the "Code of Professional Conduct for Labor Mediators" adopted jointly by the Federal Mediation and Conciliation Service of the United States and the Association of Labor Relations Agencies.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-255 Interest arbitration—Expenses of arbitration. Each party shall pay the expenses of presenting its own case and the expenses and fees of its member of the arbitration panel. The expenses of witnesses shall be paid by the party producing them. The fees and traveling expense of a neutral chairperson appointed ((pursuant to)) under WAC 391-55-210 (1) or (3), along with any costs for lists of arbitrators and for a ((tape)) recording of the proceedings, shall be shared equally between the parties. The fees and traveling expense of a neutral chairperson appointed ((by the commission pursuant to)) under WAC 391-55-210(2), along with the

costs of tapes for a tape recording of the proceedings but not a transcription or the services of a court reporter, shall be paid by the commission.

AMENDATORY SECTION (Amending Order 80-8, filed 9/30/80, effective 11/1/80)

WAC 391-55-300 ~~((Educational employees—))~~ Fact-finding. If a dispute ((involving educational employees within the meaning of RCW 41.59.020(4) has not been settled after ten days of mediation)) has not been settled after bilateral negotiations and mediation, either party may request the appointment of a fact finder by giving written notice to the commission, the mediator, and the opposite party.

(1) For disputes involving educational employees under chapter 41.59 RCW, a period of ten days of mediation must have elapsed. The parties may, by agreement made at any time prior to the appointment of a fact finder, extend the period for mediation or place in the hands of the mediator the determination of when mediation has been exhausted so as to warrant the initiation of fact-finding.

(2) For disputes involving state civil service employees under chapter 41.80 RCW, fact-finding shall be initiated if resolution is not reached through mediation by one hundred days beyond the expiration date of a contract previously negotiated under that chapter or one hundred days from the initiation of mediation if no such contract exists.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-310 ~~((Educational employees—))~~ Selection of fact finder. (1) Upon the submission of a timely request for fact-finding, the executive director shall ((invite the parties to exercise their right under RCW 41.59.120(5)).

((a) The executive director shall)) furnish a list of members of the dispute resolution panel, and the parties shall meet within seven days following receipt of the list, to attempt to select a fact finder. Names shall be referred and any fact finder shall be selected under WAC 391-55-120.

(a) The parties may agree to designate the mediator as fact finder.

(b) If the parties agree on a fact finder, they shall obtain a commitment to serve and shall notify the executive director of the identity of the fact finder.

(c) If the parties are unable to agree on a fact finder ((under RCW 41.59.120(5))), they shall notify the executive director.

(d) For disputes under chapter 41.59 RCW, the process described in this subsection implements the right of the parties under RCW 41.59.120(5).

(2) In the absence of an agreement of the parties under subsection (1) of this section, the executive director shall designate a fact finder ((from)).

(a) For disputes under chapter 41.59 RCW, the fact finder shall be a member of the commission staff other than the person who was the mediator in the dispute. The parties are not entitled to influence the designation of a fact finder and shall not, either in writing or by other communication, attempt to indicate any preference for or against any person as the fact finder to be appointed by the commission.

(b) For disputes under chapter 41.80 RCW, the fact finder may be a member of the commission staff or may be a member of the dispute resolution panel established in WAC 391-55-120.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-315 (~~(Educational employees—)~~) Conduct of fact-finding proceedings—Waiver of objections. Proceedings shall be conducted as provided in WAC 391-55-300 through 391-55-355. The fact finder shall interpret and apply all rules relating to the powers and duties of the fact finder. Any party who proceeds with fact-finding after knowledge that any provision or requirement of these rules has not been complied with and who fails to state its objection in writing, shall be deemed to have waived its right to object.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-320 (~~(Educational employees—)~~) Submission of proposals for fact-finding. At least seven days before the date of the fact-finding hearing, each party shall submit to the fact finder and to the other party written proposals on all of the issues it intends to submit to fact-finding. Parties shall not be entitled to submit issues which were not among the issues mediated under WAC 391-55-070.

AMENDATORY SECTION (Amending Order 80-8, filed 9/30/80, effective 11/1/80)

WAC 391-55-325 (~~(Educational employees—)~~) Fact-finding hearing. The fact finder shall establish a date, time and place for a hearing. The fact-finding hearing shall be open to the public unless otherwise agreed by the parties. For good cause shown, the fact finder may adjourn the hearing upon the request of a party or upon his or her own initiative. The parties may waive oral hearing by written agreement.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-330 (~~(Educational employees—)~~) Order of proceedings and evidence. The order of presentation at the fact-finding hearing shall be as agreed by the parties or as determined by the fact finder. The fact finder shall be the judge of the relevancy of the evidence. All evidence shall be taken in the presence of all parties, unless a party is absent in default or has waived its right to be present. Each documentary exhibit shall be submitted to the fact finder and copies shall be provided to the other parties. The exhibits shall be retained by the fact finder until an agreement has been signed, after which they may be disposed of as agreed by the parties or as ordered by the fact finder.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-335 (~~(Educational employees—)~~) Fact-finding in the absence of a party. The fact finder may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment. Fact finders shall treat any subject on which one party has taken a position that it is not a mandatory subject for bargaining in accordance with this rule. Findings of fact and recommendations shall not be made solely on the default of a party, and the fact finder shall require the participating party to submit evidence as may be required for making of the findings of fact and recommendations.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-340 (~~(Educational employees—)~~) Closing of fact-finding hearings. The fact finder shall declare the hearing closed after the parties have completed presenting their testimony and/or exhibits and submission of briefs within agreed time limits.

AMENDATORY SECTION (Amending WSR 98-14-112, filed 7/1/98, effective 8/1/98)

WAC 391-55-345 (~~(Educational employees—)~~) Findings of fact and recommendations. ~~((The))~~ Within thirty days after his or her appointment, the fact finder shall provide the parties and the executive director with written findings of fact and recommendations. The findings and recommendations of the fact finder shall not be subject to appeal to the commission ~~((, but the fact finder shall submit a copy of his or her written recommendations to the executive director))~~. Fact finders shall rule only on the reasonability of the proposals advanced in the context of the whole of the negotiations between the parties, and shall not rule on whether ~~((or not))~~ a subject or proposal in dispute is a mandatory subject for collective bargaining.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-55-350 (~~(Educational employees—)~~) Responsibility of parties after fact-finding. The parties are entitled to consider the fact finder's recommendations privately, before they are made public.

(1) For cases under chapter 41.59 RCW, within ~~((seven))~~ five days after the findings and recommendations have been issued, the parties shall notify the commission and each other whether they accept the recommendations of the fact finder.

(2) For cases under chapter 41.80 RCW, within ten working days after the findings and recommendations have been issued, the parties shall notify the commission and each other whether they accept the recommendations of the fact finder.

(3) If the recommendations of the fact finder are rejected by one or both parties and their further efforts do not result in an agreement, either party may ~~((request mediation pursuant to chapter 41.58 RCW))~~ ask the agency to provide further

mediation and, upon the concurrence of the other party, the agency shall assign a mediator.

AMENDATORY SECTION (Amending Order 83-05, filed 12/1/83, effective 1/1/84)

WAC 391-55-355 (~~(Educational employees—)~~) **Expenses of fact-finding.** Each party shall pay the expenses of presenting its own case. The expenses of witnesses shall be paid by the party producing them. The fees and (~~(traveling)~~) expenses of a fact finder shall be paid as follows:

(1) A fact finder appointed by the commission from the commission staff under WAC 391-55-310 (2)(a) shall be paid by the commission.

(2) A fact finder selected from the dispute resolution panel or some other source shall be paid by the parties, in equal shares.

AMENDATORY SECTION (Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

WAC 391-65-110 Grievance arbitration—Conduct of proceedings. The arbitrator assigned or selected shall conduct the arbitration proceedings in the manner provided in the collective bargaining agreement under which the dispute arises, subject to the following:

(1) Arbitration cases handled by members of the agency staff shall be kept in the public files of the agency.

(2) The services of a member of the commission staff as arbitrator shall be subject to interruption for reassignment of the staff member to other functions of the agency having a higher priority.

(3) Except as provided in subsections (1) and (2) of this section, all arbitrators shall maintain compliance with the "Code of Professional Responsibility for Arbitrators of Labor-Management Disputes" as last amended with approval of the Federal Mediation and Conciliation Service.

(4) Rulings, actions, and decisions issued by arbitrators under this chapter shall not be subject to appeal to the commission.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-65-150 Grievance arbitration—Expenses. Each party shall pay the expenses of presenting its own case and the expenses and fees of its member, if any, of an arbitration panel. The expenses of witnesses shall be paid by the party producing them. (~~The costs for recording and/or transcription of proceedings shall be paid by the parties under the terms of their collective bargaining agreement or as agreed by the parties.~~) The commission shall pay the salary and (~~(traveling)~~) expenses of a staff member assigned under WAC 391-65-070, but (~~(no)~~) the commission shall not pay any costs for recording and/or transcription of proceedings, or any other expenses of the proceedings. The parties shall pay the fees and expenses of a dispute resolution panel member selected under WAC 391-65-090, as provided in WAC 391-55-120.

Chapter 391-95 WAC

~~((UNION SECURITY DISPUTE))~~ NONASSOCIATION CASE RULES

NEW SECTION

WAC 391-95-220 Settlement conference. Separate from any prehearing conference concerning procedural matters held by the examiner under WAC 10-08-130, a settlement conference concerning substantive issues may be held under WAC 10-08-200(15).

(1) A separate case number shall be assigned, and all files and papers for the settlement conference shall be kept separate from the files and papers for the nonassociation proceeding.

(2) A commission staff member other than the assigned examiner shall be assigned to mediate between the parties on the substantive issues.

(3) Any settlement conference shall be held in advance of the scheduled hearing date on the underlying nonassociation proceedings.

(4) During a settlement conference, the parties will be encouraged, on factual and legal grounds including precedent on the particular subject, to resolve the nonassociation dispute. Participation in a settlement conference is voluntary and refusal by a party to participate in a settlement shall not prejudice that party in any manner. Conversations had and offers made in a settlement mediation shall not be admissible in evidence at a hearing.

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-95-270 Appeals. An order issued under WAC 391-95-150(1) or 391-95-250 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission as follows:

(1) The due date for a notice of appeal shall be twenty days following the date of issuance of the order being appealed. The time for filing a notice of appeal cannot be extended.

(2) Where an order has been appealed, the due date for a notice of cross-appeal by other parties shall be seven days after the last date on which a notice of appeal could be timely. The time for filing a notice of cross-appeal cannot be extended.

(3) A notice of appeal or notice of cross-appeal shall identify, in separate numbered paragraphs, the specific rulings, findings of fact, conclusions of law, or orders claimed to be in error.

(4) A party which desires to cite or reassert a document previously filed in the matter shall do so by reference to the document already on file, and shall not file or attach another copy of the document to papers filed regarding an appeal.

(5) A notice of appeal or notice of cross-appeal shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(6) The due date for any appeal brief which the party filing an appeal or cross-appeal desires to have considered by

the commission shall be fourteen days following the filing of its notice of appeal or notice of cross-appeal. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(7) The due date for any responsive brief which a party desires to have considered by the commission shall be fourteen days following the date on which that party is served with an appeal brief. Any brief shall be filed at the commission's Olympia office as required by WAC 391-08-120(1), and copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).

