

WSR 08-20-062
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed September 24, 2008, 4:12 p.m., effective November 1, 2008]

Effective Date of Rule: November 1, 2008.

Purpose: The department is revising this rule to renumber the entire chapter to four digits for ease of reading and reference; update references to reflect current standards, codes and federal requirements; separate certain larger sections into smaller sections; simplify and clarify resident protection program sections; add language on electronic monitoring; and delete and update sections on department review of nursing home renewal licenses.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 388-97-005, 388-97-012, 388-97-017, 388-97-027, 388-97-032, 388-97-037, 388-97-042, 388-97-043, 388-97-047, 388-97-051, 388-97-052, 388-97-053, 388-97-055, 388-97-060, 388-97-065, 388-97-07005, 388-97-07010, 388-97-07015, 388-97-07020, 388-97-07025, 388-97-07030, 388-97-07035, 388-97-07040, 388-97-07045, 388-97-07050, 388-97-07055, 388-97-07060, 388-97-07065, 388-97-07070, 388-97-075, 388-97-076, 388-97-077, 388-97-08010, 388-97-08020, 388-97-08030, 388-97-08040, 388-97-08050, 388-97-08060, 388-97-08070, 388-97-085, 388-97-090, 388-97-097, 388-97-110, 388-97-115, 388-97-120, 388-97-12010, 388-97-12020, 388-97-12030, 388-97-12040, 388-97-12050, 388-97-12060, 388-97-12070, 388-97-125, 388-97-130, 388-97-135, 388-97-140, 388-97-143, 388-97-147, 388-97-155, 388-97-160, 388-97-162, 388-97-165, 388-97-170, 388-97-175, 388-97-180, 388-97-185, 388-97-190, 388-97-195, 388-97-202, 388-97-203, 388-97-204, 388-97-205, 388-97-212, 388-97-220, 388-97-247, 388-97-249, 388-97-251, 388-97-253, 388-97-260, 388-97-285, 388-97-295, 388-97-29510, 388-97-29520, 388-97-29530, 388-97-29540, 388-97-29550, 388-97-29560, 388-97-310, 388-97-315, 388-97-325, 388-97-32510, 388-97-32520, 388-97-32530, 388-97-32540, 388-97-32550, 388-97-32560, 388-97-32570, 388-97-32580, 388-97-330, 388-97-33010, 388-97-33020, 388-97-33030, 388-97-33040, 388-97-33050, 388-97-335, 388-97-33510, 388-97-33520, 388-97-33530, 388-97-33540, 388-97-33550, 388-97-33560, 388-97-33570, 388-97-33580, 388-97-340, 388-97-34010, 388-97-34020, 388-97-345, 388-97-347, 388-97-350, 388-97-35010, 388-97-35020, 388-97-35030, 388-97-35040, 388-97-35050, 388-97-35060, 388-97-352, 388-97-353, 388-97-355, 388-97-357, 388-97-35710, 388-97-35720, 388-97-360, 388-97-36010, 388-97-36020, 388-97-36030, 388-97-36040, 388-97-36050, 388-97-36060, 388-97-36070, 388-97-365, 388-97-36510, 388-97-36520, 388-97-36530, 388-97-370, 388-97-37010, 388-97-37020, 388-97-375, 388-97-385, 388-97-400, 388-97-40010, 388-97-401, 388-97-402, 388-97-403, 388-97-405, 388-97-410, 388-97-415, 388-97-420, 388-97-425, 388-97-430, 388-97-43010, 388-97-43020, 388-97-43030, 388-97-43040, 388-97-43050, 388-97-455, 388-97-45510, 388-97-460, 388-97-46010, 388-97-465, 388-97-46510, 388-97-46520, 388-97-46530, 388-97-46540, 388-97-46550, 388-97-46560, 388-97-46570, 388-97-46580, 388-97-46590, 388-97-470, 388-97-47010, 388-97-47020, 388-97-480, 388-

97-48010, 388-97-48020, 388-97-48030, 388-97-48040, 388-97-550, 388-97-555, 388-97-560, 388-97-565, 388-97-570, 388-97-575, 388-97-580, 388-97-585, 388-97-590, 388-97-595, 388-97-600, 388-97-605, 388-97-610, 388-97-615, 388-97-620, 388-97-625, 388-97-630, 388-97-635, 388-97-640, 388-97-645, 388-97-650, 388-97-655, 388-97-660, 388-97-665, 388-97-670, 388-97-675, 388-97-680, 388-97-685, 388-97-690, and 388-97-695.

Statutory Authority for Adoption: Chapters 18.51 and 74.42 RCW.

Other Authority: 42 C.F.R. 489.52.

Adopted under notice filed as WSR 08-14-065 on June 24 [25], 2008.

Changes Other than Editing from Proposed to Adopted Version:

NEW SECTION

WAC 388-97-0380 Electronic monitoring equipment—Audio monitoring and video monitoring. (1) Except as provided in this section or in WAC 388-97-0400, the nursing home must not use the following in the facility or on the premises:

- (a) Audio monitoring equipment; or
- (b) Video monitoring equipment if it includes an audio component.

(2) The ~~facility~~ nursing home may video monitor and video record activities in the facility or on the premises, without an audio component, only in the following areas:

- (a) Entrances and exits as long as the cameras are:
 - (i) Focused only on the entrance or exit doorways; and
 - (ii) Not focused on areas where residents gather.
- (b) Areas used exclusively by staff persons such as, medication preparation and storage areas or food preparation areas, if residents do not go into these areas;
- (c) ~~(b)~~ Outdoor areas not commonly used by residents, such as, but not limited to, delivery areas; and
- (d) ~~(e)~~ Designated smoking areas, subject to the following conditions:
 - (i) Residents have been assessed as needing supervision for smoking;
 - (ii) A staff person watches the video monitor at any time the area is used by such residents;
 - (iii) The video camera is clearly visible;
 - (iv) The video monitor is not viewable by general public; and
 - (v) The facility notifies all residents in writing of the use of video monitoring equipment.

NEW SECTION

WAC 388-97-0660 Resident protection program definition. As used in WAC 388-97-0680 through 388-97-0840, the term "**individual**," means anyone, ~~including a volunteer~~, used by the nursing home facility to provide services to residents who is alleged to have abandoned, abused, neglected, misappropriated property of a resident or financially exploited a resident. ~~or misappropriated a resident's property.~~ "Individual" includes, but is not limited to, employees, contractors, and volunteers.

NEW SECTION

WAC 388-97-0680 Investigation of mandated reports. (1) The department will review all allegations of resident abandonment, abuse, neglect, or financial exploitation, or misappropriation of resident property, as those terms are defined in this chapter, RCW 74.34.020 or 42 C.F.R. 488.301.

(2) If, after the review of an allegation, the department concludes that there is reason to believe that an individual has abandoned, abused, neglected, or financially exploited a resident, or has misappropriated a resident's property, then the department will initiate an investigation.

(3) The department's investigation may include, but is not limited to:

- (a) The review of facility and state agency records;
- (b) Interviews with anyone who may have relevant information about the allegation; and
- (c) The collection of any evidence deemed necessary by the investigator.

NEW SECTION

WAC 388-97-0700 Preliminary finding. If, after review of the results of the investigation, the department ~~makes a preliminary determination~~ that an individual has abandoned, abused, neglected, or financially exploited a resident, or has misappropriated a resident's property funds, the department will make a preliminary finding to that effect. However, a preliminary finding of neglect will not be made if the individual ~~is able to demonstrate~~ that the neglect was caused by factors beyond the control of the individual.

NEW SECTION

WAC 388-97-0720 Notification of preliminary finding. (1) Within ten working days of making a ~~its~~ preliminary finding determination, the department will send notice of the ~~preliminary~~ finding:

(a) To the individual by first class and certified mail, return receipt requested. The department may choose to substitute personal service for certified mail;

(b) To the current administrator of the facility where the incident occurred; and

(c) To the appropriate licensing agency.

(2) The notice will include the following information:

- (a) A description of the allegation;
- (b) The date and time of the incident, if known;
- (c) That the individual may appeal the preliminary finding;

(d) That the preliminary finding will become final unless the individual makes a written request for a hearing within thirty days of the date of the notice; and

(e) That if the finding becomes final, it will be reported to the department's registry and the appropriate licensing authority.

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

- (a) Other divisions within the department;

(b) The agency, program or employer with which the individual was associated including the current employer, if known;

(c) Law enforcement; and

(d) Other entities as authorized by law and this chapter including investigative authorities consistent with chapter 74.34 RCW.

NEW SECTION

WAC 388-97-0760 Hearing procedures to dispute preliminary finding. Upon receipt of a written request for a hearing from an individual, the office of administrative hearings will schedule a hearing, taking into account the following requirements:

(1) The hearing decision must be issued within one hundred twenty days of the date the office of administrative hearings receives a hearing request; except as provided in subsection (6);

(2) Neither the department nor the individual can waive the one hundred twenty day requirement;

(3) The hearing will be conducted at a reasonable time and at a place that is convenient for the individual;

(4) The hearing, and any subsequent appeals, will be governed by this chapter, chapter 34.05 RCW, and chapter 388-02 WAC, or its successor regulations;

(5) A continuance may be granted for good cause upon the request of any party, as long as the hearing decision can still be issued within one hundred twenty days of the date of the receipt of the appeal; except under the circumstances described in subsection 6;

(6) If the administrative law judge finds that extenuating circumstances exist that will make it impossible to render a decision within one hundred twenty days, the administrative law judge may extend the one hundred twenty-day requirement by a maximum of sixty days; and

(7) To comply with the time limits described in this section, the individual must be available for the hearing and other preliminary matters. If the decision is not rendered within the time limit described in subsection (1), or if appropriate under subsection (6), the administrative law judge shall issue an order dismissing the appeal and the preliminary finding will become final.

NEW SECTION

WAC 388-97-0780 Finalizing the preliminary finding. (1) The preliminary finding becomes a final finding when:

(a) The department notifies the individual of a preliminary finding; and the individual does not ask for an administrative hearing within the timeframe provided under WAC 388-97-0740;

~~(b) The individual does not ask for an administrative hearing within the timeframe provided under WAC 388-97-0740(3); or;~~

~~(b) (e)~~ The individual requested an administrative hearing to appeal the preliminary finding and the administrative law judge:

(i) Dismisses the appeal following withdrawal of the appeal or default;

(ii) Dismisses the appeal for failure to comply with the time limits under WAC 388-97-0760; or

(iii) Issues an initial order upholding the finding; ~~or and the individual does not appeal the initial order to the department's board of appeals within the required timeframe; or;~~

(c) ~~(4)~~ The board of appeals reverses an administrative law judge's initial order and issues a final order upholding the preliminary finding.

(2) A final finding is permanent, except under the circumstances described in (3).

(3) A final finding may be removed from the department's registry and, as appropriate, any other department lists ~~of individuals found to have abandoned, abused, neglected, misappropriated property or financially exploited a vulnerable adult~~ under the following circumstances:

(a) The department determines the finding was made in error; It is rescinded following judicial review;

(b) The finding is rescinded following judicial review; The department determines the finding was in error;

(c) At least one year after a single ~~the~~ finding of neglect has been finalized, the department may remove the single finding of neglect from the department's registry or department lists based upon a written petition by the individual and in accordance with requirements of federal law, 42 U.S.C. 1396r (g)(1)(D); or

(d) The department is notified of the individual's death.

NEW SECTION

WAC 388-97-~~0800~~0820 Reporting final findings. The department will report a final finding of abandonment, abuse, neglect, financial exploitation of a resident, and misappropriation of resident property within ten working days to the following:

- (1) The individual;
- (2) The current administrator of the facility in which the incident occurred;
- (3) The administrator of the facility that currently employs the individual, if known;
- (4) The department's registry;
- (5) The appropriate licensing authority; and
- (6) Any other lists maintained by a state or federal agency as appropriate.

NEW SECTION

WAC 388-97-~~0820~~0800 Appeal of administrative law judge's initial order or finding. (1) If the individual or the department disagrees with the administrative law judge's decision, either party may appeal this decision by filing a petition for review with the department's board of appeals as provided under chapter 34.05 RCW and chapter 388-02 WAC.

(2) If the individual ~~department~~ appeals the administrative law judge's decision, the ~~department will not change the finding~~ will remain on ~~in~~ the department's registry or other lists. ~~records until a final hearing decision is issued.~~

NEW SECTION

WAC 388-97-0840 Disclosure of investigative and finding information. (1) Information obtained during the investigation into allegations of abandonment, abuse, neglect, misappropriation of property, or ~~and~~ financial exploitation of a resident, and any documents generated by the department will be maintained and disseminated with

regard for the privacy of the resident and any reporting individuals and in accordance with laws and regulations regarding confidentiality and privacy.

(2) Confidential information about resident and mandated reporters provided to the individual by the department must be kept confidential and may only be used by the individual to challenge findings through the appeals process.

(3) Confidential information such as the name and other personal identifying information of the reporter, witnesses, or the resident will be redacted from the documents unless release of that information is consistent with chapter 74.34 RCW and other applicable state and federal laws.

A final cost-benefit analysis is available by contacting Judy Johnson, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2591, fax (360) 438-7903, e-mail johnsjm1@dshs.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 237, Amended 0, Repealed 216.

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 237, Amended 0, Repealed 216.

Date Adopted: September 24, 2008.

Robin Arnold-Williams
Secretary

Chapter 388-97 WAC

NURSING HOMES

SUBCHAPTER I

RESIDENT RIGHTS, CARE AND RELATED SERVICES

Definitions

NEW SECTION

WAC 388-97-0001 Definitions. "Abandonment" means action or inaction by an individual or entity with a duty of care for a vulnerable adult that leaves the vulnerable individual without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult. 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. Abuse

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

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

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

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

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

"Administrative hearing" is a formal hearing proceeding before a state administrative law judge that gives:

(1) A licensee an opportunity to be heard in disputes about licensing actions, including the imposition of remedies, taken by the department; or

(2) An individual an opportunity to appeal a finding of abandonment, abuse, neglect, financial exploitation of a resident, or misappropriation of a resident's funds.

"Administrative law judge (ALJ)" means an impartial decision-maker who presides over an administrative hearing. ALJs are employed by the office of administrative hearings (OAH), which is a separate state agency. ALJs are not DSHS employees or DSHS representatives.

"Administrator" means a nursing home administrator, licensed under chapter 18.52 RCW, who must be in active administrative charge of the nursing home, as that term is defined in the board of nursing home administrator's regulations.

"Advanced registered nurse practitioner (ARNP)" means an individual who is licensed to practice as an advanced registered nurse practitioner under chapter 18.79 RCW.

"Applicant" means an individual, partnership, corporation, or other legal entity seeking a license to operate a nursing home.

"ASHRAE" means the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc.

"Attending physician" means the doctor responsible for a particular individual's total medical care.

"Berm" means a bank of earth piled against a wall.

"Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and is not required to treat the resident's medical symptoms.

"Civil fine" is a civil monetary penalty assessed against a nursing home as authorized by chapters 18.51 and 74.42 RCW. There are two types of civil fines, "per day" and "per instance."

(1) **"Per day fine"** means a fine imposed for each day that a nursing home is out of compliance with a specific requirement. Per day fines are assessed in accordance with WAC 388-97-4580 (1); and

(2) **"Per instance fine"** means a fine imposed for the occurrence of a deficiency.

"Condition on a license" means that the department has imposed certain requirements on a license and the licensee cannot operate the nursing home unless the requirements are observed.

"Deficiency" is a nursing home's failed practice, action or inaction that violates any or all of the following:

(1) Requirements of chapters 18.51 or 74.42 RCW, or the requirements of this chapter; and

(2) In the case of a Medicare and Medicaid contractor, participation requirements under Title XVIII and XIX of the Social Security Act and federal Medicare and Medicaid regulations.

"Deficiency citation" or **"cited deficiency"** means written documentation by the department that describes a nursing home's deficiency(ies); the requirement that the deficiency(ies) violates; and the reasons for the determination of noncompliance.

"Deficient facility practice" or **"failed facility practice"** means the nursing home action(s), error(s), or lack of action(s) that provide the basis for the deficiency.

"Dementia care" means a therapeutic modality or modalities designed specifically for the care of persons with dementia.

"Denial of payment for new admissions" is an action imposed on a nursing home (facility) by the department that prohibits payment for new Medicaid admissions to the nursing home after a specified date. Nursing homes certified to provide Medicare and Medicaid services may also be subjected to a denial of payment for new admissions by the federal Centers for Medicare and Medicaid Services.

"Department" means the state department of social and health services (DSHS).

"Department on-site monitoring" means an optional remedy of on-site visits to a nursing home by department staff according to department guidelines for the purpose of monitoring resident care or services or both.

"Dietitian" means a qualified dietitian. A qualified dietitian is one who is registered by the American Dietetic Association or certified by the state of Washington.

"Disclosure statement" means a signed statement by an individual in accordance with the requirements under RCW 43.43.834. The statement should include a disclosure of whether or not the individual has been convicted of certain crimes or has been found by any court, state licensing board, disciplinary board, or protection proceeding to have neglected, sexually abused, financially exploited, or physically abused any minor or adult individual.

"Drug" means a substance:

(1) Recognized as a drug in the official *United States Pharmacopoeia*, *Official Homeopathic Pharmacopoeia of*

the United States, Official National Formulary, or any supplement to any of them; or

(2) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease.

"Drug facility" means a room or area designed and equipped for drug storage and the preparation of drugs for administration.

"Emergency closure" is an order by the department to immediately close a nursing home.

"Emergency transfer" means immediate transfer of residents from a nursing home to safe settings.

"Entity" means any type of firm, partnership, corporation, company, association, or joint stock association.

"Financial exploitation" means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any individual for his or her profit or advantage.

"Habilitative services" means the planned interventions and procedures which constitute a continuing and comprehensive effort to teach an individual previously undeveloped skills.

"Highest practicable physical, mental, and psychosocial well-being" means providing each resident with the necessary individualized care and services to assist the resident to achieve or maintain the highest possible health, functional and independence level in accordance with the resident's comprehensive assessment and plan of care. Care and services provided by the nursing home must be consistent with all requirements in this chapter, chapters 74.42 and 18.51 RCW, and the resident's informed choices. For Medicaid and Medicare residents, care and services must also be consistent with Title XVIII and XIX of the Social Security Act and federal Medicare and Medicaid regulations.

"Informal department review" is a dispute resolution process that provides an opportunity for the licensee or administrator to informally present information to a department representative about disputed, cited deficiencies. Refer to WAC 388-97-4420.

"Inspection" or **"survey"** means the process by which department staff evaluates the nursing home licensee's compliance with applicable statutes and regulations.

"Intermediate care facility for the mentally retarded (ICF/MR)" means an institution certified under chapter 42 C.F.R., Part 483, Subpart I, and licensed under chapter 18.51 RCW.

"License revocation" is an action taken by the department to cancel a nursing home license in accordance with RCW 18.51.060 and WAC 388-97-4220.

"License suspension" is an action taken by the department to temporarily revoke a nursing home license in accordance with RCW 18.51.060 and this chapter.

"Licensee" means an individual, partnership, corporation, or other legal entity licensed to operate a nursing home.

"Licensed practical nurse" means an individual licensed to practice as a licensed practical nurse under chapter 18.79 RCW;

"Mandated reporter" as used in this chapter means any employee of a nursing home, any health care provider subject to chapter 18.130 RCW, the Uniform Disciplinary Act, and any licensee or operator of a nursing home. Under RCW

74.34.020, mandated reporters also include any employee of the department of social and health services, law enforcement officers, social workers, professional school personnel, individual providers, employees and licensees of boarding home, adult family homes, soldiers' homes, residential habilitation centers, or any other facility licensed by the department, employees of social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agencies, county coroners or medical examiners, or Christian Science practitioners.

"Misappropriation of resident property" means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money.

"NFPA" means National Fire Protection Association, Inc.

"Neglect":

(1) For a nursing home licensed under chapter 18.51 RCW, neglect means that an individual or entity with a duty of care for nursing home residents has:

(a) By a pattern of conduct or inaction, failed to provide goods and services to maintain physical or mental health or to avoid or prevent physical or mental harm or pain to a resident; or

(b) By an act or omission, demonstrated a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the resident's health, welfare, or safety.

(2) For a skilled nursing facility or nursing facility, neglect also means a failure to provide a resident with the goods and services necessary to avoid physical harm, mental anguish, or mental illness.

"Noncompliance" means a state of being out of compliance with state and/or federal requirements for nursing homes/facilities.

"Nursing assistant" means a nursing assistant as defined under RCW 18.88A.020 or successor laws.

"Nursing facility (NF)" or **"Medicaid-certified nursing facility"** means a nursing home that has been certified to provide nursing services to Medicaid recipients under Section 1919(a) of the federal Social Security Act.

"Nursing home" means any facility licensed to operate under chapter 18.51 RCW.

"Officer" means an individual serving as an officer of a corporation.

"Owner of five percent or more of the assets of a nursing home" means:

(1) The individual, and if applicable, the individual's spouse, who operates, or is applying to operate, the nursing home as a sole proprietorship;

(2) In the case of a corporation, the owner of at least five percent of the shares or capital stock of the corporation; or

(3) In the case of other types of business entities, the owner of a beneficial interest in at least five percent of the capital assets of an entity.

"Partner" means an individual in a partnership owning or operating a nursing home.

"Person" means any individual, firm, partnership, corporation, company, association or joint stock association.

"Pharmacist" means an individual licensed by the Washington state board of pharmacy under chapter 18.64 RCW.

"Pharmacy" means a place licensed under chapter 18.64 RCW where the practice of pharmacy is conducted.

"Physical restraint" means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily, and which restricts freedom of movement or access to the resident's body.

"Physician's assistant (PA)" means a physician's assistant as defined under chapter 18.57A or 18.71A RCW or successor laws.

"Plan of correction" is a nursing home's written response to cited deficiencies that explains how it will correct the deficiencies and how it will prevent their reoccurrence.

"Reasonable accommodation" and **"reasonably accommodate"** has the meaning given in federal and state anti-discrimination laws and regulations. For the purpose of this chapter:

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

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

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

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

(2) Reasonable accommodations are not required if:

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

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

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

"Receivership" is established by a court action and results in the removal of a nursing home's current licensee and the appointment of a substitute licensee to temporarily operate the nursing home.

"Recurring deficiency" means a deficiency that was cited by the department, corrected by the nursing home, and then cited again within fifteen months of the initial deficiency citation.

"Registered nurse" means an individual licensed to practice as a registered nurse under chapter 18.79 RCW.

"Rehabilitative services" means the planned interventions and procedures which constitute a continuing and comprehensive effort to restore an individual to the individual's former functional and environmental status, or alternatively, to maintain or maximize remaining function.

"Resident" generally means an individual residing in a nursing home. Except as specified elsewhere in this chapter, for decision-making purposes, the term "resident" includes the resident's surrogate decision maker acting under state law. The term resident excludes outpatients and individuals receiving adult day or night care, or respite care.

"Resident care unit" means a functionally separate unit including resident rooms, toilets, bathing facilities, and basic service facilities.

"Respiratory isolation" is a technique or techniques instituted to prevent the transmission of pathogenic organisms by means of droplets and droplet nuclei coughed, sneezed, or breathed into the environment.

"Siphon jet clinic service sink" means a plumbing fixture of adequate size and proper design for waste disposal with siphon jet or similar action sufficient to flush solid matter of at least two and one-eighth inches in diameter.

"Skilled nursing facility (SNF)" or **"Medicare-certified skilled nursing facility"** means a nursing home that has been certified to provide nursing services to Medicare recipients under Section 1819(a) of the federal Social Security Act.

"Social/therapeutic leave" means leave which is for the resident's social, emotional, or psychological well-being; it does not include medical leave.

"Staff work station" means a location at which nursing and other staff perform charting and related activities throughout the day.

"Stop placement" or **"stop placement order"** is an action taken by the department prohibiting nursing home admissions, readmissions, and transfers of patients into the nursing home from the outside.

"Substantial compliance" means the nursing home has no deficiencies higher than severity level 1 as described in WAC 388-97-4500, or for Medicaid certified facility, no deficiencies higher than a scope and severity "C."

"Surrogate decision maker" means a resident representative or representatives as outlined in WAC 388-97-0240, and as authorized by RCW 7.70.065.

"Survey" means the same as **"inspection"** as defined in this section.

"Temporary manager" means an individual or entity appointed by the department to oversee the operation of the nursing home to ensure the health and safety of its residents, pending correction of deficiencies or closure of the facility.

"Termination" means an action taken by:

(1) The department, or the nursing home, to cancel a nursing home's Medicaid certification and contract; or

(2) The department of health and human services Centers for Medicare and Medicaid Services, or the nursing home, to cancel a nursing home's provider agreement to provide services to Medicaid or Medicare recipients, or both.

"Toilet room" means a room containing at least one toilet fixture.

"Uncorrected deficiency" is a deficiency that has been cited by the department and that is not corrected by the licensee by the time the department does a revisit.

"Violation" means the same as **"deficiency"** as defined in this section.

"Volunteer" means an individual who is a regularly scheduled individual not receiving payment for services and having unsupervised access to a nursing home resident.

"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, including any boarding home; 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; or

(7) With a functional disability who lives in his or her own home, who is directing and supervising a paid personal aide to perform a health care task as authorized by RCW 74.39.050.

"Whistle blower" means a resident, employee of a nursing home, or any person licensed under Title 18 RCW, who in good faith reports alleged abandonment, abuse, financial exploitation, or neglect to the department, the department of health or to a law enforcement agency.

Admission, Transfer and Discharge

NEW SECTION

WAC 388-97-0020 Nursing facility care. The nursing facility must provide items, care, and services in accordance with this chapter and with federal regulations under 42 C.F.R. § 483.1 through 483.206, or successor laws, and other applicable federal requirements.

NEW SECTION

WAC 388-97-0040 Discrimination prohibited. (1) A nursing facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services covered under the state Medicaid plan for all individuals regardless of source of payment.

(2) A nursing facility must not require or request:

(a) Residents or potential residents to waive their rights to Medicare or Medicaid;

(b) Oral or written assurance that residents or potential residents are not eligible for, or will not apply for Medicare or Medicaid benefits; and

(c) A third party guarantee of payment to the facility as a condition of admission or expedited admission, or continued stay in the facility. However, the facility may require an individual who has legal access to a resident's income or resources available to pay for facility care to sign a contract, without incurring personal financial liability, to provide facility payment from the resident's income or resources.

(3) A nursing facility must inform, in writing, a prospective resident, and where applicable, the resident's representative, before or at the time of admission, that a third party may not be required or requested to personally guarantee payment to the nursing home, as specified in subsection (2)(c) of this section.

(4) A nursing facility must readmit a resident, who has been hospitalized or on therapeutic leave, immediately to the first available bed in a semiprivate room if the resident:

(a) Requires the services provided by the facility; and

(b) Is eligible for Medicaid nursing facility services.

(5) A nursing facility must not:

(a) Deny or delay admission or readmission of an individual to the facility because of the individual's status as a Medicaid recipient;

(b) Transfer a resident, except from a single room to another room within the facility, because of the resident's status as a Medicaid recipient;

(c) Discharge a resident from a facility because of the resident's status as a Medicaid recipient; or

(d) Charge Medicaid recipients any amounts in excess of the Medicaid rate from the date of eligibility, except for any supplementation that may be permitted by department regulation.

(6) A nursing facility must maintain only one list of names of individuals seeking admission to the facility, which is ordered by the date of request for admission, and must:

(a) Offer admission to individuals in the order they appear on the list, except as provided in subsection (7), as long as the facility can meet the needs of the individual with available staff or through the provision of reasonable accommodations required by state or federal laws;

(b) Retain the list of individuals seeking admission for one year from the month admission was requested; and

(c) Offer admission to the portions of the facility certified under Medicare and Medicaid without discrimination against persons eligible for Medicaid, except as provided in subsection (7).

(7) A nursing facility is permitted to give preferential admission to individuals who seek admission from a boarding home, licensed under chapter 18.20 RCW, or from independent retirement housing, if:

(a) The nursing facility is owned by the same entity that owns the boarding home or independent housing; and

(b) They are located within the same proximate geographic area; and

(c) The purpose of the preferential admission is to allow continued provision of culturally or faith-based services, or services provided by a continuing care retirement community as defined in RCW 74.38.025.

(8) A nursing facility must develop and implement written policies and procedures to ensure nondiscrimination in accordance with this section and RCW 74.42.055.

NEW SECTION

WAC 388-97-0060 Nursing facility admission and payment requirements. Refer to WAC 388-106-0350 through 388-106-0360

NEW SECTION

WAC 388-97-0080 Discharge planning. (1) A resident has the right to attain or maintain the highest practicable physical, mental, and psychosocial well-being, and to reside in the most independent setting. Therefore, the nursing home must:

(a) Utilize a formal resident discharge planning system with identical policies and practices for all residents regardless of source of payment;

(b) Inform the resident or resident's representative in writing of the nursing home's discharge planning system

when the resident is admitted or as soon as practical after the resident's admission, including:

(i) Specific resources available to assist the resident in locating a lesser care setting;

(ii) The name of the nursing home's discharge coordinator(s);

(iii) In the case of a Medicaid certified nursing facility, the address and telephone number for the department's local home and community services office; and

(iv) In the case of a resident identified through pre-admission screening and resident review (PASRR) as having a developmental disability or mental illness, the address and telephone number for the division of developmental disabilities or the mental health PASRR contractor.

(2) The nursing home must prepare a detailed, written transfer or discharge plan for each resident determined to have potential for transfer or discharge within the next three months. The nursing home must:

(a) Develop and implement the plan with the active participation of the resident and, where appropriate, the resident's representative;

(b) In the case of a Medicaid resident, coordinate the plan with the department's home and community services staff;

(c) In the case of a resident identified through PASRR as having a developmental disability or mental illness, coordinate the plan with the division of developmental disabilities or the mental health PASRR contractor;

(d) Ensure the plan is an integral part of the resident's comprehensive plan of care and, as such, includes measurable objectives and timetables for completion;

(e) Incorporate in the plan relevant factors to include, but not be limited to the:

(i) Resident's preferences;

(ii) Support system;

(iii) Assessments and plan of care; and

(iv) Availability of appropriate resources to match the resident's preferences and needs.

(f) Identify in the plan specific options for more independent placement; and

(g) Provide in the plan for the resident's continuity of care, and to reduce potential transfer trauma, including, but not limited to, pretransfer visit to the new location whenever possible.

(3) For a resident whose transfer or discharge is not anticipated in the next three months, the nursing home must:

(a) Document the specific reasons transfer or discharge is not anticipated in that time frame; and

(b) Review the resident's potential for transfer or discharge at the time of the quarterly comprehensive plan of care review. If the reasons documented under subsection (3)(a) of this section are unchanged, no additional documentation of reasons is necessary at the time of plan of care review.

(4) The nursing home must initiate discharge planning on residents described in subsection (3) of this section:

(a) At the request of the resident or the resident's representative; and

(b) When there is a change in the resident's situation or status which indicates a potential for transfer or discharge within the next three months.

(5) Each resident has the right to request transfer or discharge and to choose a new location. If the resident chooses to leave, the nursing home must assist with and coordinate the resident's transfer or discharge. The Medicaid resident, resident's representative, or nursing facility may request assistance from the department's home and community services or, where applicable, the division of developmental disabilities or mental health in the transfer or discharge planning and implementation process.

(6) The nursing home must coordinate all resident transfers and discharges with the resident, the resident's representative and any other involved individual or entity.

(7) When a nursing home anticipates discharge, a resident must have a discharge summary that includes:

(a) A recapitulation of the resident's stay;

(b) A final summary of the resident's status to include items in WAC 388-97-1000(1), at the time of discharge that is available for release to authorized individuals and agencies, with the consent of the resident or and surrogate decision maker; and

(c) A postdischarge plan of care that is developed with the participation of the resident and his or her family, which will assist the resident to adjust to his or her new living environment.

NEW SECTION

WAC 388-97-0100 Utilization review. (1) To assure appropriate use of Medicaid services, the nursing facility must determine whether each Medicaid resident's health has improved sufficiently so the resident no longer needs nursing facility care.

(a) The nursing facility must base its determination on:

(i) An accurate, comprehensive assessment process; and

(ii) Documentation by the resident's physician.

(b) The nursing facility must not make this determination for residents the department is responsible to assess under WAC 388-97-1960.

(2) When the nursing facility determines a resident no longer needs nursing facility care under subsection (1) of this section, the nursing facility must initiate transfer or discharge in accordance with WAC 388-97-0120, 388-97-0140, and 42 C.F.R. § 483.12, or successor laws, unless the resident voluntarily chooses to transfer or discharge.

(3) When a nursing facility initiates a transfer or discharge of a Medicaid recipient under subsection (2) of this section:

(a) The resident will be ineligible for Medicaid nursing facility payment:

(i) Thirty days after the receipt of written notice of transfer or discharge; or

(ii) If the resident appeals the facility determination, thirty days after the final order is entered upholding the nursing home's decision to transfer or discharge a resident.

(b) The department's home and community services may grant extension of a resident's Medicaid nursing facility payment after the time specified in subsection (3)(a) of this section, when the department's home and community services staff determine:

- (i) The nursing facility is making a good faith effort to relocate the resident; and
 - (ii) A location appropriate to the resident's medical and other needs is not available.
- (4) Department designees may review any assessment or determination made by a nursing facility of a resident's need for nursing facility care.

NEW SECTION

WAC 388-97-0120 Individual transfer and discharge rights and procedures. (1) The skilled nursing facility and nursing facility must comply with all of the requirements of 42 C.F.R. § 483.10 and § 483.12, and RCW 74.42.450, or successor laws, and the nursing home must comply with all of the requirements of RCW 74.42.450 (1) through (4) and (7), or successor laws, including the following provisions and must not transfer or discharge any resident unless:

- (a) At the resident's request;
- (b) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
- (c) The transfer or discharge is appropriate because the resident's health has improved enough so the resident no longer needs the services provided by the facility;
- (d) The safety of individuals in the facility is endangered;
- (e) The health of individuals in the facility would otherwise be endangered; or
- (f) The resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility.

(2) The following notice requirements apply if a nursing home/facility initiates the transfer or discharge of a resident. The notice must:

- (a) Include all information required by 42 C.F.R. § 483.12 when given in a nursing facility;
- (b) Be in writing, in language the resident understands;
- (c) Be given to the resident, the resident's surrogate decision maker, if any, the resident's family and to the department;

(d) Be provided thirty days in advance of a transfer or discharge initiated by the nursing facility, except that the notice may be given as soon as practicable when the facility cannot meet the resident's urgent medical needs, or under the conditions described in (1)(c), (d), and (e) of this section; and

(e) Be provided fifteen days in advance of a transfer or discharge initiated by the nursing home, unless the transfer is an emergency.

(3) The nursing home must:

(a) Provide sufficient preparation and orientation to the resident to ensure safe and orderly transfer or discharge from the nursing home;

(b) Attempt to avoid the transfer or discharge of a resident from the nursing home through the use of reasonable accommodations unless agreed to by the resident and the requirements of WAC 388-97-0080 are met; and

(c) Develop and implement a bed-hold policy. This policy must be consistent with any bed-hold policy that the department develops.

(4) The nursing home must provide the bed-hold policy, in written format, to the resident, and a family member, before the resident is transferred or goes on therapeutic leave. At a minimum the policy must state:

(a) The number of days, if any, the nursing home will hold a resident's bed pending return from hospitalization or social/therapeutic leave;

(b) That a Medicaid eligible resident, whose hospitalization or social/therapeutic leave exceeds the maximum number of bed-hold days will be readmitted to the first available semi-private bed, provided the resident needs nursing facility services. Social/therapeutic leave is defined under WAC 388-97-0001. The number of days of social/therapeutic leave allowed for Medicaid residents and the authorization process is found under WAC 388-97-0160; and

(c) That a Medicaid eligible resident may be charged if he or she requests that a specific bed be held, but may not be charged a bed-hold fee for the right to return to the first available bed in a semi-private room.

(5) The nursing facility must send a copy of the federally required transfer or discharge notice to:

(a) The department's home and community services when the nursing home has determined under WAC 388-97-0100, that the Medicaid resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility; and

(b) The department's designated local office when the transfer or discharge is for any of the following reasons:

- (i) The resident's needs cannot be met in the facility;
- (ii) The health or safety of individuals in the facility is endangered; or

(iii) The resident has failed to pay for, or to have paid under Medicare or Medicaid, a stay at the facility.

NEW SECTION

WAC 388-97-0140 Transfer and discharge appeals for resident in medicare or medicaid certified facilities.

(1) A skilled nursing facility and a nursing facility that initiates transfer or discharge of any resident, regardless of payor status, must:

(a) Provide the required written notice of transfer or discharge to the resident and, if known or appropriate, to a family member or the resident's representative;

(b) Attach a department-designated hearing request form to the transfer or discharge notice;

(c) Inform the resident in writing, in a language and manner the resident can understand, that:

(i) An appeal request may be made any time up to ninety days from the date the resident receives the notice of transfer or discharge; and

(ii) Transfer or discharge will be suspended when an appeal request is received by the office of administrative hearings on or before the date the resident actually transfers or discharges; and

(iii) The nursing home will assist the resident in requesting a hearing to appeal the transfer or discharge decision.

(2) A skilled nursing facility or nursing facility must suspend transfer or discharge pending the outcome of the hearing when the resident's appeal is received by the office of

administrative hearings on or before the date of the transfer or discharge set forth in the written transfer or discharge notice, or before the resident is actually transferred or discharged.

(3) The resident is entitled to appeal the skilled nursing facility or nursing facility's transfer or discharge decision. The appeals process is set forth in chapter 388-02 WAC and this chapter. In such appeals, the following will apply:

(a) In the event of a conflict between a provision in this chapter and a provision in chapter 388-02 WAC, the provision in this chapter will prevail;

(b) The resident must be the appellant and the skilled nursing facility or the nursing facility will be the respondent;

(c) The department must be notified of the appeal and may choose whether to participate in the proceedings. If the department chooses to participate, its role is to represent the state's interest in assuring that skilled nursing facility and nursing facility transfer and discharge actions comply substantively and procedurally with the law and with federal requirements necessary for federal funds;

(d) If a Medicare certified or Medicaid certified facility's decision to transfer or discharge a resident is not upheld, and the resident has been relocated, the resident has the right to readmission immediately upon the first available bed in a semi-private room if the resident requires and is eligible for the services provided by a nursing facility or skilled nursing facility;

(e) Any review of the administrative law judge's initial decision shall be conducted under WAC 388-02-0600(1).

NEW SECTION

WAC 388-97-0160 Discharge or leave of a nursing facility resident. (1) A nursing facility must send immediate written notification of the date of discharge or death of a Medicaid resident to the department's local home and community service office.

(2) The nursing facility must:

(a) Notify the department of nursing facility discharge and readmission for all Medicaid recipients admitted as hospital inpatients; and

(b) Document in the resident's clinical record all social/therapeutic leave exceeding twenty-four hours.

(3) The department will pay the nursing facility for a Medicaid resident's social/therapeutic leave not to exceed a total of eighteen days per calendar year per resident.

(4) The department's home and community services may authorize social/therapeutic leave exceeding eighteen days per calendar year per resident when requested by the nursing facility or by the resident. In the absence of prior authorization from the department's home and community services, the department will not make payment to a nursing facility for leave days exceeding eighteen per calendar year per resident.

(5) An individual who is on social/therapeutic leave retains the status of a nursing facility resident.

Resident Rights

NEW SECTION

WAC 388-97-0180 Resident rights. (1) The nursing home must meet the resident rights requirements of this section and those in the rest of the chapter.

(2) The resident has a right to a dignified existence, self-determination, and communication with, and access to individuals and services inside and outside the nursing home.

(3) A nursing home must promote and protect the rights of each resident, including those with limited cognition or other barriers that limit the exercise of rights.

(4) The resident has the right to:

(a) Exercise his or her rights as a resident of the nursing home and as a citizen or resident of the United States. Refer to WAC 388-97-0240;

(b) Be free of interference, coercion, discrimination, and reprisal from the nursing home in exercising his or her rights; and

(c) Not be asked or required to sign any contract or agreement that includes provisions to waive:

(i) Any resident right set forth in this chapter or in the applicable licensing or certification laws; or

(ii) Any potential liability for personal injury or losses of personal property.

(5) The nursing home must take steps to safeguard residents and their personal property from foreseeable risks of injury or loss.

NEW SECTION

WAC 388-97-0200 Free choice. The resident has the right to:

(1) Choose a personal attending physician.

(2) Be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being.

(3) Participate in planning care and treatment or changes in care and treatment.

NEW SECTION

WAC 388-97-0220 Statute implemented in resident decision making, informed consent, and advance directives. WAC 388-97-0240, 388-97-0260, and 388-97-0280 implement the federal Patient Self-Determination Act and clarify requirements under chapters 11.94, 7.70, 70.122, 11.88 and 11.92 RCW.

NEW SECTION

WAC 388-97-0240 Resident decision making. (1) At the time of admission, or not later than the completion of the initial comprehensive resident assessment, the nursing home must determine if the resident:

(a) Has appointed another individual to make his or her health care, financial, or other decisions;

(b) Has created any advance directive or other legal documents that will establish a surrogate decision maker in the future; and

(c) Is not making his or her own decisions, and identify who has the authority for surrogate decision making, and the scope of the surrogate decision maker's authority.

(2) The nursing home must review the requirements of (1) of this section when the resident's condition warrants the review or when there is a significant change in the resident's condition.

(3) In fulfilling its duty to determine who, if anyone, is authorized to make decisions for the resident, the nursing home must:

(a) Obtain copies of the legal documents that establish the surrogate decision maker's authority to act; and

(b) Document in the resident's clinical record:

(i) The name, address, and telephone number of the individual who has legal authority for substitute decision making;

(ii) The type of decision making authority such individual has; and

(iii) Where copies of the legal documents are located at the facility.

(4) In accordance with state law or at the request of the resident, the resident's surrogate decision maker is, in the case of:

(a) A capacitated resident, the individual authorized by the resident to make decisions on the resident's behalf;

(b) A resident adjudicated by a court of law to be incapacitated, the court appointed guardian; and

(c) A resident who has been determined to be incapacitated, but is not adjudicated incapacitated established through:

(i) A legal document, such as a durable power of attorney for health care; or

(ii) Authority for substitute decision making granted by state law, including RCW 7.70.065.

(5) Determination of an individual's incapacity must be a process according to state law not a medical diagnosis only and be based on:

(a) Demonstrated inability in decision making over time that creates a significant risk of personal harm;

(b) A court order; or

(c) The criteria contained in a legal document, such as durable power of attorney for health care.

(6) The nursing home must promote the resident's right to exercise decision making and self-determination to the fullest extent possible, taking into consideration his or her ability to understand and respond. Therefore, the nursing home must presume that the resident is the resident's own decision maker unless:

(a) A court has established a full guardianship of the individual;

(b) The capacitated resident has clearly and voluntarily appointed a surrogate decision maker;

(c) A surrogate is established by a legal document such as a durable power of attorney for health care; or

(d) The facility determines that the resident is an incapacitated individual according to RCW 11.88.010 and (5)(a) of this section.

(7) The nursing home must honor the exercise of the resident's rights by the surrogate decision maker as long as the surrogate acts in accordance with this section and with state and federal law which govern his or her appointment.

(8) If a surrogate decision maker exercises a resident's rights, the nursing home must take into consideration the resident's ability to understand and respond and must:

(a) Inform the resident that a surrogate decision maker has been consulted;

(b) Provide the resident with the information and opportunity to participate in all decision making to the maximum extent possible; and

(c) Recognize that involvement of a surrogate decision maker does not lessen the nursing home's duty to:

(i) Protect the resident's rights; and

(ii) Comply with state and federal laws.

(9) The nursing home must:

(a) Regularly review any determination of incapacity based on (4)(b) and (c) of this section;

(b) Except for residents with a guardian, cease to rely upon the surrogate decision maker to exercise the resident's rights, if the resident regains capacity, unless so designated by the resident or by court order; and

(c) In the case of a guardian notify the court of jurisdiction in writing if:

(i) The resident regains capacity;

(ii) The guardian is not respecting or promoting the resident's rights;

(iii) The guardianship should be modified; or

(iv) A different guardian needs to be appointed.

NEW SECTION

WAC 388-97-0260 Informed consent. (1) The nursing home must ensure that the informed consent process is followed with:

(a) The resident to the maximum extent possible, taking into consideration his or her ability to understand and respond; and

(b) The surrogate decision maker when the resident is determined to be incapacitated as established through the provision of a legal document such as durable power of attorney for health care, a court proceeding, or as authorized by state law, including RCW 7.70.065. The surrogate decision maker must:

(i) First determine if the resident would consent or refuse the proposed or alternative treatment;

(ii) Discuss determination of consent or refusal with the resident whenever possible; and

(iii) When a determination of the resident's consent or refusal of treatment cannot be made, make the decision in the best interest of the resident.

(2) The informed consent process must include, in words and language that the resident, or if applicable the resident's surrogate decision maker, understands, a description of:

(a) The nature and character of the proposed treatment;

(b) The anticipated results of the proposed treatment;

(c) The recognized possible alternative forms of treatment;

(d) The recognized serious possible risks, complications, and anticipated benefits involved in the treatment and in the recognized possible alternative forms of treatment including nontreatment; and

(e) The right of the resident to choose not to be informed.

(3) To ensure informed consent or refusal by a resident, or if applicable the resident's surrogate decision maker, regarding plan or care options, the nursing home must:

(a) Provide the informed consent process to the resident in a neutral manner and in a language, words, and manner the resident can understand;

(b) Inform the resident of the right to consent to or refuse care and service options at the time of resident assessment and plan of care development (see WAC 388-97-1000 and 388-97-1020 and with condition changes, as necessary to ensure that the resident's wishes are known);

(c) Inform the resident at the time of initial plan of care decisions and periodically of the right to change his or her mind about an earlier consent or refusal decision;

(d) Ensure that evidence of informed consent or refusal is consistent with WAC 388-97-1000 and 388-97-1020; and

(e) Where appropriate, include evidence of resident's choice not to be informed as required in subsections (2) and (3) of this section.

NEW SECTION

WAC 388-97-0280 Advance directives. (1) "**Advance directive**" as used in this chapter means any document indicating a resident's choice with regard to a specific service, treatment, medication or medical procedure option that may be implemented in the future such as power of attorney, health care directive, limited or restricted treatment cardiopulmonary resuscitation (CPR), do not resuscitate (DNR), and organ tissue donation.

(2) The nursing home must carry out the provisions of this section in accordance with the applicable provisions of WAC 388-97-0240 and 388-97-0260, and with state law.

(3) The nursing home must:

(a) Document in the clinical record whether or not the resident has an advance directive;

(b) Not request or require the resident to have any advance directives and not condition the provision of care or otherwise discriminate against a resident on the basis of whether or not the resident has executed an advance directive;

(c) In a language and words the resident understands, inform the resident in writing and orally at the time of admission, and thereafter as necessary to ensure the resident's right to make informed choices, about:

(i) The right to make health care decisions, including the right to change his or her mind regarding previous decisions;

(ii) Nursing home policies and procedures concerning implementation of advance directives, including how the nursing home implements emergency responses; and

(d) Review and update as needed the resident advance directive information:

(i) At the resident's request;

(ii) When the resident's condition warrants review; and

(iii) When there is a significant change in the resident's condition.

(4) When the nursing home becomes aware that a resident's health care directive is in conflict with facility practices and policies which are consistent with state and federal law, the nursing home must:

(a) Inform the resident of the existence of any nursing home practice or policy which would preclude implementing the health care directive;

(b) Provide the resident with written policies and procedures that explain under what circumstances a resident's health care directive will or will not be implemented by the nursing home;

(c) Meet with the resident to discuss the conflict; and

(d) Determine, in light of the conflicting practice or policy, whether the resident chooses to remain at the nursing home;

(i) If the resident chooses to remain in the nursing home, develop with the resident a plan in accordance with chapter 70.122 RCW to implement the resident's wishes. The nursing home may need to actively participate in ensuring the execution of the plan, including moving the resident at the time of implementation to a care setting that will implement the resident's wishes. Attach the plan to the resident's directive in the resident's clinical record; or

(ii) If, after recognizing the conflict between the resident's wishes and nursing home practice or policy the resident chooses to seek other long-term care services, or another physician who will implement the directive, the nursing home must assist the resident in locating other appropriate services.

(5) If a terminally ill resident, in accordance with state law, wishes to die at home, the nursing home must:

(a) Use the informed consent process as described in WAC 388-97-0260, and explain to the resident the risks associated with discharge; and

(b) Discharge the resident as soon as reasonably possible.

NEW SECTION

WAC 388-97-0300 Notice of rights and services. (1) The nursing home must provide the resident, before admission, or at the time of admission in the case of an emergency, and as changes occur during the resident's stay, both orally and in writing and in language and words that the resident understands, with the following information:

(a) All rules and regulations governing resident conduct, resident's rights and responsibilities during the stay in the nursing home;

(b) Advanced directives, and of any nursing home policy or practice that might conflict with the resident's advance directive if made;

(c) Advance notice of transfer requirements, consistent with RCW 70.129.110;

(d) Advance notice of deposits and refunds, consistent with RCW 70.129.150; and

(e) Items, services and activities available in the nursing home and of charges for those services, including any charges for services not covered under Medicare or Medicaid or by the home's per diem rate.

(2) The resident has the right:

(a) Upon an oral or written request, to access all records pertaining to the resident including clinical records within twenty-four hours; and

(b) After receipt of his or her records for inspection, to purchase at a cost not to exceed twenty-five cents a page, photocopies of the records or any portions of them upon request and two working days advance notice to the nursing home. For the purposes of this chapter, "**working days**" means Monday through Friday, except for legal holidays.

(3) The resident has the right to:

(a) Be fully informed in words and language that he or she can understand of his or her total health status, including, but not limited to, his or her medical condition;

(b) Accept or refuse treatment; and

(c) Refuse to participate in experimental research.

(4) The nursing home must inform each resident:

(a) Who is entitled to Medicaid benefits, in writing, prior to the time of admission to the nursing facility or, when the resident becomes eligible for Medicaid of the items, services and activities:

(i) That are included in nursing facility services under the Medicaid state plan and for which the resident may not be charged; and

(ii) That the nursing home offers and for which the resident may be charged, and the amount of charges for those services.

(b) That deposits, admission fees and prepayment of charges cannot be solicited or accepted from Medicare or Medicaid eligible residents; and

(c) That minimum stay requirements cannot be imposed on Medicare or Medicaid eligible residents.

(5) The nursing home must, except for emergencies, inform each resident in writing, thirty days in advance before changes are made to the availability or charges for items, services or activities specified in section (4)(a)(i) and (ii), or before changes to the nursing home rules.

(6) The private pay resident has the right to the following, regarding fee disclosure-deposits:

(a) Prior to admission, a nursing home that requires payment of an admission fee, deposit, or a minimum stay fee, by or on behalf of an individual seeking admission to the nursing home, must provide the individual:

(i) Full disclosure in writing in a language the potential resident or his representative understands:

(A) Of the nursing home's schedule of charges for items, services, and activities provided by the nursing home; and

(B) Of what portion of the deposits, admissions fees, pre-paid charges or minimum stay fee will be refunded to the resident if the resident leaves the nursing home.

(ii) The amount of any admission fees, deposits, or minimum stay fees.

(iii) If the nursing home does not provide these disclosures, the nursing home must not keep deposits, admission fees, prepaid charges or minimum stay fees.

(b) If a resident dies or is hospitalized or is transferred and does not return to the nursing home, the nursing home:

(i) Must refund any deposit or charges already paid, less the home's per diem rate, for the days the resident actually resided or reserved or retained a bed in the nursing home, regardless of any minimum stay or discharge notice requirements; except that

(ii) The nursing home may retain an additional amount to cover its reasonable, actual expenses incurred as a result of a

private pay resident's move, not to exceed five days per diem charges, unless the resident has given advance notice in compliance with the admission agreement.

(c) The nursing home must refund any and all refunds due the resident within thirty days from the resident's date of discharge from the nursing home; and

(d) Where the nursing home requires the execution of an admission contract by or on behalf of an individual seeking admission to the nursing home, the terms of the contract must be consistent with the requirements of this section.

(7) The nursing home must furnish a written description of legal rights which includes:

(a) A description of the manner of protecting personal funds, under WAC 388-97-0340;

(b) In the case of a nursing facility only, a description of the requirements and procedures for establishing eligibility for Medicaid, including the right to request an assessment which determines the extent of a couple's nonexempt resources at the time of institutionalization and attributes to the community spouse an equitable share of resources which cannot be considered available for payment toward the cost of the institutionalized spouse's medical care in his or her process of spending down to Medicaid eligibility levels;

(c) A posting of names, addresses, and telephone numbers of all relevant state client advocacy groups such as the state survey and certification agency, the state licensure office, the state ombudsman program, the protection and advocacy network, and the Medicaid fraud control unit; and

(d) A statement that the resident may file a complaint with the state survey and certification agency concerning resident abandonment, abuse, neglect, financial exploitation, and misappropriation of resident property in the nursing home.

(8) The nursing home must:

(a) Inform each resident of the name, and specialty of the physician responsible for his or her care; and

(b) Provide a way for each resident to contact his or her physician.

(9) The skilled nursing facility and nursing facility must prominently display in the facility written information, and provide to residents and individuals applying for admission oral and written information, about how to apply for and use Medicare and Medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

(10) The written information provided by the nursing home pursuant to this section, and the terms of any admission contract executed between the nursing home and an individual seeking admission to the nursing home, must be consistent with the requirements of chapters 74.42 and 18.51 RCW and, in addition, for facilities certified under Medicare or Medicaid, with the applicable federal requirements.

NEW SECTION

WAC 388-97-0320 Notification of changes. (1) A nursing home must immediately inform the resident, consult with the resident's physician, and if known, notify the resident's surrogate decision maker, and when appropriate, with resident consent, interested family member(s) when there is:

(a) An accident involving the resident which results in injury and has the potential for requiring physician intervention;

(b) A significant change in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental, or psychological status in either life-threatening conditions or clinical complications); refer to WAC 388-97-0240;

(c) A need to alter treatment significantly (i.e., a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or

(d) A decision to transfer or discharge the resident from the facility.

(2) The nursing home must also promptly notify the resident and, if known, the resident's surrogate decision maker, and when appropriate, with the resident's consent, interested family member(s) when there is:

(a) A change in room or roommate assignment, refer to the timing requirements in WAC 388-97-0580; or

(b) A change in resident rights under federal or state law or regulations as specified in WAC 388-97-0300.

(3) The nursing home must record and periodically update the address and phone number of the resident's legal surrogate decision maker and interested family member(s).

NEW SECTION

WAC 388-97-0340 Protection of resident funds. (1)

The resident has the right to manage his or her financial affairs and the nursing home may not require residents to deposit their personal funds with the nursing home.

(2) Upon written authorization of a resident, the nursing home must hold, safeguard, manage and account for the personal funds of the resident deposited with the nursing home.

(3) The nursing home must establish and maintain a system that assures a full, complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the nursing home on the resident's behalf and must:

(a) Deposit any resident's personal funds in excess of fifty dollars, one hundred dollars for Medicare residents, in an interest-bearing resident personal fund account or accounts, separate from any nursing home operating accounts, and credit all interest earned to the account;

(b) Keep personal funds under fifty dollars, one hundred dollars for Medicare residents, in a noninterest-bearing account or petty cash fund maintained for residents; and

(c) Make the individual financial record available to the resident or his or her surrogate decision maker through quarterly statements and on request.

(4) The nursing facility must notify each resident that receives Medicaid benefits:

(a) When the amount in the resident's account reaches two hundred dollars less than the SSI resource limit for one individual; and

(b) That if the amount in the account, in addition to the value of the resident's other nonexempt resources, reaches the SSI resource limit for one individual, the resident may lose eligibility for Medicaid or SSI.

(5) The nursing home must convey the resident's funds, and a final accounting of those funds, to the resident or to the

individual or jurisdiction administering the resident's estate, within thirty days of the discharge, transfer or death of any resident with a personal fund deposited with the nursing home. The funds of a deceased Medicaid resident must be sent to the state of Washington, department of social and health services, office of financial recovery.

(6) The nursing facility must purchase a surety bond, or an approved alternative, to assure security of personal funds of residents deposited with the facility.

(7) Medicare certified and Medicaid certified facilities may not impose a charge against a resident's personal funds for any item or service for which payment is made under Medicaid or Medicare as described in 42 C.F.R. § 483.10(c)(8).

(8) Medicare certified and Medicaid certified nursing facilities must:

(a) Not charge a resident (or the resident's representative) for any item or service not requested by the resident;

(b) Not require a resident, or the resident's representative, to request any item or service as a condition of admission or continued stay; and

(c) Inform the resident, or the resident's representative, requesting an item or services for which a charge will be made that there will be a charge for the item or service and what the charge will be.

(9) When a resident's financial eligibility for nursing facility services is established by the department, the facility must refund to the resident:

(a) Any deposit that was required prior to eligibility; and

(b) Any payments for services that will be covered retroactively by Medicaid.

NEW SECTION

WAC 388-97-0360 Privacy and confidentiality. (1)

The resident has the right to personal privacy and confidentiality of his or her personal and clinical records. Personal privacy includes:

(a) Accommodations;

(b) Medical treatment;

(c) Written and telephone communications;

(d) Personal care;

(e) Visits; and

(f) Meetings with family and resident groups.

(2) The resident may approve or refuse the release of personal and clinical records to any individual outside the nursing home, unless the resident has been adjudged incapacitated according to state law.

(3) The resident's right to refuse release of personal and clinical records does not apply when:

(a) The resident is transferred to another health care institution; or

(b) Record release is required by law.

NEW SECTION

WAC 388-97-0380 Electronic monitoring equipment—Audio monitoring and video monitoring. (1)

Except as provided in this section or in WAC 388-97-0400, the nursing home must not use the following in the facility or on the premises:

- (a) Audio monitoring equipment; or
 - (b) Video monitoring equipment if it includes an audio component.
- (2) The nursing home may video monitor and video record activities in the facility or on the premises, without an audio component, only in the following areas:
- (a) Entrances and exits as long as the cameras are:
 - (i) Focused only on the entrance or exit doorways; and
 - (ii) Not focused on areas where residents gather.
 - (b) Areas used exclusively by staff persons such as, medication preparation and storage areas or food preparation areas, if residents do not go into these areas;
 - (c) Outdoor areas not commonly used by residents, such as, but not limited to, delivery areas; and
 - (d) Designated smoking areas, subject to the following conditions:
 - (i) Residents have been assessed as needing supervision for smoking;
 - (ii) A staff person watches the video monitor at any time the area is used by such residents;
 - (iii) The video camera is clearly visible;
 - (iv) The video monitor is not viewable by general public; and
 - (v) The facility notifies all residents in writing of the use of video monitoring equipment.

NEW SECTION

WAC 388-97-0400 Electronic monitoring equipment—Resident requested use. (1) The nursing home must not use audio or video monitoring equipment to monitor any resident unless:

- (a) The resident has requested the monitoring; and
 - (b) The monitoring is only used in the sleeping room of the resident who requested the monitoring.
- (2) If the resident requests audio or video monitoring, before any electronic monitoring occurs, the nursing home must ensure:
- (a) That the electronic monitoring does not violate chapter 9.73 RCW;
 - (b) The resident has identified a threat to the resident's health, safety or personal property;
 - (c) The resident's roommate has provided written consent to electronic monitoring, if the resident has a roommate; and
 - (d) The resident and the nursing home have agreed upon a specific duration for the electronic monitoring and the agreement is documented in writing.
- (3) The nursing home must:
- (a) Re-evaluate the need for the electronic monitoring with the resident at least quarterly; and
 - (b) Have each re-evaluation in writing, signed and dated by the resident.
- (4) The nursing home must immediately stop electronic monitoring if the:
- (a) Resident no longer wants electronic monitoring;
 - (b) Roommate objects or withdraws the consent to the electronic monitoring; or
 - (c) The resident becomes unable to give consent.

(5) For the purposes of consenting to video electronic monitoring without an audio component, the term "resident" includes the resident's surrogate decision maker.

(6) For purpose of consenting to any audio electronic monitoring, the term "resident" includes:

- (a) The individual residing in the nursing home; or
- (b) The resident's court-appointed guardian or attorney-in-fact who has obtained a court order specifically authorizing the court-appointed guardian or attorney-in-fact to consent to audio electronic monitoring of the resident.

(7) If a resident's decision maker consents to audio electronic monitoring as specified in (6) above, the nursing home must maintain a copy of the court order authorizing such consent in the resident's record.

NEW SECTION

WAC 388-97-0420 Work. The resident has the right to:

- (1) Refuse to perform services for the nursing home; and
- (2) Perform services for the nursing home, if he or she chooses, when:
 - (a) The facility has documented the need or desire for work in the plan of care;
 - (b) The plan specifies the nature of the services performed and whether the services are voluntary or paid;
 - (c) Compensation for paid services is at or above prevailing rates; and
 - (d) The resident agrees to the work arrangement described in the plan of care.

NEW SECTION

WAC 388-97-0440 Self-administration of drugs. A resident may self-administer drugs if the interdisciplinary team has determined that this practice is safe.

NEW SECTION

WAC 388-97-0460 Grievance rights. A resident has the right to:

- (1) Voice grievances without discrimination or reprisal. Grievances include those with respect to treatment which has been furnished as well as that which has not been furnished.
- (2) Prompt efforts by the nursing home to resolve voiced grievances, including those with respect to the behavior of other residents.
- (3) File a complaint, contact, or provide information to the department, the long-term care ombudsman, the attorney general's office, and law enforcement agencies without interference, discrimination, or reprisal. All forms of retaliatory treatment are prohibited, including those listed in chapter 74.39A RCW.
- (4) Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.

NEW SECTION

WAC 388-97-0480 Examination of survey results. (1) The resident has the right to examine the results of:

(a) The most recent survey of the nursing home conducted by federal and state surveyors;

(b) Surveys related to any current or subsequent complaint investigation; and

(c) Any required accompanying plan of correction, completed or not.

(2) Upon receipt of any deficiency citation report, the nursing home must publicly post a notice:

(a) That the results of the survey or complaint investigation, or both, are available regardless of whether the plan of correction is completed or not; and

(b) Of the location of the deficiency citation reports.

(3) For a report posted prior to the plan of correction being completed, the nursing home may attach an accompanying notice that explains the purpose and status of the plan of correction, informal dispute review, administrative hearing and other relevant information.

(4) Upon receipt of any citation report, the nursing home must publicly post a copy of the most recent full survey and all subsequent complaint investigation deficiency citation reports, including the completed plans of correction, when one is required.

(5) The notices and any survey reports must be available for viewing or examination in a place or places:

(a) Readily accessible to residents, which does not require staff interventions to access; and

(b) In plain view of the nursing home residents, including individuals visiting those residents, and individuals who inquire about placement in the nursing home.

NEW SECTION

WAC 388-97-0500 Resident mail. The resident has the right and the nursing home must provide immediate access to any resident by the following:

(1) Send and promptly receive mail that is unopened; and

(2) Have access to stationary, postage and writing implements at the resident's own expense.

NEW SECTION

WAC 388-97-0520 Access and visitation rights. (1) The resident has the right and the nursing home must provide immediate access to any resident by the following:

(a) For Medicare and Medicaid residents any representative of the U.S. department of health and human services (DHHS);

(b) Any representative of the state;

(c) The resident's personal physician;

(d) Any representative of the state long term care ombudsman program (established under section 307 (a)(12) of the Older American's Act of 1965);

(e) Any representative of the Washington protection and advocacy system, or any other agency (established under part c of the Developmental Disabilities Assistance and Bill of Rights Act);

(f) Any representative of the Washington protection and advocacy system, or any agency (established under the Protection and Advocacy for Mentally Ill Individuals Act);

(g) Subject to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident; and

(h) Subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, others who are visiting with the consent of the resident.

(2) The nursing home must provide reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(3) The nursing home must allow representatives of the state ombudsman, described in subsection (1)(d) of this section, to examine a resident's clinical records with the permission of the resident or the resident's surrogate decision maker, and consistent with state law. The ombudsman may also, under federal and state law, access resident's records when the resident is incapacitated and has no surrogate decision maker, and may access records over the objection of a surrogate decision maker if access is authorized by the state ombudsman pursuant to 42 U.S.C. § 3058g(b) and RCW 43.190.065.

NEW SECTION

WAC 388-97-0540 Telephone. The resident has the right to have twenty-four hour access to a telephone which:

(1) Provides auditory privacy;

(2) Is accessible to an individual with a disability and accommodates an individual with sensory impairment; and

(3) Does not include the use of telephones in staff offices and at the nurses station(s).

NEW SECTION

WAC 388-97-0560 Personal property. (1) The resident has the right, unless to do so would infringe upon the rights or health and safety of other residents, to:

(a) Retain and use personal possessions, including some furnishings, and appropriate clothing, as space permits;

(b) Provide his or her own bed and other furniture, if desired and space permits; and

(c) Not be required to keep personal property locked in the facility office, safe, or similar arrangement.

(2) The nursing home must:

(a) Not request or require residents to sign waivers of potential liability for losses of personal property; and

(b) Have a system in place to safeguard personal property within the nursing home that protects the personal property and yet allows the resident to use his or her property.

NEW SECTION

WAC 388-97-0580 Roommates/rooms. (1) A resident has the right to:

(a) Share a room with his or her spouse when married residents live in the same facility and both spouses consent to the arrangement; and

(b) Receive three days notice of change in room or roommate except:

(i) For room changes: The move is at the resident's request; and

(ii) For room or roommate changes: A longer or shorter notice is required to protect the health or safety of the resident or another resident; or an admission to the facility is necessary, and the resident is informed in advance. The nursing home must recognize that the change may be traumatic for the resident and take steps to lessen the trauma.

(2) The nursing home must make reasonable efforts to accommodate residents wanting to share the same room.

NEW SECTION

WAC 388-97-0600 Refusal of certain transfers. In dually certified facilities all beds are Medicaid certified. Therefore the beds in a certified distinct part for Medicare are also nursing facility beds for Medicaid.

(1) Each resident has the right to refuse a transfer to another room within the facility, if the purpose of the transfer is to relocate:

(a) A resident from the Medicare distinct part of the facility to a part of the facility that is not a Medicare distinct part; or

(b) A resident from the part of the facility that is not a Medicare distinct part to the Medicare distinct part of the facility.

(2) A resident's exercise of the right to refuse transfer under subsection (1)(a) of this section does not affect the individual's eligibility or entitlement to Medicare or Medicaid benefits.

(3) The skilled nursing facility or nursing facility must inform residents of their rights under subsection (1) and (2) of this section at the time of the proposed transfer or relocation.

NEW SECTION

WAC 388-97-0620 Chemical and physical restraints.

(1) The resident has the right to be free from any physical or chemical restraint imposed for purposes of:

(a) Discipline or convenience, and not required to treat the resident's medical symptoms; or

(b) Preventing or limiting independent mobility or activity.

(2) The nursing home must develop and implement written policies and procedures governing:

(a) The emergency use of restraints;

(b) The use of chemical and physical restraints, required for the treatment of the resident's medical symptoms, not for discipline or convenience;

(c) The personnel authorized to administer restraints in an emergency; and

(d) Monitoring and controlling the use of restraints.

(3) Physical restraints may be used in an emergency only when:

(a) It has been assessed as necessary to prevent a resident from inflicting injury to self or to others;

(b) The restraint is the least restrictive form of restraint possible;

(c) A physician's order is obtained:

(i) Within twenty-four hours; and

(ii) The order includes treatments to assist in resolving the emergency situation and eliminating the need for the restraint.

(d) The resident is released from the restraint as soon as the emergency no longer exists.

(4) In certain situations, chemical or physical restraints may be necessary for residents with acute or chronic mental or physical impairments. When chemical or physical restraints are used the nursing home must ensure that:

(a) The use of the restraint is related to a specific medical need or problem identified through a multidisciplinary assessment;

(b) The informed consent process is followed as described under WAC 388-97-0260; and

(c) The resident's plan of care provides approaches to reduce or eliminate the use of the restraint, where possible.

(5) The nursing home must ensure that any resident physically restrained is released:

(a) At intervals not to exceed two hours; and

(b) For periods long enough to provide for ambulation, exercise, elimination, food and fluid intake, and socialization as independently as possible.

NEW SECTION

WAC 388-97-0640 Prevention of abuse. (1) Each resident has the right to be free from verbal, sexual, physical and mental abuse, corporal punishment, and involuntary seclusion.

(2) The nursing home must develop and implement written policies and procedures that:

(a) Prohibit abandonment, abuse, and neglect of residents, financial exploitation, and misappropriation of resident property; and

(b) Require staff to report possible abuse, and other related incidents, as required by chapter 74.34 RCW, and for skilled nursing facilities and nursing facilities as required by 42 C.F.R. § 483.13.

(3) The nursing home must not allow staff to:

(a) Engage in verbal, mental, sexual, or physical abuse;

(b) Use corporal punishment;

(c) Involuntarily seclude, abandon, neglect, or financially exploit residents; or

(d) Misappropriate resident property.

(4) The nursing home must report any information it has about an action taken by a court of law against an employee to the department's complaint resolution unit and the appropriate department of health licensing authority, if that action would disqualify the individual from employment as described in RCW 43.43.842.

(5) The nursing home must ensure that all allegations involving abandonment, abuse, neglect, financial exploitation, or misappropriation of resident property, including injuries of unknown origin, are reported immediately to the department, other applicable officials, and the administrator of the facility. The nursing home must:

(a) Ensure that the reports are made through established procedures in accordance with state law including chapter 74.34 RCW, and guidelines developed by the department; and

(b) Not have any policy or procedure that interferes with the requirement of chapter 74.34 RCW that employees and other mandatory reporters file reports directly with the

department, and also with law enforcement, if they suspect sexual or physical assault has occurred.

(6) The nursing home must:

(a) Have evidence that all alleged violations are thoroughly investigated;

(b) Prevent further potential abandonment, abuse, neglect, financial exploitation, or misappropriation of resident property while the investigation is in progress; and

(c) Report the results of all investigations to the administrator or his designated representative and to other officials in accordance with state law and established procedures (including the state survey and certification agency) within five working days of the incident, and if the alleged violation is verified appropriate action must be taken.

(7) When a mandated reporter has:

(a) Reasonable cause to believe that a vulnerable adult has been abandoned, abused, neglected, financially exploited, or a resident's property has been misappropriated, the individual mandatory reporter must immediately report the incident to the department's aging and disability services administration (ADSA);

(b) Reason to suspect that a vulnerable adult has been sexually or physically assaulted, the individual mandatory reporter must:

(i) Immediately report the incident to the department's aging and disability services administration (ADSA);

(ii) Notify local law enforcement in accordance with the provisions of chapter 74.34 RCW.

(8) Under RCW 74.34.053, it is:

(a) A gross misdemeanor for a mandated reporter knowingly to fail to report as required under this section; and

(b) A misdemeanor for a person to intentionally, maliciously, or in bad faith make a false report of alleged abandonment, abuse, financial exploitation, or neglect of a vulnerable adult.

(9) The nursing home must not employ individuals who are disqualified under the requirements of WAC 388-97-1820.

NEW SECTION

WAC 388-97-0660 Resident protection program definition. As used in WAC 388-97-0680 through 388-97-0840, the term "**individual**," means anyone, used by the nursing home to provide services to residents who is alleged to have abandoned, abused, neglected, misappropriated property of a resident or financially exploited a resident. "Individual" includes, but is not limited to, employees, contractors, and volunteers.

NEW SECTION

WAC 388-97-0680 Investigation of mandated reports. (1) The department will review all allegations of resident abandonment, abuse, neglect, or financial exploitation, or misappropriation of resident property, as those terms are defined in this chapter, RCW 74.34.020 or 42 C.F.R. 488.301.

(2) If, after the review of an allegation, the department concludes that there is reason to believe that an individual has abandoned, abused, neglected, or financially exploited a res-

ident, or has misappropriated a resident's property, then the department will initiate an investigation.

(3) The department's investigation may include, but is not limited to:

(a) The review of facility and state agency records;

(b) Interviews with anyone who may have relevant information about the allegation; and

(c) The collection of any evidence deemed necessary by the investigator.

NEW SECTION

WAC 388-97-0700 Preliminary finding. If, after review of the results of the investigation, the department determines that an individual has abandoned, abused, neglected, or financially exploited a resident, or has misappropriated a resident's property, the department will make a preliminary finding to that effect. However, a preliminary finding of neglect will not be made if the individual demonstrates that the neglect was caused by factors beyond the control of the individual.

NEW SECTION

WAC 388-97-0720 Notification of preliminary finding. (1) Within ten working days of making a preliminary finding, the department will send notice of the finding:

(a) To the individual by first class and certified mail, return receipt requested. The department may choose to substitute personal service for certified mail;

(b) To the current administrator of the facility where the incident occurred; and

(c) To the appropriate licensing agency.

(2) The notice will include the following information:

(a) A description of the allegation;

(b) The date and time of the incident, if known;

(c) That the individual may appeal the preliminary finding;

(d) That the preliminary finding will become final unless the individual makes a written request for a hearing within thirty days of the date of the notice; and

(e) That if the finding becomes final, it will be reported to the department's registry and the appropriate licensing authority.

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

(a) Other divisions within the department;

(b) The agency, program or employer with which the individual was associated including the current employer, if known;

(c) Law enforcement; and

(d) Other entities as authorized by law and this chapter including investigative authorities consistent with chapter 74.34 RCW.

NEW SECTION**WAC 388-97-0740 Disputing a preliminary finding.**

(1) The individual 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 individual's written request for an administrative hearing within thirty calendar days of the date of the notice of the preliminary finding; except under the circumstances described in subsection (4).

(4) If, an individual requests a hearing within one hundred eighty days of the date of the notice of the preliminary finding and the individual can demonstrate good cause for failing to request a hearing within thirty days, the office of administrative hearings may grant the request. Under these circumstances, the finding against the individual will remain on the department's registry pending the outcome of the hearing.

NEW SECTION

WAC 388-97-0760 Hearing procedures to dispute preliminary finding. Upon receipt of a written request for a hearing from an individual, the office of administrative hearings will schedule a hearing, taking into account the following requirements:

(1) The hearing decision must be issued within one hundred twenty days of the date the office of administrative hearings receives a hearing request; except as provided in subsection (6);

(2) Neither the department nor the individual can waive the one hundred twenty day requirement;

(3) The hearing will be conducted at a reasonable time and at a place that is convenient for the individual;

(4) The hearing, and any subsequent appeals, will be governed by this chapter, chapter 34.05 RCW, and chapter 388-02 WAC, or its successor regulations;

(5) A continuance may be granted for good cause upon the request of any party, as long as the hearing decision can still be issued within one hundred twenty days of the date of the receipt of the appeal; except under the circumstances described in subsection 6;

(6) If the administrative law judge finds that extenuating circumstances exist that will make it impossible to render a decision within one hundred twenty days, the administrative law judge may extend the one hundred twenty-day requirement by a maximum of sixty days; and

(7) To comply with the time limits described in this section, the individual must be available for the hearing and other preliminary matters. If the decision is not rendered within the time limit described in subsection (1), or if appropriate under subsection (6), the administrative law judge shall issue an order dismissing the appeal and the preliminary finding will become final.

NEW SECTION

WAC 388-97-0780 Finalizing the preliminary finding. (1) The preliminary finding becomes a final finding when:

(a) The department notifies the individual of a preliminary finding and the individual does not ask for an administrative hearing within the timeframe provided under WAC 388-97-0740;

(b) The individual requested an administrative hearing to appeal the preliminary finding and the administrative law judge:

(i) Dismisses the appeal following withdrawal of the appeal or default;

(ii) Dismisses the appeal for failure to comply with the time limits under WAC 388-97-0760; or

(iii) Issues an initial order upholding the finding; or

(c) The board of appeals reverses an administrative law judge's initial order and issues a final order upholding the preliminary finding.

(2) A final finding is permanent, except under the circumstances described in (3).

(3) A final finding may be removed from the department's registry and, as appropriate, any other department lists under the following circumstances:

(a) The department determines the finding was made in error;

(b) The finding is rescinded following judicial review;

(c) At least one year after a single finding of neglect has been finalized, the department may remove the finding of neglect from the department's registry or department lists based upon a written petition by the individual and in accordance with requirements of federal law, 42 U.S.C. 1396r(g)(1)(D); or

(d) The department is notified of the individual's death.

NEW SECTION

WAC 388-97-0800 Reporting final findings. The department will report a final finding of abandonment, abuse, neglect, financial exploitation of a resident, and misappropriation of resident property within ten working days to the following:

(1) The individual;

(2) The current administrator of the facility in which the incident occurred;

(3) The administrator of the facility that currently employs the individual, if known;

(4) The department's registry;

(5) The appropriate licensing authority; and

(6) Any other lists maintained by a state or federal agency as appropriate.

NEW SECTION

WAC 388-97-0820 Appeal of administrative law judge's initial order or finding. (1) If the individual or the department disagrees with the administrative law judge's decision, either party may appeal this decision by filing a petition for review with the department's board of appeals as

provided under chapter 34.05 RCW and chapter 388-02 WAC.

(2) If the individual appeals the administrative law judge's decision, the finding will remain on the department's registry or other lists.

NEW SECTION

WAC 388-97-0840 Disclosure of investigative and finding information. (1) Information obtained during the investigation into allegations of abandonment, abuse, neglect, misappropriation of property, or financial exploitation of a resident, and any documents generated by the department will be maintained and disseminated with regard for the privacy of the resident and any reporting individuals and in accordance with laws and regulations regarding confidentiality and privacy.

(2) Confidential information about resident and mandated reporters provided to the individual by the department must be kept confidential and may only be used by the individual to challenge findings through the appeals process.

(3) Confidential information such as the name and other personal identifying information of the reporter, witnesses, or the resident will be redacted from the documents unless release of that information is consistent with chapter 74.34 RCW and other applicable state and federal laws.

Quality of Life

NEW SECTION

WAC 388-97-0860 Resident dignity and accommodation of needs. (1) Dignity. The nursing home must ensure that:

(a) Resident care is provided in a manner to enhance each resident's dignity, and to respect and recognize his or her individuality; and

(b) Each resident's personal care needs are provided in a private area free from exposure to individuals not involved in providing the care.

(2) Accommodation of needs. Each resident has the right to reasonable accommodation of personal needs and preferences, except when the health or safety of the individual or other residents would be endangered.

NEW SECTION

WAC 388-97-0880 Environment. The nursing home must provide and maintain:

(1) A safe, clean, comfortable, and homelike environment, allowing the resident to use his or her personal belongings to the extent possible;

(2) Housekeeping and maintenance services necessary to maintain a sanitary, orderly, and comfortable interior;

(3) Comfortable and safe temperature levels:

(a) Facilities licensed after October 1, 1990 must maintain a temperature range of seventy-one to eighty-one degrees Fahrenheit; and

(b) Regardless of external weather conditions, all nursing homes must develop and implement procedures and pro-

cesses to maintain a temperature level that is comfortable and safe for residents;

(4) Comfortable sound levels, to include:

(a) Minimizing the use of the public address system to ensure each use is in the best interest of the residents; and

(b) Taking reasonable precautions with noisy services so as not to disturb residents, particularly during their sleeping time; and

(5) Lighting suitable for any task the resident chooses to do, and any task the staff must do.

NEW SECTION

WAC 388-97-0900 Self-determination and participation. The resident has the right to:

(1) Choose activities, schedules, and health care consistent with his or her interests, assessments, and plan of care;

(2) Interact with members of the community both inside and outside the nursing home;

(3) Make choices about aspects of his or her life in the facility that are significant to the resident; and

(4) Participate in social, religious, and community activities that do not interfere with the rights of other residents in the nursing home.

NEW SECTION

WAC 388-97-0920 Participation in resident and family groups. (1) A resident has the right to organize and participate in resident groups in the nursing home.

(2) The nursing home must provide a resident or family group, if one exists, with private space.

(3) Staff or visitors may attend meetings only at the group's invitation.

(4) The nursing home must provide a designated staff individual responsible for providing assistance and responding to written requests that result from group meetings.

(5) When a resident or family group exists, the nursing home must listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the nursing home.

(6) A resident's family has the right to meet in the nursing home with the families of other residents in the facility.

NEW SECTION

WAC 388-97-0940 Activities. The nursing home must:

(1) Provide for an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interests and the physical, mental, and psychosocial well-being of each resident;

(2) Provide activities meaningful to the residents at various times throughout every day and evening based on each resident's need and preference; and

(3) Ensure that the activities program is directed by a qualified professional who:

(a) Is a qualified therapeutic recreation specialist or an activities professional who is eligible for certification as a therapeutic recreation specialist or as an activities profes-

sional by a recognized accrediting body on or after October 1, 1990; or

(b) Has two years of experience in a social or recreational program within the last five years, one of which was full-time in a patient activities program in a health care setting; or

(c) Is a qualified occupational therapist or occupational therapy assistant.

NEW SECTION

WAC 388-97-0960 Social services. The nursing home must:

(1) Provide medically related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident; and

(2) Employ a qualified social worker on a full-time basis if the nursing home has more than one hundred twenty beds. A qualified social worker is an individual with:

(a) A bachelor's degree in social work or a bachelor's degree in a human services field including but not limited to sociology, special education, rehabilitation counseling, and psychology; and

(b) One year of supervised social work experience in a health care setting working directly with patients or residents.

NEW SECTION

WAC 388-97-0980 Pets. (1) Each resident must have a reasonable opportunity to have regular contact with animals, if desired.

(2) The nursing home must:

(a) Consider the recommendations of nursing home residents, resident councils, and staff;

(b) Determine how to provide residents access to animals;

(c) Determine the type and number of animals available in the facility, which the facility can safely manage. Such animals should include only those customarily considered domestic pets;

(d) Ensure that any resident's rights, preferences, and medical needs are not compromised by the presence of an animal; and

(e) Ensure any animal visiting or living on the premises has a suitable temperament, is healthy, and otherwise poses no significant health or safety risks to residents, staff, or visitors.

(3) Animals living on the nursing home premises must:

(a) Have regular examinations and immunizations, appropriate for the species, by a veterinarian licensed in Washington state; and

(b) Be veterinarian certified to be free of diseases transmittable to humans.

(4) Pets must be restricted from:

(a) Central food preparation areas; and

(b) Residents who object to the presence of pets.

Resident Assessment and Plan of Care

NEW SECTION

WAC 388-97-1000 Resident assessment. (1) The nursing home must:

(a) Provide resident care based on a systematic, comprehensive, interdisciplinary assessment, and care planning process in which the resident participates, to the fullest extent possible;

(b) Conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity;

(c) At the time each resident is admitted:

(i) Have physician's orders for the resident's immediate care; and

(ii) Ensure that the resident's immediate care needs are identified in an admission assessment.

(d) Ensure that the comprehensive assessment of a resident's needs describes the resident's capability to perform daily life functions and significant impairments in functional capacity.

(2) The comprehensive assessment must include at least the following information:

(a) Identification and demographic information;

(b) Customary routine;

(c) Cognitive patterns;

(d) Communication;

(e) Vision;

(f) Mood and behavior patterns;

(g) Psychosocial well-being;

(h) Physical functioning and structural problems;

(i) Continence;

(j) Disease diagnosis and health conditions;

(k) Dental and nutritional status;

(l) Skin conditions;

(m) Activity pursuit;

(n) Medications;

(o) Special treatments and procedures;

(p) Discharge potential;

(q) Documentation of summary information regarding the assessment performed; and

(r) Documentation of participation in assessment.

(3) The nursing home must conduct comprehensive assessments:

(a) No later than fourteen days after the date of admission;

(b) Promptly after a significant change in the resident's physical or mental condition; and

(c) In no case less often than once every twelve months.

(4) The nursing home must ensure that:

(a) Each resident is assessed no less than once every three months, and as appropriate, the resident's assessment is revised to assure the continued accuracy of the assessment; and

(b) The results of the assessment are used to develop, review and revise the resident's comprehensive plan of care under WAC 388-97-1020.

- (5) The skilled nursing facility and nursing facility must:
- (a) For the required assessment, complete the state approved resident assessment instrument (RAI) for each resident in accordance with federal requirements;
 - (b) Place copies of the completed state approved RAI in each resident's clinical record, unless all charting is computerized;
 - (c) Maintain all copies of resident assessments completed within the resident's active clinical record for fifteen months;
 - (d) Assess each resident not less than every three months, using the state approved assessment instrument; and
 - (e) Transmit all state and federally required RAI information for each resident to the department:
 - (i) In a manner approved by the department;
 - (ii) Within ten days of completion of any RAI required under this subsection; and
 - (iii) Within ten days of discharging or readmitting a resident.

NEW SECTION

WAC 388-97-1020 Comprehensive plan of care. (1) The nursing home must develop a comprehensive plan of care for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing and mental and psychosocial needs that are identified in the comprehensive assessment.

- (2) The comprehensive plan of care must:
- (a) Describe the services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being as required under WAC 388-97-1060;
 - (b) Describe any services that would otherwise be required, but are not provided due to the resident's exercise of rights, including the right to refuse treatment (refer to WAC 388-97-0300 and 388-97-0260);
 - (c) Be developed within seven days after completion of the comprehensive assessment;
 - (d) Be prepared by an interdisciplinary team that includes the attending physician, a registered nurse with responsibility for the resident, and other appropriate staff in disciplines as determined by the residents needs;
 - (e) Consist of an ongoing process which includes a meeting if desired by the resident or the resident's representative; and
 - (f) Include the ongoing participation of the resident to the fullest extent possible, the resident's family or the resident's surrogate decision maker.
- (3) The nursing home must implement a plan of care to meet the immediate needs of newly admitted residents, prior to the completion of the comprehensive assessment and plan of care.
- (4) The nursing home must:
- (a) Follow the informed consent process with the resident as specified in WAC 388-97-0260, regarding the interdisciplinary team's plan of care recommendations;
 - (b) Respect the resident's right to decide plan of care goals and treatment choices, including acceptance or refusal of plan of care recommendations;

- (c) Include in the interdisciplinary plan of care process:
 - (i) Staff members requested by the resident; and
 - (ii) Direct care staff who work most closely with the resident.
 - (d) Respect the resident's wishes regarding which individuals, if any, the resident wants to take part in resident plan of care functions;
 - (e) Provide reasonable advance notice to and reasonably accommodate the resident family members or other individuals the resident wishes to have attend, when scheduling plan of care meeting times; and
 - (f) Where for practical reasons any individuals significant to the plan of care process, including the resident, are unable to attend plan of care meetings, provide a method for such individuals to give timely input and recommendations.
- (5) The nursing home must ensure that each comprehensive plan of care:
- (a) Designates the discipline of the individuals responsible for carrying out the program; and
 - (b) Is reviewed at least quarterly by qualified staff, as part of the ongoing process of monitoring the resident's needs and preferences.

NEW SECTION

WAC 388-97-1040 Dementia care. (1) A nursing home must ensure that it provides residents with dementia with an environment designed to attain or maintain the highest level of functioning and well-being possible, taking into consideration the resident's medical condition and functional status. Therefore, the nursing home must:

- (a) Have a program designed to meet the identified needs of the residents;
 - (b) Develop and implement program policies and procedures; and
 - (c) Train all staff, who have resident contact, in the special needs and care approaches applicable to residents with dementia. This training must be ongoing and consistent with requirements under WAC 388-97-1680 (2)(b).
- (2) A nursing home that has a locked or secured dementia unit must:
- (a) Always have staff present in the unit, available to meet the needs of the residents and to protect them in the event of an emergency;
 - (b) Have staff available to assist residents, as needed, in accessing outdoor areas;
 - (c) Have admission, transfer, and discharge criteria which ensures that:
 - (i) The process of informed consent is followed before admission to or transfer/discharge from the unit;
 - (ii) The resident is provided with unit specific admission or transfer/discharge criteria, prior to admission to the unit;
 - (iii) The resident's need for admission to the unit from another part of the nursing home, or transfer/discharge from the unit, is based on the comprehensive assessment and plan of care;
 - (iv) Through an evaluation prior to admission, a resident admitted directly from outside the nursing home meets the cognitive and functional criteria of the unit; and

(v) In the case of an individual admitted directly to the unit from outside the nursing home, as specified in subsection (2)(b)(iv) above, the nursing home may complete the comprehensive assessment after the individual's admission to the unit, provided that the nursing home complies with required time frames for completion of the resident assessment under WAC 388-97-1000.