(8) The executive director or designee may extend the due date for an appeal brief or responsive brief. Such requests shall only be considered if made on or before the date the brief is due, and in compliance with WAC 391-08-180. Extensions of time shall not be routine or automatic.

(9) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, 12-point type), unless:

(a) It files and serves a motion for permission to file a longer brief to address novel and/or complex legal or factual issues raised by the appeal; and

(b) The commission or its designee grants such a motion for good cause shown. Any motion filed under this subsection shall toll the due date for briefs under subsections (1) and (2) of this section until the commission or its designee responds to such motion.

WSR 08-04-072

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed February 4, 2008, 1:42 p.m., effective March 6, 2008]

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

Purpose: The purpose of these amendments is to revise WAC 388-825-103 and 388-825-145 to comply with the proposed order and settlement agreement under *Boyle v. Arnold-Williams*. The amendments add language regarding disenrollment from a DDD home and community-based services waiver to the notice requirements and to the continuance of benefits pending an administrative hearing. When effective, these rules replace the emergency rules filed as WSR 07-23-012.

Citation of Existing Rules Affected by this Order: Amending WAC 388-825-103 and 388-825-145.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: Title 71A RCW.

Adopted under notice filed as WSR 08-01-086 on December 17, 2007.

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 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: February 1, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-11-015, filed 5/9/05, effective 6/9/05)

WAC 388-825-103 When will I receive written notice of decisions made by DDD? You will receive written notice from DDD of the following decisions:

(1) The denial or termination of eligibility for services under WAC 388-825-030 and 388-825-035;

(2) The authorization, denial, reduction, or termination of services or the payment of SSP set forth in chapter 388-827 WAC that are authorized by DDD;

(3) The admission or readmission to, or discharge from a residential habilitation center.

(4) Disenrollment from a DDD home and community based services waiver under WAC 388-845-0060, including a disenrollment from a waiver and enrollment in a different waiver.

AMENDATORY SECTION (Amending WSR 06-10-055, filed 5/1/06, effective 6/1/06)

WAC 388-825-145 Will my benefits continue if I request an administrative hearing? (1) If you request an administrative hearing regarding the department's decision to transfer you from a residential habilitation center to the community under RCW 71A.20.080, the rules in WAC 388-825-155 apply.

(2) If you request an administrative hearing within the ten-day notice period, as described in chapter 388-458 WAC, unless one or more of the conditions in WAC 388-825-150 applies, the department will take no action until there is a final decision on your appeal of the department's decision to:

(a) Terminate your eligibility for services;

(b) Reduce or terminate your services; ~~((or))~~

(c) Reduce or terminate the payment of SSP set forth in chapter 388-827 WAC; or

(d) Disenroll you from a DDD home and community based services waiver under WAC 388-845-0060, including a disenrollment from a waiver and enrollment in a different waiver.

(3) The department will take no action until there is a final decision on your appeal of the department's decision to remove or transfer you to another residential service unless one or more of the conditions in WAC 388-825-150 applies.

(4) The department will take no action to terminate your provider of choice unless one or more of the circumstances described in WAC 388-825-150 applies.

(5) After the administrative hearing, you may have to pay back continued benefits you get, as described in chapter 388-410 WAC, if the administrative hearing decision is in favor of the department.

WSR 08-04-074
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed February 4, 2008, 2:43 p.m., effective March 6, 2008]

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

Purpose: Recommended changes to WAC 392-410-315 Equivalency course of study, credit for work based learning, clarification of existing requirements to support improved student learning and safety, liability and accountability for all stakeholders to:

- Ensure that all students are able to access work-based learning.
- Better differentiate and define terms used in the current WAC language.
- Update alignment with related policies and state agencies.

Citation of Existing Rules Affected by this Order: Amending WAC 392-410-315.

Statutory Authority for Adoption: RCW 28A.305.130.

Adopted under notice filed as WSR 07-19-053 on September 14, 2007.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: February 4, 2008.

Dr. Terry Bergeson

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

WAC 392-410-315 Equivalency course of study—Credit for work based learning. School districts may accept ~~((work based))~~ worksite learning in lieu of either required or elective high school credits if such ~~((work based))~~ worksite learning meets the standards under subsections (1) through

(5) of this section. ~~((Schools and school districts are strongly encouraged to review the nonbinding work based learning guidelines on the web site of the superintendent of public instruction in their consideration of making this credit option available to students.))~~ Comprehensive guidelines are available on the OSPI web site in the work based learning coordination manual/guidelines.

(1) Definitions:

(a) "Work based learning" means a learning experience that connects knowledge and skills obtained in the classroom to those needed outside the classroom, and comprises a range of activities and instructional strategies designed to assist students in developing or fulfilling their education plans.

(b) ~~((("Work based learning agreement" means a contract that specifies the terms and conditions under which the work based learning experience shall occur. It is agreed to and signed by the school district, worksite supervisor, student, and the student's parents/guardians.~~

~~(c) "Worksite supervisor" means an adult employee or volunteer of the worksite responsible for overseeing the work based learning experience and acting as liaison between the worksite and school district.~~

~~(d) "Orientation" means a meeting conducted by a work based learning coordinator giving information to a worksite supervisor about the work based learning program of the school. The orientation clarifies program objectives, establishes support systems, and delineates the responsibilities and rights of the various parties—school/district, worksite, students, and parents/guardians.~~

~~(e) "New employee orientation" means an orientation program for the student facilitated by a worksite supervisor or designee (e.g., human resources) that identifies worksite safety procedures and practices, workers' rights and responsibilities, issues related to harassment, and employer policies, procedures and expectations. The orientation shall also include a description of the formal accident prevention program of the worksite.~~

~~(f) "Instructional work based learning" means a work based learning experience in which no appreciable benefit is rendered to the worksite by the presence of the minor student, in accordance with WAC 296-125-043.~~

~~(g) "Cooperative work based learning" means a work based learning experience in which an employer/employee relationship exists—the work performed by the student results in a net increase in productivity or profitability for the business or organization.~~

~~(2) The work based learning experience shall be connected to the education plan of the student.~~

~~(a) The education plan shall involve one or more of the state learning goals and related essential academic learning requirements.~~

~~(b) Counseling and guidance services, particularly career guidance, shall be available to students seeking work based learning experience.~~

~~(c) The education plan should relate to a specific career and/or educational pathway chosen by the student.~~

~~(d) The education plan should extend at least one year beyond high school graduation.~~

~~(3)) "Worksite learning" means a learning experience that occurs at a qualified worksite outside the classroom in~~

fulfillment of a student's educational or career plan through the coordination of a work based learning certificated teacher. Direct instruction and supervision is provided by a qualified worksite supervisor.

(c) "Worksite learning coordinator" means a certificated school district employee responsible for coordinating worksite learning experiences. For career and technical education programs, the coordinator must possess a work based learning certificate (WAC 181-77-068). For noncareer and technical education programs, the coordinator must successfully demonstrate competencies related to coordination techniques as verified by a professional educator standards board approved program.

(d) "Worksite supervisor" means a qualified adult from the worksite responsible for overseeing the worksite learning experience and acting as liaison between the worksite and school district.

(e) "Work based learning agreement" means a contract that specifies the terms and conditions under which the worksite learning experience shall occur. It is agreed to and signed by the school district, worksite supervisor, student, and the student's parents/guardians.

(f) "Program orientation" means a meeting conducted by a worksite learning coordinator giving information to a worksite supervisor about the work based learning program of the school. The orientation clarifies program objectives, establishes support systems, and delineates the responsibilities and rights of the various parties—school/district, worksite, students, and parents/guardians. The worksite learning coordinator qualifies the worksite and the worksite supervisor.

(g) "New employee orientation" means training for the student facilitated by a worksite supervisor or designee (e.g., human resources). This is necessary for students in cooperative worksite learning and instructional worksite learning experiences. The orientation includes worksite safety procedures and practices, workers' rights and responsibilities, issues related to harassment, and employer policies, procedures and expectations. The orientation shall also include a description of the formal accident prevention program of the worksite.

(h) "Instructional worksite learning" means learning experience that takes place in the community as part of a specific course content where the student performs tasks in order to gain desired skills, competencies, qualifications or industry certifications through direct instruction.

(i) "Cooperative worksite learning" means a learning experience where a student practices in the community the skills and knowledge learned in the classroom. An employer/employee relationship must exist if the work performed by the student results in a net increase in productivity or profitability for the business or organization.

(j) "Qualifying class" means any high school class previously or concurrently taken that directly connects the knowledge and skills learned in the class to opportunities provided by the worksite learning experience. For career and technical education funding, "qualifying classes" mean classes approved for career and technical education in the district offering worksite learning credit.

(2) The student shall be placed in a worksite that is appropriate to the previous learning experience and educa-

tional goals ((of the student and)) which shall be formalized through a ((work based)) worksite learning agreement and ((work based)) worksite learning plan. The worksite learning experience shall be connected to the student's high school and beyond plan (WAC 180-51-061). The student must have taken or be concurrently enrolled in a qualifying class.

(a) The ((work based)) worksite learning plan shall articulate the connection between the education plan of the student and the work based learning experience.

(b) The ((work based)) worksite learning plan shall articulate clear, measurable learning objectives.

(c) Evaluation of learning progress related to the ((work based)) worksite learning plan shall occur during the work based learning experience.

(i) Learning objectives shall be evaluated and updated on a regular basis as outlined in the ((work based)) worksite learning agreement.

(ii) Documentation of progress shall be on file in the district as outlined in the ((work based)) worksite learning agreement.

((4)) (3) The ((work based)) worksite learning experience shall be supervised by the school. A ((work based)) worksite learning coordinator shall be ((identified in accordance with WAC 180-77-068 and shall be)) responsible for:

(a) Aligning the ((work based)) worksite learning experience to the education plan of the student;

(b) Identifying and developing work based learning sites, establishing work based learning agreements and work based learning plans, orienting and coordinating with a worksite supervisor on the work based learning site, and assessing and reporting student progress;

(c) Ensuring that a worksite supervisor:

(i) Has received an orientation on the ((work based)) worksite learning program of the school prior to placement of the student on the worksite; and

(ii) Has provided the student with a new-employee orientation upon placement; and

(d) Applying legal requirements of the employment of minors in accordance with chapters 296-125 and 296-131 WAC, particularly on issues of occupational health and safety, discrimination, harassment, worker/employer rights and responsibilities, and work rules for minors((-

5)); and

(e) Possessing a valid Washington state secondary teaching certificate (chapter 181-79A or 181-77 WAC); and

(f) Successfully demonstrating competencies related to coordination techniques as verified by a professional educator standards board approved program.

(4) One credit may be granted for no less than one hundred eighty hours for instructional ((work based)) worksite learning experience, and not less than three hundred sixty hours of cooperative ((work based)) worksite learning experience, or one credit may be granted on a competency basis as provided under WAC 180-51-050 (1)(b).

(a) A student participating in an instructional ((work based)) worksite learning experience shall receive instruction supervised by the school. The worksite learning coordinator oversees the experience but does not need to be on-site with the student during the entire experience. The student shall be sixteen years of age or older.

~~((i) Instruction))~~ Career and technical education approved instructional worksite learning experience shall be ~~((provided))~~ coordinated by ~~((an instructor with))~~ a ~~((teaching certificate, preferably endorsed in the subject))~~ certificated work based learning coordinator who is also certificated in the program area ~~((for which))~~ where credit ~~((will be awarded the student for the work based learning experience))~~.

~~(ii) The work based learning experience shall be an embedded component of the instructional program appropriate to the subject area for which credit will be awarded the student for the work based learning experience))~~ is offered.

(b) A student participating in a cooperative ~~((work based))~~ worksite learning experience shall be legally employed ~~((and shall not))~~ if the work being performed by the student results in a net increase in productivity or profitability for the business or organization. The student shall be ~~((less than))~~ sixteen years ~~((old))~~ of age or older.

(i) ~~((The))~~ Career and technical education approved cooperative ~~((work based))~~ worksite learning ~~((experience))~~ shall be ~~((supervised either by a work based))~~ coordinated by a certificated worksite learning coordinator ~~((or an instructor with a teaching certificate, preferably endorsed in the subject area for which credit will be awarded the student for the work based learning experience;)).~~

(ii) The cooperative ~~((work based))~~ worksite learning experience shall be a direct extension of a qualifying course ~~((related to the work based learning experience and taken either concurrently with the work based learning experience or taken in a school term prior to the work based learning experience)).~~

~~((6))~~ (5) The superintendent of public instruction shall report biennially at the state board's fall meeting on the use of the work based learning credit option authorized in this section.

WSR 08-04-094

PERMANENT RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed February 5, 2008, 2:04 p.m., effective February 22, 2008]

Effective Date of Rule: February 22, 2008.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The earlier effective date is necessary because of imminent peril to the public health, safety, or welfare as described in HB 1666.

Purpose: HB 1666 (chapter 275, Laws of 2007) from the 2007 legislature repealed the sunset of SHB 1691 (Laws of 2004) allowing advanced registered nurse practitioners (ARNPs) to permanently be attending providers. This is currently in effect via an emergency rule filed by the department. This rule making will permanent adopt this change in WAC 296-23-241 to establish that ARNPs may be the attending provider but may not rate permanent partial disabilities for workers' compensation purposes.

Citation of Existing Rules Affected by this Order: Amending WAC 296-23-241.

Statutory Authority for Adoption: HB 1666 (chapter 275, Laws of 2007), RCW 51.04.020 and 51.04.030.

Adopted under notice filed as WSR 07-24-070 on December 4, 2007.

Changes Other than Editing from Proposed to Adopted Version: The following changes were made from the CR-102: "Physician's initial report" was changed to "provider's initial report." Also "attending doctor's report" was changed to "attending provider's report." These are not substantive changes.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 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: February 5, 2008.

Judy Schurke

Director

AMENDATORY SECTION (Amending WSR 04-22-085, filed 11/2/04, effective 12/15/04)

WAC 296-23-241 Can advanced registered nurse practitioners independently perform the functions of an attending ~~((physician))~~ provider? (1) Advanced registered nurse practitioners (ARNPs) may ~~((for the period of July 1, 2004, through June 30, 2007;))~~ independently perform the functions of an attending ~~((physician))~~ provider under the Industrial Insurance Act, with the exception of rating permanent impairment. These functions are referenced in the medical aid rules as those of ~~((a physician, attending physician, or attending doctor))~~ an attending or treating provider, and include, but are not limited to:

- Completing and signing the report of accident or ~~((physician's))~~ provider's initial report, where applicable;
- Certifying time-loss compensation;
- Completing and submitting all required or requested reports;
- Referring workers for consultations;
- Performing consultations;
- Facilitating early return to work offered by and performed for the employer(s) of record;
- Doing all that is possible to expedite the vocational process, including making an estimate of the worker's physical or mental capacities that affect the worker's employability.

ARNPs can state whether a worker has permanent impairment, such as on the department's ~~((physician's final report (PFR)))~~ activity prescription form (APF).

((ARNPs)) (2) Advanced registered nurse practitioners cannot;

- Rate permanent impairment; or
 - Perform independent medical examinations (IMEs).
- ((WAC 296-23-241 expires on June 30, 2007.))

WSR 08-04-095
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed February 5, 2008, 2:06 p.m., effective February 22, 2008]

Effective Date of Rule: February 22, 2008.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The earlier effective date is necessary because of imminent peril to public health, safety, or welfare as described in HB 1722.

Purpose: HB 1722 (chapter 263, Laws of 2007) which directs the department to accept the signature of a physician's assistants (PA) on any certificate, card, form, or other documentation required by the department. A PA may not rate a worker's permanent partial disability under RCW 51.32.055. The department must amend these rules to allow PAs signature on previously unaccepted forms.

Citation of Existing Rules Affected by this Order: Repealing WAC 296-20-01502; and amending WAC 296-20-01002, 296-20-01501, and 296-20-06101.

Statutory Authority for Adoption: HB 1722 (chapter 263, Laws of 2007), RCW 51.04.020 and 51.04.030.

Adopted under notice filed as WSR 07-24-069 on December 4, 2007.

Changes Other than Editing from Proposed to Adopted Version: References to the self-insured "physician's initial report" were changed to "provider's initial report." Also, "attending doctor's report" was renamed "attending provider's report." These are not substantive changes.

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 4, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 4, 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 4, Repealed 0.

Date Adopted: February 5, 2008.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 08-02-021, filed 12/21/07, effective 1/21/08)

WAC 296-20-01002 Definitions. Acceptance, accepted condition: Determination by a qualified representative of the department or self-insurer that reimbursement for the diagnosis and curative or rehabilitative treatment of a claimant's medical condition is the responsibility of the department or self-insurer. The condition being accepted must be specified by one or more diagnosis codes from the current edition of the International Classification of Diseases, Clinically Modified (ICD-CM).

Appointing authority: For the evidence-based prescription drug program of the participating agencies in the state purchased health care programs, appointing authority shall mean the following persons acting jointly: The administrator of the health care authority, the secretary of the department of social and health services, and the director of the department of labor and industries.

Attendant care: Those proper and necessary personal care services provided to maintain the worker in his or her residence. Refer to WAC 296-20-303 for more information.

Attending (~~doctor~~) provider report: This type of report may also be referred to as a "60 day" or "special" report. The following information must be included in this type of report. Also, additional information may be requested by the department as needed.

(1) The condition(s) diagnosed including ICD-9-CM codes and the objective and subjective findings.

(2) Their relationship, if any, to the industrial injury or exposure.

(3) Outline of proposed treatment program, its length, components, and expected prognosis including an estimate of when treatment should be concluded and condition(s) stable. An estimated return to work date should be included. The probability, if any, of permanent partial disability resulting from industrial conditions should be noted.

(4) If the worker has not returned to work, the attending doctor should indicate whether a vocational assessment will be necessary to evaluate the worker's ability to return to work and why.

(5) If the worker has not returned to work, a doctor's estimate of physical capacities should be included with the report. If further information regarding physical capacities is needed or required, a performance-based physical capacities evaluation can be requested. Performance-based physical capacities evaluations should be conducted by a licensed occupational therapist or a licensed physical therapist. Performance-based physical capacities evaluations may also be conducted by other qualified professionals who provided performance-based physical capacities evaluations to the department prior to May 20, 1987, and who have received written approval to continue supplying this service based on formal department review of their qualifications.

Attending provider: For these rules, means a person licensed to independently practice one or more of the following professions: Medicine and surgery; osteopathic medicine and surgery; chiropractic; naturopathic physician; podiatry; dentistry; optometry; and advanced registered nurse practitioner. An attending provider actively treats an injured or ill worker.

Authorization: Notification by a qualified representative of the department or self-insurer that specific proper and necessary treatment, services, or equipment provided for the diagnosis and curative or rehabilitative treatment of an accepted condition will be reimbursed by the department or self-insurer.

Average wholesale price (AWP): A pharmacy reimbursement formula by which the pharmacist is reimbursed for the cost of the product plus a mark-up. The AWP is an industry benchmark which is developed independently by companies that specifically monitor drug pricing.

Baseline price (BLP): Is derived by calculating the mean average for all NDC's (National Drug Code) in a specific product group, determining the standard deviation, and calculating a new mean average using all prices within one standard deviation of the original mean average. "Baseline price" is a drug pricing mechanism developed and updated by First Data Bank.

Bundled codes: When a bundled code is covered, payment for them is subsumed by the payment for the codes or services to which they are incident. (An example is a telephone call from a hospital nurse regarding care of a patient. This service is not separately payable because it is included in the payment for other services such as hospital visits.) Bundled codes and services are identified in the fee schedules.

By report: BR (by report) in the value column of the fee schedules indicates that the value of this service is to be determined by report (BR) because the service is too unusual, variable or new to be assigned a unit value. The report shall provide an adequate definition or description of the services or procedures that explain why the services or procedures (e.g., operative, medical, radiological, laboratory, pathology, or other similar service report) are too unusual, variable, or complex to be assigned a relative value unit, using any of the following as indicated:

- (1) Diagnosis;
- (2) Size, location and number of lesion(s) or procedure(s) where appropriate;
- (3) Surgical procedure(s) and supplementary procedure(s);
- (4) Whenever possible, list the nearest similar procedure by number according to the fee schedules;
- (5) Estimated follow-up;
- (6) Operative time;
- (7) Describe in detail any service rendered and billed using an "unlisted" procedure code.

The department or self-insurer may adjust BR procedures when such action is indicated.

Chart notes: This type of documentation may also be referred to as "office" or "progress" notes. Providers must maintain charts and records in order to support and justify the services provided. "Chart" means a compendium of medical records on an individual patient. "Record" means dated reports supporting bills submitted to the department or self-insurer for medical services provided in an office, nursing facility, hospital, outpatient, emergency room, or other place of service. Records of service shall be entered in a chronological order by the practitioner who rendered the service. For reimbursement purposes, such records shall be legible, and shall include, but are not limited to:

- (1) Date(s) of service;
- (2) Patient's name and date of birth;
- (3) Claim number;
- (4) Name and title of the person performing the service;
- (5) Chief complaint or reason for each visit;
- (6) Pertinent medical history;
- (7) Pertinent findings on examination;
- (8) Medications and/or equipment/supplies prescribed or provided;
- (9) Description of treatment (when applicable);
- (10) Recommendations for additional treatments, procedures, or consultations;
- (11) X rays, tests, and results; and
- (12) Plan of treatment/care/outcome.

Consultation examination report: The following information must be included in this type of report. Additional information may be requested by the department as needed.