(d) Provide private pay residents, or their surrogate decision maker written notification:

(i) If admitted from outside the nursing home, of additional charges, if any, for services, items, and activities in the unit, prior to admission; and

(ii) If admitted from another part of the nursing home, thirty days in advance of changes to those charges.

(e) Comply with physical plant requirements in WAC 388-97-2800 through 388-97-2920, for existing facilities and for new construction.

Quality of Care

NEW SECTION

WAC 388-97-1060 Quality of care. (1) Consistent with resident rights, the nursing home must provide each resident with the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being, self-care and independence in accordance with his or her comprehensive assessment and plan of care.

(2) Based on the comprehensive assessment of a resident, the nursing home must ensure that:

(a) A resident's abilities in activities of daily living do not decline unless circumstances of the resident's clinical condition demonstrate that the decline was unavoidable. This includes the resident's ability to:

(i) Bathe, dress, and groom;

(ii) Transfer and ambulate;

(iii) Toilet;

(iv) Eat; and

(v) Use speech, language, or other functional communication systems.

(b) A resident is given the appropriate treatment and services to maintain or improve the resident's abilities in activities of daily living specified in subsection (2)(a) of this section; and

(c) A resident who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene.

(3) The nursing home must ensure that the appropriate care and services are provided to the resident in the following areas, as applicable in accordance with the resident's individualized assessments and plan of care:

(a) Vision and hearing;

(b) Skin;

(c) Continence;

(d) Range of motion;

(e) Mental and psychosocial functioning and adjustment;

(f) Nasogastric and gastrostomy tubes;

(g) Accident prevention;

(h) Nutrition;

(i) Hydration;

(j) Special needs, including:

(i) Injections;

(ii) Parenteral and enteral fluids;

(iii) Colostomy, ureterostomy, or ileostomy care;

(iv) Tracheostomy care;

(v) Tracheal suction;

(vi) Respiratory care;

(vii) Dental care;

(viii) Foot care; and

(ix) Prostheses.

(k) Medications, including freedom from:

(i) Unnecessary drugs;

(ii) Nursing home error rate of five percent or greater; and

(iii) Significant medication errors.

(l) Self-administration of medication; and

(m) Independent living skills.

(4) The nursing home must ensure that each resident is monitored for desired responses and undesirable side effects of prescribed drugs.

Nursing Services

NEW SECTION

WAC 388-97-1080 Nursing services. (1) The nursing home must ensure that a sufficient number of qualified nursing personnel are available on a twenty-four hour basis seven days per week to provide nursing and related services to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident as determined by resident assessments and individual plans of care.

(2) The nursing home must:

(a) Designate a registered nurse or licensed practical nurse to serve as charge nurse, who is accountable for nursing services on each tour of duty; and

(b) Have a full time director of nursing service who is a registered nurse.

(3) The nursing home must have:

(a) A registered nurse on duty directly supervising resident care a minimum of sixteen hours per day, seven days per week; and

(b) A registered nurse or licensed practical nurse on duty directly supervising resident care the remaining eight hours per day, seven days per week. **"Directly supervising"** means the supervising individual is on the premises and is quickly and easily available to provide necessary assessments and other direct care of residents; and oversight of supervised staff.

(4) The nursing home must ensure that staff respond to each resident's requests for assistance in a manner which promptly meets the quality of life and quality of care needs of all the residents.

(5) The director of nursing services is responsible for:

(a) Coordinating the plan of care for each resident;

(b) Ensuring that registered nurses and licensed practical nurses comply with chapter 18.79 RCW; and

(c) Ensuring that the nursing care provided is based on the nursing process in accordance with nationally recognized and accepted standards of professional nursing practice.

NEW SECTION

WAC 388-97-1100 Dietary services. The nursing home must:

- (1) Provide each resident with a nourishing, palatable, well-balanced diet that meets their daily nutritional and special dietary needs.
- (2) Serve food in an attractive manner and at temperatures safe and acceptable to each resident.
- (3) Ensure that food service is in compliance with chapter 246-215 WAC.
- (4) Retain dated menus, dated records of foods received, a record of the number of meals served, and standardized recipes for at least three months for department review as necessary.

NEW SECTION

WAC 388-97-1120 Meal provision. The nursing home must:

- (1) Provide a minimum of three meals in each twenty-four period, at regular times similar to normal meal times in the community;
- (2) Make fresh fruits and vegetables, in season, available to residents on a daily basis;
- (3) Make reasonable efforts to:
 - (a) Accommodate individual mealtime preferences and portion sizes, as well as preferences for between meal and evening snacks when not medically contraindicated;
 - (b) Offer a late breakfast or an alternative to the regular breakfast for late risers; and
 - (c) Provide food consistent with the cultural and religious needs of the residents.
- (4) Use input from residents and the resident council, if the nursing home has one, in meal planning, scheduling, and the meal selection process.

NEW SECTION

WAC 388-97-1140 Individual dietary needs. The nursing home must:

- (1) Encourage residents to continue eating independently;
- (2) Provide effective adaptive utensils as needed to promote independence;
- (3) Allow sufficient time for eating in a relaxed manner;
- (4) Provide individualized assistance as needed;
- (5) Provide table service, for all residents capable of eating at a table, in a dining area/room, located outside of the resident's room; and
- (6) Offer a substitute of similar nutritive value when a resident refuses food served.

NEW SECTION

WAC 388-97-1160 Dietary personnel. The nursing home must have sufficient support personnel capable of carrying out the functions of dietary services and must:

- (1) Employ a qualified dietitian either full-time, part-time or on a consultant basis who must:

- (a) Approve regular and therapeutic menus which meet the dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences;

- (b) Prepare dated menus for general and modified diets at least three weeks in advance;

- (c) Provide services which include:

- (i) Nutrition assessment;

- (ii) Liaison with medical and nursing staff, and administrator;

- (iii) Inservice training; and

- (iv) Guidance to the director of food service, and food service staff.

- (2) If a qualified dietitian is not employed full-time as the food service manager the nursing home must employ a food service manager to serve as the director of food service.

- (3) The food service manager means:

- (a) An individual who is a qualified dietitian; or

- (b) An individual:

- (i) Who has completed a dietetic technician or dietetic assistant training program, correspondence or classroom, approved by the American Dietetic Association/Dietary Manager Association; and

- (ii) Receives regularly scheduled consultation from a qualified dietitian.

NEW SECTION

WAC 388-97-1180 Dietary menus. The nursing home must:

- (1) Ensure that menus are followed;

- (2) Post the current dated general menu, including substitutes, in the food service area and in a place accessible and conspicuous to residents and visitors, in print the residents can read; and

- (3) Note any changes to the regular menu on the posted menu.

NEW SECTION

WAC 388-97-1200 Dietary orders. The nursing home must:

- (1) Ensure that residents' diets are provided as prescribed by the physician. Diet modifications, for texture only, may be used as an interim measure when ordered by a registered nurse; and

- (2) Provide supplementary fluid and nourishment in accordance with each resident's needs as determined by the assessment process.

NEW SECTION

WAC 388-97-1220 Modified diets. The nursing home must review a resident's modified diet to ensure that the food form and texture are consistent with the resident's current needs and functional level:

- (1) At the request of the resident.

- (2) When the resident's condition warrants.

- (3) At the time of the plan of care review.

NEW SECTION

WAC 388-97-1240 Tube feedings. If the nursing home prepares tube feeding formula, or mixes additives to the prepared formula it must ensure that:

- (1) Each resident's tube feedings are of uniform consistency and quality; and
- (2) Tube feeding formulas are prepared, stored, distributed, and served in such a manner so as to maintain uniformity and to prevent contamination.

Physician Services

NEW SECTION

WAC 388-97-1260 Physician services. (1) The nursing home must ensure that the resident is seen by the physician whenever necessary.

(2) Except as specified in RCW 74.42.200, a physician must personally approve in writing a recommendation that an individual be admitted to a nursing home.

(3) The nursing home must ensure that:

- (a) Except as specified in RCW 74.42.200, the medical care of each resident is supervised by a physician;
- (b) Another physician supervises the medical care of residents when their attending physician is unavailable; and
- (c) Physician services are provided twenty-four hours per day, in case of emergency.

(4) The physician must:

- (a) Write, sign and date progress notes at each visit;
- (b) Sign and date all orders; and
- (c) In Medicare and Medicare/Medicaid certified facilities, review the resident's total program of care, including medications and treatments, at each federally required visit.

(5) Except as specified in subsections (6), (7), and (9) of this section, a physician may delegate tasks to a physician's assistant or advanced registered nurse practitioner who is:

- (a) Licensed by the state;
- (b) Acting within the scope of practice as defined by state law; and
- (c) Under the supervision of the physician.

(6) The physician may not delegate a task when the delegation is prohibited under state law or by the facility's own policies.

(7) If the resident's primary payor source is Medicare, the physician may:

- (a) Alternate federally required physician visits between personal visits by:
 - (i) The physician; and
 - (ii) An advanced registered nurse practitioner or physician's assistant; and
- (b) Not delegate responsibility for the initial required physician visit. This initial visit must occur within the first thirty days of admission to the facility.

(8) If the resident's payor source is Medicaid, the physician may delegate any federally required physician task, including tasks which the regulations specify must be performed personally by the physician, to a physician's assistant or advanced registered nurse practitioner who is not an employee of the facility but who is working in collaboration with a physician.

(9) If the resident's payor source is not Medicare or Medicaid:

(a) In the Medicare only certified facility or in the Medicare certified area of a Medicare/Medicaid facility, the physician may alternate federally required physician visits between personal visits by the physician and an advanced registered nurse practitioner or physician's assistant. The physician may not delegate responsibility for the initial required physician visit.

(b) In the Medicaid only certified facility or in the Medicaid certified area of a Medicare/Medicaid facility, the physician may delegate any federally required physician task, including tasks which the regulations specify must be performed personally by the physician, to a physician's assistant or advanced registered nurse practitioner who is not an employee of the facility but who is working in collaboration with a physician.

(10) The following table describes the physician visit requirements related to Medicare or Medicaid certified area and payor type.

	Beds in Medicare only certified area	Beds in Medicare/Medicaid certified area	Beds in Medicaid only certified area
Payor source:	Initial by physician	Initial by physician	N/A
Medicare	Physician may delegate alternate visits	Physician may delegate alternate visits	
Payor source:	N/A	Delegate all tasks	Delegate all tasks
Medicaid		Nonemployee	Nonemployee
Payor source:	Initial by physician	Initial by physician	Delegate all tasks
Others: such as insurance, private pay, Veteran Affairs	Physician may delegate alternate visits	Physician may delegate alternate visits	Nonemployee

(11) The attending physician, or the physician-designated advanced registered nurse practitioner or physician's assistant must:

- (a) Participate in the interdisciplinary plan of care process as described in WAC 388-97-1020;
- (b) Provide to the resident, or where applicable the resident's surrogate decision maker, information so that the resi-

dent can make an informed consent to care or refusal of care (see WAC 388-97-0260); and

(c) Order resident self-medication when appropriate.

(12) The nursing home must obtain from the physician the following medical information before or at the time of the resident's admission:

(a) A summary or summaries of the resident's current health status, including history and physical findings reflecting a review of systems;

(b) Orders, as necessary for medications, treatments, diagnostic studies, specialized rehabilitative services, diet, and any restrictions related to physical mobility; and

(c) Plans for continuing care and discharge.

Specialized Habilitative and Rehabilitative Services

NEW SECTION

WAC 388-97-1280 Specialized habilitative and rehabilitative services. (1) If specialized habilitative and rehabilitative services such as, but not limited to, physical therapy, speech-language pathology, occupational therapy, and mental health rehabilitative services for mental illness and mental retardation, are required in the resident's comprehensive plan of care, the facility must:

(a) Provide the required services; or

(b) Obtain the required services from an outside provider of specialized rehabilitative services.

(2) As determined by the resident's individualized comprehensive plan of care, qualified therapists, as defined in RCW 74.46.020(40), will provide specialized habilitative or rehabilitative services under the written order of the physician. According to state law and at the qualified therapist's discretion, certain services may be delegated to and provided by support personnel under appropriate supervision.

(3) The nursing facility must:

(a) Ensure that residents who display mental or psychosocial adjustment difficulties receive appropriate treatment and services to correct the assessed problem; and

(b) Provide or arrange for the mental health or mental retardation services needed by residents that are of a lesser intensity than the specialized services defined at WAC 388-97-1960.

(4) The nursing home may provide specialized rehabilitative and habilitative services to outpatients on the facility premises, only if the nursing home continues to also meet the needs of current residents.

NEW SECTION

WAC 388-97-1300 Pharmacy services. (1) The nursing home must:

(a) Obtain routine and emergency drugs and biologicals for its residents under an agreement with a licensed pharmacy;

(b) Ensure that pharmaceutical services:

(i) Meet the needs of each resident;

(ii) Establish and monitor systems for the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals; and

(c) Employ or obtain the services of a licensed pharmacist who must:

(i) Provide consultation on all aspects of the provision of pharmacy services in the nursing home;

(ii) Determine that nursing home drug records are in order;

(iii) Perform regular reviews at least once each month of each resident's drug therapy; and

(iv) Document and report drug irregularities to the attending physician and the director of nursing.

(2) Drugs and biologicals used in the nursing home must be labeled and stored in accordance with applicable state and federal laws.

(3) The nursing home must provide pharmaceutical services that:

(a) Meet recognized and accepted standards of pharmacy practice; and

(b) Comply with chapter 246-865 WAC, except nursing home staff administering drugs to residents may document administration at the time of pouring the drug or immediately after administration.

(4) The nursing home must ensure:

(a) Education and training for nursing home staff by the licensed pharmacist on drug-related subjects including, but not limited to:

(i) Recognized and accepted standards of pharmacy practice and applicable pharmacy laws and rules;

(ii) Appropriate monitoring of residents to determine desired effect and undesirable side effects of drug regimens; and

(iii) Use of psychotropic drugs.

(b) Reference materials regarding medication administration, adverse reactions, toxicology, and poison center information are readily available;

(c) Pharmacist monthly drug review reports are acted on in a timely and effective manner;

(d) Accurate detection, documentation, reporting and resolution of drug errors and adverse drug reactions; and

(e) Only individuals authorized by state law to do so will receive drug orders and administer drugs;

(5) The resident has the right to a choice of pharmacies when purchasing prescription and nonprescription drugs as long as the following conditions are met to ensure the resident is protected from medication errors:

(a) The medications are delivered in a unit of use compatible with the established system of the facility for dispensing drugs; and

(b) The medications are delivered in a timely manner to prevent interruption of dose schedule.

Infection Control

NEW SECTION

WAC 388-97-1320 Infection control. (1) The nursing home must:

(a) Establish and maintain an effective infection control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease and infection;

(b) Prohibit any employee with a communicable disease or infected skin lesion from direct contact with residents or their food, if direct contact could transmit the disease; and

(c) Require staff to wash their hands after each direct resident contact for which handwashing is indicated by accepted professional practice.

(2) Under the infection control program, the nursing home must:

(a) Investigate, control and prevent infections in the facility;

(b) Decide what procedures should be applied in individual circumstances; and

(c) Maintain a record of incidence of infection and corrective action taken.

(3) Nursing home personnel must handle, store, process, and transport linens so as to prevent the spread of infection.

(4) The nursing home must develop and implement effective methods for the safe storage, transport and disposal of garbage, refuse and infectious waste, consistent with all applicable local, state, and federal requirements for such disposal.

(5) The nursing home must provide areas, equipment, and supplies to implement an effective infection control program and ensure:

(a) Ready availability of hand cleaning supplies and appropriate drying equipment or material at each sink;

(b) Safe use of disposable and single service supplies and equipment;

(c) Effective procedures for cleaning, disinfecting or sterilizing according to equipment use;

(d) Chemicals and equipment used for cleaning, disinfecting, and sterilizing, including chemicals used to launder personal clothing, are used in accordance with manufacturer's directions and recommendations; and

(e) Safe and effective procedures for disinfecting:

(i) All bathing and therapy tubs between each resident use; and

(ii) Swimming pools, spas and hot tubs.

NEW SECTION

WAC 388-97-1340 Influenza and pneumococcal immunizations. (1) The nursing home shall provide residents access on-site or make available elsewhere, the ability to obtain the influenza virus immunization on an annual basis.

(2) Upon admission, the nursing home shall inform residents or the resident's representative, verbally and in writing, of the benefits of receiving the influenza virus immunization and the pneumococcal disease immunization.

(3) Nursing homes who rely exclusively upon treatment by nonmedical religious healing methods, including prayer, are exempt from the above rules.

NEW SECTION

WAC 388-97-1360 Surveillance, management and early identification of individuals with active tuberculosis. (1) The nursing home must develop and implement policies and procedures that comply with nationally recognized tuberculosis standards set by the Centers for Disease Control (CDC), and applicable state law. Such policies and procedures include, but are not limited to, the following:

(a) Evaluation of any resident or employee with symptoms suggestive of tuberculosis whether tuberculin skin test results were positive or negative;

(b) Identifying and following up residents and personnel with suspected or actual tuberculosis, in a timely manner; and

(c) Identifying and following up visitors and volunteers with symptoms suggestive of tuberculosis.

(2) The nursing home must comply with chapter 49.17 RCW, Washington industrial safety and health act (WISHA) requirements to protect the health and safety of employees.

NEW SECTION

WAC 388-97-1380 Tuberculosis—Testing required.

(1) The nursing home must develop and implement a system to ensure that facility personnel and residents have tuberculosis testing within three days of employment or admission.

(2) The nursing home must also ensure that facility personnel are tested annually.

(3) For the purposes of WAC 388-97-1360 through 388-97-1580 "**person**" means facility personnel and residents.

NEW SECTION

WAC 388-97-1400 Tuberculosis—Testing method—Required. The nursing home must ensure that all tuberculosis testing is done through a nationally recognized testing method such as:

(1) Intradermal (Mantoux) administration or

(2) QuantiFERON TB Gold Blood Test.

NEW SECTION

WAC 388-97-1420 Tuberculosis—Mantoux skin testing. The nursing home must ensure that when Mantoux skin testing is done:

(1) The results are read within forty-eight to seventy-two hours of the test;

(2) The results are read by a trained professional; and

(3) The results are recorded in millimeters of duration.

NEW SECTION

WAC 388-97-1440 Tuberculosis—No skin testing. The nursing home is not required to have a person tested for tuberculosis if the person has:

(1) A documented history of a previous positive skin test results; or

(2) Documented evidence of:

(a) Adequate therapy for active disease; or

(b) Adequate preventive therapy for infection.

NEW SECTION

WAC 388-97-1460 Tuberculosis—Mantoux one step testing. The nursing home is only required to have a person take a one-step skin test upon admission or employment if the person has any of the following:

(1) A documented history of a negative result from previous two step testing; or

(2) A documented negative result from one step skin testing in the previous twelve months.

NEW SECTION

WAC 388-97-1480 Tuberculosis—Mantoux two step testing. Unless the person meets the requirement for having no skin testing or only a one step skin test, the nursing home must ensure that each person has the following two-step testing:

- (1) An initial skin test within three days of employment; and
- (2) A second test done one to three weeks after the first test.

NEW SECTION

WAC 388-97-1500 Tuberculosis—Positive reaction. When there is a positive reaction to tuberculosis testing the nursing home must:

- (1) Ensure that the individual has a chest X ray within seven days;
- (2) Evaluate each resident or employee, with a positive test result, for signs and symptoms of tuberculosis; and
- (3) Follow the direction of the local health department if it requires additional tuberculin testing of residents or personnel for contact investigation.

NEW SECTION

WAC 388-97-1520 Tuberculosis—Negative reaction. The nursing home may be required by the public health official or licensing authority to ensure that persons with negative QuantiFERON or Mantoux test results have follow-up testing in certain circumstances, such as:

- (1) After exposure to active tuberculosis;
- (2) When tuberculosis symptoms are present; or
- (3) For periodic testing as determined by a health official.

NEW SECTION

WAC 388-97-1540 Tuberculosis—Declining a test. The nursing home may accept a signed statement from a person who has reason to decline skin testing; if:

- (1) The signed statement includes the reason for declining; and
- (2) Additional evidence is provided to support the reason.

NEW SECTION

WAC 388-97-1560 Tuberculosis—Reporting—Required. When, based upon symptoms or diagnosis, the nursing home suspects that a person has tuberculosis, the nursing home must:

- (1) Notify the local public health officer so that appropriate contact investigation can be performed;
- (2) Institute appropriate measures for the control of the transmission of droplet nuclei;
- (3) Apply living or work restrictions where residents or personnel are, or may be, infectious and pose a risk to other residents and personnel; and

- (4) Ensure that personnel caring for a resident with suspected tuberculosis comply with the WISHA standard for respiratory protection found in chapter 296-842 WAC.

NEW SECTION

WAC 388-97-1580 Tuberculosis—Test records. The nursing home must:

- (1) Keep any records such as tuberculin test results, reports of X-ray findings, physician or public health official orders and the person's statement declining the test in the nursing home;
- (2) Retain employee tuberculin testing results for the duration of employment; and
- (3) Provide the employee a copy of his/her testing results.

NEW SECTION

WAC 388-97-1600 Care of residents with active tuberculosis. (1) When the nursing home accepts the care of a resident with suspected or confirmed tuberculosis, the nursing home must:

- (a) Coordinate the resident's admission, nursing home care, discharge planning, and discharge with the local health officer or officer designee;

- (b) Provide necessary education about tuberculosis for staff, visitors, and residents; and

- (c) Ensure that personnel caring for a resident with active tuberculosis comply with the WISHA standards for respiratory protection, chapter 296-842 WAC.

- (2) For a resident who requires respiratory isolation for tuberculosis, the nursing home must:

- (a) Provide a private or semiprivate isolation room:

- (i) In accordance with WAC 388-97-2480;

- (ii) In which, construction review of the department of health determines that room air is maintained under negative pressure; and appropriately exhausted, either directly to the outside away from intake vents or through properly designed, installed, and maintained high efficiency particulate air (HEPA) filters, or other measures deemed appropriate to protect others in the facility;

- (iii) However, when a semiprivate isolation room is used, only residents requiring respiratory isolation for confirmed or suspected tuberculosis are placed together.

- (b) Provide supplemental environment approaches, such as ultraviolet lights, where deemed to be necessary;

- (c) Provide appropriate protective equipment for staff and visitors; and

- (d) Have measures in place for the decontamination of equipment and other items used by the resident.

AdministrationNEW SECTION

WAC 388-97-1620 General administration. (1) The nursing home must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

- (2) The nursing home must:
- (a) Be licensed under chapter 18.51 RCW;
 - (b) Operate and provide services in compliance with:
 - (i) All applicable federal, state and local laws, regulations, and codes;
 - (ii) Accepted professional standards and principles that apply to professionals providing services in nursing homes; and
 - (c) Have a governing body or designated individuals functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the nursing home.
- (3) The governing body of the nursing home must appoint the administrator who:
- (a) Is licensed by the state;
 - (b) Is responsible for management of the nursing home;
 - (c) Keeps the licensee informed of all surveys and notices of noncompliance;
 - (d) Complies with all requirements of chapter 18.52 RCW, and all regulations adopted under that chapter;
 - (e) Is an on-site, full-time individual in active administrative charge at the premises of only one nursing home, a minimum of four days and an average of forty hours per week. Exception: On-site, full-time administrator with small resident populations or in rural areas will be defined as an individual in active administrative charge at the premises of only one nursing home:
 - (i) A minimum of four days and an average of twenty hours per week at facilities with one to thirty beds; or
 - (ii) A minimum of four days and an average of thirty hours per week at facilities with thirty-one to forty-nine beds.
- (4) Nursing homes temporarily without an administrator may operate up to four continuous weeks under a responsible individual authorized to act as nursing home administrator designee.
- (a) The designee must be qualified by experience to assume designated duties; and
 - (b) The nursing home must have a written agreement with a nursing home administrator, licensed in the state of Washington, who must be readily available to consult with the designee.
 - (c) The nursing home may make a written request to the department's designated aging and disability services administration field office for an extension of the four weeks by stating why an extension is needed, how a resident's safety or well-being is maintained during an extension and giving the estimated date by which a full-time, qualified nursing home administrator will be on-site.
- (5) The nursing home must employ on a full-time, part time or consultant basis those professionals necessary to carry out the requirements of this chapter.
- (6) If the nursing home does not employ a qualified professional individual to furnish a specific service to be provided by the nursing home, the nursing home must:
- (a) Have that service furnished to residents by an individual or agency outside the nursing home under a written arrangement or agreement; and
 - (b) Ensure the arrangement or agreement referred to in (a) of this subsection specifies in writing that the nursing home assumes responsibility for:

- (i) Obtaining services that meet professional standards and principles that apply to professionals providing services in nursing homes; and
 - (ii) The timeliness of services.
- (7) The nursing home must:
- (a) Report to the local law enforcement agency and the department any individual threatening bodily harm or causing a disturbance which threatens any individual's welfare and safety;
 - (b) Identify, investigate, and report incidents involving residents, according to department established nursing home guidelines; and
 - (c) Comply with "whistle blower" rules as defined in chapter 74.34 RCW.
- (8) The department will:
- (a) Investigate complaints, made to the department according to established protocols including protocols described in RCW 74.39A.060;
 - (b) Take action against a nursing home that is found to have used retaliatory treatment toward a resident or employee who has voiced grievances to nursing home staff or administration, or lodged a good faith complaint with the department; and
 - (c) Report to local law enforcement:
 - (i) Any mandated reporter that knowingly fails to report in accordance with WAC 388-97-0640; and
 - (ii) Any person that intentionally, maliciously or in bad faith makes a false report of alleged abandonment, abuse, financial exploitation, or neglect of a vulnerable adult.
- (9) Refer also to WAC 388-97-1840, Retaliation.

NEW SECTION

- WAC 388-97-1640 Required notification and reporting.** (1) The nursing home must immediately notify the department's aging and disability services administration of:
- (a) Any allegations of resident abandonment, abuse, or neglect, including substantial injuries of an unknown source, financial exploitation and misappropriation of a resident's property;
 - (b) Any unusual event, having an actual or potential negative impact on residents, requiring the actual or potential implementation of the nursing home's disaster plan. These unusual events include but are not limited to those listed under WAC 388-97-1740 (1)(a) through (k), and could include the evacuation of all or part of the residents to another area of the nursing home or to another address; and
 - (c) Circumstances which threaten the nursing home's ability to ensure continuation of services to residents.
- (2) Mandated reporters must notify the department and law enforcement as directed in WAC 388-97-0640, and according to department established nursing home guidelines.
- (3) The nursing home must notify the department's aging and disability services administration of:
- (a) Physical plant changes, including but not limited to:
 - (i) New construction;
 - (ii) Proposed resident area or room use change;
 - (iii) Resident room number changes; and
 - (iv) Proposed bed banking.

(b) Mechanical failure of equipment important to the everyday functioning of the nursing home, which cannot be repaired within a reasonable time frame, such as an elevator; and

(c) An actual or proposed change of ownership (CHOW).

(4) The nursing home must notify, in writing, the department's aging and disability services administration and each resident, of a loss of, or change in, the nursing home's administrator or director of nursing services at the time the loss or change occurs.

(5) The nursing home licensee must notify the department's aging and disability services administration in writing of any change in the name of the licensee, or of the nursing home, at the time the change occurs.

(6) If a licensee operates in a building it does not own, the licensee must immediately notify the department of the occurrence of any event of default under the terms of the lease, or if it receives verbal or written notice that the lease agreement will be terminated, or that the lease agreement will not be renewed.

(7) The nursing home must report any case or suspected case of a reportable disease to the appropriate department of health officer and must also notify the appropriate department(s) of other health and safety issues, according to state and local laws.

(8) The nursing home licensee must notify the department in writing of a nursing home's voluntary closure.

(a) The licensee must send this written notification sixty days before closure to the department's designated local aging and adult administration office and to all residents and resident representatives.

(b) Relocation of residents and any required notice to the Centers for Medicare and Medicaid Services and the public must be in accordance with WAC 388-97-4320(2).

(9) The nursing home licensee must notify the department in writing of voluntary termination of its Medicare or Medicaid contract.

(a) The licensee must send this written notification sixty days before contract termination, to the department's designated local aging and disability services administration office and to all residents and resident representatives.

(b) If the contractor continues to provide nursing facility services, the contract termination will be subject to federal law prohibiting the discharge of residents who are residing in the facility on the day before the effective date of the contract termination.

(10) The nursing home licensee must notify the Centers for Medicare and Medicaid Services of voluntary termination of its Medicare provider agreement in accordance with the requirements of 42 C.F.R. 489.52 or successor regulations.

NEW SECTION

WAC 388-97-1660 Staff and equipment. (1) The nursing home must ensure that:

(a) Sufficient numbers of appropriately qualified and trained staff are available to provide necessary care and services safely under routine conditions, as well as fire, emergency, and disaster situations;

(b) Adequate equipment, supplies and space are available to carry out all functions and responsibilities of the nursing home;

(c) All staff, including management, provide care and services consistent with:

(i) Empowering each resident to attain or maintain the highest practicable physical, mental, and psychosocial well-being, self-care and independence;

(ii) Respecting resident rights; and

(iii) Enhancing each resident's quality of life.

(2) The nursing home must ensure that any employee giving direct resident care, excluding professionally licensed nursing staff:

(a) Has successfully completed or is a student in a DSHS-approved nursing assistant training program; and

(b) Meets other requirements applicable to individuals performing nursing related duties in a nursing home, including those which apply to minors.

(3) The nursing home must ensure:

(a) Students in an DSHS-approved nursing assistant training program:

(i) Complete training and competency evaluation within four months of beginning work as a nursing assistant;

(ii) Complete at least sixteen hours of training in communication and interpersonal skills, infection control, safety/emergency procedures including the Heimlich maneuver, promoting residents' independence, and respecting residents' rights before any direct contact with a resident; and

(iii) Wear name tags which clearly identify student or trainee status at all times in all interactions with residents and visitors in all nursing homes, including the nursing homes in which the student completes clinical training requirements and in which the student is employed.

(b) Residents and visitors have sufficient information to distinguish between the varying qualifications of nursing assistants; and

(c) Each employee hired as a nursing assistant applies for registration with the department of health within three days of employment in accordance with chapter 18.88A RCW.

NEW SECTION

WAC 388-97-1680 Staff development. (1) The nursing home must have a staff development program that is under the direction of a designated registered nurse or licensed practical nurse.

(2) The nursing home must:

(a) Ensure each employee receives initial orientation to the facility and its policies and is initially assigned only to duties for which the employee has demonstrated competence;

(b) Ensure all employees receive appropriate inservice education to maintain a level of knowledge appropriate to, and demonstrated competence in, the performance of ongoing job duties consistent with the principle of assisting the resident to attain or maintain the highest practicable physical, mental, and psychosocial well-being. To this end, the nursing home must:

(i) Assess the specific training needs of each employee and address those needs; and

(ii) Determine the special needs of the nursing home's resident population which may require training emphasis.

(c) Comply with other applicable training requirements, such as, but not limited to, the bloodborne pathogen standard.

NEW SECTION

WAC 388-97-1700 Medical director. (1) The nursing home must designate a physician to serve as medical director.

(2) The medical director is responsible for:

(a) Implementation of resident care policies; and

(b) The coordination of medical care in the facility.

NEW SECTION

WAC 388-97-1720 Clinical records. (1) The nursing home must:

(a) Maintain clinical records on each resident in accordance with accepted professional standards and practices that are:

(i) Complete;

(ii) Accurately documented;

(iii) Readily accessible; and

(iv) Systematically organized.

(b) Safeguard clinical record information against alteration, loss, destruction, and unauthorized use; and

(c) Keep confidential all information contained in the resident's records, regardless of the form or storage method of the records, except when release is required by:

(i) Transfer to another health care institution;

(ii) Law;

(iii) Third party payment contract; or

(iv) The resident.

(2) The nursing home must ensure the clinical record of each resident includes at least the following:

(a) Resident identification and sociological data, including the name and address of the individual or individuals the resident designates as significant;

(b) Medical information required under WAC 388-97-1260;

(c) Physician's orders;

(d) Assessments;

(e) Plans of care;

(f) Services provided;

(g) In the case of the Medicaid-certified nursing facility, records related to preadmission screening and resident review;

(h) Progress notes;

(i) Medications administered;

(j) Consents, authorizations, releases;

(k) Allergic responses;

(l) Laboratory, X ray, and other findings; and

(m) Other records as appropriate.

(3) The nursing home must:

(a) Designate an individual responsible for the record system who:

(i) Has appropriate training and experience in clinical record management; or

(ii) Receives consultation from a qualified clinical record practitioner, such as a registered health information administrator or registered health information technician.

(b) Make all records available to authorized representatives of the department for review and duplication as necessary; and

(c) Maintain the following:

(i) A master resident index having a reference for each resident including the health record number, if applicable; full name; date of birth; admission dates; and discharge dates; and

(ii) A chronological census register, including all admissions, discharge, deaths and transfers, and noting the receiving facility. The nursing home must ensure the register includes discharges for social leave and transfers to other treatment facilities in excess of twenty-four hours.

(4) The nursing home must ensure the clinical record of each resident:

(a) Is documented and authenticated accurately, promptly and legibly by individuals giving the order, making the observation, performing the examination, assessment, treatment or providing the care and services. "**Authenticated**" means the authorization of a written entry in a record by signature, including the first initial and last name and title, or a unique identifier allowing identification of the responsible individual; and

(i) Documents from other health care facilities that are clearly identified as being authenticated at that facility will be considered authenticated at the receiving facility; and

(ii) The original or a durable, legible, direct copy of each document will be accepted.

(b) Contains appropriate information for a deceased resident including:

(i) The time and date of death;

(ii) Apparent cause of death;

(iii) Notification of the physician and appropriate resident representative; and

(iv) The disposition of the body and personal effects.

(5) In cases where the nursing home maintains records by computer rather than hard copy, the nursing home must:

(a) Have in place safeguards to prevent unauthorized access; and

(b) Provide for reconstruction of information.

(6) The nursing home licensee must:

(a) Retain health records for the time period required in RCW 18.51.300:

(i) For a period of no less than eight years following the most recent discharge of the resident; except

(ii) That the records of minors must be retained for no less than three years following the attainment of age eighteen years, or ten years following their most recent discharge, whichever is longer.

(b) In the event of a change of ownership, provide for the orderly transfer of clinical records to the new licensee;

(c) In the event a nursing home ceases operation, make arrangements prior to cessation, as approved by the department, for preservation of the clinical records. The nursing home licensee must provide a plan for preservation of clinical records to the department's designated local aging and disability services administration office no later than seven days after the date of notice of nursing home closure as required by WAC 388-97-1640 (8) and (9) unless an alternate date has been approved by the department; and

(d) Provide a resident access to all records pertaining to the resident as required under WAC 388-97-0300(2).

NEW SECTION

WAC 388-97-1740 Disaster and emergency preparedness. (1) The nursing home must develop and implement detailed written plans and procedures to meet potential emergencies and disasters. At a minimum the nursing home must ensure these plans provide for:

- (a) Fire or smoke;
- (b) Severe weather;
- (c) Loss of power;
- (d) Earthquake;
- (e) Explosion;
- (f) Missing resident, elopement;
- (g) Loss of normal water supply;
- (h) Bomb threats;
- (i) Armed individuals;
- (j) Gas leak, or loss of service; and
- (k) Loss of heat supply.

(2) The nursing home must train all employees in emergency procedures when they begin work in the nursing home, periodically review emergency procedures with existing staff, and carry out unannounced staff drills using those procedures.

(3) The nursing home must ensure emergency plans:

- (a) Are developed and maintained with the assistance of qualified fire, safety, and other appropriate experts as necessary;
- (b) Are reviewed annually; and
- (c) Include evacuation routes prominently posted on each unit.

NEW SECTION

WAC 388-97-1760 Quality assessment and assurance. (1) The nursing home must maintain a process for quality assessment and assurance. The department may not require disclosure of the records of the quality assessment and assurance committee except in so far as such disclosure is related to ensuring compliance with the requirements of this section.

(2) The nursing home must ensure the quality assessment and assurance process:

- (a) Seeks out and incorporates input from the resident and family councils, if any, or individual residents and support groups; and
- (b) Reviews expressed concerns and grievances.

NEW SECTION

WAC 388-97-1780 Policies and procedures. (1) The nursing home must develop and implement written policies and procedures, including those specified in RCW 74.42.430, for all services provided in the facility.

(2) The nursing home must ensure the written policies and procedures:

- (a) Promote and protect each resident's:
 - (i) Rights, including health care decision making;
 - (ii) Personal interests; and

(iii) Financial and property interests.

(b) Are readily available to staff, residents, members of residents' families, the public, and representatives of the department;

(c) Are current, and continued without interruption in the event of staff changes; and

(d) Are consistent with other state and federal laws applicable to nursing home operations.

NEW SECTION

WAC 388-97-1800 Criminal history disclosure and background inquiries. (1) A nursing home licensed under chapter 18.51 RCW must make a background inquiry request to one of the following:

(a) The Washington state patrol;

(b) The department;

(c) The most recent employer licensed under chapters 18.51, 18.20, and 70.128 RCW provided termination of that employment was within twelve months of the current employment application and provided the inquiry was completed by the department or the Washington state patrol within the two years of the current date of application; or

(d) A nurse pool agency licensed under chapter 18.52C RCW, or hereafter renamed, provided the background inquiry was completed by the Washington state patrol within two years before the current date of employment in the nursing home; and

(e) A nursing home may not rely on a criminal background inquiry from a former employer, including a nursing pool, if the nursing home knows or has reason to know that the individual applying for the job has, or may have, a disqualifying conviction or finding.

(2) Nursing homes must:

(a) Request a background inquiry of any individual employed, directly or by agreement or contract, or accepted as a volunteer or student; and

(b) Notify appropriate licensing or certification agency of any individual resigning or terminated as a result of having a conviction record.

(3) Before a nursing home employs any individual, directly or by contract, or accepts any individual as a volunteer or student, a nursing home must:

(a) Inform the individual that the nursing home must make a background inquiry and require the individual to sign a disclosure statement, under penalty or perjury and in accordance with RCW 43.43.834;

(b) Inform the individual that he or she may make a request for a copy of a completed background inquiry of this section; and

(c) Require the individual to sign a statement authorizing the nursing home, the department, and the Washington state patrol to make a background inquiry; and

(d) Verbally inform the individual of the background inquiry results within seventy-two hours of receipt.

(4) The nursing home must establish procedures ensuring that:

(a) The individual is verbally informed of the background inquiry results within seventy-two hours of receipt;

(b) All disclosure statements and background inquiry responses and all copies are maintained in a confidential and secure manner;

(c) Disclosure statements and background inquiry responses are used for employment purposes only;

(d) Disclosure statements and background inquiry responses are not disclosed to any individual except:

(i) The individual about whom the nursing home made the disclosure or background inquiry;

(ii) Authorized state employees including the department's licensure and certification staff, resident protection program staff and background inquiry unit staff;

(iii) Authorized federal employees including those from the Department of Health and Human Services, Centers for Medicare and Medicaid Services;

(iv) The Washington state patrol auditor; and

(v) Potential employers licensed under chapters 18.51, 18.20, and 70.128 RCW who are making a request as provided for under subsection (1) of this section.

(e) A record of findings be retained by the nursing home for twelve months beyond the date of employment termination.

(5) The nursing home must not employ individuals who are disqualified under the requirements of WAC 388-97-1820.

NEW SECTION

WAC 388-97-1820 Disqualification from nursing home employment. (1) The nursing home must not employ directly or by contract, or accept as a volunteer or student, any individual:

(a) Who has been found to have abused, neglected, exploited or abandoned a minor or vulnerable adult by a court of law, by a disciplining authority, including the state department of health, or by the department's resident protection program;

(b) Against whom a finding of abuse, neglect, exploitation, misappropriation of property or abandonment has been entered on any state registry, including the nursing assistant registry; or

(c) Who has been subject to an order of protection under chapter 74.34 RCW for abandonment, abuse, neglect, or financial exploitation of a vulnerable adult, or misappropriation of resident property.

(2) Except as provided in this section, the nursing home must not employ directly or by contract, or accept as a volunteer or student, any individual who may have unsupervised access to residents if the individual:

(a) Has been convicted of a "crime against children and other persons" as defined in RCW 43.43.830, unless the individual has been convicted of one of the five crimes listed below and the required number of years has passed between the most recent conviction and the date of the application for employment:

(i) Simple assault, assault in the fourth degree, or the same offense as it may hereafter be renamed, and three or more years have passed;

(ii) Prostitution, or the same offense as it may hereafter be renamed, and three or more years have passed;

(iii) Theft in the second degree, or the same offense as it may hereafter be renamed, and five or more years have passed;

(iv) Theft in the third degree, or the same offense as it may hereafter be renamed, and three or more years have passed; or

(v) Forgery, or the same offense as forgery may hereafter be renamed, and five or more years have passed.

(b) Has been convicted of crimes relating to financial exploitation as defined under RCW 43.43.830.

(3) The term "**vulnerable adult**" is defined in RCW 74.34.020; the term "**unsupervised access**" is defined in RCW 43.43.830.

NEW SECTION

WAC 388-97-1840 Retaliation or discrimination prohibited. (1) The licensee or the nursing home must not discriminate or retaliate in any manner against a resident or employee in its nursing home who has initiated or participated in any action or proceeding authorized under nursing home licensing law. Examples of such participation include, but are not limited to the following:

(a) The resident, or someone acting on behalf of the resident, or the employee:

(i) Made a complaint, including a whistle blower complaint, to the department, the department of health, the long-term care ombudsman, attorney general's office, the courts or law enforcement;

(ii) Provided information to the department, the department of health, the long-term care ombudsman, attorney general's office, the courts or law enforcement; or

(iii) Testified in a proceeding related to the nursing home or its staff.

(2) For purposes of this chapter, "**retaliation**" or "**discrimination**" against a resident means an act including, but not limited to:

(a) Verbal or physical harassment or abuse;

(b) Any attempt to expel the resident from the facility;

(c) Nonmedically indicated social, dietary, or mobility restriction(s);

(d) Lessening of the level of care when not medically appropriate;

(e) Nonvoluntary relocation within a nursing home without appropriate medical, psychosocial, or nursing justification;

(f) Neglect or negligent treatment;

(g) Withholding privileges;

(h) Monitoring resident's phone, mail or visits without resident's permission;

(i) Withholding or threatening to withhold food or treatment unless authorized by terminally ill resident or the resident's representative;

(j) Persistently delaying responses to resident's request for services of assistance; or

(k) Infringement on a resident's rights described in chapter 74.42 RCW, RCW 74.39A.060(7), WAC 388-97-0180, and also, for Medicaid and Medicare certified nursing facilities, in federal laws and regulations.

(3) For purposes of this chapter, "**retaliation**" or "**discrimination**" against an employee means an act including, but not limited to:

- (a) Harassment;
- (b) Unwarranted firing;
- (c) Unwarranted demotion;
- (d) Unjustified disciplinary action;
- (e) Denial of adequate staff to perform duties;
- (f) Frequent staff changes;
- (g) Frequent and undesirable office changes;
- (h) Refusal to assign meaningful work;
- (i) Unwarranted and unsubstantiated report of misconduct under Title 18 RCW;
- (j) Unsubstantiated letters of reprimand;
- (k) Unsubstantiated unsatisfactory performance evaluations;
- (l) Denial of employment;
- (m) A supervisor or superior encouraging coworkers to behave in a hostile manner toward the whistleblower; or
- (n) Workplace reprisal or retaliatory action as defined in RCW 74.34.180 (3)(b).

(4) For purposes of this chapter, a "**whistle blower**" is defined in WAC 388-97-0001.

(5) If, within one year of the complaint by or on behalf of a resident, the resident is involuntarily discharged from the nursing home, or is subjected to any type of discriminatory treatment, there will be a presumption that the action was in retaliation for the filing of the complaint. Under these circumstances, the nursing home will have the burden of establishing that the action was not retaliatory, in accordance with RCW 18.51.220 and 74.34.180(2).