- (1) A detailed history to establish:
 - (a) The type and severity of the industrial injury or occupational disease.
 - (b) The patient's previous physical and mental health.
 - (c) Any social and emotional factors which may effect recovery.
- (2) A comparison history between history provided by attending doctor and injured worker, must be provided with exam.
- (3) A detailed physical examination concerning all systems affected by the industrial accident.
- (4) A general physical examination sufficient to demonstrate any preexisting impairments of function or concurrent condition.
- (5) A complete diagnosis of all pathological conditions including ICD-9-CM codes found to be listed:
 - (a) Due solely to injury.
 - (b) Preexisting condition aggravated by the injury and the extent of aggravation.
 - (c) Other medical conditions neither related to nor aggravated by the injury but which may retard recovery.
 - (d) Coexisting disease (arthritis, congenital deformities, heart disease, etc.).
- (6) Conclusions must include:
 - (a) Type of treatment recommended for each pathological condition and the probable duration of treatment.
 - (b) Expected degree of recovery from the industrial condition.
 - (c) Probability, if any, of permanent disability resulting from the industrial condition.
 - (d) Probability of returning to work.
- (7) Reports of necessary, reasonable X-ray and laboratory studies to establish or confirm the diagnosis when indicated.

Doctor or attending doctor: For these rules, means a person licensed to independently practice one or more of the following professions: Medicine and surgery; osteopathic medicine and surgery; chiropractic; naturopathic physician; podiatry; dentistry; optometry. An attending doctor is a treating doctor.

Only those persons so licensed may sign report of accident forms, the provider's initial report, and certify time loss

compensation (~~except as provided in WAC 296-20-01502. When can a physician assistant have sole signature on the report of accident or physician's initial report? and WAC 296-23-241. Can advanced registered nurse practitioners independently perform the functions of an attending physician?~~); however, physician assistants (PAs) also may sign these forms pursuant to WAC 296-20-01501 (PAs may be "treating providers" pursuant to the definition contained in WAC 296-20-01002); and ARNPs may also sign these forms pursuant to WAC 296-23-241 (ARNPs may be "attending providers" consistent with the definition contained in WAC 296-20-01002).

Emergent hospital admission: Placement of the worker in an acute care hospital for treatment of a work related medical condition of an unforeseen or rapidly progressing nature which if not treated in an inpatient setting, is likely to jeopardize the workers health or treatment outcome.

Endorsing practitioner: A practitioner who has reviewed the preferred drug list and has notified the health care authority that he or she has agreed to allow therapeutic interchange of a preferred drug for any nonpreferred drug in a given therapeutic class.

Fatal: When the attending doctor has reason to believe a worker has died as a result of an industrial injury or exposure, the doctor should notify the nearest department service location or the self-insurer immediately. Often an autopsy is required by the department or self-insurer. If so, it will be authorized by the service location manager or the self-insurer. Benefits payable include burial stipend and monthly payments to the surviving spouse and/or dependents.

Fee schedules or maximum fee schedule(s): The fee schedules consist of, but are not limited to, the following:

(a) Health Care Common Procedure Coding System Level I and II Codes, descriptions and modifiers that describe medical and other services, supplies and materials.

(b) Codes, descriptions and modifiers developed by the department.

(c) Relative value units (RVUs), calculated or assigned dollar values, percent-of-allowed-charges (POAC), or diagnostic related groups (DRGs), that set the maximum allowable fee for services rendered.

(d) Billing instructions or policies relating to the submission of bills by providers and the payment of bills by the department or self-insurer.

(e) Average wholesale price (AWP), baseline price (BLP), and policies related to the purchase of medications.

Health services provider or provider: For these rules means any person, firm, corporation, partnership, association, agency, institution, or other legal entity providing any kind of services related to the treatment of an industrially injured worker. It includes, but is not limited to, hospitals, medical doctors, dentists, chiropractors, vocational rehabilitation counselors, osteopathic physicians, pharmacists, podiatrists, physical therapists, occupational therapists, massage therapists, psychologists, naturopathic physicians, and durable medical equipment dealers.

Home nursing: Those nursing services that are proper and necessary to maintain the worker in his or her residence. These services must be provided through an agency licensed, certified or registered to provide home care, home health or

hospice services. Refer to WAC 296-20-091 for more information.

Independent or separate procedure: Certain of the fee schedule's listed procedures are commonly carried out as an integral part of a total service, and as such do not warrant a separate charge. When such a procedure is carried out as a separate entity, not immediately related to other services, the indicated value for "independent procedure" is applicable.

Initial prescription drugs: Any drug prescribed for an alleged industrial injury or occupational disease during the initial visit.

Initial visit: The first visit to a healthcare provider during which the *Report of Industrial Injury or Occupational Disease* is completed and the worker files a claim for workers compensation.

Medical aid rules: The Washington Administrative Codes (WACs) that contain the administrative rules for medical and other services rendered to workers.

Modified work status: The worker is not able to return to their previous work, but is physically capable of carrying out work of a lighter nature. Workers should be urged to return to modified work as soon as reasonable as such work is frequently beneficial for body conditioning and regaining self confidence.

Under RCW 51.32.090, when the employer has modified work available for the worker, the employer must furnish the doctor and the worker with a statement describing the available work in terms that will enable the doctor to relate the physical activities of the job to the worker's physical limitations and capabilities. The doctor shall then determine whether the worker is physically able to perform the work described. The employer may not increase the physical requirements of the job without requesting the opinion of the doctor as to the worker's ability to perform such additional work. If after a trial period of reemployment the worker is unable to continue with such work, the worker's time loss compensation will be resumed upon certification by the attending doctor.

If the employer has no modified work available, the department should be notified immediately, so vocational assessment can be conducted to determine whether the worker will require assistance in returning to work.

Nonemergent (elective) hospital admission: Placement of the worker in an acute care hospital for medical treatment of an accepted condition which may be safely scheduled in advance without jeopardizing the worker's health or treatment outcome.

Physician or attending physician (AP): For these rules, means any person licensed to perform one or more of the following professions: Medicine and surgery; or osteopathic medicine and surgery. An AP is a treating physician.

Practitioner or licensed health care provider: For these rules, means any person defined as a "doctor" under these rules, or licensed to practice one or more of the following professions: Audiology; physical therapy; occupational therapy; pharmacy; prosthetics; orthotics; psychology; nursing; (~~physician or osteopathic assistant;~~) advanced registered nurse practitioners (ARNPs); certified medical physician assistants or osteopathic physician assistants; and massage therapy.

Preferred drug list: The list of drugs selected by the appointing authority to be used by applicable state agencies as the basis for the purchase of drugs in state purchased health care programs.

Proper and necessary:

(1) The department or self-insurer pays for proper and necessary health care services that are related to the diagnosis and treatment of an accepted condition.

(2) Under the Industrial Insurance Act, "proper and necessary" refers to those health care services which are:

(a) Reflective of accepted standards of good practice, within the scope of practice of the provider's license or certification;

(b) Curative or rehabilitative. Care must be of a type to cure the effects of a work-related injury or illness, or it must be rehabilitative. Curative treatment produces permanent changes, which eliminate or lessen the clinical effects of an accepted condition. Rehabilitative treatment allows an injured or ill worker to regain functional activity in the presence of an interfering accepted condition. Curative and rehabilitative care produce long-term changes;

(c) Not delivered primarily for the convenience of the claimant, the claimant's attending doctor, or any other provider; and

(d) Provided at the least cost and in the least intensive setting of care consistent with the other provisions of this definition.

(3) The department or self-insurer stops payment for health care services once a worker reaches a state of maximum medical improvement. Maximum medical improvement occurs when no fundamental or marked change in an accepted condition can be expected, with or without treatment. Maximum medical improvement may be present though there may be fluctuations in levels of pain and function. A worker's condition may have reached maximum medical improvement though it might be expected to improve or deteriorate with the passage of time. Once a worker's condition has reached maximum medical improvement, treatment that results only in temporary or transient changes is not proper and necessary. "Maximum medical improvement" is equivalent to "fixed and stable."

(4) In no case shall services which are inappropriate to the accepted condition or which present hazards in excess of the expected medical benefits be considered proper and necessary. Services that are controversial, obsolete, investigational or experimental are presumed not to be proper and necessary, and shall be authorized only as provided in WAC 296-20-03002(6) and 296-20-02850.

Refill: The continuation of therapy with the same drug (including the renewal of a previous prescription or adjustments in dosage) when a prescription is for an antipsychotic, antidepressant, chemotherapy, antiretroviral or immunosuppressive drug, or for the refill of an immunomodulator/antiviral treatment for hepatitis C for which an established, fixed duration of therapy is prescribed for at least twenty-four weeks but no more than forty-eight weeks.

Regular work status: The injured worker is physically capable of returning to his/her regular work. It is the duty of the attending doctor to notify the worker and the department or self-insurer, as the case may be, of the specific date of

release to return to regular work. Compensation will be terminated on the release date. Further treatment can be allowed as requested by the attending doctor if the condition is not stationary and such treatment is needed and otherwise in order.

Temporary partial disability: Partial time loss compensation may be paid when the worker can return to work on a limited basis or return to a lesser paying job is necessitated by the accepted injury or condition. The worker must have a reduction in wages of more than five percent before consideration of partial time loss can be made. No partial time loss compensation can be paid after the worker's condition is stationary. **All time loss compensation must be certified by the attending doctor based on objective findings.**

Termination of treatment: When treatment is no longer required and/or the industrial condition is stabilized, a report indicating the date of stabilization should be submitted to the department or self-insurer. This is necessary to initiate closure of the industrial claim. The patient may require continued treatment for conditions not related to the industrial condition; however, financial responsibility for such care must be the patient's.

Therapeutic alternative: Drug products of different chemical structure within the same pharmacologic or therapeutic class and that are expected to have similar therapeutic effects and safety profiles when administered in therapeutically equivalent doses.

Therapeutic interchange: To dispense with the endorsing practitioner's authorization, a therapeutic alternative to the prescribed drug.

Total permanent disability: Loss of both legs or arms, or one leg and one arm, total loss of eyesight, paralysis or other condition permanently incapacitating the worker from performing any work at any gainful employment. When the attending doctor feels a worker may be totally and permanently disabled, the attending doctor should communicate this information immediately to the department or self-insurer. A vocational evaluation and an independent rating of disability may be arranged by the department prior to a determination as to total permanent disability. Coverage for treatment does not usually continue after the date an injured worker is placed on pension.

Total temporary disability: Full-time loss compensation will be paid when the worker is unable to return to any type of reasonably continuous gainful employment as a direct result of an accepted industrial injury or exposure.

Treating provider: For these rules, means a person licensed to practice one or more of the following professions: Medicine and surgery; osteopathic medicine and surgery; chiropractic; naturopathic physician; podiatry; dentistry; optometry; advanced registered nurse practitioner (ARNP); and certified medical physician assistants or osteopathic physician assistants. A treating provider actively treats an injured or ill worker.

Unusual or unlisted procedure: Value of unlisted services or procedures should be substantiated "by report" (BR).

Utilization review: The assessment of a claimant's medical care to assure that it is proper and necessary and of good quality. This assessment typically considers the appropriateness of the place of care, level of care, and the duration,

frequency or quantity of services provided in relation to the accepted condition being treated.

AMENDATORY SECTION (Amending WSR 04-22-085, filed 11/2/04, effective 12/15/04)

WAC 296-20-01501 Physician assistant rules. (1) Physician assistants ~~((may perform only))~~ (PA) may be "treating providers" pursuant to WAC 296-20-01002, under the workers' compensation system, and they may be approved for payment for those medical services ~~((in industrial injury cases;))~~ for which the physician assistant is trained and licensed, under the control and supervision of a licensed physician. Such control and supervision shall not be construed to require the personal presence of the supervising physician.