Miscellaneous Services

NEW SECTION

WAC 388-97-1860 Laundry services. (1) The nursing home must meet the requirements of WAC 388-97-2780, and:

- (a) Launder nursing home linens on the premises; or
- (b) Contract with a laundry service capable of meeting quality standards, infection control, and turn-around time requirements; and
- (c) Make provision for laundering of residents' personal clothing.
 - (2) For residents' personal clothing, the nursing home:
 - (a) Must have a system in place to ensure that personal clothing is not damaged or lost during handling and laundering; and
 - (b) May use a chemical disinfectant in lieu of hot water disinfection provided that the nursing home:
 - (i) Uses the product according to the manufacturer's instructions; and
 - (ii) Has readily available, current documentation from the manufacturer that supports the claim that the product is effective as a laundry disinfectant and such documentation is based on scientific studies or other rational data. "Disinfectant" means a germicide that inactivates virtually all recognized pathogenic microorganisms (but not necessarily all

microbial forms, such as bacterial spores) on inanimate objects.

NEW SECTION

WAC 388-97-1880 Short-term care, including respite services and adult day or night care. (1) The nursing home may provide short-term care to individuals which include:

- (a) Respite services to provide relief care for families or other caregivers of individuals with disabilities which must:
 - (i) Provide short-term care and supervision in substitution for the caregiver;
 - (ii) Be for short-term stays up to a maximum of thirty-one days; and
 - (iii) Not be used as a short-term placement pending the individual's admission to the nursing home.
- (b) Adult day or night care to provide short-term nursing home care:
 - (i) Not to exceed sixteen hours each day; and
 - (ii) May be on a regular or intermittent basis.
- (2) The nursing home providing respite services, and adult day or night care must:
 - (a) Develop and implement policies and procedures consistent with this section;
 - (b) Ensure that individuals receiving short-term services under respite or adult day or night care are treated and cared for in accordance with the rights and choices of long-term residents, except for transfer and discharge rights which are provided under the program for short-term services which covers the individual in the nursing home;
 - (c) Have appropriate and adequate staff, space, and equipment to meet the individual's needs without jeopardy to the care of regular residents;
 - (d) Before or at the time of admission, obtain sufficient information to meet the individual's anticipated needs. At a minimum, such information must include:
 - (i) The name, address, and telephone number of the individual's attending physician, and alternate physician if any;
 - (ii) Medical and social history, which may be obtained from a respite care assessment and service plan performed by a case manager designated by an area agency on aging under contract with the department, and mental and physical assessment data; and
 - (iii) Physician's orders for diet, medication and routine care consistent with the individual's status on admission.
 - (e) Ensure the individuals have assessments performed, where needed, and where the assessment of the individual reveals symptoms of tuberculosis, follow tuberculosis testing requirements under WAC 388-97-1360 through 388-97-1580;
 - (f) With the participation of the individual and, where appropriate, their representative, develop a plan of care to maintain or improve their health and functional status during their stay or care in the nursing home;
 - (g) Provide for the individual to:
 - (i) Bring medications from home in accordance with nursing home policy; and
 - (ii) Self-medicate where determined safe.

(h) Promptly report injury, illness, or other adverse change in health condition to the attending physician; and

(i) Inquire as to the need for and comply with any request of the individual, or where appropriate, the individual's representative, to secure cash and other valuables brought to the nursing home during the stay/care.

(3) The nursing home may, in lieu of opening a new record, reopen the individual's clinical record with each period of stay or care up to one year from the previous stay or care, provided the nursing home reviews and updates the recorded information.

(4) Medicaid certified nursing facilities must complete the state-approved resident assessment instrument, within fourteen days, for any individual whose respite stay exceeds fourteen days.

NEW SECTION

WAC 388-97-1900 Dialysis services. (1) The nursing home must ensure that appropriate care, treatment, and services are provided to each nursing home resident receiving dialysis. "Dialysis" means the process of separating crystalloids and colloids in solution by means of the crystalloids and colloids unequal diffusion through a natural or artificial semi-permeable membrane.

(2) Dialysis for acute renal failure must not be administered in a nursing home.

(3) A nursing home may only administer maintenance dialysis in the nursing home after the:

(a) Analysis of other options and elimination of these options based on the resident's best interest; and

(b) Decision is made jointly by a team of individuals representing the kidney center, the resident, the resident's nephrologist, and the nursing home. A "**kidney center**" means those facilities as defined and certified by the federal government to provide end stage renal (ESRD) services.

(4) The nursing home must ensure that:

(a) A current written agreement is in effect with each kidney center responsible for the management and care of each nursing home resident undergoing dialysis; and

(b) Such agreement delineates the functions, responsibilities, and services of both the kidney center and the nursing home.

(5) The kidney center must assist the nursing home in ensuring appropriate care, treatment, and services related to dialysis. Responsibilities of the kidney center must include, but not be limited to:

(a) The provision of clinical and chemical laboratory services;

(b) The services of a qualified dietitian;

(c) Social services;

(d) Preventative maintenance and emergency servicing of dialysis and water purification equipment;

(e) The certification and continuing education of dialysis helpers and periodic review and updating of dialysis helpers' competencies. A "dialysis helper" means an individual who has completed an inservice class approved by the kidney center and has been hired by the resident to provide to the resident care related only to the dialysis treatment;

(f) An in-hospital dialysis program for the care and treatment of a dialysis resident with a complication or acute condition necessitating hospital care;

(g) A continuing in-service education program for nursing home staff working with a dialysis resident;

(h) A program for periodic, on-site review of the nursing home's dialysis rooms;

(i) Selection, procurement, and installation of dialysis equipment;

(j) Selection and procurement of dialysis supplies;

(k) Proper storage of dialysis supplies; and

(l) Specification, procurement, and installation of the purification process for treatment of water used as a diluent in the dialyzing fluid.

(6) Only a registered nurse from the kidney center or a dialysis helper may administer dialysis in the nursing home.

(a) A dialysis helper may be a registered nurse; and

(b) When a dialysis helper is not a registered nurse, the nursing home must have a registered nurse who has completed an in-service class approved by the kidney center, on the premises during dialysis.

(7) A physician, designated or approved by the kidney center, must be on call at all times dialysis is being administered in the nursing home.

(8) The resident's attending physician and the kidney center must provide, or direct and supervise, the continuing medical management and surveillance of the care of each nursing home resident receiving dialysis.

(9) The nursing home must:

(a) Ensure the kidney center develops a dialysis treatment plan; and

(b) Incorporate this treatment plan into the resident's comprehensive plan of care and include specific medical orders for medications, treatment, and diet.

(10) The dialysis room in the nursing home must be in compliance with federal standards established for ESRD facilities. This includes:

(a) Storage space available for equipment and supplies;

(b) A telephone at the bedside of each dialysis resident; and

(c) A mechanical means of summoning additional staff to the dialysis area in the event of a dialysis emergency.

Preadmission Screening and Resident Review (PASRR) in Medicaid Certified Facilities.

NEW SECTION

WAC 388-97-1920 Preadmission screening—Level I.

(1) Preadmission screening (PAS) is a process by which individuals are evaluated:

(a) For the presence of a serious mental illness or a developmental disability, before admission to the nursing facility;

(b) For nursing facility level of care; and

(c) If the individual does have either a serious mental illness or a developmental disability, to determine whether there is a need for specialized services, or services of a lesser intensity.

(2) The referring hospital, physician, or other referral source must:

(a) Perform the identification screen using a standardized department-specified Level I screening form for all individuals seeking admission to a nursing facility unless they:

(i) Are being readmitted to the nursing facility from the hospital; or

(ii) Are being transferred from one nursing facility to another, with or without an intervening hospital stay.

(b) Identify whether the individual may have a serious mental illness or a developmental disability as defined under 42 C.F.R. § 483.102, or successor laws; and

(c) Refer all individuals identified as likely to have a serious mental illness or a developmental disability to the department for a nursing facility level of care assessment and a Level II screening.

NEW SECTION

WAC 388-97-1940 Advanced categorical determinations, not subject to preadmission screening—Level II. Individuals identified as having symptoms of mental illness or a developmental disability and meeting any of the advanced categorical determinations do not need to be referred for a Level II screening. The determinations include that the individual:

(1) Is admitted to the nursing facility for respite care as defined under WAC 388-97-1880, or convalescent care, following treatment in an acute care hospital, not to exceed thirty days;

(2) Cannot accurately be diagnosed because of delirium. NOTE: The individual would be subject to a Level II screening when the delirium cleared;

(3) Has been certified by a physician to be terminally ill as defined under section 1861 (dd)(3)(A) of the Social Security Act;

(4) Has been diagnosed with a severe physical illness such as coma, ventilator dependence, and is functioning at a brain stem level;

(5) Has a severe level of impairment from diagnoses such as:

(a) Chronic obstructive pulmonary disease;

(b) Parkinson's disease;

(c) Huntington's chorea;

(d) Amyotrophic lateral sclerosis;

(e) Congestive heart failure; or

(6) Has a primary diagnosis of dementia, including Alzheimer's disease or a related disorder. NOTE: There must be evidence to support this determination.

NEW SECTION

WAC 388-97-1960 Preadmission screening—Level II. (1) For individuals likely to have a serious mental illness or developmental disability, the department must determine their need for nursing facility level of care. If they meet the nursing facility level of care, the department refers them to the department's designee, either the mental health PASRR contractor or the division of developmental disabilities, for a Level II screening.

(2) In the Level II screening, the department's designee will verify the diagnosis and determine whether the referred individuals need specialized services, or services of a lesser intensity:

(a) "**Specialized services**" for an individual with mental retardation or related conditions is defined under 42 C.F.R. § 483.120 (a)(2), and 42 C.F.R. § 483.440 (a)(1), or successor laws. These specialized services do not include services to maintain a generally independent individual able to function with little supervision or in the absence of a treatment program; and

(b) "**Specialized services**" for an individual with a serious mental illness is defined under 42 C.F.R. § 483.120 (a)(1), or successor laws. These services are generally considered acute psychiatric inpatient care, emergency respite care, or stabilization and crisis services.

(3) The need for specialized services, for a nursing facility applicant, will be determined as follows:

(a) If the individual is identified as likely to have a serious mental illness, a qualified mental health professional will verify whether the individual has a serious mental illness and, if so, will recommend whether the individual needs specialized services; and

(b) If the individual is identified as likely to have a developmental disability, a licensed psychologist will verify whether the individual has a developmental disability and, if so, staff of the division of developmental disabilities will assess and determine whether the individual requires specialized services.

NEW SECTION

WAC 388-97-1980 Resident review. After a resident's admission to the nursing facility must:

(1) Review the Level I screening form for accuracy and make changes as needed if the resident develops a qualifying diagnosis or if the resident's symptoms were undetected or misdiagnosed;

(2) Refer residents who have qualifying diagnoses and who require further PASRR assessment to the mental health PASRR contractor or division of developmental disabilities;

(3) Record the identification screen information or subsequent changes on the resident assessment instrument according to the schedule required under 42 C.F.R. § 483.20;

(4) Maintain the identification screen form and PASRR assessment information, including recommendations, in the resident's active clinical record; and

(5) Promptly notify the mental health PASRR contractor or division of developmental disabilities after a significant change in the physical or mental condition of any resident that is mentally ill or mentally retarded.

NEW SECTION

WAC 388-97-2000 Preadmission screening and resident review (PASRR) determination and appeal rights.

(1) The resident has the right to choose to remain in the nursing facility and receive specialized services if:

(a) He or she has continuously resided in a nursing facility since October 1, 1987; and

(b) The department determined, in 1990, that the resident required specialized services for a serious mental illness or developmental disability but did not require nursing facility services.

(2) In the event that residents chose to remain in the nursing facility as outlined in subsection (1) above, the department, or designee, will clarify the effect on eligibility for Medicaid services under the state plan if the resident chooses to leave the facility, including its effect on readmission to the facility.

(3) An individual applying for admission to a nursing facility or a nursing facility resident who has been adversely impacted by a PASRR determination may appeal the department's determination that the individual is:

(a) Not in need of nursing facility care as defined under WAC 388-106-0350 through 388-106-0360;

(b) Not in need of specialized services as defined under WAC 388-97-1960; or

(c) Need for specialized services as defined under WAC 388-97-1960.

(4) The nursing facility must assist the individual applying for admission or resident, as needed, in requesting a hearing to appeal the department's PASRR determination.

(5) If the department's PASRR determination requires that a resident be transferred or discharged, the department will:

(a) Provide the required notice of transfer or discharge to the resident, the resident's surrogate decision maker, and if appropriate, a family member or the resident's representative thirty days or more before the date of transfer or discharge;

(b) Attach a hearing request form to the transfer or discharge notice;

(c) Inform the resident, in writing in a language and manner the resident can understand, that:

(i) An appeal request may be made any time up to ninety days from the date the resident receives the notice of transfer or discharge;

(ii) Transfer or discharge will be suspended when an appeal request is received by the office of administrative hearings on or before the date of transfer or discharge set forth in the written transfer or discharge notice; and

(iii) The resident will be ineligible for Medicaid nursing facility payment:

(A) Thirty days after the receipt of written notice of transfer or discharge; or

(B) If the resident appeals under subsection (1)(a) of this section, thirty days after the final order is entered upholding the department's decision to transfer or discharge a resident.

(6) The department's home and community services may pay for the resident's nursing facility services after the time specified in subsection (5)(c)(iii) of this section, if the department determines that a location appropriate to the resident's medical and other needs is not available.

(7) The department will:

(a) Send a copy of the transfer/discharge notice to the resident's attending physician, the nursing facility and, where appropriate, a family member or the resident's representative;

(b) Suspend transfer or discharge:

(i) If the office of administrative hearings receives an appeal on or before the date set for transfer or discharge or before the resident is actually transferred or discharged; and

(ii) Until the office of appeals makes a determination; and

(c) Provide assistance to the resident for relocation necessitated by the department's PASRR determination.

(8) Resident appeals of PASRR determinations will be in accordance with 42 C.F.R. § 431 Subpart E, chapter 388-02 WAC, and the procedures defined in this section. In the event of a conflict between a provision in this chapter and a provision in chapter 388-02 WAC, the provision in this chapter will prevail.

Intermediate Care Facilities for the Mentally Retarded

NEW SECTION

WAC 388-97-2020 Intermediate care facilities for the mentally retarded. (1) ICF/MR nursing facilities must meet the requirements of 42 C.F.R. § 483 Subpart I and the requirements of this subchapter except that in an ICF/MR nursing facility:

(a) There must be at least one registered nurse or licensed practical nurse on duty eight hours per day, and additional licensed staff on any shift if indicated. WAC 388-97-1080 (2)(a) and (3)(a) and (b) do not apply to ICF/MR nursing facilities; and

(b) A medical director is not required.

(2) Staff from the division of developmental disabilities will approve of social/therapeutic leave for individuals who reside in ICF/MR nursing facilities.

SUBCHAPTER II

PHYSICAL ENVIRONMENT

General

NEW SECTION

WAC 388-97-2040 Design. The design of a nursing home must facilitate resident-centered care and services in a safe, clean, comfortable and homelike environment that allows the resident to use his or her personal belongings to the greatest extent possible.

NEW SECTION

WAC 388-97-2060 New construction compliance. The nursing home must ensure that:

(1) New construction complies with all the requirements of subchapter II of this chapter;

(2) New construction approved by the department of health, certificate of need and construction review, before the effective date of this chapter complies with the rules in effect at the time of the plan approval;

(3) The department of health, certificate of need and construction review, is contacted for review and issues an applicable determination and approval for all new construction; and

(4) The department has done a pre-occupancy survey and has notified the nursing home that they may begin admitting residents.

NEW SECTION

WAC 388-97-2080 Fire standards and approval, and other standards. The nursing home must:

(1) Conform to at least the minimum standards for the prevention of fire, and for the protection of life and property against fire, according to the International Fire Code, RCW 19.27.031, the federal Life Safety Code, 42 C.F.R. 483.70(a), and additional state requirements in chapter 212-12 WAC; and

(2) Comply with all other applicable requirements of state and federal law.

NEW SECTION

WAC 388-97-2100 Maintenance and repair. All nursing homes must:

(1) Maintain electrical, mechanical, and patient care equipment in safe and operating condition; and

(2) Ensure floors, walls, ceilings, and equipment surfaces are maintained in clean condition and in good repair.

NEW SECTION

WAC 388-97-2120 Noise. (1) All nursing homes must maintain comfortable sound levels, to include minimizing the use of the public address system and taking reasonable precautions with noisy services so residents are not disturbed, particularly during their sleeping time; and

(2) In new construction, the nursing home must:

(a) Have walls, floor/ceiling and roof/ceiling assemblies constructed with materials that provide comfortable sound levels in all resident areas, rated at an STC 50 or greater; and

(b) Utilize an alternative to the public address system for nonemergency communication that best serves the residents' needs.

NEW SECTION

WAC 388-97-2140 Accessibility in new construction. The nursing home must be readily accessible to a person with disability and comply with WAC 388-97-3520.

NEW SECTION

WAC 388-97-2160 Types of new construction. New construction includes, but is not limited to:

(1) New structures.

(a) A new building to be licensed as a nursing home; or

(b) An addition to a building currently licensed as a nursing home.

(2) Existing buildings.

(a) Conversion of another building to a nursing home;

(b) Change in the use of space for access by residents within an existing nursing home; and

(c) Alterations including physical, mechanical, or electrical changes made to an existing nursing home, except for normal routine maintenance and repair.

(3) See WAC 388-97-3400(3) for less extensive alterations.

NEW SECTION

WAC 388-97-2180 ICF/MR exceptions to physical plan requirements. The following regulations do not apply to nursing homes certified exclusively under 42 C.F.R. § 483, Subpart I, or successor laws:

(1) WAC 388-97-2440, regarding the required number of square feet per bed; and

(2) WAC 388-97-2660, regarding cubicle curtains.

NEW SECTION

WAC 388-97-2200 Emergency power. (1) The nursing home must have an alternate source of power and automatic transfer equipment to connect the alternate source within ten seconds of the failure of the normal source.

(2) The nursing home must ensure the alternate source is a generator:

(a) With on-site fuel supply;

(b) Permanently fixed in place;

(c) Approved for emergency service; and

(d) An on premises emergency generator, as defined in NFPA 99, Health care facilities, when life support systems are used.

(3) The nursing home must ensure the emergency power supply provides a minimum of four hours of effective power for lighting for night lights, exit signs, exit corridors, stairways, dining and recreation areas, work stations, medication preparation areas, boiler rooms, electrical service room and emergency generator locations.

(4) A nursing home first licensed on or after October 1, 1981, must have emergency power supplied to:

(a) Communication systems, all alarm systems, an elevator that reaches every resident floor including the ground floor, equipment to provide heating for resident rooms or a room to which all residents can be moved; and

(b) Electrical outlets located in medication preparation areas, pharmacy dispensing areas, staff work stations, dining areas, resident corridors, and resident bed locations designated for use with life support systems.

(5) **In new construction** the emergency power equipment must meet the:

(a) Earthquake standards for the facility's geographic locale; and

(b) Requirements in NFPA 110, Generators.

Resident Care Unit

NEW SECTION

WAC 388-97-2220 Location of the resident care unit. The nursing home must ensure that:

(1) Each resident care unit is located to minimize through traffic to any general service, diagnostic, treatment, or administrative area; and

(2) **In new construction**, the resident care unit, and the services to support resident care and nursing needs, are designed to serve a maximum of sixty beds on the same floor.

NEW SECTION

WAC 388-97-2240 Required service areas on resident care units. (1) The nursing home must ensure each resident care unit has at least the following required service areas:

- (a) A staff work station;
- (b) A medicine storage and preparation area;
- (c) A utility room that maintains separated clean and soiled functions;
- (d) Storage space for linen, other supplies, and equipment; and
- (e) Housekeeping services and janitor's closet.

(2) **In new construction** resident care units may share required services if the units are in close proximity to each other and the combined units serve a total of not more than sixty residents; except the nursing home must have a separate staff work station on a secured dementia care unit.

NEW SECTION

WAC 388-97-2260 Staff work stations on resident care units. (1) On each unit, the nursing home must have a staff work station appropriate to the needs of staff using the space. At a minimum, the nursing home must equip the area with:

- (a) A charting surface;
- (b) A rack or other storage for current health records;
- (c) Storage for record and clerical supplies;
- (d) A telephone;
- (e) A resident call system; and
- (f) A clock.

(2) **In new construction** the work station space must be open to the corridor.

NEW SECTION

WAC 388-97-2280 Call systems on resident care units. The nursing home must provide the following, or an equivalent system that meets these standards:

(1) A wired or wireless communication system which registers a call by distinctive light at the room door and by distinctive light and audible tone at the staff work station. The system must be equipped to receive resident calls from:

- (a) The bedside of each resident;
- (b) Every common area, dining and activity areas, common use toilet rooms, and other areas used by residents; and
- (c) Resident toilet, bath and shower rooms.

(2) An emergency signal device activated by a nonconductive pull cord, or adapted to meet the needs of the resident. The nursing home must locate the signal device for easy reach by the resident. A signal device must be adapted to meet resident needs and, in the dementia unit, may be adapted for staff and family use, see WAC 388-97-2990.

NEW SECTION

WAC 388-97-2300 Telephones on resident care units. The nursing home must provide twenty-four hour access to a telephone for resident use which:

- (1) Provides auditory privacy;
- (2) Is accessible to a person with a disability and accommodates a person with sensory impairment;
- (3) Is not located in a staff office or at a nurse's station; and
- (4) Does not require payment for local calls.

NEW SECTION

WAC 388-97-2320 Utility service rooms on resident care units. (1) All nursing homes must:

- (a) Provide utility rooms designed, equipped, and maintained to ensure separation of clean and sterile supplies and equipment from those that are contaminated;
- (b) Ensure that each clean utility room has:
 - (i) A work counter;
 - (ii) A sink equipped with single use hand drying towels and soap for handwashing; and
 - (iii) Closed storage units for supplies and small equipment; and

- (c) Ensure that each soiled utility room has:
 - (i) A work counter and a sink large enough to totally submerge the items being cleaned and disinfected;
 - (ii) Storage for cleaning supplies and other items, including equipment, to meet nursing home needs;
 - (iii) Locked storage for cleaning agents, disinfectants and other caustic or toxic agents;
 - (iv) Adequate space for waste containers, linen hampers, and other large equipment; and
 - (v) Adequate ventilation to remove odors and moisture.

- (2) **In new construction:**
 - (a) A resident room must not be more than ninety feet from a clean utility room and a soiled utility room;
 - (b) The clean utility room and the soiled utility room must be separate rooms;

- (c) Each soiled utility room must contain:
 - (i) A double-compartment sink with inside dimensions of each compartment deep enough to totally submerge items being cleaned and disinfected;

- (ii) Sufficient, available work surface on each side of the sink to adequately process and dry equipment with a minimum of three feet of work surface on the clean side;

- (iii) Drying/draining racks for wet equipment;
- (iv) Work counters, sinks, and other fixed equipment arranged to prevent intermingling of clean and contaminated items during the cleaning process; and

- (v) A siphon jet type clinic service sink or equivalent installed on the soiled side of the utility room away from the door.

- (d) The nursing home's space for waste containers, linen hampers, and other large equipment must not block work areas; and

- (e) The utility rooms must meet the ventilation requirements of Table 6 in WAC 388-97-4040.

NEW SECTION

WAC 388-97-2340 Drug facilities on resident care units. The nursing home must provide an area designed and equipped for drug preparation and locked storage convenient to each work station. The nursing home must ensure:

- (1) The drug facilities are well illuminated, ventilated, and equipped with a work counter, sink with hot and cold running water, and drug storage units;
- (2) The drug storage units are one or more of the following:
 - (a) Locked cabinetry constructed in accordance with board of pharmacy regulations for drug storage which has:
 - (i) Separately keyed storage for Schedule II and III controlled substances; and
 - (ii) Segregated storage of different residents' drugs; or
 - (b) An automated medication distribution device or storage.
 - (3) There is a refrigerator for storage of thermolabile drugs in the drug facility;
 - (4) Locks and keys for drug facilities are different from other locks and keys within the nursing home; and
 - (5) **In new construction**, the drug facility must be a separate room.

NEW SECTION

WAC 388-97-2360 Linen storage on resident care units. The nursing home must provide:

- (1) A clean area for storage of clean linen and other bedding. This may be an area within the clean utility room;
- (2) A soiled linen area for the collection and temporary storage of soiled linen. This may be within the soiled utility room; and
- (3) **In new construction**, storage for linen barrels and clean linen carts.

NEW SECTION

WAC 388-97-2380 Janitors closets on resident care units. (1) The nursing home must have a janitor's closet with a service sink and adequate storage space for housekeeping equipment and supplies convenient to each resident unit.

- (2) **In new construction** a janitor's closet must meet the ventilation requirements of Table 6, in WAC 388-97-4040.

Resident Rooms

NEW SECTION

WAC 388-97-2400 Resident rooms. (1) The nursing home must ensure that each resident bedroom:

- (a) Has direct access to a hall or corridor;
- (b) Is located on an exterior wall with a transparent glass window; and
- (c) Is located to prevent through traffic.
- (2) **In a new building or addition**, each resident bedroom must:
 - (a) Have an exterior transparent glass window:
 - (i) With an area equal to at least one-tenth of the bedroom usable floor area;

- (ii) Located twenty-four feet or more from another building or the opposite wall of a court, or ten feet or more away from a property line, except on street sides;

- (iii) Located eight feet or more from any exterior walkway, paved surface, or driveway; and

- (iv) With a sill three feet or less above the floor.

- (b) Be located on a floor level at or above grade level except for earth berms. "Grade" means the level of ground adjacent to the building floor level measured at the required exterior window. The ground must be level or slope downward for a distance of at least ten feet from the wall of the building. From there the ground may slope upward to the maximum sill height of the required window at a rate of one foot vertical for two feet horizontal.

NEW SECTION

WAC 388-97-2420 Capacity of resident rooms. (1) The nursing home must ensure that any resident bedroom has:

- (a) No more than two beds between any resident bed and exterior window wall; and

- (b) A maximum capacity of four beds.

- (2) **In a new building, addition, or change of use to a resident bedroom** the maximum capacity is two beds per room, for plans submitted after September 1, 1995.

NEW SECTION

WAC 388-97-2440 Size of resident rooms. The nursing home must ensure that minimum usable room space exclusive of toilet rooms, closets, lockers, wardrobes, must:

- (1) In existing facilities, be at least eighty square feet per bed in each multibed room and at least one hundred square feet for each single bed room;

- (2) **In a new building or addition**, be one-hundred and ten square feet per bed in multibed rooms, and one-hundred square feet in single bed rooms;

- (3) **In new construction**, ensure that the minimum usable room space is also exclusive of vestibules; and

- (4) For exceptions to room size requirements refer to WAC 388-97-2180.

NEW SECTION

WAC 388-97-2460 Privacy in resident rooms. The nursing home must ensure that each resident bedroom is designed or equipped to ensure full visual privacy for each resident.

NEW SECTION

WAC 388-97-2480 Resident isolation rooms. If a nursing home provides an isolation room, the nursing home must ensure the room is uncarpeted and contains:

- (1) A handwashing sink with water supplied through a mixing valve;

- (2) Its own adjoining toilet room containing a bathing facility; and

- (3) **In new construction**, the handwashing sink must be located between the entry door and the nearest bed.

NEW SECTION

WAC 388-97-2500 Resident room size variance. The director of residential care services, aging and disability services administration, or their designee, may permit exceptions to WAC 388-97-2420 (1)(a) and 388-97-2440(1) when the nursing home demonstrates in writing that the exception:

- (1) Is in accordance with the special needs of the resident; and
- (2) Will not adversely affect any resident's health or safety.

Resident Room EquipmentNEW SECTION

WAC 388-97-2520 Resident room equipment. The nursing home must determine a resident's furniture and equipment needs at the time of admission and routinely thereafter to ensure resident comfort. Except as specified in WAC 388-97-0560, the nursing home must provide each resident with the following items required in WAC 388-97-2540 through 388-97-2680.

NEW SECTION

WAC 388-97-2540 Resident bed and bedside equipment. The nursing home must provide:

- (1) A comfortable bed of size and height to maximize a resident's independent functioning. Beds may be arranged to satisfy the needs and desires of the individual resident provided the arrangement does not negatively impact the health or safety of other residents;
- (2) Appropriate bedding; and
- (3) A bedside cabinet that allows for storage of small personal articles and a separate drawer or enclosed compartment for storage of resident care utensils/equipment.

NEW SECTION

WAC 388-97-2560 Lockable storage space in a resident room. The nursing home must provide:

- (1) A lockable storage space accessible to each resident for storage of small personal items, upon request; and
- (2) **In a new building or addition**, a lockable cabinet space or drawer for storage of personal belongings for each resident bed, in addition to the bedside cabinet.

NEW SECTION

WAC 388-97-2580 Wardrobes in a resident room. The nursing home must provide:

- (1) A separated, enclosed wardrobe or closet for each resident's clothing and belongings accessible to the resident; and
- (2) **In a new building or addition**, each bed in each room must have a separate, enclosed wardrobe or closet accessible to the resident with:
 - (a) Minimum inside dimensions of twenty-two inches deep by a minimum of twenty-six inches wide by sixty inches high; and

- (b) Inside space including a rod, at least fifteen inches long, and allowing for fifty-four inches of clear hanging length adjustable to meet the needs of the resident.

NEW SECTION

WAC 388-97-2600 Seating in a resident room. The nursing home must provide comfortable seating for residents and visitors, not including resident care equipment, that provides proper body alignment and support.

NEW SECTION

WAC 388-97-2620 Lighting in resident rooms. The nursing home must provide a permanently mounted or equivalent light suitable for any task the resident chooses to do or any task the staff must do.

NEW SECTION

WAC 388-97-2640 Call signal device in resident rooms. The nursing home must provide a resident call signal device that complies with WAC 388-97-2280.

NEW SECTION

WAC 388-97-2660 Cubicle curtains in resident rooms. The nursing home must provide:

- (1) Flame-retardant cubicle curtains in multibed rooms that ensures full visual privacy for each resident;
- (2) **In a new building or addition**, the cubicle curtain or enclosed space ensures full visual privacy for each bed in a multibed room with enclosed space containing at least sixty-four square feet of floor area with a minimum dimension of seven feet. "Full visual privacy" in a multibed room prevents staff, visitors and other residents from seeing a resident in bed, while allowing staff, visitors, and other residents access to the toilet room, handwashing sink, exterior window, and the entrance door;
- (3) For exceptions to cubicle curtain requirements refer to WAC 388-97-2180.

NEW SECTION

WAC 388-97-2680 Miscellaneous equipment in resident rooms in a new building or addition. The nursing home must provide:

- (1) A phone jack for each bed in each room;
- (2) A handwashing sink in each multibed room and a handwashing sink in each single room that does not have an adjoining toilet room containing a handwashing sink. A handwashing sink located in a resident bedroom must be located between the corridor entry door and the nearest resident bed; and
- (3) Storage that meets the requirements of WAC 388-97-3000, 388-97-3020, and 388-97-3040.

Resident Toilet and Bathing Facilities

NEW SECTION

WAC 388-97-2700 Resident toilet facilities or rooms.

The nursing home must ensure that:

- (1) Each resident room is equipped with or located convenient to toilet facilities.
- (2) **For new construction**, a toilet room must:
 - (a) Be directly accessible from each resident room and from each bathing facility without going through or entering a general corridor while maintaining resident dignity;
 - (b) Serve two bedrooms or less;
 - (c) Be designed to accommodate a person in a wheelchair;
 - (d) Contain at least one handwashing sink; and
 - (e) Provide a properly located and securely mounted grab bar at each side and the back of each toilet fixture in each toilet room and stall. Grab bars on the open side must be located twelve to eighteen inches from the center line of the toilet. Grab bars on the open side must be able to swing up.

NEW SECTION

WAC 388-97-2720 Resident bathing facilities or rooms. The nursing home must ensure:

- (1) Each resident room is equipped with or located near bathing facilities;
- (2) At least one bathing unit for no more than thirty residents that is not located in a room served by an adjoining bathroom;
- (3) At least one bathing device for immersion per floor;
- (4) At least one roll in shower or equivalent on each resident care unit:
 - (a) Designed and equipped for unobstructed ease of shower chair entry and use; and
 - (b) With a spray attachment equipped with a backflow prevention device.
- (5) Resident bathing equipment is smooth, cleanable, and able to be disinfected after each use.
- (6) **For new construction**, in each bathing unit containing more than one bathing facility:
 - (a) Each bathtub, shower, or equivalent, is located in a separate room or compartment with three solid walls;
 - (b) The entry wall may be a "shower" type curtain or equivalent;
 - (c) The area for each bathtub and shower is sufficient to accommodate a shower chair, an attendant, and provide visual privacy for bathing, drying, and dressing;
 - (d) Shower and tub surfaces are slip-resistant;
 - (e) Bathing areas are constructed of materials that are impervious to water and cleanable; and
 - (f) Grab bars are installed on all three sides of a shower with the shower head grab bar being "L" shaped.

NEW SECTION

WAC 388-97-2740 Locks in toilet and bathing facilities. The nursing home must ensure:

- (1) All lockable toilet facilities and bathrooms have a readily available means of unlocking from the outside; and

- (2) Locks are operable from the inside with a single motion.

Dining, Dayrooms, and Resident Activity Areas

NEW SECTION

WAC 388-97-2760 Dining, dayrooms, and resident activity areas. (1) The nursing home must provide one or more rooms designated for resident dining and activities that are:

- (a) Well lighted;
- (b) Well ventilated;
- (c) Adequately furnished; and
- (d) Large enough to accommodate all activities.
- (2) **In a new building or addition**, the nursing home must design space for dining rooms, dayrooms, and activity areas for resident convenience and comfort and to provide a homelike environment. These areas must be located on the same floor as the residents who will use the areas. The nursing home must:
 - (a) Ensure these rooms or areas are exterior rooms with windows that have a maximum sill height of thirty-six inches;
 - (b) Provide space for dining, day use, and activities with a minimum combined total of thirty square feet for each licensed bed;
 - (c) Design any multipurpose rooms to prevent program interference with each other;
 - (d) Locate a day room on each resident care unit;
 - (e) Provide storage spaces for all activity and recreational equipment and supplies, adjoining or adjacent to the facilities provided; and
 - (f) Locate a common use toilet facility, with handwashing sink and accessories, providing direct access from the hallway and within a maximum of forty feet from these spaces.

Laundry Services

NEW SECTION

WAC 388-97-2780 Laundry services and storage. The nursing home must comply with WAC 388-97-1860 and ensure:

- (1) Sufficient laundry washing and drying facilities to meet the residents' care and comfort needs without delay.
- (2) That the nursing home linen is disinfected in accordance with:
 - (a) The temperature and time of the cycle as specified by the manufacturer; or
 - (b) The hot water cycle using the following table:

Water Temperature	Cycle Length
160 degrees F	At least 5 minutes
140 degrees F	At least 15 minutes

- (3) **In new construction**, soiled linens and soiled clothing are stored and sorted in a room ventilated according to Table 6 in WAC 388-97-4040. The room must:

- (a) Have self-closing doors;

- (b) Be separated from the washing and drying facilities;
- (c) Contain a handwashing sink;
- (d) Have a floor drain; and
- (e) Contain a clinic service sink.

(4) **In new construction**, clean linen is stored in a room ventilated according to Table 6 in WAC 388-97-4040. The room must:

- (a) Be separated from the washing and drying facilities; and
- (b) Have self closing doors.

Dementia Care Unit

NEW SECTION

WAC 388-97-2800 Dementia care unit. A nursing home that began operating a dementia care unit at any time after November 13, 1989, must meet all requirements of this section, WAC 388-97-2820 through 388-97-2920, and the resident care unit requirements of WAC 388-97-2220 through 388-97-2380. Refer to WAC 388-97-1040, for program requirements.

NEW SECTION

WAC 388-97-2820 Dining areas on a dementia care unit. (1) The nursing home must provide dining areas in the dementia care unit which may also serve as day areas for the unit.

(2) **In a new building or addition**, the dining, dayroom, and activity area or areas on the unit must provide a minimum of thirty square feet per resident.

NEW SECTION

WAC 388-97-2840 Outdoor areas on a dementia care unit. The nursing home must provide the dementia care unit with:

- (1) Secured outdoor space and walkways;
- (2) An ambulation area with accessible walking surfaces that:
 - (a) Are firm, stable, and free from cracks and abrupt changes with a maximum of one inch between sidewalk and adjoining landscape areas;
 - (b) Have slip-resistant surfaces if subject to wet conditions; and
 - (c) Sufficient space and outdoor furniture with flexibility in arrangement of the furniture to accommodate residents who use wheelchairs and mobility aids.
- (3) Nontoxic outdoor plants in areas accessible to residents.
- (4) In new construction the outdoor areas must also meet the requirements of WAC 388-97-3740.

NEW SECTION

WAC 388-97-2860 Indoor areas on a dementia care unit. The nursing home must provide the dementia care unit with:

- (1) Indoor ambulation areas that meet the needs of the residents and are maintained free of equipment; and

- (2) Nontoxic indoor plants in areas accessible to residents.

NEW SECTION

WAC 388-97-2880 Ambulation route on a dementia care unit in a new building or addition. The nursing home must ensure that the dementia care unit has a continuous ambulation route which may include outdoor ambulation areas and allows the resident to return to the resident's starting point without reversing direction.

NEW SECTION

WAC 388-97-2900 Physical plant on a dementia care unit. The nursing home must:

- (1) Provide a staff toilet room with a handwashing sink;
- (2) Ensure that floors, walls, and ceiling surfaces display contrasting color for identification:
 - (a) Surfaces may have a disguise design to obscure or conceal areas that residents should not enter, except for exit doors and doorways; and
 - (b) Exit doors must be marked so that they are readily distinguishable from adjacent construction and the way of exit travel is obvious and direct.
- (3) Ensure that door thresholds are one-half inch high or less;
- (4) Provide a signal device adapted:
 - (a) To meet residents' needs; and
 - (b) For staff and family use, if necessary.
- (5) Ensure that the public address system is used only for emergency use; and
- (6) Refer to WAC 388-97-470(2) for dementia care unit exceptions to individual temperature controls.

NEW SECTION

WAC 388-97-2920 Special egress control devices on a dementia care unit. In dementia care units the nursing home must:

- (1) Have proof that required approvals for any special egress control devices were obtained from the state fire marshal, department of social and health services, and the local official who enforces the International Building Code and International Fire Code; and
- (2) **In a new building or addition, or when adding** special egress control devices to be used on doors and gates which are a part of the exit system, the building must:
 - (a) Have obtained approval from department of health construction review and the local official who enforces the International Building Code and International Fire Code;
 - (b) Have an approved automatic fire alarm system;
 - (c) Have an approved supervised automatic fire sprinkler system which is electrically interconnected with the fire alarm system; and
 - (d) Have a system which must:
 - (i) Automatically release if power to the system is lost;
 - (ii) Automatically release with activation of the building's fire alarm system;

(iii) Release with an override switch installed at each staff work station or at a constantly staff attended location within the building; and

(iv) Have directions for releasing the device at each egress controlled door and gate; and

(e) Prohibit the use of keyed locks at all doors and gates in all egress pathways.

Specialized and Outpatient Rehabilitation

NEW SECTION

WAC 388-97-2940 Specialized rehabilitation. (1) If nursing homes initially licensed after October 1, 1981 provide inpatient specialized rehabilitation, they must ensure that those services provide:

- (a) Easy access in general service areas;
- (b) Exercise, treatment, and supportive equipment as required by the narrative program in the construction documents;
- (c) Adequate space for exercise equipment and treatment tables with sufficient work space on each side;
- (d) Privacy cubicle curtains on tracks or the equivalent around treatment areas;
- (e) A sink in the treatment area and a toilet and hand-washing sink in a toilet room nearby;
- (f) Space and a desk or equivalent for administrative, clerical, interviewing, and consultative functions;
- (g) Adequate enclosed storage cabinets for clean linen and supplies and locked storage for cleaning chemicals in the rehabilitation room or nearby janitor's closet;
- (h) Adequate storage space for large equipment;
- (i) A janitor's closet close to the area;
- (j) Soiled linen storage; and
- (k) A separate room or area for hydrotherapy tanks, or the equivalent, if provided.

(2) **For any new construction** under WAC 388-97-2160, nursing homes licensed before October 1, 1981, must comply with the requirements in subsection (1) of this section.

NEW SECTION

WAC 388-97-2960 Outpatient rehabilitation. The nursing home must ensure that facilities with outpatient programs provide:

- (1) A designated reception and waiting room or area and space for interviewing or counseling individual outpatients and their families;
- (2) Adequate space for the program so that disruption to designated resident care units is minimized;
- (3) Accessible toilet and shower facilities nearby;
- (4) Lockers or a safe place to store outpatient personal belongings;
- (5) A separate room or area for hydrotherapy tanks, or the equivalent, if provided; and
- (6) **In new construction**, required access must come from the exterior without passing through the interior of the facility.

Food Services Areas

NEW SECTION

WAC 388-97-2980 Food service areas. The nursing home must ensure food service areas are in compliance with chapter 246-215 WAC, state board of health rules governing food service sanitation. The nursing home must:

- (1) Ensure food service areas are provided for the purpose of preparing, serving, and storing food and drink unless food service is provided from another licensed food service facility;
- (2) Ensure food service areas are located to facilitate receiving of food supplies, disposal of kitchen waste, and transportation of food to dining and resident care areas;
- (3) Locate and arrange the kitchen to avoid contamination of food, to prevent heat and noise entering resident care areas, and to prevent through traffic;
- (4) Locate the receiving area for ready access to storage and refrigeration areas;
- (5) Conveniently locate a handwashing sink near the food preparation and dishwashing area, and include a waste receptacle and dispensers stocked with soap and paper towels;
- (6) Adequately ventilate, light, and equip the dishwashing room or area for sanitary processing of dishes;
- (7) Locate the garbage storage area in a well-ventilated room or an outside area;
- (8) Provide hot and cold water and a floor drain connected to the sanitary sewage system in a can wash area, unless located in outside covered area;
- (9) Provide space for an office or a desk and files for food service management located central to deliveries and kitchen operations; and
- (10) Include housekeeping facilities or a janitor's closet for the exclusive use of food service with a service sink and storage of housekeeping equipment and supplies.

Storage

NEW SECTION

WAC 388-97-3000 Storage of equipment. The nursing home must:

- (1) Provide adequate storage space for wheelchairs and other ambulation equipment;
- (2) Ensure stored equipment does not impinge upon the required corridor space; and
- (3) **In new construction**, provide adequate storage of four square feet or more of storage space per bed which does not impinge upon required corridor space.

NEW SECTION

WAC 388-97-3020 Storage of resident room equipment in a new building or addition. The nursing home must provide separate storage for extra pillows and blankets for each bed. This may be in a location convenient to the resident room or combined with the wardrobe or closet if it does not impinge upon the required space for clothing.

NEW SECTION

WAC 388-97-3040 General storage in new construction. A nursing home must have general storage space of not less than five square feet per bed in addition to the closets and storage required in WAC 388-97-2560.

Lighting and ElectricalNEW SECTION

WAC 388-97-3060 Lighting. The nursing home must ensure that lighting and lighting levels:

- (1) Are adequate and comfortable for the functions being conducted in each area of the nursing home;
- (2) Are suitable for any task the resident chooses or any task the staff must do;
- (3) Support the independent functioning of the resident;
- (4) Provide a homelike environment; and
- (5) Minimize glare.

NEW SECTION

WAC 388-97-3080 Natural or artificial light. (1) The nursing home must ensure that adequate natural or artificial light for inside illumination is provided in every useable room area, including but not limited to storerooms, attic and basement rooms, hallways, stairways, inclines, and ramps.

(2) **In new buildings and additions**, the nursing home must utilize:

- (a) Windows and skylights to minimize the need for artificial light and to allow a resident to experience the natural daylight cycle; and
- (b) Windows and skylights near entrances/exits in order to avoid difficulty in adjusting to light levels when entering or leaving the facility.

NEW SECTION

WAC 388-97-3100 Outside lighting. The nursing home must ensure:

- (1) Lighting levels in parking lots and approaches to buildings are appropriate for resident and visitor convenience and safety; and
- (2) All outside areas where nursing home equipment and machinery are stored have proper lighting.

NEW SECTION

WAC 388-97-3120 Light shields. The nursing home must ensure that light shields are provided in food preparation and serving areas, utility rooms, medication rooms, exam rooms, pool enclosures, laundry areas, and on ceiling mounted fluorescent lights in resident rooms.

NEW SECTION

WAC 388-97-3140 Illumination levels in new buildings and additions. The nursing home must ensure:

- (1) Lighting fixtures and circuitry provide at least the illumination levels appropriate to the task;

(2) Design takes into consideration that lighting systems normally decrease in output with age and dirt accumulation; and

(3) Light fixture locations and switching arrangements are appropriate for the needs of the occupants of the spaces and follow Illuminating Engineering Society (IES) recommendations for health care facilities.

NEW SECTION

WAC 388-97-3160 Night lights in new construction. The nursing home must install in each resident room a night light that is:

- (1) Flush mounted on the wall;
- (2) Designed to prevent viewing the light source from thirty inches or more above the floor;
- (3) Located to provide safe pathway lighting for the staff and residents; and
- (4) Controlled by a switch at each resident room entrance door or by a master switch.

NEW SECTION

WAC 388-97-3180 Switches in new construction. The nursing home must install quiet operating switches for general illumination adjacent to doors in all areas and accessible to residents in resident rooms.

NEW SECTION

WAC 388-97-3200 Electrical outlets. (1) The nursing home must provide enough electrical outlets to meet the care and personal appliance needs of each resident. An approved power tap may be used only for portable appliances with specific overcurrent protection needs, such as a computer. A "power tap" is a device for indoor use consisting of an attachment plug on the end of a flexible cord and two or more receptacles on the opposite end, with overcurrent protection. A power tap must be:

- (a) Polarized or grounded;
- (b) UL listed; and
- (c) Directly connected to a permanently installed electrical outlet.

(2) **In new construction**, the nursing home must ensure:

- (a) There are a minimum of seven outlets:
 - (i) Four hospital grade electrical outlets located convenient to each residents' bed and centered at forty to forty-four inches above the floor, with a minimum of:
 - (A) Two additional electrical outlets at separate, convenient locations in each resident room; and
 - (B) One duplex electrical outlet located adjacent to each handwashing sink intended for resident use.
 - (b) All electrical outlets located within five feet of any sink, toilet, bath, or shower must be protected by a ground fault circuit interrupter.

SafetyNEW SECTION

WAC 388-97-3220 Safety. The nursing home must provide:

- (1) A safe, functional, sanitary, and comfortable environment for the residents, staff, and the public; and
- (2) Signs to designate areas of hazard.

NEW SECTION

WAC 388-97-3240 Safety—Poisons and nonmedical chemicals. The nursing home must ensure that poisons and nonmedicinal chemicals are stored in containers identified with warning labels. The containers must be stored:

- (1) In a separate locked storage when not in use by staff; and
- (2) Separate from drugs used for medicinal purposes.

NEW SECTION

WAC 388-97-3260 Safety—Storage of equipment and supplies. The nursing home must ensure that the manner in which equipment and supplies are stored does not jeopardize the safety of residents, staff, or the public.

NEW SECTION

WAC 388-97-3280 Safety—Handrails. The nursing home must:

- (1) Provide handrails on each side of all corridors and stairwells accessible to residents; and
- (2) **In new construction** ensure that:
 - (a) Ends of handrails are returned to the walls;
 - (b) Handrails are mounted thirty to thirty-four inches above the floor and project not more than three and three-quarters inches from the wall; and
 - (c) Handrails terminate not more than six inches from a door.

Water SupplyNEW SECTION

WAC 388-97-3300 Water supply. The nursing home must comply with the requirements of the group A, Public Water Systems, chapter 246-290 WAC or group B, Public Water Systems, chapter 246-291 WAC.

NEW SECTION

WAC 388-97-3320 Hot water. The nursing home must ensure:

- (1) The hot water system maintains water temperatures at one hundred ten degrees Fahrenheit, plus or minus ten degrees Fahrenheit, at fixtures used by residents and staff.
- (2) For laundry temperatures, refer to WAC 388-97-2780.
- (3) For dishwashing temperatures, refer to chapter 246-215 WAC.

NEW SECTION

WAC 388-97-3340 Cross connections. The nursing home must:

- (1) Prohibit all cross connections between potable and nonpotable water;
- (2) Use backflow prevention devices on plumbing fixtures, equipment, facilities, buildings, premises or areas which are actual or potential cross-connections to prevent the backflow of water or other liquids, gases, mixtures or substances into a water distribution system or other fixtures, equipment, facilities, buildings or areas; and
- (3) Follow guidelines, practices, procedures, interpretations and enforcement as outlined in the manual titled "Accepted Procedure and Practice in Cross-Connection Control; Pacific NW Edition; American Waterworks Association," or any successor manual, referenced in chapter 246-290 WAC for public water supply.

Pest Control and Sewage and Waste DisposalNEW SECTION

WAC 388-97-3360 Pest control. The nursing home must:

- (1) Maintain an effective pest control program so that the facility is free of pests such as rodents and insects;
- (2) Construct and maintain buildings to prevent the entrance of pests such as rodents and insects; and
- (3) Provide mesh screens or equivalent with a minimum mesh of one-sixteenth inch on all windows and other openings that can be left open.

NEW SECTION

WAC 388-97-3380 Sewage and liquid waste disposal. The nursing home must ensure:

- (1) All sewage and liquid wastes are discharged into an approved public sewage system where such system is available; or
- (2) Sewage and liquid wastes are collected, treated, and disposed of in an on-site sewage system in accordance with chapter 246-272A WAC and meets with the approval of the local health department and/or the state department of health.

New Construction DocumentsNEW SECTION

WAC 388-97-3400 General new construction documents. (1) The project sponsor must submit plans for all new construction to the department of health, construction review, for review and approval. Documents must be approved before the work begins. The project sponsor must also submit documents to department of health, certificate of need for review and applicable determination.

- (2) The nursing home may request exemptions to new construction requirements as described in WAC 388-97-3500.
- (3) If the proposed project is not extensive enough to require professional architectural or engineering services, the

project sponsor must submit a written description to the department of health, construction review, to determine if WAC 388-97-3440 applies.

NEW SECTION

WAC 388-97-3420 Preliminary new construction documents. If preliminary documents and specifications are submitted, they must:

(1) Include a narrative program with drawings. Copies of these documents must be sent to the department of health, certificate of need and construction review, and to aging and disability services administration. The narrative program must identify:

- (a) How the design promotes a homelike environment and facilitates resident-centered care and services;
- (b) Functional space requirements;
- (c) Staffing patterns;
- (d) Each function to be performed;
- (e) Types of equipment required; and
- (f) Services that will not be provided directly, but will instead be provided through contract.

(2) Refer to WAC 388-97-3400(3), if the proposed project is not extensive enough to require professional architectural or engineering services.

(3) Be drawn to scale and include:

(a) A site plan showing streets, entrance ways, drive-ways, parking, design statements for adequate water supply, sewage and disposal systems, space for the storage of recycled materials, and the arrangement of buildings on the site noting handicapped accessible parking and entrances;

(b) Floor plans showing existing and proposed arrangements within the building, including the fixed and major movable equipment; and

(c) Each room, space, and corridor identified by function and number.

(4) Include a general description of construction and materials, including interior finishes.

NEW SECTION

WAC 388-97-3440 Final new construction documents. (1) Construction must not start until at least two sets of final construction documents drawn to scale with complete specifications have been submitted to and approved by the department of health, construction review, in coordination with aging and disability services administration and the department of health, certificate of need.

(2) An architect or engineer licensed by the state of Washington must prepare, stamp, sign, and date the final construction documents.

(3) Construction documents that are changed after approval by the department of health, construction review, require resubmission before any construction on the proposed change is started.

(4) The construction of the facility must follow the final approved construction documents.

(5) These drawings and specifications must show complete details to be furnished to contractors for construction of the buildings, including:

- (a) Site plan;

(b) Drawings of each floor of the building, including fixed equipment;

(c) Elevations, sections, and construction details;

(d) Schedule of floor, wall, and ceiling finishes, door and window sizes and types, and door finish hardware;

(e) Mechanical and electrical systems;

(f) Provision for noise, dust, smoke, and draft control, fire protection, safety and comfort of the residents if construction work takes place in or near occupied areas; and

(g) Landscape plans and vegetation planting schedules for dementia care units.

(6) A reduced set of the final construction floor plans on eight and one half by eleven inch or eleven by seventeen inch sheets showing each room function and number must be submitted.

NEW SECTION

WAC 388-97-3460 Preinstallation submissions for new construction. The department of health, construction review, must receive and approve preinstallation submissions prior to installation. Preinstallation submissions may include any or all of the following:

(1) Stamped shop drawings, hydraulic calculations, and equipment information sheets for fire sprinkler system(s);

(2) Shop drawings, battery calculations, and equipment information sheets for fire detection and alarm systems;

(3) Shop drawings and equipment information sheets for a kitchen hood and duct automatic fire extinguishing system;

(4) Drawings and equipment information sheets for special egress control devices; and

(5) Drawings and/or a finish schedule denoting areas to be carpeted with:

(a) A coding system identifying type of carpet in each area;

(b) A copy the manufacturer's specifications for each type of carpet; and

(c) A copy of a testing laboratory report of the radiant panel and smoke density tests for each type of carpet.

NEW SECTION

WAC 388-97-3480 New construction timelines. (1) Construction documents must be resubmitted for review as a new project according to current requirements if construction:

(a) Has not started within one year from the date of approval; or

(b) Is not completed within two years from the date of approval.

(2) To obtain an extension beyond two years, a written request must be submitted and approved thirty days prior to the end of the two-year period.

NEW SECTION

WAC 388-97-3500 Exemptions to new construction requirements. (1) The director of residential care services, aging and disability services administration, may grant exemptions to new construction requirements for:

(a) Alterations when the applicant demonstrates the proposed alterations will serve to correct deficiencies or will upgrade the nursing home in order to better serve residents; and

(b) Substitution of procedures, materials, or equipment for requirements specified in this chapter when such procedures, materials, or equipment have been demonstrated to the director's satisfaction to better serve residents.

(2) The nursing home must ensure requests for exemptions are in writing and include any necessary approvals from the local code enforcement authority and the state fire marshal.

(3) The nursing home must ensure all exemptions granted under the foregoing provisions are kept on file at the nursing home.

Codes and Standards in New Construction

NEW SECTION

WAC 388-97-3520 State building code in new construction. The nursing home must through its design, construction and necessary permits demonstrate compliance with the following codes and local jurisdiction standards. The nursing home that submitted plans for construction review after July 1, 2007 must also comply with the following International Building Codes and Standards:

(1) The International Building Code, and International Building Code Standards, as published by the International Conference of Building Officials as amended and adopted by the Washington state building code council and published as chapter 51-50 WAC, or successor laws;

(2) The International Mechanical Code, including chapter 22, Fuel Gas Piping, Appendix B, as published by the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials as amended and adopted by the Washington state building code council and published as chapter 51-52 WAC, or successor laws;

(3) The International Fire Code, and International Fire Code Standards, as published by the International Conference of Building Officials and the Western Fire Chiefs Association as amended and adopted by the Washington state building code council and published as chapter 51-54 WAC, or successor laws;

(4) The Uniform Plumbing Code, and Uniform Plumbing Code Standards, as published by the International Association of Plumbing and Mechanical Officials, as amended and adopted by the Washington state building code council and published as chapters 51-56 and 51-57 WAC, or successor laws;

(5) The Washington state ventilation and indoor air quality code, as adopted by the Washington state building code council and filed as chapter 51-13 WAC, or successor laws; and

(6) The Washington state energy code, as amended and adopted by the Washington state building code council and filed as chapter 51-11 WAC, or successor laws.

NEW SECTION

WAC 388-97-3540 Electrical codes and standards in new construction. The nursing home must ensure that all electrical wiring complies with state and local electrical codes including chapter 296-46B WAC and the National Electric Code of the National Fire Protection Association (NFPA-70) as adopted by the Washington state department of labor and industries.

NEW SECTION

WAC 388-97-3560 Elevator codes in new construction. The nursing home must ensure that elevators are installed in accordance with chapter 296-96 WAC.

NEW SECTION

WAC 388-97-3580 Local codes and ordinances in new construction. The nursing home must:

(1) Follow all local ordinances relating to zoning, building, and environmental standards; and

(2) Obtain all local permits before construction and keep permits on file at the nursing home.

Administration and Public Areas in New Construction

NEW SECTION

WAC 388-97-3600 Entrances and exits in new construction. The nursing home must have the main entrances and exits sheltered from the weather and barrier free accessible in accordance with chapter 51-50 WAC.

NEW SECTION

WAC 388-97-3620 Lobbies in new construction. The nursing home must have a lobby or area in close proximity to the main entrance that is barrier free accessible and includes:

- (1) Waiting space with seating accommodations;
- (2) A reception and information area;
- (3) Space to accommodate persons in wheelchairs;
- (4) A public restroom;
- (5) A drinking fountain; and
- (6) A public telephone.

NEW SECTION

WAC 388-97-3640 Interview space in new construction. The nursing home must have interview spaces for private interviews relating to social service and admission.

NEW SECTION

WAC 388-97-3660 Offices in new construction. The nursing home must provide:

(1) Office space convenient to the work area for the administrator, the director of nursing services, medical records staff, social services staff, activities director, and other personnel as appropriate;

(2) Work space for physicians and outside consultants;

(3) Space for locked storage of health records which provides for fire and water protection; and

(4) Space for the safe storage and handling of financial and business records.

NEW SECTION

WAC 388-97-3680 Inservice education space in new construction. The nursing home must provide space for employee inservice education that will not infringe upon resident space.

NEW SECTION

WAC 388-97-3700 Staff areas in new construction. The nursing home must ensure a lounge, lockers, and toilets are provided convenient to the work areas for employees and volunteers.

Visiting, Private, and Outdoor Recreation Space and Walkways in New Construction

NEW SECTION

WAC 388-97-3720 Visiting and private space in new construction. The nursing home must design a separate room or areas for residents to have family and friends visit and for residents to spend time alone. The nursing home must ensure these areas provide:

- (1) Space which facilitates conversation and privacy; and
- (2) Access to a common-use toilet facility.

NEW SECTION

WAC 388-97-3740 Outdoor recreation space and walkways in new construction. A nursing home must provide a safe, protected outdoor area for resident use. The nursing home must ensure the outdoor area has:

- (1) Shaded and sheltered areas to meet residents needs;
- (2) Accessible walking surfaces which are firm, stable, and free from cracks and abrupt changes with a maximum of one inch between sidewalk and adjoining landscape areas;
- (3) Sufficient space and outdoor furniture provided with flexibility in arrangement of the furniture to accommodate residents who use wheelchairs and mobility aids;
- (4) Shrubs, natural foliage, and trees; and
- (5) If used as a resident courtyard, the outdoor area must not be used for public or service deliveries.

Pools and Pharmacies in New Construction

NEW SECTION

WAC 388-97-3760 Pools in new construction. The nursing home must ensure swimming pools, spas, and tubs which remain filled between uses meet the requirements in chapter 246-260 WAC.

NEW SECTION

WAC 388-97-3780 Pharmacies in new construction. The nursing home must ensure that an on-site pharmacy meets the requirements of the Washington state board of pharmacy per chapters 18.64 RCW and 246-865 WAC.

General Design Requirements in New Construction

NEW SECTION

WAC 388-97-3800 Elevators in new construction. The nursing home must:

- (1) Ensure that all buildings having residential use areas or service areas that are not located on the main entrance floor, have an elevator; and
- (2) Have at least one elevator sized to accommodate a resident bed and attendant for each sixty beds on floors other than the main entrance floor.

NEW SECTION

WAC 388-97-3820 Stairways, ramps, and corridors in new construction. The nursing home must ensure stairways, ramps, and corridors conform with Uniform Building Code.

NEW SECTION

WAC 388-97-3840 Walking surfaces in a new building or addition. The nursing must ensure that:

- (1) An abrupt change in the walking surface level including at door thresholds which are greater than one quarter inch are beveled to a one vertical in two horizontal; and
- (2) Changes in the walking surface level greater than one half inch are accomplished by means of a ramp with a maximum slope of one vertical in twelve horizontal.

NEW SECTION

WAC 388-97-3860 Doors in new construction. The nursing home must ensure doors to:

- (1) Resident rooms provide a minimum of forty-four inches clear width;
- (2) Resident bathrooms and toilet rooms are a minimum of thirty-two inches clear width for wheelchair access;
- (3) All resident toilet rooms and bathing facilities open outward except if doors open directly into a resident occupied corridor;
- (4) Toilet rooms and bathrooms have single action locks, and a means of unlocking doors from the outside;
- (5) Occupied areas do not swing into corridors; and
- (6) All passages are arranged so that doors do not open onto or obstruct other doors while maintaining resident dignity.

NEW SECTION

WAC 388-97-3880 Floor finishes in new construction. The nursing home must ensure:

- (1) Floors at all outside entrances have slip-resistant finishes both inside and outside the entrance even when wet; and

(2) All uncarpeted floors are smooth, nonabsorbent and easily cleanable.

NEW SECTION

WAC 388-97-3900 Carpets in new construction. The nursing home must ensure that department of health, construction review approves of all carpet installation.

(1) Carpets may be used in all areas except: Toilet rooms, bathrooms, kitchen, laundry, utility rooms, medication rooms, maintenance, isolation rooms if provided, and areas subject to high moisture or flooding. Specifications for acceptable carpeting are:

- (a) Pile yarn fibers are easily cleanable;
- (b) Pile is looped texture in all resident use areas. Cut pile may be used in nonresident use areas;
- (c) Average pile density of five thousand ounces per cubic yard in resident use areas and four thousand ounces per cubic yard in nonresident areas. The formula for calculating the density of the carpet is: Yarn weight in ounces times 36, divided by pile height in inches equals ounces per cubic yard of density; and
- (d) A maximum pile height of .255 inches in resident use areas and .312 inches in nonresident use areas.

(2) Carpets must:

- (a) Be cemented to the floor; and
- (b) Have the edges covered and top set base with toe at all wall junctures.
- (3) When recarpeting, the safety of residents must be assured during and after recarpeting installation within the room or area. The nursing home must ensure the room or area is:
 - (a) Well ventilated;
 - (b) Unoccupied; and
 - (c) Unavailable for use until room is free of volatile fumes and odors.

NEW SECTION

WAC 388-97-3920 Coving in new construction. The nursing home must ensure:

- (1) Kitchens, restrooms, laundry, utility rooms, and bathing areas have integral coves of continuous commercial grade sheet vinyl, bullnose ceramic tile or sealed bullnose quarry tile at least six inches in height; and
- (2) All other wall junctions have either integral coving or top set base with toe.

NEW SECTION

WAC 388-97-3940 Walls in new construction. The nursing home must ensure:

- (1) Wall finishes are easily cleanable;
- (2) A water-resistant finish extends above the splash line in all rooms or areas subject to splash or spray, such as bathing facilities with tubs only, toilet rooms, janitors' closets, and can-wash areas; and
- (3) Bathing facilities with showers have a water-resistant finish extending to the ceiling.

NEW SECTION

WAC 388-97-3960 Accessories in new construction.

The nursing home must provide the following accessories with the necessary backing, if required, for mounting:

- (1) Usable countertop area and mirror at each handwashing sink in toilet rooms and resident rooms;
- (2) Towel or robe hooks at each handwashing sink in resident rooms and at each bathing facility;
- (3) A robe hook at each bathing facility, toilet room and in examination room or therapy area, including outpatient therapy rooms;
- (4) A securely mounted toilet paper holder properly located within easy reach of the user at each toilet fixture;
- (5) Sanitary seat covers at each public and employee use toilet;
- (6) Open front toilet seats on all toilets;
- (7) Dispensers for paper towels and handwashing soap at each handwashing sink, and bathing facility;
- (8) Sanitary napkin dispensers and disposers in public and employee women's toilet rooms; and
- (9) Grab bars that are easily cleanable and resistant to corrosion and securely mounted.

NEW SECTION

WAC 388-97-3980 Miscellaneous in new construction. The nursing home must ensure:

- (1) Rooms and service areas are identified by visible and tactile signs, refer to WAC 388-97-2900(2) for possible exceptions; and
- (2) Equipment and casework is designed, manufactured and installed for ease of proper cleaning and maintenance, and suitable for the functions of each area.

Heating, Ventilation, and Air Conditioning Systems in New Construction

NEW SECTION

WAC 388-97-4000 Heating systems in new construction. The nursing home must ensure:

- (1) The heating system is capable of maintaining a temperature of seventy-five degrees Fahrenheit for areas occupied by residents and seventy degrees Fahrenheit for nonresident areas;
- (2) Resident rooms have individual temperature control, except in a dementia care unit controls may be covered, locked, or placed in an inconspicuous place;
- (3) The following is insulated within the building:
 - (a) Pipes conducting hot water which are exposed to resident contact; and
 - (b) Air ducts and casings with outside surface temperatures below ambient dew point.
- (4) Insulation on cold surfaces includes an exterior vapor barrier; and
- (5) Electric resistant wall heat units are prohibited in new construction.

NEW SECTION

WAC 388-97-4020 Cooling systems in new construction. The nursing home must have:

- (1) A mechanical cooling system capable of maintaining a temperature of seventy-five degrees Fahrenheit for areas occupied by residents; and
- (2) A cooling system that has mechanical refrigeration equipment to provide summer air conditioning to resident areas, food preparation areas, laundry, medication rooms, and therapy areas by either a central system with distribution ducts or piping, or packaged room or zonal air conditioners.

NEW SECTION

WAC 388-97-4040 Ventilation systems in new construction. The nursing home must ensure:

- (1) Ventilation of all rooms is designed to prevent objectionable odors, condensation, and direct drafts on the residents;
- (2) All habitable space is mechanically ventilated including:

- (a) Air-supply and air-exhaust systems;
- (b) Installation of air-handling duct systems according to the requirements of the International Mechanical Code and chapter 51-52 WAC;
- (c) Installation of supply registers and return air grilles at least three inches above the floor;
- (d) Installation of exhaust grilles on or near the ceiling; and
- (e) Outdoor air intakes located a minimum of twenty-five feet from the exhaust from any ventilating system, combustion equipment, or areas which may collect vehicular exhaust and other noxious fumes, and a minimum of ten feet from plumbing vents. The nursing home must locate the bottom of outdoor air intakes serving central systems a minimum of three feet above adjoining grade level or, if installed through the roof, three feet above the highest adjoining roof level.
- (3) Minimum ventilation requirements meet the pressure relationship and ventilation rates per ASHRAE 2007 HVAC Applications Chapter 7.11 Table 6, Pressure Relationships and Ventilation of Certain Areas of Nursing Homes.

**TABLE 6
PRESSURE RELATIONSHIPS AND VENTILATION OF CERTAIN AREAS OF NURSING HOMES**

Function Area	Pressure Relationship To Adjacent Areas ^{1,2}	Minimum Air Changes of Outdoor Air Per Hour Supplied To Room	Minimum Total Air Changes Per Hour Supplied To Room	All Air Exhausted Directly To Outdoors	Air Recirculated Within Room Units
RESIDENT CARE					
Resident room (holding room)	±	2	4	Optional	Optional
Resident corridor	±	Optional	2	Optional	Optional
Toilet room	N	Optional	10	Yes	No
Resident gathering (dining, activity)	±	2	4	Optional	Optional
DIAGNOSTIC AND TREATMENT					
Examination room	±	2	6	Optional	Optional
Physical therapy ³	N	2	6	Optional	Optional
Occupational therapy ³	N	2	6	Optional	Optional
Soiled workroom or soiled holding	N	2	10	Yes	No
Clean workroom or clean holding	P	2	4	Optional	Optional
STERILIZING AND SUPPLY					
Sterilizer exhaust room	N	Optional	10	Yes	No
Linen and trash chute room	N	Optional	10	Yes	No
Laundry, general ³	±	2	10	Yes	No
Soiled linen sorting and storage	N	Optional	10	Yes	No

Function Area	Pressure Relationship To Adjacent Areas ^{1,2}	Minimum Air Changes of Outdoor Air Per Hour Supplied To Room	Minimum Total Air Changes Per Hour Supplied To Room	All Air Exhausted Directly To Outdoors	Air Recirculated Within Room Units
Clean linen storage SERVICE	P	Optional	2	Yes	No
Food preparation center ³	±	2	10	Yes	Yes
Warewashing room ³	N	Optional	10	Yes	Yes
Dietary day storage	±	Optional	2	Yes	No
Janitor closet	N	Optional	10	Yes	No
Bathroom	N	Optional	10	Yes	No
Personal services (barber/salon)	N	2	10	Yes	No

^{1/} P=Positive N=Negative ±=Continuous directional control not required.

^{2/} Whether positive or negative, pressure must be a minimum of seventy cubic feet per minute (CFM).

^{3/} The volume of air may be reduced up to fifty percent in these areas during periods of nonuse. The soiled holding area of the general laundry must maintain its full ventilation capacity at all times.

(4) Individual exhaust systems meet the following requirements:

(a) Where individual mechanical exhaust systems are used to exhaust individual toilet rooms or bathrooms, the individual ventilation fans are interconnected with room lighting to ensure ventilation while room is occupied. The ventilation fan must have a time delay shutoff to ensure that the exhaust continues for a minimum of five minutes after the light switch is turned off; and

(b) The volume of air removed from the space by exhaust ventilation is replaced directly or indirectly by an equal amount of tempered/conditioned air.

(5) Central exhaust systems meet the following requirements:

(a) All fans serving central exhaust systems are located to prevent a positive pressure in the duct passing through an occupied area; and

(b) Fire and smoke dampers are located and installed in accordance with the International Building Code, Standards and amendments in chapter 51-50 WAC.

(6) Air filters meet the following requirements:

(a) All central ventilation or air-conditioning systems are equipped with filters per ASHRAE 2007 HVAC Applications Chapter 7.11 Table 5, Filter Efficiencies for Central Ventilation and Air Conditioning Systems in Nursing Homes and meet the following requirements:

FUNCTION AREA	Minimum Number of Filter Beds	Filter Efficiency of Main Filter Bed, MERV*
Resident care, treatment, diagnostic, and related areas	1	15

FUNCTION AREA	Minimum Number of Filter Beds	Filter Efficiency of Main Filter Bed, MERV*
Food preparation areas and laundries	1	8
Administrative, bulk storage, and soiled holding areas	1	6

*MERV = Minimum Efficiency Reporting Value

(b) Central ventilation or air conditioning systems means any system serving more than a single room used by residents or by any group of rooms serving the same utility function (i.e., the laundry);

(c) Filter efficiency is warranted by the manufacturer and is based on atmospheric dust spot efficiency per ASHRAE Standard 52.2;

(d) The filter bed is located upstream of the air-conditioning equipment, unless a prefilter is employed. In which case, the prefilter is upstream of the equipment and the main filter bed may be located downstream;

(e) Filter frames are durable and provide an airtight fit with the enclosing duct work. All joints between filter segments and enclosing duct work are gasketed or sealed;

(f) All central air systems have a manometer installed across each filter bed with an alarm to signal high pressure differential; and

(g) Humidifiers, if provided, are a steam type.

Plumbing and Fixtures in New Construction

NEW SECTION

WAC 388-97-4060 Handwashing sinks in new construction. The nursing home must provide a handwashing sink in each toilet room and exam room.

NEW SECTION

WAC 388-97-4080 Drinking fountains in new construction. Where drinking fountains are installed, the nursing home must ensure the fountains are of the inclined jet, sanitary type.

NEW SECTION

WAC 388-97-4100 Mixing valves or mixing faucets in new construction. The nursing home must provide each fixture, except toilet fixtures and special use fixtures, with hot and cold water through a mixing valve or mixing faucet.

NEW SECTION

WAC 388-97-4120 Spouts in new construction. The nursing home must ensure all lavatories and sinks in resident rooms, resident toilet rooms, and utility and medication areas have gooseneck spouts, without aerators in areas requiring infection control.

NEW SECTION

WAC 388-97-4140 Faucet controls in new construction. The nursing home must provide wrist blade, single-lever controls or their equivalent at all sinks and lavatories. The nursing home must:

- (1) Provide at least four inch wrist blades and/or single-levers;
- (2) Provide sufficient space for full open and closed operation; and
- (3) Color-code and label faucet controls to indicate "hot" and "cold."

SUBCHAPTER III

NURSING HOME LICENSE

Initial License Application

NEW SECTION

WAC 388-97-4160 Initial nursing home license. (1) A complete nursing home license application must be:

- (a) Submitted at least sixty days prior to the proposed effective date of the license on forms designated by the department;
- (b) Signed by the proposed licensee or the proposed licensee's authorized representative;
- (c) Notarized; and
- (d) Reviewed by the department in accordance with this chapter.

(2) All information requested on the license application must be provided. At minimum, the nursing home license application will require the following information:

- (a) The name and address of the proposed licensee, and any partner, officer, director, managerial employee, or owner of five percent or more of the proposed licensee;
- (b) The names of the administrator, director of nursing services, and, if applicable, the management company;
- (c) The specific location and the mailing address of the facility for which a license is sought;
- (d) The number of beds to be licensed; and
- (e) The name and address of all nursing homes that the proposed licensee or any partner, officer, director, managerial employee, or owner of five percent or more of the proposed licensee has been affiliated with in the past ten years.

(3) The proposed licensee must be:

- (a) The individual or entity responsible for the daily operation of the nursing home;
- (b) Denied the license if any individual or entity named in the application is found by the department to be unqualified.

(4) For initial licensure of a new nursing home, the proposed licensee must submit the annual license fee with the initial license application. The nonrefundable nursing home license fee is two hundred seventy-five dollars per bed per year.

(5) If any information submitted in the initial license application changes before the license is issued, the proposed licensee must submit a revised application containing the changed information.

(6) If a license application is pending for more than six months, the proposed licensee must submit a revised application containing current information about the proposed licensee or any other individuals or entities named in the application.

License Renewal

NEW SECTION

WAC 388-97-4180 Nursing home license renewal. (1) All nursing home licenses must be renewed annually.

(2) License renewals must be:

- (a) Submitted at least thirty days prior to the license's expiration date on forms designated by the department;
- (b) Signed by the current licensee; and
- (c) Reviewed by the department in accordance with this chapter.

(3) The current licensee must provide all information on the license renewal form or other information requested by the department.

(4) The application for a nursing home license renewal must be made by the individual or entity currently licensed and responsible for the daily operation of the nursing home.

(5) The nursing home license renewal fee must be submitted at the time of renewal. The nonrefundable nursing home license renewal fee is two hundred seventy-five dollars per bed per year.

(6) In unusual circumstances, the department may issue an interim nursing home license for a period not to exceed

three months. The current licensee must submit the prorated nursing home license fee for the period covered by the interim license. The annual date of license renewal does not change when an interim license is issued.

(7) A change of nursing home ownership does not change the date of license renewal and fee payment.

Department Review of License Applications and Appeals

NEW SECTION

WAC 388-97-4200 Department review of initial nursing home license applications. (1) All initial nursing home license applications must be reviewed by the department under this chapter.

(2) The department will not begin review of an incomplete license application.

(3) The proposed licensee must respond to any department request for additional information within five working days.

(4) When the application is determined to be complete, the department will consider the proposed licensee or any partner, officer, director, managerial employee, or owner of five percent or more of the proposed licensee, separately and jointly, in its review. The department will review:

- (a) The information contained in the application;
 - (b) Survey and complaint investigation findings in every facility each individual and entity named in the application has been affiliated with during the past ten years;
 - (c) Compliance history;
 - (d) Financial assessments;
 - (e) Actions against the proposed licensee (i.e., revocation, suspension, refusal to renew, etc.);
 - (f) All criminal convictions, and relevant civil or administrative actions or findings including, but not limited to, findings under 42 C.F.R. § 488.335, disciplinary findings, and findings of abuse, neglect, exploitation, or abandonment; and
 - (g) Other relevant information.
- (5) The department will notify the proposed licensee of the results of the review.

NEW SECTION

WAC 388-97-4220 Reasons for denial, suspension, modification, revocation of, or refusal to renew a nursing home license. (1) The department may deny, suspend, modify, revoke, or refuse to renew a nursing home license when the department finds the proposed or current licensee, or any partner, officer, director, managing employee, owner of five percent or more of the proposed or current licensee of the nursing home, owner of five percent or more of the assets of the nursing home, proposed or current administrator, or employee or individual providing nursing home care or services has:

- (a) Failed or refused to comply with the:
 - (i) Requirements established by chapters 18.51, 74.42, or 74.46 RCW and regulations adopted under these chapters; or
 - (ii) Medicaid requirements of Title XIX of the Social Security Act and Medicaid regulations.

(b) A history of significant noncompliance with federal or state regulations in providing nursing home care;

(c) No credit history or a poor credit history;

(d) Engaged in the illegal use of drugs or the excessive use of alcohol or been convicted of "crimes relating to drugs" as defined in RCW 43.43.830;

(e) Unlawfully operated a nursing home, or long term care facility as defined in RCW 70.129.010, without a license or under a revoked or suspended license;

(f) Previously held a license to operate a hospital or any facility for the care of children or vulnerable adults, and that license has been revoked, or suspended, or the licensee did not seek renewal of the license following written notification of the licensing agency's initiation of revocation or suspension of the license;

(g) Obtained or attempted to obtain a license by fraudulent means or misrepresentation;

(h) Permitted, aided, or abetted the commission of any illegal act on the nursing home premises;

(i) Been convicted of a felony or other crime that would be prohibited under RCW 74.39A.050(8), if it reasonably relates to the competency of the individual to own or operate a nursing home;

(j) Failed to:

(i) Provide any authorization, documentation, or information the department requires in order to verify information contained in the application;

(ii) Meet financial obligations as the obligations fall due in the normal course of business;

(iii) Verify additional information the department determines relevant to the application;

(iv) Report abandonment, abuse, neglect or financial exploitation in violation of chapter 74.34 RCW; or in the case of a skilled nursing facility or nursing facilities, failure to report as required by 42 C.F.R. 483.13; or

(v) Pay a civil fine the department assesses under this chapter within ten days after assessment becomes final.

(k) Been certified pursuant to RCW 74.20A.320 as a person who is not in compliance with a child support order (license suspension only);

(l) Knowingly or with reason to know makes a false statement of a material fact in the application for a license or license renewal, in attached data, or in matters under department investigation;

(m) Refused to allow department representatives or agents to inspect required books, records, and files or portions of the nursing home premises;

(n) Willfully prevented, interfered with, or attempted to impede the work of authorized department representatives in the:

(i) Lawful enforcement of provisions under this chapter or chapters 18.51 or 74.42 RCW; or

(ii) Preservation of evidence of violations of provisions under this chapter or chapters 18.51 or 74.42 RCW.

(o) Retaliated against a resident or employee initiating or participating in proceedings specified under RCW 18.51.220; or

(p) Discriminated against Medicaid recipients as prohibited under RCW 74.42.055.

(2) In determining whether there is a history of significant noncompliance with federal or state regulations under subsection (1)(b), the department may, at a minimum, consider:

(a) Whether the violation resulted in a significant harm or a serious and immediate threat to the health, safety, or welfare of any resident;

(b) Whether the proposed or current licensee promptly investigated the circumstances surrounding any violation and took steps to correct and prevent a recurrence of a violation;

(c) The history of surveys and complaint investigation findings and any resulting enforcement actions;

(d) Repeated failure to comply with regulations;

(e) Inability to attain compliance with cited deficiencies within a reasonable period of time; and

(f) The number of violations relative to the number of facilities the proposed or current licensee, or any partner, officer, director, managing employee, employee or individual providing nursing home care or services has been affiliated within the past ten years, or owner of five percent or more of the proposed or current licensee or of the assets of the nursing home.

(3) The department must deny, suspend, revoke, or refuse to renew a proposed or current licensee's nursing home license if the proposed or current licensee or any partner, officer, director, managing employee, owner of five percent or more of the proposed or current licensee of the nursing home or owner of five percent or more of the assets of the nursing home, proposed or current administrator, or employee or individual providing nursing home care or services has been:

(a) Convicted of a "crime against children or other persons" as defined under RCW 43.43.830;

(b) Convicted of a "crime relating to financial exploitation" as defined under RCW 43.43.830;

(c) Found by a court in a criminal proceeding or a protection proceeding under chapter 74.34 RCW, or any comparable state or federal law, to have abandoned, abused, neglected or financially exploited a vulnerable adult;

(d) Found in any final decision issued by a disciplinary board to have sexually or physically abused or exploited any minor or an individual with a developmental disability or to have abused, neglected, abandoned, or financially exploited any vulnerable adult;

(e) Found in any dependency action to have sexually assaulted or exploited any minor or to have physically abused any minor;

(f) Found by a court in a domestic relations proceeding under Title 26 RCW, or any comparable state or federal law, to have sexually abused or exploited any minor or to have physically abused any minor; or

(g) Found to have abused, neglected, abandoned or financially exploited or mistreated residents or misappropriated their property, and that finding has been entered on a nursing assistant registry.

NEW SECTION

WAC 388-97-4240 Appeal of the department's licensing decision. A proposed or current licensee contesting

a department licensing decision must file a written request for an administrative hearing within twenty days of receipt of the decision.

The appeals process and requirements are set forth in WAC 388-97-4440.

Management Agreements and Changes of Ownership

NEW SECTION

WAC 388-97-4260 Management agreements. (1) The licensee is responsible for the daily operations of the nursing home.

(2) As used in this section:

(a) "**Management agreement**," means a written, executed, agreement between the licensee and another individual or entity regarding the provision of certain services in a nursing home; and

(b) "**Manager**" refers to the individual or entity providing services under a management agreement.

(3) The licensee may not give the manager responsibilities that are so extensive that the licensee is relieved of responsibility for the daily operations and provisions of services of the facility. If the licensee does so, then the department must determine that a change of ownership has occurred.

(4) The proposed licensee or the current licensee must notify the residents and their representatives sixty days before entering into a management agreement.

(5) The department must receive a written management agreement, including an organizational chart showing the relationship between the proposed or current licensee, management company, and all related organizations:

(a) Sixty days before:

(i) The proposed change of ownership date;

(ii) The initial licensure date; or

(iii) The effective date of the management agreement; or

(b) Thirty days before the effective date of any amendment to an existing management agreement.

(6) Management agreements, at minimum must:

(a) Create a principal/agent relationship between the licensee and the manager;

(b) Describe the responsibilities of the licensee and manager, including items, services, and activities to be provided;

(c) Require the licensee's governing body, board of directors, or similar authority to appoint the facility administrator;

(d) Provide for maintenance and retention of all records as applicable according to rules and regulations;

(e) Allow unlimited access by the department to documentation and records according to applicable laws or regulations;

(f) Require the licensee to participate in monthly oversight meetings and quarterly on-site visits to the facility;

(g) Require the manager to immediately send copies of surveys and notices of noncompliance to the licensee;

(h) State that the licensee is responsible for ensuring all licenses, certifications, and accreditations are obtained and maintained;

(i) State that the manager and licensee will review the management agreement annually and notify the department of changes according to applicable regulations;

(j) Acknowledge that the licensee is the party responsible for meeting state and federal licensing and certification requirements;

(k) Require the licensee to maintain ultimate responsibility over personnel issues relating to the operation of the nursing home and care of the residents, including but not limited to, staffing plans, orientation, and training;

(l) Require that, even if day-to-day management of the trust funds are delegated, the licensee:

(i) Retains all fiduciary and custodial responsibility for funds that have been deposited with the nursing home by the resident; and

(ii) Is directly accountable to the residents for such funds.

(m) Provide that if any responsibilities for the day-to-day management of the resident trust fund are delegated to the manager, then the manager must:

(i) Provide the licensee with a monthly accounting of the resident funds; and

(ii) Meet all legal requirements related to holding, and accounting for, resident trust funds; and

(n) State that the manager will not represent itself or give the appearance it is the licensee.

(7) Upon receipt of a proposed management agreement, the department may require:

(a) The licensee or manager to provide additional information or clarification;

(b) Any changes necessary to:

(i) Bring the management agreement into compliance with this section; and

(ii) Ensure that the licensee has not been relieved of the responsibility for the daily operations of the facility; and

(c) More frequent contact between the licensee and manager under subsection (6)(f).

(8) The licensee and manager must act in accordance with the terms of the management agreements. If the department determines that they are not, then the department may take action deemed appropriate.

NEW SECTION

WAC 388-97-4280 Change of ownership. (1) A change of ownership occurs when there is a substitution, elimination, or withdrawal of the licensee or a substitution of control of the licensee. "Control," as used in this section, means the possession, directly or indirectly, of the power to direct the management, operation, and policies of the licensee, whether through ownership, voting control, by agreement, by contract or otherwise. Events which constitute a change of ownership include, but are not limited to, the following:

(a) The form of legal organization of the licensee is changed (e.g., a sole proprietor forms a partnership or corporation);

(b) The licensee transfers ownership of the nursing home business enterprise to another party regardless of whether

ownership of some or all of the real property and/or personal property assets of the facility is also transferred;

(c) Dissolution or consolidation of the entity;

(d) Merger unless the licensee survives the merger and there is not a change in control of the licensee;

(e) If, during any continuous twenty-four month period, fifty percent or more of the entity is transferred, whether by a single transaction or multiple transactions, to:

(i) A different party (e.g., new or former shareholders); or

(ii) An individual or entity that had less than a five percent ownership interest in the nursing home at the time of the first transaction; or

(f) Any other event or combination of events that the department determines results in a:

(i) Substitution, elimination, or withdrawal of the licensee; or

(ii) Substitution of control of the licensee responsible for the daily operational decisions of the nursing home.

(2) Ownership does not change when the following, without more, occur:

(a) A party contracts with the licensee to manage the nursing home enterprise in accordance with the requirements of WAC 388-97-4260; or

(b) The real property or personal property assets of the nursing home are sold or leased, or a lease of the real property or personal property assets is terminated, as long as there is not a substitution or substitution of control of the licensee.

(3) When a change of ownership is contemplated, the current licensee must notify the department and all residents and their representatives at least sixty days prior to the proposed date of transfer. The notice must be in writing and contain the following information as specified in RCW 18.51.530:

(a) Name of the proposed licensee;

(b) Name of the managing entity;

(c) Names, addresses, and telephone numbers of department personnel to whom comments regarding the change may be directed;

(d) Names of all officers and the registered agent in the state of Washington if proposed licensee is a corporation; and

(e) Names of all general partners if proposed licensee is a partnership.

(4) The proposed licensee must comply with license application requirements. The operation or ownership of a nursing home must not be transferred until the proposed licensee has been issued a license to operate the nursing home.

Licensed Bed Capacity, Relocation of Residents and License Relinquishment

NEW SECTION

WAC 388-97-4300 Licensed bed capacity. A nursing home must not be licensed for a capacity that exceeds the number of beds permitted under:

(1) This chapter;

(2) Chapter 70.38 RCW and regulations thereunder; or

(3) Applicable local zoning, building or other such regulations.

NEW SECTION

WAC 388-97-4320 Relocation of residents. (1) In the event of license revocation or suspension, decertification, or other emergency closures the department must:

(a) Notify residents and, when appropriate, resident representatives of the action;

(b) Assist with residents' relocation and identify possible alternative living choices and locations; and

(c) The nursing home will assist the residents to the extent it is directed to do so by the department.

(2) When a resident's relocation occurs due to a nursing home's voluntary closure, or voluntary termination of its Medicare or Medicaid contract or both, the nursing home must:

(a) Notify the department and all residents and resident representatives in accordance with WAC 388-97-1640;

(b) Notify the Centers for Medicare and Medicaid Services and the public as required by 42 C.F.R. 489.52, or a successor regulation, if the closure or termination affects the provision of Medicare services; and

(c) Provide appropriate discharge planning and coordination for all residents including a plan to the department for safe and orderly transfer or discharge of residents from the nursing home.

(3) The department may provide residents assistance with relocation.

NEW SECTION

WAC 388-97-4340 License relinquishment. (1) A nursing home licensee must voluntarily relinquish its license when:

(a) The nursing home ceases to do business as a nursing home; and

(b) Within twenty-four hours after the last resident is discharged from the facility.

(2) The license must be returned to the department.

(3) If a nursing home licensee fails to voluntarily relinquish its license, the department will revoke the license.