(2) Physician assistants may perform those medical services which are within the scope of their physician's assistant license ~~((for industrial injury cases))~~ within the limitations of subsection (3) of this section.

(3) ~~((Advance approval must be obtained from the department to treat industrial injury cases;))~~ To be eligible to treat ~~((industrial injuries))~~ and be paid for workers' compensation related services, the physician assistant must obtain a provider number by:

(a) ~~((Provide))~~ Providing the department with a copy of his/her license~~(-);~~

(b) ~~((Provide))~~ Providing the name ~~((and))~~, address ~~((and))~~, specialty, and provider number issued by the department of the supervising physician~~(-~~

~~(e) Provide the department with the evidence of a reliable and rapid system of communication with the supervising physician))~~ (s) on the provider application (a PA may have to obtain more than one provider number if billing under multiple supervising physicians); and

(c) Notifying the department of any change of the parameters listed in (a) or (b) of this subsection.

(4) Physician assistants may ~~((prepare report of accident, time loss compensation certification, and progress reports for~~

~~the supervising physician signature. Physician assistants cannot submit such information under his/her signature. Under certain circumstances, physician assistants can submit the report of accident or physician initial report under his or her signature. See WAC 296-20-01502))~~ sign and attest to any certificates, cards, forms or other required documentation required by the department that the physician assistant's supervising physician may sign provided that it is within the physician assistant's scope of practice and is consistent with the terms of the physician assistant's practice arrangement plan as required by chapters 18.57A and 18.71A RCW. This includes but is not limited to:

- Completing and signing the report of accident or provider's initial report, where applicable;

- Certifying time-loss compensation;

- Completing and submitting all required or requested reports;

- Referring workers for consultations;

- Facilitating early return to work offered by and performed for the employer(s) of record; and

- Doing all that is possible to expedite the vocational process, including making an estimate of the worker's physical or mental capacities that affect the worker's employability.

(5) Physician assistants cannot:

- Rate permanent disability or impairment; and

- Perform independent medical examinations or consultations.

AMENDATORY SECTION (Amending WSR 04-22-085, filed 11/2/04, effective 12/15/04)

WAC 296-20-06101 What reports are health care providers required to submit to the insurer? The department or self-insurer requires different kinds of information at various stages of a claim in order to approve treatment, time loss compensation, and treatment bills. The department or self-insurer may request the following reports at specified points in the claim. The information provided in these reports is needed to adequately manage industrial insurance claims.

| <i>Report</i> | <i>Due/Needed by Insurer</i> | <i>What Information Should Be Included In the Report?</i> | <i>Special Notes</i> |
|--|--|---|---|
| Report of Industrial Injury or Occupational Disease (form) | Immediately - within five days of first visit. | See form | Only MD, DO, DC, ND, DPM, DDS, ARNP, <u>PA</u> , and OD may sign and be paid for completion of this form. ((PAs may sign and be paid for completion of this form under the circumstances outlined in WAC 296-20-01502;)) |
| Self-Insurance: ((Physician's)) <u>Provider's Initial Report</u> (form) | | If additional space is needed, please attach the information to the application. The claim number should be at the top of the page. | |

| <i>Report</i> | <i>Due/Needed by Insurer</i> | <i>What Information Should Be Included In the Report?</i> | <i>Special Notes</i> |
|---|--|--|---|
| <p>Sixty Day (narrative) Purpose: Support and document the need for continued care when conservative (non-surgical) treatment is to continue beyond sixty days</p> | <p>Every sixty days when only conservative (nonsurgical) care has been provided.</p> | <p>(1) The conditions diagnosed, including ICD-9-CM codes and the subjective complaints and objective findings.</p> <p>(2) The relationship of diagnoses, if any, to the industrial injury or exposure.</p> <p>(3) Outline of proposed treatment program, its length, components and expected prognosis including an estimate of when treatment should be concluded and condition(s) stable. An estimated return to work date and the probability, if any, of permanent partial disability resulting from the industrial condition.</p> <p>(4) Current medications, including dosage and amount prescribed. With repeated prescriptions, include the plan and need for continuing medication.</p> <p>(5) If the worker has not returned to work, indicate whether a vocational assessment will be necessary to evaluate the worker's ability to return to work and why.</p> <p>(6) If the worker has not returned to work, a doctor's estimate of physical capacities should be included.</p> <p>(7) Response to any specific questions asked by the insurer or vocational counselor.</p> | <p>Providers may submit legible comprehensive chart notes in lieu of sixty day reports PROVIDED the chart notes include all the information required as noted in the "What Information Should Be Included?" column.</p> <p>However, office notes are not acceptable in lieu of requested narrative reports and providers may not bill for the report if chart notes are submitted in place of the report.</p> <p>Please see WAC 296-20-03021 and 296-20-03022 for documentation requirements for those workers receiving opioids to treat chronic non-cancer pain.</p> <p>Providers must include their name, address and date on all chart notes submitted.</p> |
| <p>Special Reports/Follow-up Reports (narrative)</p> | <p>As soon as possible following request by the department/insurer.</p> | <p>Response to any specific questions asked by the insurer or vocational counselor.</p> | <p>"Special reports" are payable only when requested by the insurer.</p> |

| <i>Report</i> | <i>Due/Needed by Insurer</i> | <i>What Information Should Be Included In the Report?</i> | <i>Special Notes</i> |
|--|--|---|---|
| <p>Consultation Examination Reports (narrative)</p> | <p>At one hundred twenty days if only conservative (nonsurgical) care has been provided.</p> | <p>(1) Detailed history.</p> | <p>If the injured/ill worker had been seen by the consulting doctor within the past three years for the same condition, the consultation will be considered a follow-up office visit, not consultation.</p> |
| <p>Purpose: Obtain an objective evaluation of the need for ongoing conservative medical management of the worker.</p> <p>The attending (doctor) or <u>treating provider</u> may choose the consultant.</p> | | <p>(2) Comparative history between the history provided by the attending (doctor) or <u>treating provider</u> and injured worker.</p> <p>(3) Detailed physical examination.</p> <p>(4) Condition(s) diagnosed including ICD-9-CM codes, subjective complaints and objective findings.</p> <p>(5) Outline of proposed treatment program: Its length, components, expected prognosis including when treatment should be concluded and condition(s) stable.</p> <p>(6) Expected degree of recovery from the industrial condition.</p> <p>(7) Probability of returning to regular work or modified work and an estimated return to work date.</p> <p>(8) Probability, if any, of permanent partial disability resulting from the industrial condition.</p> <p>(9) A doctor's estimate of physical capacities should be included if the worker has not returned to work.</p> <p>(10) Reports of necessary, reasonable X ray and laboratory studies to establish or confirm diagnosis when indicated.</p> | <p>A copy of the consultation report must be submitted to both the attending (doctor) or <u>treating provider</u> and the department/insurer.</p> |
| <p>((Supplemental Medical Report (form)</p> | <p>As soon as possible following request by the department/insurer.</p> | <p>See form</p> | <p>Payable only to the attending doctor upon request of the department/insurer.))</p> |

| <i>Report</i> | <i>Due/Needed by Insurer</i> | <i>What Information Should Be Included In the Report?</i> | <i>Special Notes</i> |
|--|---|--|---|
| Attending (Doctor) Provider Review of IME Report (form) Purpose: Obtain the attending (doctor's) <u>provider's</u> opinion about the accuracy of the diagnoses and information provided based on the IME. | As soon as possible following request by the department/insurer. | Agreement or disagreement with IME findings. If you disagree, provide objective/subjective findings to support your opinion. | Payable only to the attending (doctor) <u>provider</u> upon request of the department/insurer. <u>PAs can concur with treatment recommendations but not PPD ratings.</u> |
| Loss of Earning Power (form) Purpose: Certify the loss of earning power is due to the industrial injury/occupational disease. | As soon as possible after receipt of the form. | See form | Payable only to the (AP) <u>attending or treating provider.</u> |
| Application to Reopen Claim Due to Worsening of Condition (form) Purpose: Document worsening of the accepted condition and need to reopen claim for additional treatment. | Immediately following identification of worsening after a claim has been closed for sixty days. Crime Victims: Following identification of worsening after a claim has been closed for ninety days. | See form | Only MD, DO, DC, ND, DPM, DDS, ARNP, <u>PA</u> , and OD may sign and be paid for completion of this form. |

What documentation is required for initial and follow up visits?

Legible copies of office or progress notes are required for the initial and all follow-up visits.

What documentation are ancillary providers required to submit to the insurer?

Ancillary providers are required to submit the following documentation to the department or self-insurer:

| Provider | Chart Notes | Reports |
|---|--------------------|----------------|
| Audiology | X | X |
| Biofeedback | X | X |
| Dietician | | X |
| Drug & Alcohol Treatment | X | X |
| Free Standing Surgery | X | X |
| Free Standing Emergency Room | X | X |
| Head Injury Program | X | X |
| Home Health Care | | X |
| Infusion Treatment, Professional Services | | X |
| Hospitals | X | X |
| Laboratories | | X |
| Licensed Massage Therapy | X | X |
| Medical Transportation | | X |

| Provider | Chart Notes | Reports |
|--------------------------|--------------------|----------------|
| Nurse Case Managers | | X |
| Nursing Home | X | X |
| Occupational Therapist | X | X |
| Optometrist | X | X |
| Pain Clinics | X | X |
| Panel Examinations | | X |
| Physical Therapist | X | X |
| Prosthetist/Orthotist | X | X |
| Radiology | | X |
| Skilled Nursing Facility | X | X |
| Speech Therapist | X | X |

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-20-01502

When can a physician assistant have sole signature on the report of accident or physician's initial report?

WSR 08-04-108**PERMANENT RULES****DEPARTMENT OF AGRICULTURE**

[Filed February 6, 2008, 9:54 a.m., effective March 8, 2008]

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

Purpose: The department amended chapter 16-409 WAC, Washington standards for asparagus. The department changed the size small designation at WAC 16-409-024(5) from "less than 5/16" inch in diameter to "at least 3/16" inch in diameter.

Citation of Existing Rules Affected by this Order: Amending WAC 16-409-024(5).

Statutory Authority for Adoption: RCW 15.17.050.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 08-01-056 on December 13, 2007.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: February 6, 2008.

Valoria Loveland
Director

AMENDATORY SECTION (Amending WSR 07-06-047, filed 3/1/07, effective 4/1/07)

WAC 16-409-024 Size requirements for Washington asparagus grades. The following size designations apply to all grades of asparagus in Washington state.

- (1) Jumbo: Stalks at least 13/16 inch in diameter.
- (2) Extra large: Stalks at least 10/16 inch in diameter.
- (3) Large: Stalks at least 7/16 inch in diameter.
- (4) Standard: Stalks at least 5/16 inch in diameter.
- (5) Small: Stalks (~~less than 5/16~~) at least 3/16 inch in diameter.
- (6) All size designations, as defined in WAC 16-409-024, may be packed in all grades and in all containers.