SUBCHAPTER IV**NURSING HOME LICENSURE PROGRAM ADMINISTRATION**NEW SECTION

WAC 388-97-4360 Inspections and deficiency citation report. (1) The department may inspect nursing homes at any time in order to determine compliance with the requirements of chapters 18.51 or 74.42 RCW and this chapter. Types of state inspections in nursing homes include pre-occupancy, licensing, revisit, and complaint investigation. In the case of a Medicaid or Medicare contractor, or both, the department may also inspect Medicare and Medicaid certified nursing homes to determine compliance with the requirements of Title XVIII and/or XIX of the Social Security Act and federal Medicare and Medicaid regulations.

(2) The department will provide to the nursing home written documentation (notice) of the nursing home's defi-

ciency(ies), the requirement that the deficiency(ies) violates, and the reasons for the determination of noncompliance with the requirements (RCW 18.51.091).

(3) The department may revisit the nursing home to confirm that corrections of deficiencies has been made. Revisits will be made:

(a) In accordance with RCW 74.39A.060 (5)(e);

(b) In the case of a Medicare or Medicaid contractor, or both, in accordance with the requirements of Title XVIII or XIX, or both of the Social Security Act and federal Medicare and Medicaid regulations; and

(c) At the department's discretion.

(4) The licensee or nursing home must:

(a) Ensure that department staff have access to the nursing home residents, staff and all resident records; and

(b) Not willfully interfere or fail to cooperate with department staff in the performance of official duties. Examples of willful interference or failure to cooperate include, but are not limited to, not allowing department staff to talk to residents or staff in private or not allowing department staff access to resident records.

NEW SECTION

WAC 388-97-4380 Plan of correction. (1) The licensee or nursing home must, within ten calendar days of notification of the cited deficiencies prepare, sign, date and provide to the department a detailed written plan of correction. Such plan of correction will provide notification to the department of the date by which the nursing home will complete the correction of cited deficiencies. The plan of correction must be completed regardless of whether the licensee requests an informal department review in accordance in WAC 388-97-4420.

(2) A plan of correction is not required for deficiencies at a severity level 1/isolated scope as described in WAC 388-97-4500, unless specifically requested by the department.

(3) In the case of actual or imminent threat to resident health or safety/immediate jeopardy (severity level 4 as described in WAC 388-97-4500), the department may require the licensee or nursing home to submit a document alleging that the imminent threat has been removed within a time frame specified by the department. The document must specify the steps the nursing home has taken or will take to correct the imminent harm. An allegation that the imminent harm has been removed does not substitute for the plan of correction as required by subsection (1) of this section but it will become a part of the completed plan of correction.

NEW SECTION

WAC 388-97-4400 Acceptable and unacceptable plans of correction. (1) A plan of correction must:

(a) Address how corrective action will be accomplished for those residents found to have been affected by the deficient practice;

(b) Address how the nursing home will identify other residents having the potential to be affected by the same deficient practice;

(c) Address what measures will be put into place or systemic changes made to ensure that the deficient practice will not recur;

(d) Indicate how the nursing home plans to monitor its performance to make sure that solutions are sustained, including how the plan of correction will be integrated into the nursing home's quality assurance system;

(e) Give the title of the person who is responsible for assuring lasting correction; and

(f) Give the date by which the correction will be made.

(2) The department will review the nursing home's plan of correction to determine whether it is acceptable.

(3) When deficiencies involve nursing home alterations, physical plant plan development, construction review, or other circumstances where extended time to complete correction may be required, the department's designated local aging and disability services administration field office or other department designee may accept a plan of correction as evidence of substantial compliance under the following circumstances:

(a) The plan of correction must include the steps that the nursing home needs to take, the time schedule for completion of the steps, and concrete evidence that the plan will be carried out as scheduled; and

(b) The nursing home must submit progress reports and/or updated plans to the department in accordance with a schedule specified by department.

(c) The department's acceptance of a plan of correction is solely at the department's discretion and does not rule out the imposition of optional remedies.

NEW SECTION

WAC 388-97-4420 Informal department review. (1) For Medicare or Medicaid certified nursing homes, the informal department review process described in this section is the only opportunity for the nursing home to dispute the federal deficiency citation report, unless a federal sanction is imposed.

(2) The nursing home licensee has the right to an informal department review of disputed state or federal citations, or both.

(3) A licensee must make a written request for an informal department review within ten calendar days of receipt of the department's written deficiency citation(s) report. The request must be directed to the department's designated local aging and disability services administration office and must identify the deficiencies that are being disputed.

(4) At the informal department review, the licensee or nursing home may provide documentation and verbal explanations related to the disputed federal or state deficiencies, or both.

(5) When modifications or deletions are made to the disputed federal or state deficiency citations, or both, the licensee or nursing home must modify or delete the relevant portions of the plan of correction within five days of receipt of the modified or deleted deficiency(ies). The licensee or nursing home may request from the department a clean copy of the revised deficiency citation report.

(6) If the licensee or nursing home is unwilling to provide the modified plan of correction, the department may impose a per day civil fine for failure to return the modified deficiency citation report to the department in accordance with this subsection.

NEW SECTION

WAC 388-97-4440 Notice and appeal rights. (1) The notification and hearing rights in this section apply to any appealable action taken by the department under chapters 18.51, 74.42 and 74.39A RCW. Notification and appeals requirements for resident protection program findings are described in WAC 388-97-0720 and 388-97-0740.

(2) The following actions may be appealed:

(a) Imposition of a penalty under RCW 18.51.060 or 74.42.580;

(b) An action by the department such as a denial of a license under RCW 18.51.054, a license suspension under RCW 18.51.067 or a condition on a license under RCW 74.39A.050; or

(c) Deficiencies cited on the state survey report.

(3) The appeal process will be governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 18.51.065 and 74.42.580, chapter 388-02 WAC and this chapter. If any provision in this chapter conflicts with chapter 388-02 WAC, the provision of this chapter will govern.

(4) The purpose of an administrative hearing will be to review actions taken by the department under chapters 18.51, 74.42 or 74.39A RCW, and under this chapter.

(5) The applicant, licensee or nursing home must receive a request for an administrative hearing with the office of administrative hearings within twenty days of receipt of written notification of the department's action as defined in subsection (2) of this section. Further information about administrative hearings is available in chapter 388-02 WAC and at the office of administrative hearing (OAH) web site: www.oah.wa.gov.

(6) Orders of the department imposing a stop placement, license suspension, emergency closure emergency transfer of residents, temporary management or conditions on a license are effective immediately upon verbal or written notice and must remain in effect until they are rescinded by the department or through the state administrative appeals process.

(7) Deficiencies cited on the federal survey report may not be appealed through the state administrative appeals process. If a federal remedy is imposed, the Centers for Medicare and Medicaid Services will notify the nursing facility of appeal rights under the federal administrative appeals process.

(8) The department's decision to petition to remove a finding of neglect under WAC 388-97-0780 (3)(c) may not be appealed.

NEW SECTION

WAC 388-97-4460 Remedies. Mandatory Remedies

(1) In accordance with RCW 18.51.060 (5)(a), the department must impose a stop placement order when the department determines that the nursing home is not in sub-

stantial compliance with applicable laws or regulations and the cited deficiency(ies):

- (a) Jeopardize the health and safety of the residents; or
- (b) Seriously limit the nursing home's capacity to provide adequate care.

(2) When required by RCW 18.51.060(3), the department must deny payment to a nursing home that is certified to provide Medicaid services for any Medicaid-eligible individual admitted to the nursing home. Nursing homes that are certified to provide Medicare services or both Medicare and Medicaid services may be subject to a federal denial of payment for new admissions, in accordance with federal law.

(3) The department must deny, suspend, revoke or refuse to renew a proposed or current licensee's nursing home license in accordance with WAC 388-97-4220(3).

Optional Remedies

(4) When the department determines that a licensee has failed or refused to comply with the requirements under chapter 18.51, 74.39A or 74.42 RCW, or this chapter; or a Medicaid contractor has failed or refused to comply with Medicaid requirements of Title XIX of the Social Security Act or Medicaid regulations, the department may impose any or all of the following optional remedies:

- (a) Stop placement;
- (b) Immediate closure of a nursing home, emergency transfer of residents or both;
- (c) Civil fines;
- (d) Appoint temporary management;
- (e) Petition the court for appointment of a receiver in accordance with RCW 18.51.410;
- (f) License denial, revocation, suspension or nonrenewal;
- (g) Denial of payment for new Medicaid admissions;
- (h) Termination of the Medicaid provider agreement (contract);
- (i) Department on-site monitoring as defined under WAC 388-97-0001; and
- (j) Reasonable conditions on a license as authorized by chapter 74.39A RCW. Examples of conditions on a license include but are not limited to training related to the deficiency(ies); consultation in order to write an acceptable plan of correction; demonstration of ability to meet financial obligations necessary to continue operation.

NEW SECTION

WAC 388-97-4480 Criteria for imposing optional remedies. (1) The criteria set forth in this section implement the requirements under RCW 18.51.060(8). The criteria do not replace the standards for imposition of mandatory remedies under RCW 18.51.060 (3) and (5), or for the imposition of mandatory remedies in accordance with WAC 388-97-4460 (1), (2) and (3).

(2) The department must consider the imposition of one or more optional remedy(ies) when the nursing home has:

- (a) A history of being unable to sustain compliance;
- (b) One or more deficiencies on one inspection at severity level 2 or higher as described in WAC 388-97-4500;

(c) Been unable to provide an acceptable plan of correction after receiving assistance from the department about necessary revisions;

(d) One or more deficiencies cited under general administration and/or nursing services;

(e) One or more deficiencies related to retaliation against a resident or an employee for whistle blower activity under RCW 18.51.220, 74.34.180 or 74.39A.060 and WAC 388-97-1820;

(f) One or more deficiencies related to discrimination against a Medicare or Medicaid client under RCW 74.42.055, and Titles XVIII and XIX of the Social Security Act and Medicare and Medicaid regulations; or

(g) Willfully interfered with the performance of official duties by a long-term care ombudsman.

(3) The department, in its sole discretion, may consider other relevant factors when determining what optional remedy or remedies to impose in particular circumstances.

(4) When the department imposes an optional remedy or remedies, the department will select more severe penalties for nursing homes that have deficiency(ies) that are:

- (a) Uncorrected upon revisit;
- (b) Recurring (repeated);
- (c) Pervasive; or
- (d) Present a threat to the health, safety, or welfare of the residents.

(5) The department will consider the severity and scope of cited deficiencies in accordance with WAC 388-97-4500 when selecting optional remedy(ies). Such consideration will not limit the department's discretion to impose a remedy for a deficiency at a low level severity and scope.

NEW SECTION

WAC 388-97-4500 Severity and scope of deficiencies.

(1) "**Severity of a deficiency**" means the seriousness of the deficiency. Factors the department will consider when determining the severity of a deficiency may include, but are not limited to:

- (a) Whether harm to the resident has occurred, or could occur, including but not limited to a violation of resident's rights;
- (b) The Impact of the actual or potential harm on the resident; and
- (c) The degree to which the nursing home failed to meet the resident's highest practicable physical, mental, and psychosocial well-being as defined in WAC 388-97-0001.

(2) Severity levels

(a) Severity level 4—Imminent harm or immediate jeopardy

Level 4 means that a resident(s)' health or safety is imminently threatened or immediately jeopardized as a result of deficient nursing home practice. This level includes actual harm or potential harm, or both, to resident(s)' health or safety that has had or could have a severe negative outcome or critical impact on resident's well-being, including death or severe injury. Severity Level 4 requires immediate corrective action to protect the health and safety of resident(s).

<p>(b) Severity level 3—Actual harm Level 3 means that actual harm has occurred to resident(s) as the result of deficient nursing home practice.</p> <p>(i) "Serious harm" is harm that results in a negative outcome that significantly compromises the resident(s)' ability to maintain and/or reach the highest practicable physical, mental and psychosocial well-being. Serious harm does not constitute imminent danger/immediate jeopardy (Severity Level 4).</p> <p>(ii) "Moderate harm" is harm that results in a negative outcome that more than slightly but less than significantly compromises the resident(s)' ability to maintain and/or reach the highest practicable physical, mental and psychosocial well-being.</p> <p>(iii) "Minimal harm" is harm that results in a negative outcome that to a small degree compromises the resident(s)' ability to maintain and/or reach the highest practicable physical, mental well-being.</p>
<p>(c) Severity level 2—Potential for harm Level 2, "potential for harm" means that if the deficient nursing home practice is not corrected, resident(s) may suffer actual harm.</p>
<p>(d) Severity level 1—No harm or minimal impact Level 1 means a deficient nursing home practice that does not compromise the resident(s)' ability to maintain or reach, or both, the highest practicable physical, mental and psychosocial well-being. Deficiencies at level 1 are those that have no direct or potential for no more than minimal impact on the resident. Examples include certain structure deficiencies, certain physical environment deficiencies and process deficiencies.</p>

(3) **"Scope of a deficiency"** means the frequency, incidence, or extent of the occurrence of the deficiency.

(4) Scope categories

(a) **"Isolated or limited scope"** means a relatively few number of residents have been affected or have the potential to be affected, by the deficient nursing home practice.

(b) **"Moderate or pattern scope"** scope means more than an isolated and less than a widespread number of residents have been affected, or have the potential to be affected by the deficient nursing home practice.

(c) **"Widespread"** or **"systemic scope"** means most or all of the residents are affected or have the potential to be affected, by the deficient nursing home practice.

(5) Determination of scope will be made by the department in its sole discretion. Factors the department will consider may include:

- (a) Size of the nursing home;
- (b) Size of the sample;
- (c) Number and location of affected residents;
- (d) Whether the deficiency applies to all or a subset of the residents;
- (e) Other factors relevant to the particular circumstances.

NEW SECTION

WAC 388-97-4520 Separate deficiencies—Separate remedies. (1) Each deficiency cited by the department for noncompliance with a statute or regulation is a separate deficiency subject to the assessment of a separate remedy.

(2) Each day upon which the same deficiency occurs is a separate deficiency subject to the assessment of a separate remedy.

NEW SECTION

WAC 388-97-4540 Stop placement. (1) The department must impose a stop placement order when required by RCW 18.51.060(5) and WAC 388-97-4460(1) and may impose a stop placement order as an optional remedy in accordance with WAC 388-97-4480. The department's stop placement order becomes effective upon verbal or written notice.

(2) The nursing home has the right to an informal department review to refute the federal or state deficiencies, or both, cited as the basis for the stop placement and must request such review in accordance with WAC 388-97-4420(3).

(3) The department will not delay or suspend a stop placement order because the nursing home requests an administrative hearing or informal department review.

(4) The stop placement order must remain in effect until:

(a) The department terminates the stop placement order;

or

(b) The stop placement order is terminated by a final agency order following appeal conducted in accordance with chapter 34.05 RCW.

(5) The department must terminate the stop placement when:

(a) The nursing home states in writing that the deficiencies necessitating the stop placement action have been corrected; and

(b) Within fifteen working days of the nursing home's notification, department staff confirm by on-site revisit of the nursing home that:

(i) The deficiencies that necessitated the stop placement action have been corrected; and

(ii) The nursing home exhibits the capacity to maintain adequate care and services and correction of deficiencies.

(6) After lifting the stop placement, the department may continue to perform on site monitoring to verify that the nursing home has maintained correction of deficiencies.

(7) While a stop placement order is in effect, the department may approve a readmission to the nursing home from the hospital in accordance with RCW 18.51.060 (5)(b) and department guidelines for readmission decisions.

NEW SECTION

WAC 388-97-4560 Amount of civil fine. (1) Except as otherwise provided in statute, the range for a:

(a) Per day civil fine is fifty dollars to three thousand dollars; and

(b) Per instance civil fine is one thousand to three thousand dollars.

(2) In the event of continued noncompliance, nothing in this section must prevent the department from increasing a civil fine up to the maximum amount allowed by law.

NEW SECTION

WAC 388-97-4580 Civil fine accrual and due dates and interest. (1) Accrual of a per day civil fine begins on the first date the department verifies that the nursing home has or had a specific deficiency. Accrual of the per day civil fine will end on the date the department determines the nursing home corrected the deficiency.

(2) A per instance fine may be assessed for a deficiency, regardless of whether or not the deficiency had been corrected by the time the department first identified it.

(3) Civil fine(s) are due twenty days after the nursing home is notified of the civil fine(s) if the nursing home does not request a hearing.

(4) If the nursing home requests a hearing, the civil fine(s) including interest, if any, is due twenty days after:

(a) A hearing decision ordering payment of the fine(s) becomes final in accordance with chapter 388-02 WAC;

(b) The appeal is withdrawn;

(c) A settlement agreement and order of dismissal is entered, unless otherwise specified in the agreement; or

(d) An order of dismissal is entered.

(5) Interest on the civil fine(s) begins to accrue at a rate of one percent per month, thirty days after the nursing home is notified of the fine, unless a settlement agreement includes other provisions for payment of interest. If the amount of the civil fine is reduced following an appeal, interest on the reduced civil fine(s) accrues from thirty days after the nursing home was notified of the original civil fine(s).

(6) When a nursing home fails to pay a civil fine when due under this chapter, the department may:

(a) Withhold an amount equal to the fine plus interest, if any, from the nursing home's Medicaid payment;

(b) Impose an additional fine; or

(c) Suspend the nursing home license under WAC 388-97-570(1). Such license suspension must continue until the fine is paid.

NEW SECTION

WAC 388-97-4600 Civil penalty fund. (1) The department must deposit civil penalties collected under chapter 18.51 or 74.42 RCW into a special fund administered by the department to be applied to the protection of the health or property of residents of nursing homes found to be deficient.

(2) The funds must be administered by the department according to department procedures. Uses of the fund include, but are not limited to:

(a) Payment for the costs of relocation of residents to other facilities;

(b) Payment to maintain operation of a nursing home pending correction of deficiencies or closure; and

(c) Reimbursement of residents for personal funds or property lost when the resident's personal funds or property cannot be recovered from the nursing home or third party insurer.

NEW SECTION

WAC 388-97-4620 Temporary management. (1) When the department appoints a temporary manager, the department must order the licensee to:

(a) Cease operating the nursing home; and

(b) Immediately turn over to the temporary manager possession and control of the nursing home including, but not limited to, all patient care records, financial records, and other records necessary for continued operation of the nursing home while temporary management is in effect.

(2) The temporary manager will have authority to temporarily relocate some or all residents if the:

(a) Temporary manager determines the resident's health, security, or welfare is jeopardized; and

(b) Department concurs with the temporary manager's determination that relocation is necessary.

(3) The department's authority to order temporary management is discretionary in all cases.

NEW SECTION

WAC 388-97-4640 Receivership. (1) Receivership is authorized under RCW 18.51.400 through 18.51.520 and the following regulations.

(2) After receivership is established, the department may recommend to the court that all residents be relocated and the nursing home closed when:

(a) Problems exist in the physical condition of the premises which cannot be corrected in an economically prudent manner; or

(b) The department determines the former licensee or owner:

(i) Is unwilling or unable to manage the nursing home in a manner ensuring residents' health, safety, and welfare; and

(ii) Has not entered into an enforceable agreement to sell the nursing home within three months of the court's decision to grant receivership.

NEW SECTION

WAC 388-97-4660 Temporary managers and receivers—Application. (1) The department may recruit individuals, partnerships, corporations and other entities interested in serving as a temporary manager or receiver of a nursing home.

(2) Individuals, partnerships, corporations, or other entities interested in being appointed as a temporary manager or receiver must complete and submit to the department the required application on department forms.

(3) Individuals, partnerships, corporations, or other entities with experience in providing long-term health care and a history of satisfactory nursing home operation may submit an application to the department at any time. Applicants will be subject to the criteria established for licensees found in WAC 388-97-4220, except the department may waive the requirement that it have at least sixty days to review the application.

(4) The department must not appoint or recommend the appointment of a person (including partnership, corporation or other entity) to be a temporary manager or receiver if that person:

(a) Is the licensee, administrator, or partner, officer, director, managing employee, or owner of five percent or more of the licensee of the nursing home subject to temporary management or receivership;

(b) Is affiliated with the nursing home subject to temporary management or receivership; or

(c) Has owned or operated a nursing home ordered into temporary management or receivership in any state.

NEW SECTION

WAC 388-97-4680 Temporary managers and receivers—Considerations before appointment. (1) The department's authority to appoint a temporary manager or to recommend appointment of a specific individual or entity to act as receiver is discretionary in all cases.

(2) The department, in appointing a temporary manager or recommending appointment of a receiver, may consider one or more of the following factors:

(a) Potential temporary manager's or receiver's willingness to serve as a temporary manager or receiver for the nursing home in question;

(b) Amount and quality of the potential temporary manager's or receiver's experience in long-term care;

(c) Quality of care, as determined by prior survey reports, provided under the potential temporary manager's or the potential receiver's supervision, management or operation;

(d) Potential temporary manager's or receiver's prior performance as a temporary manager or receiver;

(e) How soon the potential temporary manager or receiver is available to act as a temporary manager or receiver;

(f) Potential temporary manager's or receiver's familiarity and past compliance with Washington state and federal regulations applicable to nursing homes.

NEW SECTION

WAC 388-97-4700 Duties and powers of temporary manager and receiver. (1) The temporary manager or receiver must protect the health, security and welfare of the residents for the duration of the temporary management or receivership. The temporary manager or receiver must perform all acts reasonably necessary to ensure residents' needs are met. Such acts may include, but are not limited to:

(a) For receivers, the powers in RCW 18.51.490;

(b) Correcting cited deficiencies;

(c) Hiring, directing, and managing all consultants and employees and discharging them for just cause, discharging the administrator of the nursing home, recognizing collective bargaining agreement, and settling labor disputes;

(d) Receiving and expending in a prudent and business-like manner all current revenues of the home provided priority will be given to debts and expenditures directly related to providing care and meeting residents' needs;

(e) Making necessary purchases, repairs, and replacements, provided such expenditures in excess of five thousand dollars are approved by the department, or in the case of a receiver, approved by court;

(f) Entering into contracts necessary for the operation of the nursing home, provided that, the court must approve contracts extending beyond the period of receivership;

(g) Preparing all department-required reports;

(h) Overseeing facility closure, when appropriate;

(i) Planning required relocation with residents and residents' legal representative, family, or significant others in conjunction with home and community services division field staff;

(j) Meeting regularly with and informing staff, residents, and residents' families or significant others of:

(i) Plans for correcting the cited deficiencies;

(ii) Progress achieved in correction of deficiencies;

(iii) Plans for facility closure and relocation; and

(iv) Plans for continued operation of the nursing home, including training of staff.

(2) The temporary manager or receiver must make a detailed monthly accounting of all expenditures and liabilities to the department and to the owner of the nursing home, and to the court when required.

(3) The receiver must consult the court in cases of extraordinary or questionable debts incurred prior to the receiver's appointment and will not have the power to close the home or sell any of the nursing home's assets without prior court approval.

(4) The temporary manager or receiver must comply with all applicable state and federal laws and regulations. If the nursing home is certified and is providing care to Medicaid clients, the temporary manager or receiver must become the Medicaid contractor for the duration of the temporary management or receivership period.

NEW SECTION

WAC 388-97-4720 Termination of temporary management and receivership. (1) The department will terminate temporary management:

(a) After three months unless good cause is shown to continue the temporary management. Good cause for continuing the temporary management exists when returning the nursing home to its former licensee would subject residents to a threat to health, safety, or welfare;

(b) When all residents are transferred and the nursing home is closed;

(c) When deficiencies threatening residents' health, safety, or welfare are eliminated and the former licensee agrees to department-specified conditions regarding the continued facility operation; or

(d) When a new licensee assumes control of the nursing home.

(2) The department may appoint an alternate temporary manager:

(a) When the temporary manager is no longer willing to serve as a temporary manager;

(b) If a temporary manager is not making acceptable progress in correcting the nursing home deficiencies or in closing the nursing home; or

(c) If the department determines the temporary manager is not operating the nursing home in a financially responsible manner.

(3) The receivership will terminate in accordance with RCW 18.51.450 and 18.51.460.

(4) The department may recommend to the court an alternate receiver be appointed:

(a) When the receiver is no longer willing to serve as a receiver; or

(b) If a receiver is not making acceptable progress in correcting the deficiencies in the nursing home.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-97-005	Definitions.	WAC 388-97-07050	Access and visitation rights.
WAC 388-97-012	Nursing facility care.	WAC 388-97-07055	Telephone.
WAC 388-97-017	Discrimination prohibited.	WAC 388-97-07060	Personal property.
WAC 388-97-027	Nursing facility admission and payment requirements.	WAC 388-97-07065	Roommates/rooms.
WAC 388-97-032	Discharge planning.	WAC 388-97-07070	Refusal of certain transfers.
WAC 388-97-037	Utilization review.	WAC 388-97-075	Chemical and physical restraints.
WAC 388-97-042	Individual transfer and discharge rights and procedures.	WAC 388-97-076	Prevention of abuse.
WAC 388-97-043	Transfer and discharge appeals for residents in Medicare or Medicaid certified facilities.	WAC 388-97-077	Resident protection program.
WAC 388-97-047	Discharge or leave of a nursing facility resident.	WAC 388-97-08010	Resident dignity and accommodation of needs.
WAC 388-97-051	Resident rights.	WAC 388-97-08020	Environment.
WAC 388-97-052	Free choice.	WAC 388-97-08030	Self-determination and participation.
WAC 388-97-053	Statutes implemented in resident decision making, informed consent and advance directives.	WAC 388-97-08040	Participation in resident and family groups.
WAC 388-97-055	Resident decision making.	WAC 388-97-08050	Activities.
WAC 388-97-060	Informed consent.	WAC 388-97-08060	Social services.
WAC 388-97-065	Advance directives.	WAC 388-97-08070	Pets.
WAC 388-97-07005	Notice of rights and services.	WAC 388-97-085	Resident assessment.
WAC 388-97-07010	Notification of changes.	WAC 388-97-090	Comprehensive plan of care.
WAC 388-97-07015	Protection of resident funds.	WAC 388-97-097	Dementia care.
WAC 388-97-07020	Privacy and confidentiality.	WAC 388-97-110	Quality of care.
WAC 388-97-07025	Work.	WAC 388-97-115	Nursing services.
WAC 388-97-07030	Self-administration of drugs.	WAC 388-97-120	Dietary services.
WAC 388-97-07035	Grievance rights.	WAC 388-97-12010	Meal provision.
WAC 388-97-07040	Examination of survey results.	WAC 388-97-12020	Individual dietary needs.
WAC 388-97-07045	Resident mail.	WAC 388-97-12030	Dietary personnel.
		WAC 388-97-12040	Dietary menus.
		WAC 388-97-12050	Diet orders.
		WAC 388-97-12060	Modified diets.
		WAC 388-97-12070	Tube feedings.
		WAC 388-97-125	Physician services.
		WAC 388-97-130	Specialized habilitative and rehabilitative services.
		WAC 388-97-135	Pharmacy services.
		WAC 388-97-140	Infection control.
		WAC 388-97-143	Influenza and pneumococcal immunizations.
		WAC 388-97-147	Surveillance, management and early identification of individuals with active tuberculosis.

WAC 388-97-155	Care of residents with active tuberculosis.	WAC 388-97-29540	Noise.
WAC 388-97-160	General administration.	WAC 388-97-29550	Accessibility in new construction.
WAC 388-97-162	Required notification and reporting.	WAC 388-97-29560	Types of new construction.
WAC 388-97-165	Staff and equipment.	WAC 388-97-310	ICF/MR exceptions to physical plant requirements.
WAC 388-97-170	Staff development.	WAC 388-97-315	Emergency power.
WAC 388-97-175	Medical director.	WAC 388-97-325	Location of the resident care unit.
WAC 388-97-180	Clinical records.		
WAC 388-97-185	Disaster and emergency preparedness.	WAC 388-97-32510	Required service areas on resident care units.
WAC 388-97-190	Quality assessment and assurance.	WAC 388-97-32520	Staff work stations on resident care units.
WAC 388-97-195	Policies and procedures.	WAC 388-97-32530	Call systems on resident care units.
WAC 388-97-202	Criminal history disclosure and background inquiries.	WAC 388-97-32540	Telephones on resident care units.
WAC 388-97-203	Disqualification from nursing home employment.	WAC 388-97-32550	Utility service rooms on resident care units.
WAC 388-97-204	Retaliation or discrimination prohibited.	WAC 388-97-32560	Drug facilities on resident care units.
WAC 388-97-205	Laundry services.	WAC 388-97-32570	Linen storage on resident care units.
WAC 388-97-212	Short-term care, including respite services and adult day or night care.	WAC 388-97-32580	Janitors closets on resident care units.
WAC 388-97-220	Dialysis services.		
WAC 388-97-247	Preadmission screening—Level I.	WAC 388-97-330	Resident rooms.
		WAC 388-97-33010	Capacity of resident rooms.
WAC 388-97-249	Advanced categorical determinations, not subject to preadmission screening—Level II.	WAC 388-97-33020	Size of resident rooms.
		WAC 388-97-33030	Privacy in resident rooms.
WAC 388-97-251	Preadmission screening—Level II.	WAC 388-97-33040	Resident isolation rooms.
		WAC 388-97-33050	Resident room size variance.
WAC 388-97-253	Resident review.	WAC 388-97-335	Resident room equipment.
WAC 388-97-260	Preadmission screening and resident review (PASRR) determination and appeal rights.	WAC 388-97-33510	Resident bed and bedside equipment.
		WAC 388-97-33520	Lockable storage space in a resident room.
WAC 388-97-285	Intermediate care facilities for the mentally retarded (ICF/MR).	WAC 388-97-33530	Wardrobes in a resident room.
WAC 388-97-295	Design.	WAC 388-97-33540	Seating in a resident room.
WAC 388-97-29510	New construction compliance.	WAC 388-97-33550	Lighting in resident rooms.
		WAC 388-97-33560	Call signal device in resident rooms.
WAC 388-97-29520	Fire standards and approval, and other standards.		
		WAC 388-97-33570	Cubicle curtains in resident rooms.
WAC 388-97-29530	Maintenance and repair.		

WAC 388-97-33580	Miscellaneous equipment in resident rooms in a new building or addition.	WAC 388-97-36070	Electrical outlets.
		WAC 388-97-365	Safety.
WAC 388-97-340	Resident toilet facilities or rooms.	WAC 388-97-36510	Safety—Poisons and non-medical chemicals.
WAC 388-97-34010	Resident bathing facilities or rooms.	WAC 388-97-36520	Safety—Storage of equipment and supplies.
WAC 388-97-34020	Locks in toilet and bathing facilities.	WAC 388-97-36530	Safety—Handrails.
WAC 388-97-345	Dining, dayrooms, and resident activity areas.	WAC 388-97-370	Water supply.
WAC 388-97-347	Laundry services and storage.	WAC 388-97-37010	Hot water.
WAC 388-97-350	Dementia care unit.	WAC 388-97-37020	Cross connections.
WAC 388-97-35010	Dining areas on a dementia care unit.	WAC 388-97-375	Pest control.
WAC 388-97-35020	Outdoor areas on a dementia care unit.	WAC 388-97-385	Sewage and liquid waste disposal.
WAC 388-97-35030	Indoor areas on a dementia care unit.	WAC 388-97-400	General new construction documents.
WAC 388-97-35040	Ambulation route on a dementia care unit in a new building or addition.	WAC 388-97-40010	Preliminary new construction documents.
WAC 388-97-35050	Physical plant on a dementia care unit.	WAC 388-97-401	Final new construction documents.
WAC 388-97-35060	Special egress control devices on a dementia care unit.	WAC 388-97-402	Preinstallation submissions for new construction.
WAC 388-97-352	Specialized rehabilitation.	WAC 388-97-403	New construction timelines.
WAC 388-97-353	Outpatient rehabilitation.	WAC 388-97-405	Exemptions to new construction requirements.
WAC 388-97-355	Food service areas.	WAC 388-97-410	State building code in new construction.
WAC 388-97-357	Storage of equipment.	WAC 388-97-415	Electrical codes and standards in new construction.
WAC 388-97-35710	Storage of resident room equipment in a new building or addition.	WAC 388-97-420	Elevator codes in new construction.
WAC 388-97-35720	General storage in new construction.	WAC 388-97-425	Local codes and ordinances in new construction.
WAC 388-97-360	Lighting.	WAC 388-97-430	Entrances and exits in new construction.
WAC 388-97-36010	Natural or artificial light.	WAC 388-97-43010	Lobbies in new construction.
WAC 388-97-36020	Outside lighting.	WAC 388-97-43020	Interview space in new construction.
WAC 388-97-36030	Light shields.	WAC 388-97-43030	Offices in new construction.
WAC 388-97-36040	Illumination levels in new buildings and additions.	WAC 388-97-43040	Inservice education space in new construction.
WAC 388-97-36050	Night lights in new construction.	WAC 388-97-43050	Staff areas in new construction.
WAC 388-97-36060	Switches in new construction.	WAC 388-97-455	Visiting and private space in new construction.

WAC 388-97-45510	Outdoor recreation space and walkways in new construction.		tion of, or refusal to renew a nursing home license.
WAC 388-97-460	Pools in new construction.	WAC 388-97-575	Appeal of the department's licensing decision.
WAC 388-97-46010	Pharmacies in new construction.	WAC 388-97-580	Management agreements.
WAC 388-97-465	Elevators in new construction.	WAC 388-97-585	Change of ownership.
WAC 388-97-46510	Stairways, ramps, and corridors in new construction.	WAC 388-97-590	Licensed bed capacity.
WAC 388-97-46520	Walking surfaces in a new building or addition.	WAC 388-97-595	Relocation of residents.
WAC 388-97-46530	Doors in new construction.	WAC 388-97-600	License relinquishment.
WAC 388-97-46540	Floor finishes in new construction.	WAC 388-97-605	Inspections and deficiency citation report.
WAC 388-97-46550	Carpets in new construction.	WAC 388-97-610	Plan of correction.
WAC 388-97-46560	Coving in new construction.	WAC 388-97-615	Acceptable and unacceptable plans of correction.
WAC 388-97-46570	Walls in new construction.	WAC 388-97-620	Informal department review.
WAC 388-97-46580	Accessories in new construction.	WAC 388-97-625	Notice and appeal rights.
WAC 388-97-46590	Miscellaneous in new construction.	WAC 388-97-630	Remedies.
WAC 388-97-470	Heating systems in new construction.	WAC 388-97-635	Criteria for imposing optional remedies.
WAC 388-97-47010	Cooling systems in new construction.	WAC 388-97-640	Severity and scope of deficiencies.
WAC 388-97-47020	Ventilation systems in new construction.	WAC 388-97-645	Separate deficiencies—Separate remedies.
WAC 388-97-480	Handwashing sinks in new construction.	WAC 388-97-650	Stop placement.
WAC 388-97-48010	Drinking fountains in new construction.	WAC 388-97-655	Amount of civil fine.
WAC 388-97-48020	Mixing valves or mixing faucets in new construction.	WAC 388-97-660	Civil fine accrual and due dates and interest.
WAC 388-97-48030	Spouts in new construction.	WAC 388-97-665	Civil penalty fund.
WAC 388-97-48040	Faucet controls in new construction.	WAC 388-97-670	Temporary management.
WAC 388-97-550	Initial nursing home license.	WAC 388-97-675	Receivership.
WAC 388-97-555	Nursing home license renewal.	WAC 388-97-680	Temporary managers and receivers—Application.
WAC 388-97-560	Department review of initial nursing home license applications.	WAC 388-97-685	Temporary managers and receivers—Considerations before appointment.
WAC 388-97-565	Department review of nursing home license renewals.	WAC 388-97-690	Duties and powers of temporary manager and receiver.
WAC 388-97-570	Reasons for denial, suspension, modification, revoca-	WAC 388-97-695	Termination of temporary management and receivership.

WSR 08-22-003
PERMANENT RULES
BOARD OF
PILOTAGE COMMISSIONERS

[Filed October 23, 2008, 1:57 p.m., effective November 23, 2008]

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

Purpose: To set forth requirements for a pilot on board a vessel which has been involved in a serious marine incident. These requirements involve stabilizing the vessel, relieving the pilot, transferring the con, and drug and alcohol testing.

Citation of Existing Rules Affected by this Order: Amending WAC 363-116-200 Duties of pilots.

Statutory Authority for Adoption: Chapter 88.16 RCW.

Adopted under notice filed as WSR 08-18-085 on September 3, 2008.

Changes Other than Editing from Proposed to Adopted Version: The portion of the proposed amendment which requires a pilot to depart the vessel for purposes of drug and alcohol testing was thought to possibly present a situation where a pilot could not meet the two-hour time limit in which such testing is required under 46 C.F.R. Part 4.06. Less restrictive language was adopted so that the pilot involved may meet the requirements of 46 C.F.R. Part 4.06.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 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 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 1, Repealed 0.

Date Adopted: October 9, 2008.

Peggy Larson
Administrator

AMENDATORY SECTION (Amending WSR 08-15-119, filed 7/21/08, effective 8/21/08)

WAC 363-116-200 Duties of pilots. (1) In any case where a vessel in the charge of a state licensed pilot is involved in an incident or near-miss occurrence, said pilot shall make a report to the board in the following required manner:

(a) *Pilot's Report of Incident.* A state licensed pilot involved in an incident shall notify the board by telephoning or radioing the Marine Exchange of Puget Sound as soon as the situation is stabilized or within one hour of reaching shore. The pilot shall also complete the board required *Pilot's Report of Incident* form and file it with the board as soon as possible after the incident, but in no event more than ten days afterwards. An incident includes an actual or apparent collision, allision or grounding, as well as a navigational occur-

rence which results in actual or apparent personal injury or property damage or environmental damage.

(b) *Pilot's Report of Marine Safety Occurrence.* A state licensed pilot involved in a near-miss occurrence shall complete the board required *Pilot's Report of Marine Safety Occurrence* form and file it with the board as soon as possible after the near-miss occurrence, but in no event more than ten days afterwards. A near-miss occurrence is where a pilot successfully takes action of a nonroutine nature to avoid a collision with another vessel, structure or aid to navigation, to avoid a grounding of the vessel or to avoid causing damages to the environment. Information relating to near-miss occurrences provided by a pilot on this form shall not be used for imposing any sanctions or penalties against said pilot. A state licensed pilot may also use this form on a voluntary basis for reporting out of the ordinary occurrences or concerns for navigational safety encountered or observed during the course of piloting a vessel.

(c) Completion of these forms does not replace or relieve a pilot from any other reporting requirements under federal, state or local law. If circumstances permit, a pilot will notify the vessel master of his/her intent to file a report of incident or marine safety occurrence with the board. The board shall forward a copy of any form received to the respective shipper or its board representative. The board of pilotage commissioners may, with or without a complaint being made against a pilot, investigate the matter reported upon.

(2) Pilots will report to the aids to navigation officer of the United States Coast Guard, all changes in lights, range lights, buoys, and any dangers to navigation that may come to their knowledge.

(3) Any pilot who shall fail, neglect or refuse to make a report to the board of pilotage commissioners as required by the pilotage laws of the state, or by these rules and regulations, for a period of ten days after the date when said report is required to be made, shall be subject to having his/her license suspended at the discretion of the board, and if he/she fails to report for a period of thirty days the board may, at its discretion, revoke his/her license.

(4) Pilots when so notified in writing shall report in person to the board, at any meeting specified in such notice.

(5) Any pilot summoned to testify before the pilotage board shall appear in accordance with such summons and shall make answer, under oath, to any question put to him/her which deals with any matter connected with the pilot service, or of the pilotage waters over which he/she is licensed to act. The pilot shall be entitled to have his/her attorney or advisor present during any such appearance and testimony.

(6) Any pilot who shall absent himself/herself from his/her pilotage duties or district for a period of sixty days without permission of the board of pilotage commissioners shall be liable to suspension or to the forfeiture of his/her license.

(7) A pilot on boarding a ship, if required by the master thereof, shall exhibit his/her license, or photo static copy thereof.

(8) When a pilot licensed under this act is employed on an enrolled ship, the same rules and regulations shall apply as pertain to registered ships.

(9) Any state licensed pilot assigned to pilot a vessel entering, leaving, or shifting berths under its own power in any of the waters subject to the provisions of chapter 88.16 RCW shall before assuming pilotage obligations for such vessel obtain assurance from the master that the vessel meets all requirements for safe navigation and maneuvering. In addition, the pilot shall obtain assurance that the ship's officers will maintain navigation procedures by all navigational aids available to insure that the vessel's position is known at all times. If the pilot in his/her professional judgment considers the vessel to be incapable of safe navigation and maneuvering due to performance limitations, he/she shall refuse to assume the obligations of pilotage for such vessel until such limitations have been corrected and shall promptly notify the pilot's control station and the chairman of the board of pilotage commissioners of such action.

(10) In providing pilotage services under chapter 88.16 RCW every pilot shall perform those duties in a professional manner and without negligence so as to not endanger life, limb or property, not violate or not fail to comply with state laws or regulations intended to promote marine safety or to protect navigable waters.

(11) A pilot involved in a serious marine incident as that term is defined in 46 CFR 4.03-2 shall, in addition to meeting all requirements imposed by federal law:

(a) To the extent practicable and safe, stabilize the vessel and request relief by the dispatching of another pilot; and

(b) As soon as the relief pilot arrives, transfer the con of the vessel to the new pilot; such that the pilot involved in the incident may meet the requirements of 46 CFR Part 4.06.

WSR 08-22-005

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Pharmacy)

[Filed October 24, 2008, 1:31 p.m., effective January 1, 2009]

Effective Date of Rule: January 1, 2009.

Purpose: The adopted rule amendments establishes a new credentialing requirement for new pharmacy technician applicants. The rule adopts the use of board-approved pharmacy technician national standardized certification examinations as a reliable assessment of a pharmacy technician's minimum education and qualification needed to successfully contribute to the practice of pharmacy in all practice settings. The exam does not replace experiential training requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 246-901-030 and 246-901-060.

Statutory Authority for Adoption: RCW 18.64.005.

Other Authority: RCW 18.64A.020 Rules—Qualification and training programs.

Adopted under notice filed as WSR 08-09-102 on April 21, 2008.

Changes Other than Editing from Proposed to Adopted Version: The adopted rule added the word "program" to WAC 246-901-030 (1)(a) filed in WSR 08-09-102 on April 21, 2008. This was a minor change to add a missing word.

A final cost-benefit analysis is available by contacting Doreen E. Beebe, Washington State Board of Pharmacy, P.O. Box 47863, Olympia, WA 98501, phone (360) 236-4834, fax (360) 236-2901, e-mail doreen.beebe@doh.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: May 29, 2008.

Rebecca E. Hille
Board Chair

AMENDATORY SECTION (Amending WSR 00-15-081, filed 7/19/00, effective 8/19/00)

WAC 246-901-030 Technician education and training. (1) ~~((Pharmacy technicians))~~ Applicants must obtain education ~~((and))~~ and training from one of the following:

(a) Formal academic ~~((program for))~~ pharmacy technician training program approved by the board.

(b) On-the-job pharmacy technician training program approved by the board.

(2) The minimum educational prerequisite for entering a training program shall be high school graduation or G.E.D.

(3) ~~((In order to receive certification as a pharmacy technician, the technician must send the board the following:~~

~~(a) A state application indicating completion of board approved training program;~~

~~(b) Proof of successful completion of a))~~ Applicants must pass a board-approved national standardized pharmacy technician certification examination ~~((approved by the board)).~~

(4) An out-of-state pharmacy technician applicant must meet the same requirements as a pharmacy technician trained in this state. The board must approve training programs approved in other states.

(5) Applicants whose academic training has been obtained in foreign countries shall meet certification requirements as listed below:

(a) Foreign pharmacy school graduates. Board approval of program completed for the degree.

(b) Foreign medical school graduates. Board approval of program completed for the degree.

(c) All foreign graduates for whom English is not the primary language shall provide proof of receiving a score of at least 173 on the Test of English as a Foreign Language (TOEFL) and a score of 50 on the Test of Spoken English (TSE) prior to certification.

(d) Foreign trained applicants must earn 520 hours of supervised experience in an approved pharmacy technician training program.

(6) Prior to performing specialized functions, pharmacy technicians shall complete specialized training and meet proficiency criteria set forth by the board.

(a) Unit-dose medication checking. The training proficiency criteria requires demonstration of 99% accuracy in medication checking.

(b) Intravenous admixture preparation. The training proficiency criteria requires demonstration of 100% accuracy in intravenous admixture preparation of a representative sample of preparations provided by the facility using aseptic technique.