WSR 08-04-110**PERMANENT RULES****WORKFORCE TRAINING AND
EDUCATION COORDINATING BOARD**

[Filed February 6, 2008, 10:33 a.m., effective March 8, 2008]

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

Purpose: Set standards for private vocational schools in the areas of: (1) Financial responsibility, (2) tuition refund deadlines, (3) applicants' ability to benefit, (4) "at risk" schools, and (5) faculty qualifications.

Citation of Existing Rules Affected by this Order: Amending WAC 490-105-030, 490-105-040, 490-105-060, 490-105-100, 490-105-130, 490-105-140, 490-105-150, 490-105-160, and 490-105-180.

Statutory Authority for Adoption: RCW 28.10.040 [28C.10.040].

Adopted under notice filed as WSR 07-24-064 on December 4, 2007.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 9, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 9, Repealed 0.

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

Date Adopted: January 31, 2008.

Peggy Rudolph
Program Manager

AMENDATORY SECTION (Amending WSR 98-22-033, filed 10/29/98, effective 11/29/98)

WAC 490-105-030 How are words and phrases used in these rules? (1) The following clarifies the statutory exemptions under RCW 28C.10.030:

(a) "Avocational" or "recreational" means instruction that is primarily intended for leisure; it is not offered to provide a student with employable skills or competencies. Instruction offered as a prerequisite for a vocational program does not qualify for this exemption.

(b) "Entities not otherwise exempt offering only workshops or seminars lasting no longer than three calendar days" means instruction that can be completed within three eight-hour days. A vocational education program divided into a series of supplementary seminars does not qualify for this exemption.

(c) "Programs of continuing professional education" include:

(i) Review programs offered solely as preparation for tests leading to certification in specific disciplines but not offered to provide occupational competencies. For example, this exemption applies to test preparation programs that lead to: Certification by a state board of accountancy (CPA); certification by the institute of certified management accounting (CMA); admission to practice before a state bar; certification in health occupations initiated by the American Medical Association, American Dental Association, and their respec-

tive professional auxiliaries; and, acquisition of other public certificates of convenience and necessity; and

(ii) Programs offered to conform with rules adopted by state agencies that require practitioners to undergo continuing professional education as a condition to renewing certification or licensure.

(2) The term "revoke" as used in RCW 28C.10.050(3) means an agency action that terminates a school's license. The agency's executive director or designee may revoke a school's license for just cause.

(3) The term "suspend" as used in RCW 28C.10.050(3) means an action by which the agency interrupts the school's authority to make offers of training. The agency's executive director or designee may suspend a school's license for just cause. An order of suspension prohibits the school from beginning instruction of new students for a maximum of thirty days. The school may remain in operation to continue training students in regular attendance on the date the suspension takes effect.

(4) The term "private vocational school" is further defined to include instruction at the postsecondary level that is intended for use by individuals who have either completed high school or are beyond the age of compulsory school attendance. Instruction or training offered to pre-kindergarten, kindergarten, elementary, or secondary school students is not encompassed by the act.

(5) "At risk" means the school demonstrates a pattern or history of one or more of the following conditions that the agency determines raise doubts for the continued successful and profitable operation of the organization:

(a) Failure to meet the standards of financial responsibility;

(b) Misrepresentation;

(c) A decrease in enrollment from the previous reporting period of fifty percent or more or twenty-five students, whichever is greater;

(d) Frequent substantiated complaints filed with the agency;

(e) Staff turnover from the previous year of fifty percent or more or three staff, whichever is greater; and

(f) Conditions listed in (c) and (e) of this subsection, caused by unusual circumstances, shall be evaluated by the agency and exceptions may be granted.

(6) "Distance education" means education provided by written correspondence or any electronic medium for students who are enrolled in a private vocational school in pursuit of an identified occupational objective, but are not attending classes at an approved site or training establishment.

AMENDATORY SECTION (Amending WSR 00-21-037, filed 10/12/00, effective 11/12/00)

WAC 490-105-040 What does it take to obtain a private vocational school license? (See RCW 28C.10.050 and 28C.10.060.) An entity that wishes to operate a private vocational school must apply for a license on forms provided by the agency. If the agency determines an application is deficient, the applicant will be so notified. The applicant must correct the deficiencies within thirty days of notification. If

that fails to occur, the application will be returned to the applicant. The license application fee will not be refunded. The agency's executive director or designee may deny a license application for just cause.

The application must include the following information attested to by the school's chief administrative officer:

(1) An identification of owners, shareholders, and directors.

(a) The complete legal name, current telephone number, and current mailing address of the owner;

(b) The form of ownership; e.g., sole proprietorship, partnership, limited partnership, or corporation;

(c) Names, addresses, phone numbers, birth dates, and prior school affiliations if any, of all individuals with ten percent or more ownership interest;

(d) A school that is a corporation or a subsidiary of another corporation must submit:

(i) Current evidence that the corporation is registered with the Washington secretary of state's office; and

(ii) The name, address and telephone number of the corporation's registered agent;

(e) "Ownership" of a school means:

(i) In the case of a school owned by an individual, that individual;

(ii) In the case of a school owned by a partnership, all full, silent and limited partners having a ten percent or more ownership interest;

(iii) In the case of a school owned by a corporation, the corporation, each corporate director, officer, and each shareholder owning shares of issued and outstanding stock aggregating at least ten percent of the total of the issued and outstanding shares;

(f) Schools under common ownership may designate a single location as the principal facility for recordkeeping via written notice to the agency.

(2) Financial statement.

(a) The school must submit information reflecting its financial condition at the close of its most recent fiscal year to demonstrate that it has sufficient financial resources to fulfill its commitments to students.

~~((The))~~ (i) Each nonaccredited school must submit a financial statement ((must be completed)) in a format supplied by the agency.

(ii) Each accredited school must submit a reviewed or audited financial statement, whichever is required by its accrediting body.

(b) If inadequate time exists to produce a financial statement in the interval between the ending date of the school's fiscal year and the due date of an application, the agency will adjust the school's license period to provide a reasonable interval.

(c) New schools must submit a proposed operating budget for the initial twelve months of operation rather than the financial statement described in (a) of this subsection. The proposed operating budget must be completed in a format supplied by the agency.

(d) New schools that have operated another business for at least one year, must submit, in addition to the proposed operating budget described in (c) of this subsection, a financial statement for that business. The financial statement must

cover the existing business' most recently completed fiscal year and be prepared by a certified public accountant or be certified by the business' chief administrative officer.

(e) Owners of multiple schools may file financial information that consists of a single, consolidated financial statement and balance sheet for the corporation. The consolidated financial statement must be accompanied by data that documents total tuition earnings for each separate school under the corporation's ownership at the close of its most recent fiscal year. If historical data is not available, the data must project total tuition earnings for the school in its first or next completed twelve months of operation.

(3) Financial references.

(a) The school must furnish the names of at least one bank or other financial institution and two other entities that the agency may consult as financial references.

(b) A statement must be included authorizing the agency to obtain financial information from the references.

(4) A school must demonstrate to the agency that it is financially viable under the requirements established by this section.

(a) The agency considers a school to be financially viable only if it:

(i) Is able to provide the services described in its official publications and statements;

(ii) Is able to provide the administrative resources necessary to comply with the requirements of this subsection;

(iii) Is able to meet all of its financial obligations, including, but not limited to refunds that it is required to make;

(iv) Demonstrates at the end of its latest fiscal year, a ratio of current assets to current liabilities of at least 1:1;

(v) Had, for its latest fiscal year, a positive net worth. For the purposes of this subsection, a positive net worth occurs when the school's assets exceed its liabilities;

(vi) Has not had operating losses over both of its two latest fiscal years. In applying this standard, the agency may consider the effect of unusual events;

(vii) Has not had, for its latest fiscal year, an operating deficit exceeding ten percent of the institution's net worth. For purposes of this subsection, an operating deficit occurs when operating expenses exceed revenues from current business activities.

(b) A school that is not financially viable may be considered at risk and be required to follow the procedures cited in WAC 490-105-175.

(5) A copy of the school's catalog. (See RCW 28C.10-050 (1)(c).) The school must publish a catalog or brochure that explains its operations and requirements. The catalog must be current, comprehensive, and accurate. The school must disclose the following in some combination of a catalog, brochure or other written material and furnish a copy of each to every prospective student prior to completing an enrollment agreement:

(a) Date of publication;

(b) Names of owners having a ten percent or more equity ownership and officers, including any governing boards, and the name and address of its parent corporation, if a subsidiary;

(c) Names, addresses, and telephone numbers of the school's administrative offices and all auxiliary facilities;

(d) Names and qualifications of faculty. The list must be accurate as of the date of catalog publication. Any changes of faculty must be noted on a catalog errata sheet;

(e) The school calendar, including hours of operation, holidays, enrollment periods, and the beginning and ending dates of terms, courses, or programs as may be appropriate;

(f) Admission procedures including policies describing all prerequisites needed by entering students to:

(i) Successfully complete the programs of study in which they are interested; and

(ii) Qualify for the fields of employment for which their education is designed;

(g) A description of the job placement assistance offered, if any. If no assistance is offered, the school must make that fact known;

(h) The school's policy regarding student conduct, including causes for dismissal and conditions for readmission;

(i) The school's policy regarding leave, absences, class cuts, makeup work, tardiness, and interruptions for unsatisfactory attendance;

(j) The school's policy regarding standards of progress required of the student. This policy must define the grading system, the minimum grades considered satisfactory, conditions for interruption for unsatisfactory progress, a description of the probationary period, if any, allowed by the school, conditions for reentrance for those students dismissed for unsatisfactory progress; and information that a statement will be furnished to the student regarding satisfactory or unsatisfactory progress;

(k) An accurate description of the school's facilities and equipment available for student use, the maximum or usual class size and the average student/teacher ratio;

(l) The total cost of training including registration fee, if any, tuition, books, supplies, equipment, laboratory usage, special clothing, student activities, insurance and all other charges and expenses necessary for completion of the program;

(m) A description of each program of instruction, including:

(i) Specific program objectives including the job titles for which the program purports to train;

(ii) The number of clock or credit hours of instruction, the method of instruction (e.g., correspondence, classroom, lab, computer assisted), and the average length of time required for successful completion;

(iii) If instruction is calculated in credit hours, the catalog must contain at least one prominent statement describing the contact hour conversion formula applied by the school; i.e., the number of contact hours applicable to each quarter or semester credit hour of lecture, laboratory/practicum, and/or internship/externship;

(iv) For ~~((the purpose of home study))~~ distance education schools, instructional sequences must be described in numbers of lessons ~~((-"Home study school" means the instructional format of the school involves the sequential distribution of lessons to the student, who studies the material, completes an examination, and returns the examination to the school. The school then grades the examination (and, in some instances, provides additional comments and instruction);~~

and returns the graded examination to the student along with the next set of instructional materials);

(n) The scope and sequence of courses or programs required to achieve the educational objective;

(o) A statement indicating the type of educational credential that is awarded upon successful completion;

(p) The school's cancellation and refund policy;

(q) The following statement must appear prominently on either the first or last printed page or inside the front or back cover: THIS SCHOOL IS LICENSED UNDER CHAPTER 28C.10 RCW; INQUIRIES OR COMPLAINTS REGARDING THIS OR ANY OTHER PRIVATE VOCATIONAL SCHOOL MAY BE MADE TO THE: WORKFORCE TRAINING AND EDUCATION COORDINATING BOARD, 128 TENTH AVENUE S.W., P.O. BOX 43105, OLYMPIA, WASHINGTON 98504-3105 ((360/753-5673)) 360-753-5662;

(r) The availability of financial aid, if any;

(s) Supplements or errata sheets for the catalog and other written materials related to enrollment must be filed with the agency prior to being used (see RCW 28C.10.110(2));

(i) Supplements or errata sheets must be made an integral part of that publication;

(ii) The supplement or errata sheet must include its publication date;

(iii) In the event information on a supplement or errata sheet supplants information contained in the catalog, the insert must identify the information it replaces, including at the least an appropriate page reference.