AMENDATORY SECTION (Amending WSR 00-15-081, filed 7/19/00, effective 8/19/00)

WAC 246-901-060 Technician certification. To become certified as a pharmacy technician, an individual must(=

~~(1) Complete an approved pharmacy technician program;~~

~~(2))~~ apply to the board for certification. The application must include ~~((a notarized))~~:

~~(1) A statement ((of program verification signed by the program director)) signed by the program director verifying the applicant has successfully completed the board-approved pharmacy technician training program.~~

~~(2) Proof of passing a board-approved national standardized pharmacy technician certification examination.~~

It is the responsibility of the pharmacy technician to maintain a current mailing address with the board as required by chapter 246-12 WAC. Pharmacy technicians shall notify the board of any change of mailing address within thirty days of the change.

**WSR 08-22-027
PERMANENT RULES
DEPARTMENT OF LICENSING**

[Filed October 28, 2008, 1:21 p.m., effective November 28, 2008]

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

Purpose: The rule will add clarity to rule language and reflect a current course of the profession.

Citation of Existing Rules Affected by this Order: Amending WAC 308-13-010 State board of registration.

Statutory Authority for Adoption: RCW 18.96.060 Board—Rules—Quorum—Hearings.

Adopted under notice filed as WSR 08-11-109 on May 20, 2008.

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 2, 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: October 28, 2008.

Joe Vincent, Jr.
Administrator

AMENDATORY SECTION (Amending Order PL 511, filed 1/31/85)

WAC 308-13-010 State board of registration. (1) Meetings. The Washington state board of registration for landscape architects, hereinafter called the board, ~~((shall hold an annual public meeting during April of each year for the purpose of election of board officers and any other business of a public nature))~~ will hold quarterly regular public meetings each year.

(2) Officers. At ~~((the annual public meeting))~~ its regular meeting during the second quarter of the calendar year, the board shall elect a chairman, a vice chairman, and a secretary for the ensuing year. The secretary may delegate the office's responsibilities in all or in part to the executive secretary.

NEW SECTION

WAC 308-13-011 The seal/stamp. These rules govern the design and use of the landscape architect seal/stamp.

(1) Every landscape architect licensed in the state of Washington shall have a seal/stamp of design authorized by the board, bearing the registrant's name, license number and the legend "Registered landscape architect, state of Washington." The seal/stamp may be used in a horizontal or vertical format, and scaled as appropriate, provided it remains readable. Other deviations are not allowed. Facsimiles of the board-authorized seal/stamp appear below.



(2) The following shall be signed and sealed/stamped by the landscape architect:

All technical submissions required for building permits, regulatory approvals and/or construction drawings that are filed with authorities having jurisdiction.

- Drawings prepared by the landscape architect on each sheet.
 - Specifications and other technical submissions need only be sealed/stamped on the cover, title page, and all pages of the table of contents.
- (3) No landscape architect's seal/stamp or countersignature shall be affixed to any drawings not prepared by the landscape architect or his or her regularly employed subordinates, or reviewed by the landscape architect. A landscape architect who seals/stamps or signs drawings or specifications that he or she has reviewed shall be responsible to the same extent as if prepared by that landscape architect.
- (4) Without exception, these sealing/stamping requirements for landscape architects shall apply to all work prepared or supervised by the landscape architect.

NEW SECTION

WAC 308-13-012 Standards of practice and conduct.

(1) Competence.

(a) In practicing landscape architecture, a landscape architect shall act with reasonable care and competence and shall apply the technical knowledge and skill that is ordinarily applied by landscape architects of good standing practicing in the same locality.

(b) In designing a project, a landscape architect shall take into account all applicable construction laws, zoning codes and other applicable laws or regulations. A landscape architect shall not knowingly design a project in violation of such laws and regulations.

(c) A landscape architect shall undertake to perform professional services only when the landscape architect, together with those whom the landscape architect may engage as consultants, is qualified by education, training and experience in the specific technical areas involved.

(2) Conflict of interest.

(a) A landscape architect shall not accept compensation for services from more than one party on a project unless the circumstances are fully disclosed and agreed to in writing by all interested parties.

(b) If a landscape architect has any business association or direct or indirect financial interest that is substantial enough to influence the landscape architect's judgment in connection with the performance of professional services, the landscape architect shall fully disclose this in writing to the client or employer. If the landscape architect's client or employer objects to such association or financial interest, the landscape architect shall either terminate such association or offer to give up the commission or employment.

(c) A landscape architect shall not solicit or accept compensation from material or equipment suppliers in return for specifying or endorsing their products.

(d) When acting as the interpreter of landscape contract documents and the judge of contract performance, a landscape architect shall render decisions impartially, favoring neither party to the contract.

(3) Full disclosure.

(a) A landscape architect shall disclose whenever he or she is being compensated for making public statements concerning landscape architectural issues.

(b) A landscape architect shall accurately represent to a prospective or existing client or employer the landscape architect's qualifications and clearly define the scope of his or her responsibility in connection with work for which the landscape architect is claiming responsibility.

(c) If a landscape architect becomes aware of a decision made by his or her employer or clients against the landscape architect's advice, that violates applicable construction laws, zoning codes or other applicable regulations and that will, in the landscape architect's judgment, materially and adversely affect the public health, safety and welfare, the landscape architect shall:

(i) Report the decision to the local authorities or other public official charged with the enforcement of such laws and regulations;

(ii) Refuse to consent to the decision; and

(iii) In circumstances where the landscape architect reasonably believes that other such decisions will be made notwithstanding his or her objection, then the landscape architect shall terminate services with reference to the project. In the case of a termination in accordance with this paragraph of this rule, the landscape architect shall have no liability to the client on account of such termination.

(d) A landscape architect shall not deliberately make a materially false statement or deliberately fail to disclose a material fact requested in connection with an application for licensure or renewal.

(e) A landscape architect shall not assist in the application for licensure of a person known by the landscape architect to be unqualified in respect to education, examination, experience or character.

(4) Compliance with laws.

(a) A landscape architect shall not, in the practice of landscape architecture, knowingly violate any criminal law.

(b) A landscape architect shall neither offer nor make any payment or gift to any governmental official (whether elected or appointed) with the intent of influencing the official's judgment in connection with a prospective or existing project in which the landscape architect is interested.

(c) A landscape architect shall comply with the laws and regulations governing professional practice in any jurisdiction.

(5) Professional conduct. A landscape architect shall neither offer nor make any gifts, other than gifts of nominal value (including, for example, reasonable entertainment and hospitality), with the intent of influencing the judgment of an existing or prospective client in connection with a project in which the landscape architect is interested.

WSR 08-22-029

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed October 28, 2008, 2:40 p.m., effective February 1, 2009]

Effective Date of Rule: February 1, 2009.

Purpose: Due to the passage of SHB 2427 which made the cosmetology apprenticeship pilot program permanent, the department needs to clarify the approval process for the registration of apprentice trainers, amend language that refers to

the apprenticeship pilot program, and any other rules that need further written clarification.

The department is also considering adding a new section regarding the registration of students and apprentices to validate attendance at licensed schools and apprentice salons; and establish examination procedures for testing sites. Adding additional licensing requirements that include requiring additional documentation and submitting to a preinspection of the site prior to opening a school.

Citation of Existing Rules Affected by this Order: Amending WAC 308-20-010 Definitions, 308-20-055 Apprentice records, 308-20-080 Minimum instruction guidelines for cosmetology, barbering, manicuring and esthetics training, 308-20-090 Student credit for training [in] a licensed [school] and 308-20-101 Apprentice credit for training in an approved apprentice salon/shop; and new sections WAC 308-20-065 Student registration, 308-20-121 Examination code of conduct, and 308-20-572 Preinspection of schools.

Statutory Authority for Adoption: RCW 18.16.030, 43.24.023.

Adopted under notice filed as WSR 08-18-089 on September 3, 2008.

Changes Other than Editing from Proposed to Adopted Version: Minor changes in language were made for clarification purposes. None of which impact the intent of the rule 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 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 5, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 5, Repealed 0.

Date Adopted: October 28, 2008.

Susan Colard
Assistant Administrator

AMENDATORY SECTION (Amending WSR 05-17-020, filed 8/4/05, effective 9/4/05)

WAC 308-20-010 Definitions. (1) "Chemical compounds formulated for professional use only" are those compounds containing hazardous chemicals in a form not generally sold to the public; including but not limited to, bulk concentrates of permanent wave solution, neutralizers, chemical relaxers, oxidizing agents, flammable substances, facial creams, or approved chemical compounds. These compounds must be designated for use on the hair, face, neck, skin, or scalp.

(2) "Monthly student report" are forms provided by the school, approved by the department, preprinted with the school name. The report must include the daily activities of the student in each subject, (i.e., number of shampoos, haircuts, perms, colors, etc.) within each course (i.e., barbering, manicuring, cosmetology, esthetics, or instructor-trainee).

(3) "Completed and graduated" is the completion of the school curriculum and the state approved minimum hourly course of training.

(4) "Apprentice salon/shop" is a location certified by the ~~((advisory committee))~~ Washington state apprenticeship and training committee, that provides training for individuals accepted into the apprenticeship program. Apprentice salon/shops shall not receive payment from the apprentice for training.

(5) "Apprentice trainer" is a person that is currently licensed and in good standing. This person provides training in a licensed shop approved for the apprenticeship program, who must have received journey level training and have held a license in the curriculum for which he or she is providing training for a minimum of three years.

(6) "Journey level training" is the completion of three years working as a licensed cosmetologist, barber, manicurist or esthetician.

~~(7)~~ "Completion of the apprenticeship ~~((program))~~ training" is the completion of the apprentice salon/shop curriculum that includes the state approved hourly course of training as described in WAC 308-20-080.

~~((7))~~ (8) "Monthly apprentice report" forms provided by the apprentice shop, approved by the department, printed with the shop name, for use in recording apprentice training hours and activities.

AMENDATORY SECTION (Amending WSR 04-05-005, filed 2/6/04, effective 3/8/04)

WAC 308-20-055 Apprentice records. (1) Apprentice salon/shops shall collect and record monthly and final apprentice training records. ~~((Copies of each apprentice's records shall be forwarded to the apprenticeship program. The records))~~ These reports described in WAC 308-20-010(8) shall contain the cumulative number of hours the apprentice has earned in each area of the minimum instruction guidelines and the number of times an apprentice performs an activity.

(2) Copies of each apprentice's records shall be kept on file at the apprentice salon shop for the duration of training for each apprentice and provided to the apprentice and the apprenticeship program at the end of each month of training.

(3) Monthly and final apprentice records shall be signed by the trainer and shop owner. The apprentice salon/shop shall notify the department of persons authorized to sign the apprentice's records on forms provided by the department.

~~((3))~~ (4) At the completion of training the apprenticeship program shall certify to the department on forms provided by the department that the apprentice has satisfied the minimum number of training hours required in the standards of the apprenticeship program which must include the minimum instruction requirements for cosmetology, barbering,

manicuring and esthetics training as described in WAC 308-20-080.

~~((4))~~ (5) The apprentice records shall be maintained by the shop during the training and by the Washington state apprenticeship (program) and training committee for three years once training is completed. The apprentice records shall include documentation of apprentice training.

NEW SECTION

WAC 308-20-065 Student and apprentice registration. (1) All schools and apprentice shops shall register any new student to the department in a manner and format prescribed by the department.

(2) At least one time per month, schools and apprentice shops shall submit to the department, a record of each student or apprentice's accrued clock hours in a manner and format prescribed by the department. A school or apprentice shop's initial submission of clock hours shall include all hours accrued at the school or apprentice shop and all transferred hours received by the school or apprentice shop.

(3) Upon graduation, a school shall certify in a manner and format prescribed by the department that a student has completed the curriculum hours approved by the department. Upon completion of the apprenticeship training program, the apprentice shop shall certify in a manner and format prescribed by the department that an apprentice has completed the minimum number of training hours approved by the department.

(4) Schools and apprentice shops shall submit a student or apprentice's withdrawal or termination to the department within ten calendar days after the withdrawal or termination.

(5) Schools and apprentice shops shall submit a student or apprentice's leave of absence request approved by the school or apprentice shop to the department within ten calendar days of the start date of the leave.

AMENDATORY SECTION (Amending WSR 02-04-012, filed 1/24/02, effective 6/30/02)

WAC 308-20-080 Minimum instruction guidelines for cosmetology, barbering, manicuring and esthetics training. The minimum instruction guidelines for training required for a student or apprentice to be eligible to take the license examination for the following professions shall include:

- (1) For cosmetology:
 - (a) Theory of the practice of cosmetology, barbering, manicuring and esthetics services;
 - (b) At least 100 hours of skills in the application of manicuring and pedicuring services;
 - (c) At least 100 hours of skills in the application of esthetics services;
 - (d) Shampooing including draping, brushing, scalp manipulations, conditioning and rinsing;
 - (e) Scalp and hair analysis;
 - (f) Hair cutting and trimming including scissors, razor, thinning shears and clippers;
 - (g) Hair styling including wet, dry and thermal styling, braiding and styling aids;

(h) Cutting and trimming of facial hair including beard and mustache design and eyebrow, ear and nose hair trimming;

(i) Artificial hair that may include extensions and fitting;

(j) Permanent waving including sectioning, wrapping, preperm test curl, solution application, processing test curl and neutralizing;

(k) Chemical relaxing including sectioning, strand test, and relaxer application;

(l) Hair coloring and bleaching including predisposition test and strand test, and measurement, mixing, application and removal of chemicals;

(m) Disinfecting of individual work stations, individual equipment and tools and proper use and storage of linens;

(n) Diseases and disorders of the scalp, hair, skin and nails;

(o) Safety including proper use and storage of chemicals, implements and electrical appliances;

(p) First aid as it relates to cosmetology, barbering, manicuring and esthetics; and

(q) No more than twenty-five percent of skills training using mannequins.

(2) For barbering:

(a) Theory of the practice of barbering services;

(b) Shampooing including draping, brushing, scalp manipulations, conditioning and rinsing;

(c) Scalp and hair analysis;

(d) Hair cutting and trimming including scissors, razor, thinning shears and clippers;

(e) Hair styling, wet, dry and thermal styling and styling aids;

(f) Cutting and trimming of facial hair including shaving, beard and mustache design and eyebrow, ear and nose hair trimming;

(g) Artificial hair;

(h) Disinfecting of individual work stations, individual equipment and tools and proper use and storage of linens;

(i) Diseases and disorders of the skin, scalp and hair;

(j) Safety including proper use of implements and electrical appliances;

(k) First aid as it relates to barbering; and

(l) No more than twenty-five percent of skills training using mannequins.

(3) For manicuring:

(a) Theory in the practice of manicuring and pedicuring services;

(b) Artificial nails including silk, linen, fiberglass, acrylic, gel, powder, extensions and sculpting, preparation, application, finish and removal;

(c) Cleaning, shaping and polishing of nails of the hands and treatment of cuticles;

(d) Cleaning, shaping and polishing of nails of the feet;

(e) Disinfecting of individual work station, individual equipment and tools and proper use and storage of linens;

(f) Diseases and disorders of the nails of the hands and feet;

(g) Safety including proper use and storage of chemicals, implements and electrical appliances;

(h) First aid as it relates to manicuring and pedicuring; and

(i) No more than twenty-five percent of skills training using mannequins.

(4) For esthetics:

(a) Theory in the practice of esthetics services;

(b) Skin care of the face, neck and hands including hot compresses, massage, electrical or mechanical appliances or chemical compounds;

(c) Facials;

(d) Temporary removal of superfluous hair of the face, neck and hands by tweezing, waxing, tape, chemicals, lotions, creams, mechanical or electrical apparatus and appliances;

(e) Disinfecting of individual work stations, individual equipment and tools and proper use and storage of linens;

(f) Diseases and disorders of the skin of the face, neck and hands;

(g) Safety including proper use and storage of chemicals, implements and electrical appliances;

(h) First aid as it relates to esthetics; and

(i) No more than twenty-five percent of skills training using mannequins.

AMENDATORY SECTION (Amending WSR 04-05-005, filed 2/6/04, effective 3/8/04)

WAC 308-20-090 Student credit for training in a licensed school. (1) A maximum of twenty students per instructor is required within a licensed school.

(2) Only those hours of instruction a student is given under the direction of a licensed instructor of the licensed school in which the student is enrolled and in the courses listed in WAC 308-20-080 and 308-20-105 or hours earned under WAC 308-20-091 shall be credited toward completion of the course of study required in RCW 18.16.100.

(3) When all of a school's requirements have been met by a student and within thirty days of a student leaving a school, the school shall provide to the student a copy of the student's final report.

(4) Students may transfer between the schools and apprenticeship salon/shops and may receive credit toward completion of the curriculum in the new school or apprenticeship salon/shop. In order to receive a transfer student or apprentice, the new school or apprentice salon/shop shall do the following:

(a) Evaluate the certified final student report provided by the student or apprentice and compare the report with the new or apprentice salon/shop requirements;

(b) The school or apprentice salon/shop may accept or reject the final student or apprentice report in part or in total from the previous school or salon/shop and prepare a monthly report that documents the amount of instructions being accepted.

(5) Both the transferring and receiving school or salon/shop shall maintain student or apprentice records including the transfer record as required in WAC 308-20-040(4).

(6) Licensed instructors must be physically present where the students are training.

AMENDATORY SECTION (Amending WSR 05-17-020, filed 8/4/05, effective 9/4/05)

WAC 308-20-101 Apprentice credit for training in an approved apprentice salon/shop. (1) A minimum of one trainer per apprentice is required.

(2) Only those hours of theory instruction given under the direction of an instructor licensed under chapter 18.16 RCW shall be credited towards completion of the apprentice curriculum requirements for theory hours. Cosmetologist, barber, manicurist and esthetician theory hours must be taught in a classroom setting under the direct supervision of an instructor licensed in the curriculum for which he or she is providing theory instruction.

(3) With the exception of theory hours, only those hours of instruction an apprentice is given under the direction of an apprentice trainer as defined in WAC 308-20-010 and in the standards developed by the apprenticeship program shall be credited toward completion of the apprenticeship training.

(4) When all of the apprenticeship program requirements have been met by the apprentice and within thirty days of an apprentice's completed training, the committee shall provide to the apprentice a copy of the apprentice's final report.

(5) An apprentice may transfer between shops only when the committee approves the transfer.

(6) Apprentice trainers and instructors must be physically present where apprentices are receiving practical training.

NEW SECTION

WAC 308-20-121 Examination code of conduct. (1) Applicants will be required to refrain from:

(a) Talking to other examinees during the examination unless specifically directed or permitted to do so by a test monitor.

(b) Attempting to communicate or record any information by any means.

(c) Holding in their possession any unauthorized materials during any portion of the examination.

(d) Removing test materials and/or notes from the testing room.

(e) Disruptive behavior as determined by the department.

(2) Applicants who participate in any activity listed in subsection (1) of this section will be required to leave the examination site. Their opportunity to sit for the examination will be forfeited. Their answer sheet will be voided. A voided answer sheet will not be scored and the examination fee will not be refunded.

(3) Any applicant who was removed from the testing site for any of the reasons listed in subsection (1) of this section will be denied for testing for one year.

NEW SECTION

WAC 308-20-572 Preinspection of schools. (1) Prior to approval for licensure, any person wishing to operate a school shall, before opening a school, meet the requirements in RCW 18.16.140; submit to a preinspection of the site; and provide the following:

(a) Name of owner and current mailing and physical address if solely owned.

(b) Names of partners and current mailing and physical addresses if a partnership.

(c) Names of corporate officers and current mailing and physical addresses if a corporation.

(d) Name of the school, complete mailing address, and physical address.

(e) A signed fire inspection report from the local fire authority indicating all standards and requirements have been met.

(f) Listing of all instructors including license number and expiration date.

(g) Sample of monthly student reports.

(h) Sample of student packet to be provided to student at enrollment that must contain, but is not limited to, a copy of the school's catalog, brochure, enrollment contract, and cancellation and refund policies.

(i) Floor plan drawn to scale showing placement of all equipment; areas designated for the clinic, dispensary, classroom, office and restrooms; and identify student capacity.

(2) All locations shall pass a preinspection by a department representative by meeting the following requirements:

(a) An entrance sign designating the name of the school.

(b) A time clock or other equipment necessary for verification of attendance and hours earned.

(c) An adequate supply of hot and cold running water shall be available for school operation.

(d) Textbooks/teaching materials - textbooks shall be provided for each student in attendance.

(e) Lavatories with hot and cold running water.

(f) When a salon and school are under the same ownership in the same building, separate operation of the salon and the school must be maintained. Common reception areas and restrooms will be allowed; however, the salon and school must have separate entrances and meet location requirements identified in chapter 18.16 RCW.

(g) Emergency evacuation plans posted for staff and students.

(h) There must be a sufficient number of tables/desks and chairs to accommodate the registered students.

(i) Department of licensing safety and sanitation guidelines posted in all dispensaries and classrooms.

(j) Supplemental training space must be located within two miles of the original facility of the licensed school. These facilities must bear the same name as the original licensed school and it is only approved for theory and/or practice rooms. No clinic services shall be provided in additional facilities.

(k) Schools must post a sign that contains the words "work done exclusively by students" or "all work performed by students under supervision of a licensed instructor" in the reception or clinic area.

WSR 08-22-035
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed October 30, 2008, 11:43 a.m., effective November 30, 2008]

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

Purpose: Need to include bus driver authorization appeals to the WAC.

Citation of Existing Rules Affected by this Order: Amending WAC 392-101-010.

Statutory Authority for Adoption: RCW 42.20.100.

Adopted under notice filed as WSR 08-19-063 on September 15, 2008.

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: October 30, 2008.

Dr. Terry Bergeson
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending Order 91-17, filed 8/23/91, effective 9/23/91)

WAC 392-101-010 Conduct of administrative hearings. The superintendent of public instruction hereby assigns the following administrative hearings to the office of administrative hearings and hereby delegates to the administrative law judge conducting any such hearing the authority to render the final decision by the superintendent of public instruction:

(1) Nonresident transfer appeals pursuant to WAC 392-137-055(2).

(2) Special education hearings pursuant to WAC 392-171-531.

(3) Equal educational opportunity complaints pursuant to WAC 392-190-075.

(4) Professional certification appeals pursuant to WAC 180-75-030.

(5) Child care food program and summer food service program appeals pursuant to 7 C.F.R. Parts 225 and 226.

(6) Traffic safety education appeals pursuant to WAC 392-153-005 through 392-153-040.

(7) Bus driver authorization appeals pursuant to chapter 392-144 WAC.

WSR 08-22-041
PERMANENT RULES
HEALTH CARE AUTHORITY

[Order 08-02—Filed October 31, 2008, 8:54 a.m., effective December 1, 2008]

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

Purpose: These rules are necessary for the agency to implement the health insurance partnership, as required by chapter 70.47A RCW.

Statutory Authority for Adoption: RCW 70.47A.060.

Adopted under notice filed as WSR 08-19-065 on September 15, 2008.

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 21, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: October 31, 2008.

Jason Siems
Rules Coordinator

Chapter 182-26 WAC

**WASHINGTON HEALTH INSURANCE
PARTNERSHIP (HIP) PROGRAM**

NEW SECTION

WAC 182-26-010 Authority. The administrator's authority to make rules is contained in RCW 70.47A.060.

NEW SECTION

WAC 182-26-020 Definitions—Generally. Unless the context clearly indicates otherwise, the definitions in Part 1 of this chapter apply throughout this chapter.

**PART 1
DEFINITIONS**

NEW SECTION

WAC 182-26-100 Definitions. "Administrator" means the administrator of the Washington state health care authority established under chapter 41.05 RCW.

"Appeal" means a formal written request to the HIP or its designee for resolution of problems or concerns that cannot be resolved informally. For the purposes of this chapter,

"appeal" applies only to HIP decisions regarding subsidy determinations and employer eligibility for the HIP.

"Applicant" means:

- An individual who applies for a premium subsidy through the HIP on behalf of the individual and his or her dependents; or

- A partnership participant who applies or reapplies for premium subsidy through the HIP on behalf of the partnership participant and his or her dependents during the annual subsidy application and renewal period as described in WAC 182-26-320.

"Application" means a form developed by the administrator that an applicant must sign, complete, and submit to the administrator to apply for a premium subsidy through the HIP. To be considered complete, the application must be accompanied by all supporting documents as required and determined by the administrator.

"Benchmark health benefit plan" or "benchmark plan" means a health benefit plan selected by the board and upon which the subsidy scale shall be determined and from which the administrator will calculate a partnership participant's premium subsidy.

"Board" or "HIP board" means the health insurance partnership board established under RCW 70.47A.100.

"Carrier" or "insurance carrier" means the same as defined in RCW 48.43.005.

"The department of social and health services" or "DSHS" means the department of social and health services as defined in RCW 43.20A.020.

"Dependent," for the purpose of determining subsidy eligibility, "dependent" means:

- (1) A partnership participant's lawful spouse, not legally separated, who shares a home with the partnership participant; or

- (2) The unmarried child of the partnership participant or participant's dependent spouse, whether by birth, adoption, legal guardianship, or placement pending adoption, and not given up for adoption, who is:

- (a) Younger than age twenty-five; or

- (b) Is of any age, is not able to take care of himself or herself due to disability, and is under legal guardianship of the partnership participant or the participant's dependent spouse.

- (3) A dependent may be placed on only one HIP account at any given time.

"Designated health benefit plan" means a health benefit plan selected by the board as eligible for offer through the HIP.

"Disenroll" or "disenrollment" means the termination of a partnership participants' enrollment in the HIP program. Decisions regarding eligibility or enrollment status for insurance coverage will be made by the carrier.

"Eligible partnership participant" means a partnership participant who:

- Is a resident of the state of Washington;

- Has a family income that does not exceed two hundred percent of the federal poverty level, as determined annually by the federal Department of Health and Human Services; and

• Is a health plan eligible employee as defined in this section that is enrolled or is applying to enroll in the participating small employer's offered coverage.

"Employee" has the same meaning as defined in RCW 48.43.005.

"Employer agreement" means a form developed by the administrator that a small employer must complete, sign, and submit to the administrator to request enrollment in the HIP.

"Health insurance partnership" or "HIP" means the health insurance partnership established in RCW 70.47A.-030.

"Health plan eligible employee" means an individual who meets the participating small employer's enrollment criteria.

"HIP account" means an account maintained by the administrator for each partnership participant that includes but is not limited to:

- Demographic information for participants and dependents, if any;
- Subsidy status;
- Carrier and plan enrollment status; and
- Other information as required by the administrator.

"Income" or "family gross income" means total cash receipts, as defined in WAC 182-26-345, before taxes, for participants and all dependents.

"Individual health benefit plan selection." Reserved.

The "office of the insurance commissioner" or "OIC" means the insurance commissioner as defined in RCW 48.02.010.

"Open enrollment" means a designated time period during which partnership participants may enroll additional dependents or make other changes to their employer-sponsored health benefit plan coverage.

"Participating small employer" means a small employer who:

- Enters into a written agreement with the HIP to purchase a designated health benefit plan through the HIP;
- Attests at the date of the agreement that the employer does not currently offer coverage, including insurance purchased through the small group and association health plan markets, self-funded plans, and multiple employer welfare arrangements; and
- Attests at the date of the agreement that at least fifty percent of its employees are low-wage workers, as defined by the board.

"Partnership participant" means:

- A participating small employer as defined in this section;
- An employee of a participating small employer;
- A former employee of a participating small employer who chooses to continue coverage through the HIP following separation from employment, to the extent the employee is eligible for continuation of coverage under 29 U.S.C. Sec. 1161 et seq.; and
- A former employee of a participating small employer who chooses to continue coverage through HIP following separation from employment, to the extent determined by the board.

"Philanthropy" means a person, organization or other entity, approved by the administrator that is responsible for

payment of all or part of the monthly premium obligation on behalf of a partnership participant.

"Premium" has the same meaning as described in RCW 48.43.005.

"Premium subsidy" or "subsidy" means payment to or reimbursement by the HIP on behalf of an eligible partnership participant toward the purchase of a designated health benefit plan.

"Qualifying change in family status" is defined in WAC 182-26-325.

"Section 125 plan" means a cafeteria plan compliant with section 125 of the federal Internal Revenue Code that enables employees to use pretax dollars to pay their share of their health benefit plan premium.

"Small employer" or "employer" as used in this chapter means an employer who meets the definition of "small employer" in RCW 48.43.005.

"Subsidy application and renewal period" means an annual period that lasts at least sixty days, during which:

- All partnership participants may apply for premium subsidies for themselves and their dependents; and
- All partnership participants receiving a subsidy are required to provide proof of their continuing eligibility for a premium subsidy.

The subsidy application and renewal period will begin ninety days before the employer-sponsored health benefit plan open enrollment period begins.

"Surcharge" means an amount, determined by the administrator, that may be added to a partnership participant's premium as provided for in WAC 182-26-500. The surcharge is not part of the premium and applies only to coverage purchased through the HIP.

"Washington state resident" means:

- (a) A person who physically resides in and maintains a residence in the state of Washington.
- (b) To be considered a Washington resident, individuals who are temporarily out of Washington state for any reason may be required to demonstrate their intent to return to Washington state.
- (c) "Residence" may include, but is not limited to:
 - (i) A home the person owns or is purchasing or renting;
 - (ii) A shelter or other physical location where the person stays; or
 - (iii) Another person's home.

PART 2 EMPLOYER ENROLLMENT

NEW SECTION

WAC 182-26-200 Employer eligibility for the HIP.

To enroll in the HIP, a small employer must:

- Meet the minimum contribution requirement under WAC 182-26-210;
- Meet the minimum participation requirement under WAC 182-26-220; and
- Agree to establish a section 125 plan under RCW 70.47A.030 (2)(a).

NEW SECTION**WAC 182-26-210 Minimum employer contribution.**

- A small employer must contribute at least forty percent of each health plan eligible employee's total premium obligation.
- The minimum contribution requirement does not apply to a health plan eligible employee's dependent's premium.

NEW SECTION**WAC 182-26-220 Minimum participation.**

- A participating small employer will determine the criteria for eligibility and enrollment in his or her designated health benefit plan.
- To participate in the HIP, the small employer must enroll at least seventy-five percent of the health plan eligible employees in the designated health benefit plan.
- When calculating the minimum participation percentage, employees who have similar existing coverage from another source and the health plan eligible employees' dependents will not be included.

PART 3 PREMIUM SUBSIDIES

NEW SECTION

WAC 182-26-300 Who can receive a premium subsidy? An eligible partnership participant may receive a premium subsidy if there is sufficient funding available, as determined by the administrator.

NEW SECTION

WAC 182-26-305 Applying for a HIP premium subsidy. (1) To receive a HIP subsidy, an applicant must submit a complete application and all supporting documents as described in WAC 182-26-310 to the HIP.

(2) On a subsidy application, an applicant must list all eligible dependents up to age nineteen. The applicant must also provide other information and documents as required by the HIP.

(3) An applicant is not required to list dependents aged nineteen or over and under twenty-five on the application, but if they are listed on the application, the HIP will include the dependents' income for purposes of subsidy eligibility and calculation.

(4) An applicant is not required to apply for a subsidy for all of his or her dependents. However, any dependent that does not apply for a subsidy at the same time that the other family members apply must wait to apply as a dependent until the next subsidy application and renewal period.

NEW SECTION

WAC 182-26-310 Application—Supporting documents. (1) An application for a HIP subsidy must be accompanied by all of the following supporting documents:

- Proof of the family gross income as described in WAC 182-26-345.

- Proof of the applicant's Washington state residence, displaying the applicant's name and current address, such as a utility bill or rent receipt. The HIP may accept other documents if the applicant does not have a physical residence, for example, a signed statement from a person or other entity that is providing temporary shelter. The HIP will not accept a post office box or other mailing address as proof of residence.

- Other documents or information as requested by the HIP to establish or verify eligibility.

(2) The HIP may verify income of applicants for a HIP subsidy through comparison with other state and federal agency records or other third-party sources.

(3) Incomplete or inaccurate information may delay or prevent an applicant from receiving a premium subsidy. Intentionally submitting false information will, at a minimum, result in the loss of subsidy eligibility for an applicant or partnership participant and all of his or her subsidized dependents.

NEW SECTION

WAC 182-26-315 HIP application review. (1) Except as provided in WAC 182-26-300, the HIP will review subsidy applications within thirty days of receipt. The HIP will send notification of an applicant's subsidy status upon completion of the review.

(2) Eligible applicants will be subsidized in the HIP in the order in which their completed applications have been received by the HIP, provided the administrator has determined there is subsidy funding available and the participating small employer also remits full payment of the first full month's premium to the HIP by the due date specified by the HIP.

NEW SECTION

WAC 182-26-320 Annual subsidy application and renewal. (1) The HIP will verify the continuing eligibility of eligible partnership participants at least annually, or upon renewal or a change of the employer-sponsored health benefit plan.

(2) Upon request of the HIP, subsidized eligible partnership participants must submit evidence satisfactory to the HIP that proves their continued eligibility for a premium subsidy and for the amount of subsidy they receive.

(3) The HIP may verify income of subsidized eligible partnership participants through comparison with other state and federal agency records or other third-party sources.

(4) If the eligible partnership participant's income on record with other agencies or third-party sources differs from the income the participant has reported to the HIP, or if questions arise concerning the documents submitted, the HIP may require updated documents from the participant to prove continued eligibility for the subsidy they receive. At that time, the HIP may also require updated proof of residence.

(5) Eligible partnership participants who have documented that they did not file a federal income tax return for previous years may not be required to provide additional verification of nonfiling, unless their circumstances appear to have changed or other information received by the HIP indicates they may have filed a federal income tax return.

(6) In addition to verification of income, eligible partnership participants must annually submit proof of Washington state residence to the HIP.

(7) Partnership participants who fail to comply with an annual subsidy renewal request will be disenrolled from the HIP subsidy program and will no longer receive a premium subsidy from the HIP.

(8) If, as the result of an annual subsidy renewal review, the HIP determines that a partnership participant has not reported income accurately, the partnership participant will be subject to the provisions of WAC 182-26-335.

NEW SECTION

WAC 182-26-325 Making changes to a HIP account.

(1) A partnership participant may add an eligible dependent to a HIP account:

(a) Annually, during the subsidy application and renewal period; or

(b) When there is a qualifying change in family status. In these cases, the partnership participant must notify the administrator on the required form within thirty calendar days of the change in family status. A "qualifying change in family status" means:

- The loss of other health care coverage for a dependent who has previously waived coverage in the partnership participant's employer-sponsored health benefit plan;
- The birth, adoption, or placement for adoption of a dependent child in the partnership participant's home;
- The partnership participant marries;
- The partnership participant or his or her spouse assumes custody or dependency of a child or adult dependent; or
- A dependent that was previously ineligible for the partnership participant's employer-sponsored health benefit plan coverage has become eligible.

(2) A partnership participant may remove dependents from a HIP account upon divorce, annulment, or legal separation, or upon the death of a dependent. In these cases, the partnership participant must notify the HIP within thirty calendar days of the change in family status.

(3) A partnership participant must notify the HIP of a change in his or her physical address within thirty calendar days of the change of address.

NEW SECTION

WAC 182-26-330 Loss of subsidy eligibility. A partnership participant may lose subsidy eligibility for himself or herself and his or her dependents when:

- The partnership participant's or dependent's coverage under his or her designated health benefit plan has been suspended or terminated;
- The partnership participant is no longer a Washington state resident;
- The partnership participant has not accurately reported his or her family gross income at the time of subsidy application or renewal; or
- The partnership participant's employer is disenrolled from the HIP program.

If the partnership participant loses subsidy eligibility, he or she will no longer receive a premium subsidy, beginning with the next coverage month following the determination of the change.

NEW SECTION

WAC 182-26-335 Recoupment. The HIP may recoup overpaid subsidy amounts from current and former partnership participants when the HIP determines that a subsidy overpayment occurred because the current or former partnership participant misrepresented or withheld information necessary to accurately determine their subsidy eligibility or subsidy amount.

NEW SECTION

WAC 182-26-340 How does the HIP determine the premium subsidy amount? (1) The HIP will apply a sliding scale subsidy schedule based on the partnership participant's family gross income and family size to determine the percentage of the employee's premium obligation the state will pay.

(2) The percentage in subsection (1) of this section will be applied to the health benefit plan employee premium share, including the amount due for dependents' coverage, remaining after deducting the employer contribution from the total premium amount for that participant.

(3) If a participating small employer chooses a health benefit plan with a higher premium than the benchmark plan, the subsidy will not exceed the amount applicable to the benchmark plan.

(4) In no case will the subsidy percentage exceed ninety percent of the benchmark plan employee premium share.

(5) Once enrolled in the HIP, the subsidy percentage will not change until the next subsidy application and renewal period, even if the total premium share changes because of a qualifying change in family status.

NEW SECTION

WAC 182-26-345 How does the HIP calculate income? (1) The HIP will average applicants' or dependents' family gross income over a twelve-month period using the total income reported on the most recent tax year's federal income tax return.

(2) If the applicant or dependent cannot provide a copy or IRS transcript of the most recent tax year's federal income tax return, the applicant or dependent must submit a signed declaration of nonfiling and the HIP will calculate the income based on documents deemed acceptable to the administrator.

(3) If an applicant or his or her spouse is self-employed or receives rental income, the applicant or spouse may be required to submit a twelve-month history of receipts and expenses for proof of self-employment or rental income unless the applicant or spouse has not owned the business or rental for at least twelve months. In these cases, the applicant or spouse must send proof of all receipts and expenses for all months he or she has owned the business or rental.

(4) The HIP will deduct expenses an applicant or spouse pays for child or dependent care when calculating family

income. The HIP will establish a maximum amount that can be deducted, consistent with IRS requirements. To qualify for this deduction:

(a) The care must be for a dependent on the account, as described under "dependent" as defined in WAC 182-26-100;

(b) The applicant and spouse, if any, listed on the account, must be employed, attend school, or be receiving Social Security disability benefits during the months the care was provided; and

(c) The person who was paid for the dependent's care cannot be the dependent's parent or stepparent or another of the applicant's or spouse's dependents.

(5) The HIP will deduct payments made for alimony when calculating family income.

NEW SECTION

WAC 182-26-350 What does the HIP count as income? Income includes all of the following, before any deductions (gross income):

Source	Received by the participant, spouse, child dependent aged nineteen or over and under twenty-five, or adult dependent	Received by a dependent child under age nineteen
Wages, tips, and salaries	Yes	No
Taxable interest	Yes	Yes
Ordinary dividends	Yes	Yes
Taxable refunds, credits, or offsets of state and local income taxes	Yes	Yes
Alimony received	Yes	N/A
Business income or loss	Yes	Yes
Capital gain or loss	Yes	Yes
Other gains or losses	Yes	Yes
IRA distributions	Yes	Yes
Pensions and annuities	Yes	N/A
Rental real estate, royalties, partnerships, S corporations	Yes	Yes
Farm income	Yes	Yes
Unemployment compensation	Yes	No
Social Security benefits	Yes	Yes

Source	Received by the participant, spouse, child dependent aged nineteen or over and under twenty-five, or adult dependent	Received by a dependent child under age nineteen
Other income	Yes	Yes

**PART 4
ADMINISTRATIVE PROCEDURES**

NEW SECTION

WAC 182-26-400 Appeals—Grounds. (1) An employer may appeal a HIP decision regarding the employer group's eligibility or enrollment status in the HIP.

(2) A partnership participant or applicant may appeal a HIP decision regarding:

- Eligibility for a premium subsidy;
- Premium subsidy amounts;
- Premium subsidy adjustments or penalties.

NEW SECTION

WAC 182-26-405 Appeals—Who may appeal a HIP decision? The HIP will accept appeals from an appealing party. For the purposes of this chapter, "appealing party" means:

(1) A participating small employer or small employer who has been denied enrollment in the HIP;

(2) An eligible partnership participant or applicant; or

(3) A third party on the behalf of the person listed in subsection (1) or (2) of this section, as long as the HIP has authorization from the person appealing. The authorization must:

- Be in writing; and
- Verify that the third party represents the person appealing, and that the HIP can share the person's HIP account information with the third party.

NEW SECTION

WAC 182-26-410 How to appeal a HIP decision. (1) To appeal a HIP decision, submit a signed letter of appeal to the HIP. The HIP must receive the letter of appeal within thirty calendar days of the date of the decision. The letter of appeal should include:

(a) The appealing party's name, mailing address, and HIP account number if assigned;

(b) A copy of the notice of the decision being appealed or an explanation of the decision being appealed; and

(c) A statement explaining why the appealing party believes the decision was incorrect, outlining the facts surrounding the decision and including supporting documents.

(2) If an appealing party would like an opportunity to explain in person or by phone, the appealing party should include that in the letter of appeal.

(3) Within fifteen calendar days of the date the HIP receives the letter of appeal, the HIP will send the appealing

party written confirmation of receipt of the appeal. If requested by the appealing party, the HIP will schedule an opportunity for the appealing party to explain in person or by phone.

(4) Within sixty calendar days of the date the HIP receives the letter of appeal, the HIP will send the appealing party written notice of the HIP appeal decision. If the appeal is from a third party, the HIP will send a copy of the notice to the appealing party. The notice will include the reasons for the appeal decision and instructions for requesting a review of the appeal decision.

(5) The appeal decision becomes the final agency decision unless the HIP receives a valid request for an additional review from the appealing party. To be valid the request must:

- Be received by the HIP within thirty calendar days of the date of the appeal decision;
- Include a summary of the decision to be reviewed and explain why the appealing party believes the decision was incorrect; and
- Provide additional information or documents the appealing party would like the HIP to consider in the review.

(6) When a valid request for an additional review is received, HIP appeal decisions will be reviewed by a presiding officer according to the requirements of RCW 34.05.488 through 34.05.494. These review decisions will be based on the record and documents submitted, unless the presiding officer decides that an in-person or telephone hearing is needed. If an in-person or telephone hearing is needed, the presiding officer will decide whether to conduct the hearing as an informal hearing or formal adjudicative proceeding.

(7) The presiding officer will send a written notice of the review decision, including the reasons for the decision, within twenty-one calendar days of receiving the request for review, unless the presiding officer finds that additional time is needed for the decision.

(8) If the appealing party disagrees with a review decision under subsection (5) of this section, he or she may request judicial review of the decision, as provided for in RCW 34.05.542.

PART 5 AGENCY OPERATIONS

NEW SECTION

WAC 182-26-500 Surcharge applicability. (1) The HIP may apply the surcharge uniformly to each health benefit plan purchased through the HIP to reflect the HIP's administrative and operational expenses remaining after any legislative appropriation for this purpose during the year the surcharge is assessed.

(2) The surcharge may be added to the premium, but will not be considered a part of the small group community rate and applies only to coverage purchased through the HIP.

(3) The surcharge may not be used to pay any premium assistance payments.

WSR 08-22-048 PERMANENT RULES DEPARTMENT OF REVENUE

[Filed October 31, 2008, 1:29 p.m., effective December 1, 2008]

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

Purpose: WAC 458-20-27701 is a new rule establishing the compensation for model 2 volunteer sellers who voluntarily collect and remit retail sales and use taxes for Washington state. Model 2 volunteer sellers are sellers that use a certified automated system to calculate, process, and record their retail sales transactions. The selected certified automated system must be certified by the governing board of the streamlined sales and use tax agreement. WAC 458-20-27701 also contains liability and administrative provisions related to model 2 volunteer sellers, and explains the qualifications for becoming a model 2 volunteer seller.

Statutory Authority for Adoption: RCW 82.32.300, 82.32.715, and 82.01.060(2).

Adopted under notice filed as WSR 08-09-157 on April 23, 2008.

Changes Other than Editing from Proposed to Adopted Version: WAC 458-20-27701 (3)(a) is amended as follows: "If you are a qualified seller, you are ~~entitled~~ eligible to receive monetary allowances from Washington under this subsection ~~in addition to any other vendor compensation that may be allowed by a member or associate member state of the SSUTA.~~ and this may be in addition to any existing discount afforded by each member. This language is amended in order to more closely track the language of the SSUTA.

WAC 458-20-27701 (3)(b) is amended as follows: ~~If you installed a certified automated system prior to July 1, 2008, (the date on which Washington becomes a member of the SSUTA), you are entitled to monetary allowances under this subsection for a period of up to twenty-four months beginning no sooner than July 1, 2007, and no later than June 30, 2008.~~ If you install a certified automated system on or after July 1, ~~2008~~ 2007, you are ~~entitled~~ eligible to receive monetary allowances under this subsection for a period up to twenty-four months from the date that you install your certified automated system.