~~((5))~~ (6) A copy of the school's enrollment agreement/contract. (See RCW 28C.10.050 (1)(d).) An enrollment agreement is any agreement that creates a binding obligation to purchase a course of instruction from a school. Each school must use an enrollment contract or agreement that includes:

(a) The school's cancellation and refund policy, in accordance with these rules, displayed in a type size no smaller than that used to meet any other requirements of this section;

(b) The following statement: THIS SCHOOL IS LICENSED UNDER CHAPTER 28C.10 RCW; INQUIRIES OR COMPLAINTS REGARDING THIS OR ANY OTHER PRIVATE VOCATIONAL SCHOOL MAY BE MADE TO THE: WORKFORCE TRAINING AND EDUCATION COORDINATING BOARD, 128 TENTH AVENUE S.W., P.O. BOX 43105, OLYMPIA, WASHINGTON 98504-3105 ((360/753-5673)) 360-753-5662;

(c) Information that will clearly and completely define the terms of the agreement between the student and the school, including at least the following:

(i) The name and address of the school and the student;

(ii) The program or course title as it appears in the school's catalog, date training is to begin, and the number of hours or units of instruction or lessons for which the student is enrolled;

(iii) An itemization of all charges, fees, and required purchases being incurred by the student or his/her sponsor in order to complete the training. The student enrollment agreement must also contain the methods of payment and/or payment schedule being established;

(iv) Language explaining that the agreement will be binding only when it has been fully completed, signed and dated by the student and an authorized representative of the school prior to the time instruction begins;

(d) A statement that any changes in the agreement will not be binding on either the student or the school unless such

changes have been acknowledged in writing by an authorized representative of the school and by the student or the student's parent or guardian if he/she is a minor;

(e) A "NOTICE TO THE BUYER" section which includes the following statements in a position above the space reserved for the student's signature:

(i) "DO NOT SIGN THIS AGREEMENT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACES. THIS IS A LEGAL INSTRUMENT.

(ii) ALL PAGES OF THE CONTRACT ARE BINDING.

(iii) READ BOTH SIDES OF ALL PAGES BEFORE SIGNING.

(iv) YOU ARE ENTITLED TO AN EXACT COPY OF THE AGREEMENT, SCHOOL CATALOG AND ANY OTHER PAPERS YOU SIGN AND ARE REQUIRED TO SIGN A STATEMENT ACKNOWLEDGING RECEIPT OF THOSE.

(v) IF YOU HAVE NOT STARTED TRAINING, YOU MAY CANCEL THIS CONTRACT BY PROVIDING WRITTEN NOTICE OF CANCELLATION TO THE SCHOOL AT ITS ADDRESS SHOWN ON THE CONTRACT. THE NOTICE MUST BE POSTMARKED NOT LATER THAN MIDNIGHT OF THE FIFTH BUSINESS DAY (EXCLUDING SUNDAYS AND HOLIDAYS) FOLLOWING YOUR SIGNING THIS CONTRACT OR THE WRITTEN NOTICE MAY BE PERSONALLY OR OTHERWISE DELIVERED TO THE SCHOOL WITHIN THAT TIME. IN EVENT OF DISPUTE OVER TIMELY NOTICE, THE BURDEN TO PROVE SERVICE RESTS ON THE APPLICANT.

(vi) IT IS AN UNFAIR BUSINESS PRACTICE FOR THE SCHOOL TO SELL, DISCOUNT OR OTHERWISE TRANSFER THIS CONTRACT OR PROMISSORY NOTE WITHOUT THE SIGNED WRITTEN CONSENT OF THE STUDENT OR HIS/HER FINANCIAL SPONSORS AND A WRITTEN STATEMENT NOTIFYING ALL PARTIES THAT THE CANCELLATION AND REFUND POLICY CONTINUES TO APPLY."

(f) Attached to each contract must be a form provided by the agency that contains statements relating to the student's rights, responsibilities, and loan repayment obligations; and the school's responsibility to counsel the student against incurring excessive debt;

(g) The school must provide the student a copy of the signed enrollment agreement.

~~((6))~~ (7) Information regarding the qualifications of administrative and instructional personnel. (See RCW 28C.10.050 and 28C.10.060.) The education and experience of administrators, faculty, and other staff must be adequate to insure students will receive educational services consistent with the stated program objectives.

(a) The school must file the qualifications of all affected individuals with the agency within thirty calendar days of their employment. The information must be submitted on forms provided by the agency.

(b) The school must establish and enforce written policies for the qualification, supervision, continuing education, and periodic evaluation of administrators, faculty, and staff.

(c) School directors must have at least two years of experience in either school or business administration, teaching, or other experience related to their duties within the organization.

(d) Faculty must be qualified to provide instruction in their areas of specialization as demonstrated by possession of the following:

(i) Sufficient broad and comprehensive training;
(ii) Industry recognized certification when available; and
(iii) Two years of relevant education or work experience or relevant, current teaching experience that particularly qualifies them to provide instruction in their areas of specialization; or

(iv) Current evidence of being qualified to teach that has been issued by a regulatory agency of this or another state.

(e) In addition to the requirements in (d) of this subsection, faculty who teach a course related to an occupation for which the student must subsequently be licensed or certified must

~~((i)) hold or be qualified to hold such a license or certificate ((and possess at least two years of work experience, postsecondary training or a combination of both in the subject they instruct; or~~

~~((ii) Possess current evidence of being qualified to teach that has been issued by a regulatory agency of this or another state)).~~

~~((e)) (f) If the school uses teacher assistants, aides, or trainees, it must maintain policies governing their duties and functions. Such personnel may provide services to students only under the direct supervision of a qualified instructor. They may not act as substitutes for the instructor.~~

~~((f)) (g) Owners, administrators, faculty, agents and other staff must be of good moral character and reputation. The agency may find that a person is not of good moral character and reputation if the person ((has been convicted of):~~

~~(i) Has been convicted of any felony within the prior seven years(;~~

~~((ii)), a misdemeanor which involved the illegal use, possession, or sale of a controlled substance(;~~

~~((iii)), or a misdemeanor that involved any sexual offense; or~~

~~(ii) Is found to have made any false statements in the application for a private vocational school license.~~

~~((g)) (h) If the person has been convicted of a felony, or is found to have made false statements in the private vocational school application, the agency will consider the relationship of the facts supporting the charge or conviction to the performance of his or her occupational responsibilities with the licensed school and to that school's students.~~

~~((h)) (i) In making such determinations the agency will request a letter of recommendation from the employing school and may consider any other related materials submitted by the school and/or affected individual prior to making a finding under this section.~~

AMENDATORY SECTION (Amending WSR 98-22-033, filed 10/29/98, effective 11/29/98)

WAC 490-105-060 Do off-campus activities require licensing? (1) The agency may grant exemptions from licensing for off-campus activities that either:

(a) Absorb a temporary overload that the licensed facility cannot accommodate; or

(b) Provide a single, specialized kind of training activity, generally on a short-term basis, under circumstances that cannot readily be accommodated at the licensed facility(~~(;~~

~~(e) Provide training under contract with a public agency, private company, or other sponsor as long as no contractual responsibility is created between students and the school and the training is not open to the general public)).~~

(2) The school must obtain approval from the agency before conducting operations at an auxiliary facility. To obtain approval, the school must document that:

(a) The facility meets one of the above definitions;

(b) The instructional program, site administration, and training are significantly integrated with the school's primary facility;

(c) The facility will not be represented as a school location and its address will not be advertised; and

(d) No enrollment will be solicited or executed at the auxiliary facility.

(3) Activities occurring at an auxiliary facility must be incorporated into operational and financial data the school reports to the agency. ~~((However, income derived from activities conducted under contract should not be reported for purposes of calculating license fees or contributions to the tuition recovery trust fund (see subsection (1)(c) of this section).))~~

AMENDATORY SECTION (Amending WSR 98-22-033, filed 10/29/98, effective 11/29/98)

WAC 490-105-100 Who is exempt from licensing? To qualify for an exemption as test preparation or continuing education under WAC 490-105-030 (1)(c)(i) and (ii), a school must apply to the agency on a form created for that purpose and obtain approval. Exemptions must be renewed annually.

AMENDATORY SECTION (Amending WSR 98-22-033, filed 10/29/98, effective 11/29/98)

WAC 490-105-130 What are minimum requirements for student refunds? (See RCW 28C.10.050 (1)(b).) At a minimum, schools must use the following cancellation and refund policies; however, the agency may approve refund policies whose terms are more favorable to students than the following established minimums. Refunds must be paid within thirty calendar days of the student's official date of termination.

(1) For resident programs:

(a) The school must refund all money paid if the applicant is not accepted. This includes instances where a starting class is canceled by the school;

(b) The school must refund all money paid if the applicant cancels within five business days (excluding Sundays and holidays) after the day the contract is signed or an initial payment is made, as long as the applicant has not begun training;

(c) The school may retain an established registration fee equal to ten percent of the total tuition cost, or one hundred dollars, whichever is less, if the applicant cancels after the fifth business day after signing the contract or making an initial payment. A "registration fee" is any fee charged by a school to process student applications and establish a student records system;

(d) If training is terminated after the student enters classes, the school may retain the registration fee established under (c) of this subsection, plus a percentage of the total tuition as described in the following table:

| If the student completes this amount of training: | The school may keep this percentage of the tuition cost: |
|---|--|
| One week or up to 10%, whichever is less | 10% |
| More than one week or 10% whichever is less but less than 25% | 25% |
| 25% through 50% | 50% |
| More than 50% | 100% |

(e) When calculating refunds, the official date of a student's termination is the last date of recorded attendance:

- (i) When the school receives notice of the student's intention to discontinue the training program;
- (ii) When the student is terminated for a violation of a published school policy which provides for termination;
- (iii) When a student, without notice, fails to attend classes for thirty calendar days.

(2) Discontinued programs:

(a) If instruction in any program is discontinued after training has begun or if the school moves from one location to another, it must either:

- (i) Provide students pro rata refunds of all tuition and fees paid; or
- (ii) Arrange for comparable training at another public or private vocational school. Students must accept comparable training in writing.

(b) If the school plans to discontinue a program it must notify the agency and affected students in advance. The notification must be in writing and must include at least data required under WAC 490-105-210(3).

(c) Students affected by a discontinuation must request a refund within ninety days.

(3) For ~~((home study))~~ distance education programs:

- (a) A student may request cancellation in any manner.
- (b) The following is a minimum refund policy for ~~((home study))~~ distance education courses without mandatory resident training:

(i) An applicant may cancel up to five business days after signing the enrollment agreement. In the event of a dispute over timely notice, the burden to prove service rests on the applicant.

(ii) If a student cancels after the fifth calendar day but before the school receives the first completed lesson, the school may keep only a registration fee of either fifty dollars or an amount equal to fifteen percent of the tuition (in no case is the school entitled to keep a registration fee greater than one hundred fifty dollars).

(iii) After the school receives the student's first completed lesson and until the student completes half the total number of lessons in the program, the school is entitled to keep the registration fee and a percentage of the total tuition as described in the following table:

| If the student completes this percentage of lessons: | The school may keep this percentage of the tuition cost: |
|--|--|
| 0% through 10% | 10% |
| 11% through 25% | 25% |
| 26% through 50% | 50% |
| More than 50% | 100% |

(iv) Calculate the amount of the course completed by dividing the number of lesson assignments contained in the program by the number of completed lessons received from the student.

(4) Combination ~~((home study))~~ distance education/resident training programs:

(a) The following is a minimum refund policy for a ~~((home study))~~ distance education program that includes mandatory resident training courses.

(i) Tuition for the ~~((home study))~~ distance education and resident portions of the program must be stated separately on the enrollment agreement. The total of the two is the price of the program.

(ii) For settlement of the ~~((home study))~~ distance education portion of the combination program, the provisions of the table in subsection (2)(b)(iii) of this section apply.

(iii) For the resident portion of the program, beginning with the first resident class session if the student requests a cancellation, the provisions of the table in subsection (1)(d) of this section apply.

(iv) Calculate the amount of resident training completed by dividing the total number of training days provided in the resident training program by the number of instructional days the student attends resident training.

(b) A ~~((home study))~~ distance education student who cancels after paying full tuition is entitled to receive all course materials, including kits and equipment.

AMENDATORY SECTION (Amending WSR 98-22-033, filed 10/29/98, effective 11/29/98)

WAC 490-105-140 What are student admission standards? (See RCW 28C.10.050 (1)(g).) Prior to enrolling students the school must assess their basic skills and relevant aptitudes to determine that they have the ability to complete and benefit from the training they are considering.

(1) When a school applies for initial licensing under chapter 28C.10 RCW, it must submit a description of the method it will use to comply with the requirements under this section. Any subsequent change in that method must be reported to the agency no more than fifteen calendar days after the change is adopted.

(2) The school must measure all applicants' ability to benefit against current prerequisites for employment in the job objective established for the program, e.g., prior work and health history, English language proficiency, driving and arrest records, and evaluations of any applicable physiological factors such as vision acuity, color perception, lifting and weight bearing capabilities, and manual dexterity.

(3) Schools may consider that applicants ~~((who))~~ have adequate academic abilities if they have earned a high school

diploma or General Educational Development (GED) certificate (~~may be considered to have adequate academic abilities to meet learning needs~~)).

~~(4) Schools may consider that applicants (who) have (not earned a high school diploma or GED must be tested. The school must adopt or devise a test to assess the applicants' academic abilities) adequate English language proficiency if they have received:~~

~~(a) A high school diploma from a high school where English is the official language; or~~

~~(b) A General Educational Development (GED) certificate in English; or~~

~~(c) A passing score on the Test of English as a Foreign Language, or the International English Language Testing System or a similar language proficiency exam; or~~

~~(d) A satisfactory evaluation of the applicant's foreign course work that has been produced by a reputable organization specializing in such evaluations.~~

~~(5) The school must test all other applicants. Any academic or English language proficiency test must have the capability of:~~

~~(a) Validating that applicants possess skills, competencies, and knowledge that correlate with grades, course or program completion or other measures of success in the program of study; or~~

~~(b) Validating that applicants' academic skills, competencies, and knowledge are at a level equivalent to that of persons completing a high school education;~~

~~(c) Comparing success ratios of accepted students with test cut-off scores and incorporating appropriate cut-off adjustments.~~

~~((5)) (6) Any ability to benefit (ATB) test that has been published by the American College Testing Service (ACT) or reviewed and approved by the American Council on Education (ACE) is acceptable evidence of meeting the criteria in subsection ((4)) (5) of this section.~~

~~((6)) (7) The following must be part of the methodology developed for assessment:~~

~~(a) In the event tests are administered by school officials, evidence the tests are being administered as intended by the publisher;~~

~~(b) Information about the test security procedures employed, evidencing that students have no advance information about the exact questions or tasks and that answers cannot be supplied by a third party while completing the test(s);~~

~~(c) Information about test scoring procedures employed, evidencing that if tests are scored by school officials the tests are being evaluated as intended by the publisher;~~

~~(d) Information that the tests are free from information that is offensive with regard to gender, age, native language, ethnic origin, or handicapping conditions.~~

~~((7)) (8) Records resulting from the ability to benefit assessment must be included as a regular part of all students' records.~~

AMENDATORY SECTION (Amending WSR 98-22-033, filed 10/29/98, effective 11/29/98)

WAC 490-105-150 What ~~(are)~~ program, facility, and equipment standards must schools meet? (See RCW 28C.10.050 and 28C.10.060.)

~~(1) (The school must design and implement programs that will adequately achieve the stated objectives for which they are offered. In evaluating programs, the agency will use as a guideline their comparability to similar programs that have been established by other comparable schools.) Schools must design and implement programs of quality, content, and duration, and with appropriate entrance criteria, instructional materials, staff, equipment and facilities to prepare students for the program's occupational objectives.~~

~~(2) The school must have an exact physical location which:~~

~~(a) Is adequate to meet the needs of its students and the objectives of the program;~~

~~(b) Provides a modern and effective learning environment with enough classroom, laboratory, and shop space for the number of students to be trained; and~~

~~(c) Is maintained in compliance with state laws and local ordinances related to safety and health.~~

~~(3) The school must have equipment, furniture, instructional devices and aids, machinery and other physical features that are:~~

~~(a) Adequate in number and condition to achieve the stated educational objectives of the course;~~

~~(b) Comparable in number and quality with those used by comparable schools with similar programs;~~

~~(c) Comparable to those in current use by the appropriate trade, business or profession; and~~

~~(d) Of sufficient quantity for the number of enrolled students.~~

AMENDATORY SECTION (Amending WSR 98-22-033, filed 10/29/98, effective 11/29/98)

WAC 490-105-160 What reports are required? (See RCW 28C.10.050 and 28C.10.060.) In addition to the minimum licensing standards described in RCW 28C.10.050, each school must~~(:~~

~~(1) Complete and submit to the agency an annual Impact Data Survey; and~~

~~(2) No later than July 1, 2000;) submit the following information annually for each student who participated in training~~(. The information will be used to compile consumer reports that will be published in the future)) during the reporting period:~~~~

~~((a)) (1) Student name, address, telephone number and Social Security number if provided by the student;~~

~~((b)) (2) Start date of training and date of completion or dropout;~~

~~((c) Whether or not the student graduated;~~

~~((d)) (3) Enrollment status as of the end of the reporting period;~~

~~(4) Previous education before starting the current training program;~~

~~((e) Ethnicity;~~

~~((f)) (5) Race;~~

- (6) Date of birth;
 ((g)) (7) Gender;
 ((h) Program or major (for larger schools with multiple programs.)) (8) Disability status;
 (9) Hispanic/non-Hispanic;
 (10) Program title and duration (in months).

NEW SECTION

WAC 490-105-175 Under what conditions will a school be determined to be at risk? What steps will the agency take if a school is determined to be at risk?

(1) The agency may determine a school is at risk if it demonstrates a pattern or history of one or more of the conditions described in the definition of at risk.

(2) A school determined to be at risk may petition the agency to reconsider that designation if the school believes it is unreasonable, unfair, or not in keeping with the intent and purpose of the act. The agency will consider the school's petition and may rescind the at risk designation.

(3) The school's owner and/or director will be required to meet with agency staff to discuss the conditions that lead to being designated at risk.

(4) A school determined to be at risk will be placed on probation and will be required to provide:

- (a) A school improvement plan acceptable to the agency within thirty days after meeting with agency staff;
 (b) A line of credit if appropriate; and
 (c) Monthly progress reports for up to twelve months that include at a minimum:
 (i) Steps taken to correct identified deficiencies; and
 (ii) Current student directory information.

(5) During the probation period the school must demonstrate improvement or the agency will take action to suspend or revoke its license.

(6) The agency may publish on its web site, a list of schools whose licenses have been either suspended or revoked.

AMENDATORY SECTION (Amending WSR 98-22-033, filed 10/29/98, effective 11/29/98)

WAC 490-105-180 How are student complaints handled? (See RCW 28C.10.084(10) and 28C.10.120.)

- (1) A complaint must be filed no more than:
 (a) One calendar year following:
 (i) A resident student's last recorded date of attendance;
 or

(ii) The date ((the)) a distance education school received a ((home study)) student's last completed lesson; or

(b) Sixty calendar days from the date a school ceases to provide educational services.

(2) The agency may extend the time a student has to file a complaint if the student can establish that good faith efforts to obtain satisfaction from the school were being made during the time elapsed.

(3) The term "a person" used to reference a complainant under RCW 28C.10.120(1) is further defined to mean only individuals who established a contractual relationship through their enrollment in a school or, in the case of a minor, the minor's parent or guardian.

(a) Private or public agencies, employers, or others who contract with a private vocational school to provide training services to a particular individual or individuals do not have access to the complaint process.

(b) When a person establishes a financial obligation for only a portion of the contracted costs and is subsidized for the remainder as described under (a) of this subsection, that student's claim will be prorated to recognize only the unsubsidized amount.

(4) The agency may consider the following costs when determining losses suffered by a complainant:

- (a) Tuition and fees;
 (b) Transportation costs;
 (c) Books, supplies, equipment, uniforms and protective clothing, rental charges; and
 (d) Insurance required by the school.

(5) In estimating a student's attendance related expenses other than tuition, the agency may use standards developed under Title IV of the Higher Education Act or those of the Washington state departments of employment security and social and health services.

(6) When the agency receives a complaint, it will:

- (a) Evaluate the complaint for completeness and to determine eligibility within ten working days after receipt;
 (b) Accept or reject the complaint and so notify the complainant within an additional five working days;
 (c) Forward a copy of a bona fide complaint and related attachments to the school by certified mail.

(7) The school has fifteen working days after receipt to respond to the student's complaint. If a school fails to submit a timely response the agency will conclude the school has no defense to offer.

(8) Based on all information then available, the agency will:

- (a) Investigate the facts;
 (b) Secure additional information if so indicated;
 (c) Attempt to bring about a negotiated solution;
 (d) Adjudicate the complaint by making findings, conclusions, and determinations; and
 (e) Notify all parties of the determinations and remedies.

(9) If a student can document that the procedures used by the agency to resolve a complaint were either unreasonable, unfair, or not in keeping with the intent of the law, the student may request a review of the decision.

(a) The student must request the review in writing within twenty days following receipt of the complaint determination. A timely request stays the agency's determination during the review process.

(b) When the agency receives a request for review it will:

(i) Notify the school that the student has requested a review and that the complaint determination will not take effect until the review has been completed;

(ii) Schedule an informal hearing to be conducted by agency staff; and

(iii) Make a final determination regarding the complaint within fifteen working days following the hearing.