In WAC 458-20-27701 (2)(b)(ii)(D) the phrase "before October 1, 2005" will be inserted after the word "action." This language is amended in order to make the rule more closely track the language of the SSUTA.

In WAC 458-20-27701 (2)(e) the word or [words] "or similar persons" will be inserted after "employees." This is being amended to provide additional clarification.

A final cost-benefit analysis is available by contacting Tim Jennrich, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, phone (360) 570-6136, fax (360) 586-0127, e-mail TimJe@dor.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 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 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: October 31, 2008.

Alan R. Lynn
Rules Coordinator

NEW SECTION

WAC 458-20-27701 Model 2 volunteer sellers— Compensation. (1) **Introduction.** As a requirement of membership in the Streamlined Sales and Use Tax Agreement (SSUTA), Washington has agreed to provide compensation to model 2 volunteer sellers collecting and remitting retail sales and use taxes in Washington. For more information concerning the SSUTA, visit <http://www.streamlinedsal-estax.org>. This section explains who qualifies as a model 2 volunteer seller and the compensation available to such sellers as authorized under RCW 82.32.715.

The web site referenced in this section is not maintained by Washington or the department of revenue (department). This referenced web site may contain recommendations that require a change to Washington law before becoming effective in Washington. The web site is current as of the date of adoption of this section, but may change in future periods by action of the owner of the web site without notice.

(2) **Model 2 volunteer sellers.** This subsection discusses the qualifications for status as a model 2 seller and a model 2 volunteer seller. Only those model 2 sellers qualifying as model 2 volunteer sellers are eligible to receive compensation for remitting sales and use taxes to Washington under subsection (3) of this section. A taxpayer that qualifies as a model 2 volunteer seller under this subsection will be referred to as a "qualified seller."

(a) **What is a model 2 seller?** You will qualify as a model 2 seller if you meet all of the following conditions:

(i) You use a certified automated system to perform part of your sales and use tax functions. (See (f) of this subsection for a definition of certified automated system); and

(ii) You retain the responsibility for remitting your sales and use taxes to Washington.

(b) **What is a model 2 volunteer seller?** If you are a model 2 seller under (a) of this subsection, you will be a model 2 volunteer seller if you are registered through the SSUTA central registration system (CRS) as a model 2 seller and you meet the following additional conditions:

(i) You have represented that you do not have a legal requirement to register and do not in fact have a legal requirement to register in Washington at the time you register with the CRS, regardless of any previous registration you may have made in Washington; or

(ii) You register with Washington through the CRS after November 12, 2002, and you meet all of the following requirements immediately before the date of your registration with Washington through the CRS (and you do not cease to

meet these requirements thereafter pursuant to subsection (3)(d) of this section):

(A) You have no fixed place of business in Washington for more than thirty days;

(B) You have less than fifty thousand dollars of property in Washington;

(C) You have less than fifty thousand dollars of payroll in Washington; and

(D) You have less than twenty-five percent of your total property or payroll in Washington.

If you have registered in Washington because you had a legal requirement to register resulting from an administrative, legislative, or judicial action before October 1, 2005, you cannot be a model 2 volunteer seller under this subsection.

(c) **If I am a qualified seller, do I still need to register with the department for Washington state tax purposes under RCW 82.32.030(1)?** Your status as a qualified seller does not impact your requirement to register with the department. If you meet the conditions for registration with the department under RCW 82.32.030, you must register with the department.

(d) **What is property for purposes of (b) of this subsection and how is it valued?** Property refers to the "average value" of the real property and tangible personal property that you own and rent. You will value owned property at its original cost basis. Rented property will be valued at eight times the net annual rental rate of that property. The net annual rental rate is the annual rental rate paid by you less any annual rental rates you receive from subrentals.

You must determine the "average value" of this property by averaging the value of property at the beginning of the twelve-month period immediately before the date you register with Washington with the value of property at the end of the twelve-month period immediately before you register with Washington.

(e) **What is payroll for purposes of (b) of this subsection?** Payroll is the total amount paid by you for compensation during the twelve-month period immediately preceding the date you register with Washington. Compensation means wages, salaries, commissions, and any other form of payment to employees or similar persons that meet the definition of gross income under section 61 of the Internal Revenue Code in effect on the effective date of this section.

Compensation is deemed to be payroll in Washington if:

(i) The employee's service is performed entirely within Washington;

(ii) The employee's service is performed both within and outside Washington, and the performance of services outside Washington is merely incidental to the services performed within Washington;

(iii) The employee performs some services within Washington, and the base of operations or the place from which the services are directed or controlled is within Washington; or

(iv) The employee performs some services within Washington, and the base of operations or place from which the services are directed or controlled is not within any state (where some part of the services are performed), but the employee's residence is within Washington.

(f) **What is a certified automated system for purposes of this section?** A certified automated system is software

certified by Washington under the SSUTA: To calculate the sales and use tax imposed by each taxing jurisdiction on a transaction; to determine the amount of tax to remit; and to maintain a record of the transaction.

(3) **Qualified seller compensation.** This subsection explains compensation available to qualified sellers.

(a) **What type of compensation is available to qualified sellers?** If you are a qualified seller, you are eligible to receive monetary allowances from Washington under this subsection and this is in addition to any existing discount afforded by each member state. For a list of SSUTA member and associate member states visit <http://www.streamlinedsal-estax.org>. You obtain these monetary allowances from Washington by retaining a portion of the Washington state retail sales and use taxes you collect and report to Washington. You are not entitled to monetary allowances unless you are a qualified seller and have filed and paid a timely return.

(b) **How long are qualified sellers permitted to receive monetary allowances?** If you install a certified automated system on or after July 1, 2007, you are eligible to receive monetary allowances under this subsection for a period up to twenty-four months from the date that you install your certified automated system.

(c) **How do qualified sellers calculate their monetary allowances?** You will calculate your monetary allowance under the following formula:

(Applicable rate) multiplied by (Washington retail sales and use taxes you collect and report).

The applicable rate for this formula is one and one-half percent. Your total monetary allowance for the first twelve months of the twenty-four month period described in (b) of this subsection cannot exceed ten thousand dollars. Your total monetary allowance for the second twelve months of the twenty-four month period described in (b) of this subsection cannot exceed ten thousand dollars. For purposes of determining when each ten thousand dollar limit is reached, affiliated qualified sellers must be treated as a single qualified seller if they would qualify as "related persons" under sections 267(b) or 707(b) of the Internal Revenue Code in effect on the effective date of this section.

You may not retain monetary allowances under this subsection based on any sales taxes determined or calculated without the use of a certified automated system. Moreover, you may not retain monetary allowances under this subsection based on any sales taxes determined or calculated with a certified automated system that you have failed to update or modify in accordance with your agreement with your certified automated system provider. It is your duty to make sure all updates and modifications to your certified automated system are properly implemented.

(d) **Can a qualified seller continue to receive monetary allowances if it ceases to be a qualified seller?** No. If you cease to be a qualified seller, you are not entitled to monetary allowances. If you cease to be a qualified seller during any part of a calendar month, you will not be entitled to monetary allowances for that entire month. You will cease to be a qualified seller if you conduct activities in Washington that would require you to register in Washington and as a result of these activities fail to meet one or more of the requirements

of subsection (2)(b)(ii)(A) through (D) of this section. The meanings given to property and payroll in subsection (2)(d) and (e) of this section apply for purposes of this subsection (3)(d). However, you must determine the "average value" of property and the amount of payroll under this subsection (3)(d) as follows:

(i) You must determine the "average value" of property by averaging the values at the beginning and end of your last fiscal year that terminates at least thirty days before the date the determination is made.

(ii) You must determine payroll, by calculating the total amount of compensation paid to employees during your last fiscal year that terminates at least thirty days before the date the determination is made.

(e) **Are monetary allowances funded from both Washington state and local retail sales and use taxes?** No, monetary allowances will only be funded from the Washington state portion of the retail sales and use taxes that you collect and must remit.

(4) **Do qualified sellers have any liability protections when operating in Washington?** You are not liable for charging or collecting the incorrect amount of sales or use tax when that error results from reliance on incorrect data provided in the department's taxability matrix. To obtain a copy of the taxability matrix, visit the SSUTA web site located at: <http://www.streamlinedsalestax.org>.

Additionally, you will be held harmless and not liable for sales and use taxes, including interest and penalties on those taxes, not collected due to reliance on Washington's certification of the certified automated system you use. However, you will not be held harmless for the incorrect classification of an item or transaction into a product based exemption certified by the department unless that item or transaction is listed within a product definition approved by the SSUTA's governing board or the department. See also RCW 82.32.-745.

(5) **Filing returns and remitting taxes.** Qualified sellers must electronically file retail sales and use excise tax returns and must remit retail sales and use taxes due with respect to these returns using ACH Debit, ACH Credit, or the Fed Wire Funds Transfer System.

WSR 08-22-052

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed November 3, 2008, 12:24 p.m., effective December 4, 2008]

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

Purpose: DSHS is amending WAC 388-106-0225 and 388-515-1505 as follows:

- Increasing the personal needs allowance allowed in alternate living facilities (boarding homes and adult family homes) by 3.3% effective July 1, 2008. This increase does not apply to state funded general assistance personal needs allowance grants.

- Changing the personal needs allowance allowed for medicaid personal care in alternate living facilities to match the HCS CN waiver PNA amount of \$62.79. The new PNA amount includes the \$20 disregard. This change is effective January 1, 2009.
- Removing references to the medicare/medicaid integration project (MMIP), as this program will be phased out in 2008.
- Clarifying in WAC 388-515-1505 that clients on waiver services in a residential setting contribute up to the state rate of the cost of care as long as there is eligibility for the waiver service.
- DSHS is clarifying WAC 388-106-0225 to state that a GA-X, GA-D, or GA-A client in an adult family home, receiving a \$339 grant, is allowed to keep a PNA of \$38.84 per month. The remainder of the grant must be paid to the adult family home as room and board. A GA-X, GA-D, or GA-A client residing in all other residential facilities (boarding homes) receive a GA-X, GA-D, or GA-A grant of \$38.84.

DSHS is adopting new WAC 388-515-1506 through 388-515-1509 to break up WAC 388-515-1505 for clarity and readability.

Citation of Existing Rules Affected by this Order: Amending WAC 388-515-1505 and 388-106-0225.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530.

Other Authority: Washington state 2007-09 operating budget (SHB 1128).

Adopted under notice filed as WSR 08-19-101 on September 17, 2008.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 2, Repealed 0.

Date Adopted: October 27, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-11-047, filed 5/15/08, effective 6/15/08)

WAC 388-106-0225 How do I pay for MPC? (1) If you live in your own home, you do not participate toward the cost of your personal care services.

(2) If you live in a residential facility and are:

(a) An SSI beneficiary who receives only SSI income, you only pay for board and room. You are allowed to keep a

personal needs allowance of forty-one dollars and ((twelve)) forty-four cents per month. Effective January 1, 2009 this amount will change to sixty-two dollars and seventy-nine cents;

(b) An SSI beneficiary who receives SSI and ((SSA benefits)) another source of income, you only pay for board and room. You are allowed to keep a personal needs allowance of forty-one dollars and ((twelve)) forty-four cents. You keep an additional twenty dollars ((disregard)) from non-SSI income. Effective January 1, 2009 this amount will change to sixty-two dollars and seventy-nine cents. This new amount includes the twenty dollar disregard;

(c) An SSI-related person under WAC 388-475-0050, you may be required to participate towards the cost of your personal care services in addition to your board and room if your financial eligibility is based on the facility's state contracted rate described in WAC 388-513-1305. You are allowed to keep a personal needs allowance of forty-one dollars and ((twelve)) forty-four cents. You keep an additional twenty dollars ((disregard)) from non-SSI income. Effective January 1, 2009 this amount will change to sixty-two dollars and seventy-nine cents. This new amount includes the twenty dollar disregard; or

(d) A ((GA-X)) general assistance client eligible for categorically needy Medicaid coverage in ((a residential care facility)) an adult family home (AFH), you are allowed to keep a personal needs allowance (PNA) of ((only)) thirty-eight dollars and eighty-four cents per month. The remainder of your ((grant)) income must be paid to the ((facility)) AFH as your room and board up to the ADSA room and board standards.

(e) A general assistance client eligible for categorically needy Medicaid coverage in a boarding home, you are authorized a personal needs grant of up to thirty-eight dollars and eighty-four cents per month.

(f) Personal needs allowance (PNA) standards and the ADSA room and board standard can be found at <http://www.dshs.wa.gov/manuals/eaz/sections/LongTerm-Care/ltcstandardsPNAchartsufile.shtml>.

(3) The department pays the residential care facility from the first day of service through the:

(a) Last day of service when the Medicaid resident dies in the facility; or

(b) Day of service before the day the Medicaid resident is discharged.

AMENDATORY SECTION (Amending WSR 07-19-127, filed 9/19/07, effective 10/20/07)

WAC 388-515-1505 ((Financial eligibility requirements for long term care services under COPES, New Freedom, PACE, MMIP, and WMIP)) Long-term care home and community based services and hospice. (1) ((This section describes the financial eligibility requirements and the rules used to determine a client's participation in the total cost of care for home or community-based long term care (LTC) services provided under the following programs:

(a) Community options program entry system (COPES);

(b) Program of all-inclusive care for the elderly (PACE);

(c) Medicare/Medicaid integration project (MMIP);

~~(d) Washington Medicaid integration partnership (WMIP);~~

~~(e) New Freedom consumer directed services (New Freedom); and~~

~~(f) Hospice services for clients not in a medical institution with gross income at or below the SIL and not eligible for another CN or MN Medicaid program.~~

~~(2) To be eligible, a client must:~~

~~(a) Meet the program and age requirements for the specific program, as follows:~~

~~(i) COPES, per WAC 388-106-0310;~~

~~(ii) PACE, per WAC 388-106-0705;~~

~~(iii) MMIP waiver services, per WAC 388-106-0725;~~

~~(iv) WMIP waiver services, per WAC 388-106-0750;~~

~~(v) New Freedom, per WAC 388-106-1410; or~~

~~(vi) Hospice, per chapter 388-551 WAC.~~

~~(b) Meet the aged, blind or disability criteria of the Supplemental Security Income (SSI) program as described in WAC 388-475-0050(1);~~

~~(c) Require the level of care provided in a nursing facility as described in WAC 388-106-0355;~~

~~(d) Be residing in a medical facility as defined in WAC 388-500-0005, or likely to be placed in one within the next thirty days in the absence of home or community-based LTC services provided under one of the programs listed in subsection (1) of this section;~~

~~(e) Have attained institutional status as described in WAC 388-513-1320;~~

~~(f) Be determined in need of home or community-based LTC services and be approved for a plan of care as described in subsection (2)(a);~~

~~(g) Be able to live at home with community support services and choose to remain at home, or live in a department contracted:~~

~~(i) Enhanced adult residential care (EARC) facility;~~

~~(ii) Licensed adult family home (AFH); or~~

~~(iii) Assisted living (AL) facility.~~

~~(h) Not be subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1363, 388-513-1364, 388-513-1365 and 388-513-1366; and~~

~~(i) Meet the resource and income requirements described in subsections (3), (4), and (5) or be an SSI beneficiary not subject to a penalty period as described in subsection (2)(h).~~

~~(3) Refer to WAC 388-513-1315 for rules used to determine countable resources, income and eligibility standards.~~

~~(4) Excess resources are reduced in an amount equal to medical expenses incurred by the institutional client as described in WAC 388-513-1350 and:~~

~~(a) Must result in countable resources being at or below the resource standard in WAC 388-513-1350(1).~~

~~(b) If remaining resources are over the standard, the client is ineligible.~~

~~(5) Nonexcluded income must be at or below the SIL (300% of the federal benefit rate (FBR)) and is allocated in the following order:~~

~~(a) An earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;~~

~~(b) Maintenance and personal needs allowances as described in subsection (7), (8), (9), (10), and (11) of this section;~~

~~(c) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed by chapter 388-79 WAC;~~

~~(d) Income garnished for child support or withheld according to a child support order in the month of the garnishment (for current and back support):~~

~~(i) For the time period covered by the PNA; and~~

~~(ii) Is not counted as the child's income when determining the family allocation amount.~~

~~(e) Monthly maintenance needs allowance for the community spouse not to exceed that in WAC 388-513-1380 (5)(b) unless a greater amount is allocated as described in subsection (6) of this section. This amount:~~

~~(i) Is allowed only to the extent that the client's income is made available to the community spouse; and~~

~~(ii) Consists of a combined total of both:~~

~~(A) One hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1st (<http://aspe.os.dhhs.gov/poverty/>); and~~

~~(B) Excess shelter expenses. For the purposes of this section, excess shelter expenses are the actual required maintenance expenses for the community spouse's principal residence. These expenses are:~~

~~(I) Rent;~~

~~(II) Mortgage;~~

~~(III) Taxes and insurance;~~

~~(IV) Any maintenance care for a condominium or cooperative; and~~

~~(V) The food assistance standard utility allowance (for LTC services this is set at the standard utility allowance (SUA) for a four person household), provided the utilities are not included in the maintenance charges for a condominium or cooperative;~~

~~(VI) LESS the standard shelter allocation. This standard is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1st (<http://aspe.os.dhhs.gov/poverty/>); and~~

~~(VII) Is reduced by the community spouse's gross countable income.~~

~~(f) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of the community or institutionalized spouse based on the living arrangement of the dependent. If the dependent:~~

~~(i) Resides with the community spouse, the amount is equal to one-third of the community spouse income allocation as described in WAC 388-513-1380 (5)(b)(i)(A) that exceeds the dependent family member's income;~~

~~(ii) Does not reside with the community spouse, the amount is equal to the MNIL for the number of dependent family members in the home less the income of the dependent family members.~~

~~(iii) Child support received from a noncustodial parent is the child's income;~~

~~(g) Medical expenses incurred by the client and not used to reduce excess resources. Allowable medical expenses and reducing excess resources are described in WAC 388-513-1350.~~

~~(6) The amount allocated to the community spouse may be greater than the amount in subsection (5)(e) only when:~~

(a) A court enters an order against the client for the support of the community spouse; or

(b) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(7) A client who receives SSI, and lives at home as defined in WAC 388-106-0010 does not use income to participate in the cost of personal care.

(8) A client who receives SSI and lives in an enhanced adult residential center (EARC), adult family home (AFH) or assisted living (AL) does not use income to participate in the cost of personal care and:

(a) Retains a personal needs allowance (PNA) of sixty dollars and seventy-eight cents; and

(b) Uses income to pay the facility for the cost of room and board.

(c) Room and board is the SSI FBR minus sixty dollars and seventy-eight cents.

(9) A client who is eligible to receive CN-P Medicaid described in WAC 388-475-0100 (2)(a) and (b) and lives at home, defined in WAC 388-106-0010, does not use income to participate in the cost of personal care.

(10) A client who is eligible to receive CN-P Medicaid described in WAC 388-475-0100 (2)(a) and (b) and lives in an EARC, AFH or AL does not use income to participate in the cost of personal care and:

(a) Retains a personal needs allowance (PNA) of sixty dollars and seventy-eight cents; and

(b) Uses income to pay the facility for the cost of room and board.

(c) Room and board is the SSI FBR minus sixty dollars and seventy-eight cents.

(11) An institutionalized SSI-related client living:

(a) At home, retains a maintenance needs amount equal to the following:

(i) Up to one hundred percent of the one-person FPL, if the client is:

(A) Single; or

(B) Married, and is:

(I) Not living with the community spouse; or

(II) Whose spouse is receiving long-term care (LTC) services outside of the home.

(ii) Up to one hundred percent of the one-person FPL for each client, if both spouses are receiving COPES, New Freedom, PACE, MMIP, or WMIP services;

(iii) Up to the one-person medically needy income level (MNIL) for a married client who is living with a community spouse who is not receiving COPES, New Freedom, PACE, MMIP, or WMIP.

(b) In an EARC, AFH, or AL, retains a maintenance needs amount equal to the SSI FBR and:

(i) Retains a personal needs allowance (PNA) of sixty dollars and seventy-eight cents from the maintenance needs; and

(ii) Pays the remainder of the maintenance needs to the facility for the cost of room and board. (Refer to subsection (14) in this section for allocation of the balance of income remaining over maintenance needs.)

(12) A client who is eligible for the general assistance expedited Medicaid disability (GAX) program does not participate in the cost of personal care. When such a client lives:

(a) At home, the client retains the cash grant amount authorized under the general assistance program;

(b) In an AFH, the client retains a PNA of thirty-eight dollars and eighty-four cents, and pays remaining income and GAX grant to the facility for the cost of board and room; or

(c) In an EARC or AL, the client only receives a PNA of thirty-eight dollars and eighty-four cents and retains it.

(13) The total of the following amounts cannot exceed the SHL:

(a) Maintenance and personal needs allowances as described in subsections (7), (8), (9), (10), (11), and (12).

(b) Earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income in subsection (5)(a); and

(c) Guardianship fees and administrative costs in subsection (5)(e).

(14) The client's remaining income after the allocations described in subsections (5) through (12) is the client's responsibility in the cost of care.) This chapter describes the general and financial eligibility requirements for categorically needy (CN) home and community based (HCB) services administered by home and community services (HCS) and hospice services administered by health and recovery services administration (HRSA).

(2) The HCB service programs are:

(a) Community options program entry system (COPES);

(b) Program of all-inclusive care for the elderly (PACE);

(c) Washington Medicaid integration partnership (WMIP); or

(d) New Freedom consumer directed services (New Freedom).

(3) Roads to community living (RCL) services. For RCL services this chapter is used only to determine your cost of care. Medicaid eligibility is guaranteed for three hundred sixty-five days upon discharge from a medical institution.

(4) Hospice services if you don't reside in a medical institution and:

(a) Have gross income at or below the special income level (SIL); and

(b) Aren't eligible for another CN or medically needy (MN) Medicaid program.

(5) WAC 388-515-1506 describes the general eligibility requirements for HCS CN waivers.

(6) WAC 388-515-1507 describes eligibility for waiver services when you are eligible for Medicaid using noninstitutional CN rules.

(7) WAC 388-515-1508 describes the initial financial eligibility requirements for waiver services when you are not eligible for noninstitutional CN Medicaid described in WAC 388-515-1507(1).

(8) WAC 388-515-1509 describes the rules used to determine your responsibility in the cost of care for waiver services if you are not eligible for Medicaid under a CN program listed in WAC 388-515-1507(1). This is also called client participation or post eligibility.

NEW SECTION

WAC 388-515-1506 What are the general eligibility requirements for home and community based (HCB) services and hospice? (1) To be eligible for home and community based (HCB) services and hospice you must:

(a) Meet the program and age requirements for the specific program:

- (i) COPEs, per WAC 388-106-0310;
- (ii) PACE, per WAC 388-106-0705;
- (iii) WMIP waiver services, per WAC 388-106-0750;
- (iv) New Freedom, per WAC 388-106-1410;
- (v) Hospice, per chapter 388-551 WAC; or
- (vi) Roads to community living (RCL), per WAC 388-106-0250, 388-106-0255 and 388-106-0260.

(b) Meet the disability criteria for the supplemental security income (SSI) program as described in WAC 388-475-0050;

(c) Require the level of care provided in a nursing facility described in WAC 388-106-0355;

(d) Be residing in a medical institution as defined in WAC 388-500-0005, or likely to be placed in one within the next thirty days without HCB services provided under one of the programs listed in subsection (1)(a);

(e) Have attained institutional status as described in WAC 388-513-1320;

(f) Be determined in need of services and be approved for a plan of care as described in subsection (1)(a);

(g) Be able to live at home with community support services and choose to remain at home, or live in a department-contracted:

- (i) Enhanced adult residential care (EARC) facility;
 - (ii) Licensed adult family home (AFH); or
 - (iii) Assisted living (AL) facility.
- (h) Not be subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1363 through 388-513-1366;

(i) Not have a home with equity in excess of the requirements described in WAC 388-513-1350.

(2) Refer to WAC 388-513-1315 for rules used to determine countable resources, income, and eligibility standards for long-term care services.

(3) Current income and resource standard charts are located at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.html>.

NEW SECTION

WAC 388-515-1507 What are the financial requirements for home and community based (HCB) services when you are eligible for a noninstitutional categorically needy (CN) Medicaid program? (1) You are eligible for Medicaid under one of the following programs:

(a) Supplemental security income (SSI) eligibility described in WAC 388-474-0001. This includes SSI clients under 1619B status;

(b) SSI-related CN Medicaid described in WAC 388-475-0100 (2)(a) and (b);

(c) General assistance expedited Medicaid disability (GAX) or general assistance based on aged/blind/disabled

criteria described in WAC 388-505-0110(6) and are receiving CN Medicaid.

(2) You are not subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1363 through 388-513-1366. This does not apply to PACE or hospice services.

(3) You do not have a home with equity in excess of the requirements described in WAC 388-513-1350.

(4) You do not have to meet the initial eligibility income test of having gross income at or below the special income level (SIL).

(5) You do not pay (participate) toward the cost of your personal care services.

(6) If you live in a department contracted facility listed in WAC 388-515-1506 (1)(g), you pay room and board up to the ADSA room and board standard. The ADSA room and board standard is based on the federal benefit rate (FBR) minus the current personal needs allowance (PNA) for HCS CN waivers in an alternate living facility.

(a) If you live in an assisted living (AL) facility, enhanced adult residential center (EARC), or adult family home (AFH) you keep a PNA of sixty-two dollars and seventy-nine cents and use your income to pay up to the room and board standard.

(7) If you are eligible for general assistance expedited Medicaid disability (GAX) or general assistance based on aged/blind/disabled criteria described in WAC 388-505-0110(6), you do not participate in the cost of personal care and you may keep the following:

(a) When you live at home, you keep the cash grant amount authorized under the general assistance program;

(b) When you live in an AFH, you keep a PNA of thirty-eight dollars and eighty-four cents, and pay any remaining income and general assistance grant to the facility for the cost of room and board up to the ADSA room and board standard; or

(c) When you live in an assisted living facility or enhanced adult residential center, you are only eligible to receive a cash grant of thirty-eight dollars and eighty-four cents, which you keep for your PNA.

(8) Current resource and income standards are located at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

(9) Current PNA and ADSA room and board standards are located at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/lcstandardsPNAchartsuffix.shtml>.

NEW SECTION

WAC 388-515-1508 How does the department determine if you are financially eligible for home and community based (HCB) services and hospice if you are not eligible for Medicaid under a categorically needy (CN) program listed in WAC 388-515-1507(1)? (1) If you are not eligible for Medicaid under a categorically needy (CN) program listed in WAC 388-515-1507(1), the department must determine your eligibility using institutional Medicaid rules. This section explains how you may qualify using institutional Medicaid rules.

(2) You must meet the general eligibility requirements described in WAC 388-513-1315 and 388-515-1506.

(3) You must meet the following resource requirements:

(a) Resource limits described in WAC 388-513-1350.

(b) If you have resources over the standard allowed in WAC 388-513-1350, the department reduces resources over the standard by your unpaid medical expenses described in WAC 388-513-1350 (d), (e) and (f) if you verify these expenses.

(4) Your gross nonexcluded income must be at or below the special income level (SIL) which is three hundred percent of the federal benefit rate (FBR).

(5) The department follows the rules in WAC 388-515-1325, 388-513-1330, and 388-513-1340 to determine available income and income exclusions.

(6) Current resource and income standards (including the SIL and FBR) for long-term care are found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandards.pna.shtml>.

NEW SECTION

WAC 388-515-1509 How does the department determine how much of my income I must pay towards the cost of my care if I am only eligible for home and community based (HCB) services under WAC 388-515-1508? If you are only eligible for Medicaid under WAC 388-515-1508, the department determines how much you must pay based upon the following:

(1) If you are single and living at home as defined in WAC 388-106-0010, you keep all your income up to the federal poverty level (FPL) for your personal needs allowance (PNA).

(2) If you are married living at home as defined in WAC 388-106-0010, you keep all your income up to the medically needy income level (MNIL) for your PNA.

(3) If you live in an assisted living (AL) facility, enhanced adult residential center (EARC), or adult family home (AFH), you:

(a) Keep a PNA from your gross nonexcluded income. The PNA is sixty-two dollars and seventy-nine cents effective July 1, 2008; and

(b) Pay for your room and board up to the ADSA room and board standard.

(4) In addition to paying room and board, you may also have to pay toward the cost of personal care. This is called your participation. Income that remains after the PNA and any room and board deduction is reduced by allowable deductions in the following order:

(a) If you are working, the department allows an earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income.

(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed by chapter 388-79 WAC;

(c) Current or back child support garnished or withheld from your income according to a child support order in the month of the garnishment if it is for the current month. If the department allows this as deduction from your income, the

department will not count it as your child's income when determining the family allocation amount;

(d) A monthly maintenance needs allowance for your community spouse not to exceed that in WAC 388-513-1380 (5)(b) unless a greater amount is allocated as described in subsection (e) of this section. This amount:

(i) Is allowed only to the extent that you make your income available to your community spouse; and

(ii) Consists of a combined total of both:

(A) One hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1 (<http://aspe.os.dhhs.gov/poverty/>); and

(B) Excess shelter expenses. For the purposes of this section, excess shelter expenses are the actual required maintenance expenses for your community spouse's principal residence. These expenses are determined in the following manner:

(I) Rent, including space rent for mobile homes, plus;

(II) Mortgage, plus;

(III) Taxes and insurance, plus;

(IV) Any required payments for maintenance care for a condominium or cooperative, minus;

(V) The food assistance standard utility allowance (SUA) (for long-term care services this is set at the standard utility allowance for a four-person household), provided the utilities are not included in the maintenance charges for a condominium or cooperative, minus;

(VI) The standard shelter allocation. This standard is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1 (<http://aspe.os.dhhs.gov/poverty/>).

(e) Is reduced by your community spouse's gross countable income.

(f) The amount allocated to the community spouse may be greater than the amount in subsection (d)(ii) only when:

(i) There is a court order approving the higher amount for the support of your community spouse; or

(ii) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(g) A monthly maintenance needs amount for each minor or dependent child, dependent parent, or dependent sibling of your community or institutional spouse. The amount the department allows is based on the living arrangement of the dependent. If the dependent:

(i) Resides with your community spouse, the amount is equal to one-third of the community spouse allocation as described in WAC 388-513-1380 (5)(b)(i)(A) that exceeds the dependent family member's income (child support received from a noncustodial parent is considered the child's income);

(ii) Does not reside with the community spouse, the amount is equal to the MNIL based on the number of dependent family members in the home less their separate income (child support received from a noncustodial parent is considered the child's income).

(h) Your unpaid medical expenses which have not been used to reduce excess resources. Allowable medical expenses are described in WAC 388-513-1350.

(i) The total of the following deductions cannot exceed the SIL (three hundred percent of the FBR):

(i) Personal needs allowance in subsections (1), (2) and (3)(a) and (b); and

(ii) Earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income in subsection (4)(a); and

(iii) Guardianship fees and administrative costs in subsection (4)(b).

(5) You must pay your provider the combination of the room and board amount and the cost of personal care services after all allowable deductions.

(6) You may have to pay third party resources described in WAC 388-501-0200 in addition to the room and board and participation. The combination of room and board, participation, and third party resources is the total amount you must pay.

(7) Current income and resource standards for long-term care (including SIL, MNIL, FPL, FBR) are located at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

(8) If you are in multiple living arrangements in a month (an example is a move from an adult family home to a home setting on HCB services), the department allows you the highest PNA available based on all the living arrangements and services you have in a month.

(9) Current PNA and ADSA room and board standards are located at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/ltestandardsPNAchartsufile.shtml>.

WSR 08-22-059

PERMANENT RULES

COLUMBIA RIVER GORGE COMMISSION

[Filed November 3, 2008, 2:14 p.m., effective December 15, 2008]

Effective Date of Rule: December 15, 2008.

Purpose: This rule repeals two prior chapters of the commission's rules relating to land use permitting. The commission no longer uses these rules to review development applications. The commission amended one section to require that changes to existing land use decisions comply with the current land use ordinance, which is the only land use ordinance that remains after this rule-making activity. Finally, the commission repealed its existing public contracting provisions, which are out-of-date, and adopted a new public contracting provision that specifies the commission use Washington's public contracting laws, which is the commission's current practice. These repeals will save more than three hundred pages of printing.

Citation of Existing Rules Affected by this Order: Repealing all rules in chapter 350, Divisions 080 and 020; 350-015-001, 350-015-002, 350-015-003, 350-015-004, 350-015-005, 350-015-006, 350-015-007, 350-015-008, 350-015-009, 350-015-010, 350-015-011, 350-015-012, 350-015-013, 350-015-014, 350-015-015, 350-015-016, 350-015-017, 350-015-018, 350-015-019, 350-015-020, 350-015-025, 350-015-

026, 350-015-027 and 350-015-028; and amending 350-81-046.

Statutory Authority for Adoption: RCW 43.97.015.

Other Authority: ORS 197.150, 16 U.S.C. § 544c(b).

Adopted under notice filed as WSR 08-14-150 on July 1, 2008.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 1, Repealed 24; 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 1, Repealed 24.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 1, Repealed 24.

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: October 7, 2008.

Nancy A. Andring
Rules Coordinator

AMENDATORY SECTION

350-81-046. Changes or Alterations to an Approved Action

Any change to a development action approved by the Executive Director ~~pursuant to this rule~~ shall be processed as a new action, except that the Executive Director may approve minor changes to findings, conclusions, and conditions of approval deemed to be consistent with the guidelines of Commission Rule 350-81 and the findings and conclusions for the original action. If the Executive Director approves a minor change, the Director shall notify all of the parties that would have standing to appeal the change, including the applicant, the Forest Service, the four Indian tribal governments, the county planning department, and anyone who submitted comments during the comment period on the original land use application. The change itself (not the original decision) would be subject to appeal under the same time frames applicable to the original decision.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Columbia River Gorge Commission and appears in the Register pursuant to the requirements of RCW 34.08.040.

REPEALED CHAPTER

350-80

The Columbia River Gorge Commission repeals Chapter 350-80 in its entirety.

REPEALED CHAPTER

350-20

The Columbia River Gorge Commission repeals Chapter 350-20 in its entirety.

REPEALED SECTIONS

350-015-001, 350-015-002, 350-015-003, 350-015-004, 350-015-005, 350-015-006, 350-015-007, 350-015-008, 350-015-009, 350-015-010, 350-015-011, 350-015-012, 350-015-013, 350-015-014, 350-015-015, 350-015-016, 350-015-017, 350-015-018, 350-015-019, 350-015-020, 350-015-025, 350-015-026, 350-015-027, 350-015-028

NEW SECTION**350-015-100**

For reasons of efficiency, and to avoid a piecemeal approach to public contracting administration, the Commission shall conduct public contracting in accordance with the public contracting law of the State of Washington. The Commission deems the public contracting law of the State of Washington as a total package to be equivalent in its degree of restrictiveness to the public contracting law of the State of Oregon.

WSR 08-22-066**PERMANENT RULES****DEPARTMENT OF LICENSING**

[Filed November 4, 2008, 8:23 a.m., effective December 5, 2008]

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

Purpose: Rule making is required to implement SSB 6678 relating to special license plates for parents of United States armed forces members who have died while in service to his or her country or as a result of such service. This rule establishes criteria for a Special Gold Star Parent license plate.

Statutory Authority for Adoption: RCW 46.01.110.

Other Authority: RCW 46.16.305 and 46.16.725.

Adopted under notice filed as WSR 08-18-036 on August 28, 2008.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 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: November 4, 2008.

Mykel D. Gable
Assistant Director
Vehicle Services

NEW SECTION**WAC 308-96A-545 Gold Star Parent license plate.**

(1) **What is a Gold Star Parent license plate?** The Gold Star Parent license plate was created by the legislature to recognize the parents of United States armed forces members who have died while in service to their country or as a result of such service.

(2) **Who qualifies as a parent of a member of the United State armed forces?** The term "parent," as defined by the Washington state department of veterans affairs, (WDVA) includes:

- (a) Birth mother;
- (b) Birth father;
- (c) Stepmother;
- (d) Stepfather;
- (e) Mother through adoption;
- (f) Father through adoption; and
- (g) Adults who fulfilled the parental role including foster parents and kinship care providers or caretaker relative. (Documentation required.)

(3) **Who can purchase a Gold Star Parent plate?** A resident of this state and a registered owner of a motorized vehicle who is a parent of a member of the United States armed forces who has died while in service to their country or as a result of such service. The parent must be certified by the WDVA.

(4) **What is required to purchase a Gold Star Parent plate?** A copy of the letter to a qualifying parent provided by WDVA is required. The letter will be used in lieu of a special plate application to purchase the plate. No other documentation is required.

(5) **Can a Gold Star Parent plate be transferred to a new owner?** No. The plate may only be transferred to a vehicle owned by the same registered owner who was certified as a qualifying parent by WDVA. The plate cannot be transferred to a different registered owner. If the parent transfers the plate to a new car registered to them, they are required to pay the plate transfer fee.

(6) **What vehicles qualify to display a Gold Star Parent plate?** Motorized vehicles required to display one or two license plates.

(7) **What fees are required to purchase the plate?** There is no special plate fee or special plate renewal fee for the Gold Star Parent plate. The registered owner must pay all licensing fees.

(8) **Is the plate subject to the mandatory plate replacement?** Yes, the plate must be replaced every seven years due to mandatory plate replacement requirements. Customers will not be charged the plate replacement fees, or the fee to keep their same number.

(9) **Can a Gold Star Parent plate background be personalized?** Yes. A Gold Star Parent plate background can be personalized; however, the customer is required to pay all fees associated with a personalized plate original purchase or renewal.

(10) **Is a commercial vehicle eligible for a Gold Star Parent plate as long as it is in the name of the qualifying parent and not a business name?** Yes.

(11) **Can a prorated vehicle display a Gold Star Parent plate if the vehicle is under the name of the parent that is eligible for this plate?** No per chapter 46.87 RCW.

WSR 08-22-067

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed November 4, 2008, 8:25 a.m., effective December 5, 2008]

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

Purpose: Rule making is required to clarify requirements to the special license plate review board. Making clearer what is required when reporting information to the special license plate review board.

Citation of Existing Rules Affected by this Order: Amending WAC 308-96A-560 Special license plates—Criteria for creation or continued issuance.

Statutory Authority for Adoption: RCW 46.01.110.

Adopted under notice filed as WSR 08-18-037 on August 28, 2008.

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 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 1, Repealed 0.

Date Adopted: November 4, 2008.

Mykel D. Gable
Assistant Director
Vehicle Services

AMENDATORY SECTION (Amending WSR 07-20-110, filed 10/3/07, effective 11/3/07)

WAC 308-96A-560 Special license plates—Criteria for creation or continued issuance. (1) **What is a special license plate series?** For the purpose of this rule a special license plate series is one license plate design with a range of numbers and letter combinations to be determined by the department.

(2) **What is required for an organization to apply to create a new plate through the special license plate review board?** The organization must submit a completed application packet, signature sheet and supporting documentation as required by law. Signature sheets must reflect that they are collected within three years of submission.

If an organization started collecting signature sheets before the moratorium was put into place that ends on July 1,

2009, they are exempt from the three-year time frame. However, organizations collecting signatures during the moratorium must submit their completed application packet and signature sheets at the next board meeting after the moratorium is lifted. If an organization does not submit the signature sheets at the board meeting following the moratorium, the signature sheets are no longer valid.

(3) **What criteria are used to discontinue issuing special license plates?** A special license plate series may be canceled if:

(a) The department determines that fewer than five hundred special license plates (~~(in the approved configuration)~~) are purchased annually and (~~(no less)~~) fewer than one thousand five hundred special license plates are purchased in any continuous three-year period. (Except those license plates issued under RCW 46.16.301, 46.16.305, and 46.16.324); or

(b) If the sponsoring organization does not submit an annual financial statement required by RCW 46.16.765 and certified by an accountant; or

(c) The legislature concurs with a recommendation from the special license plate review board to discontinue a plate series created after January 1, 2003; or

(d) The state legislature changes the law allowing that plate series.

~~((3))~~ (4) **What information must be contained in the annual financial report?** The annual financial report must include all expenditures related to programs, fund-raising, marketing, and administrative expenses related to their special license plate. The report must include:

(a) The stated purpose of the organization receiving the special plate revenue;

(b) A message from the chair or director of the organization;

(c) Program highlights with a detailed list of how the funds were expended for those programs;

(d) List of special events the organization held to market their special plate for the current reporting year;

(e) A summary of financial information:

(i) Previous revenue received during current reporting year;

(ii) Total revenue received during current reporting year;

(iii) Summary of administrative expenses.

If an organization is disbursing funds through a grant program or to another nonprofit organization supporting Washington citizens, a list including the program and the organizations must be submitted which includes their name and amount received.

(5) **What steps are taken by the department if the annual financial report is not submitted as required or the special plate revenue is expended for purposes other than allowed by law?** The department will follow the guidelines as established in the organization's contractual agreement with the department:

(a) Send a written notice of the violations to the organization;

(b) The organization is given thirty days to correct the violation;

(c) If the violation is not corrected, the department may immediately terminate the contract.

(6) Can an organization have more than one special plate series? No. Organizations cannot have more than one special license plate series except those issued before January 1, 2006. Those organizations that already have multiple special plate series may not have more.

An updated design of the current special license plates does not constitute more than one special plate series. The newest design supersedes the prior design. The assigned number and letter combination cannot be changed when a new plate design is created.

WSR 08-22-068

PERMANENT RULES

GAMBLING COMMISSION

[Order 635—Filed November 4, 2008, 8:25 a.m., effective January 1, 2009]

Effective Date of Rule: January 1, 2009.

Purpose: Expedited adoption to fix incorrect citation to another rule (WAC 230-16-195) and to correct a subsection numbering error (WAC 230-15-285).

Citation of Existing Rules Affected by this Order: Amending WAC 230-15-285 and 230-16-195.

Statutory Authority for Adoption: RCW 9.46.070 and 34.05.353.

Adopted under notice filed as WSR 08-17-115 on August 20, 2008, and published September 3, 2008.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: November 3, 2008.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 611, filed 4/24/07, effective 1/1/08)

WAC 230-15-285 Camera and monitor requirements for closed circuit television systems. (1) Class F and house-banked licensees' closed circuit television system must consist of light sensitive cameras capable of permitting the viewer to determine card and chip values. Each video camera must be capable of having the images displayed on a video monitor and recorded.

(2) Class F and house-banked licensees must install, at least:

(a) Cameras in a manner that will prevent them from being obstructed, tampered with, or disabled; and

(b) Pan, tilt, zoom (PTZ) cameras behind a smoked dome, one-way mirror, or similar materials that conceal the camera from view; and

(c) One or more fixed camera focused over each gambling table, covering the entire table layout.

(d) In nonhouse-banked games, an additional fixed camera must focus over the dealer area, covering the chip rack, all drop box openings, and the community card area; and

(e) A sufficient number of fixed cameras and/or PTZ cameras to monitor players and dealers at each gambling table. The PTZ cameras must be:

(i) Permanently programmed; and

(ii) Capable of viewing each patron and dealer at each gambling position at least once every five minutes; and

(f) A sufficient number of fixed cameras and/or PTZ cameras in the count area or count room; and

(g) Fixed cameras and/or PTZ cameras in any other location deemed necessary.

~~((4))~~ (3) In addition, house-banked card game licensees must:

(a) Install a sufficient number of video monitors in their CCTV system to simultaneously view multiple gambling tables, the cashier's cage, and count room activities;

(b) Install a sufficient number of fixed cameras and/or PTZ cameras in the cage(s); and

(c) Install a sufficient number of PTZ cameras having the ability to determine the card and chip values for winning hands.

AMENDATORY SECTION (Amending Order 615, filed 9/17/07, effective 1/1/08)

WAC 230-16-195 Additional requirements for sales invoices. (1) In addition to the requirements of WAC ~~((230-16-310))~~ 230-16-190, manufacturers and distributors must complete sales invoices that include:

(a) For distributors, a separate line for each I.D. stamp number; and

(b) Space for the operator to either attach a records entry label or enter the I.D. stamp number and the date they placed the equipment out for play, adjacent to the written entry the distributor makes; and

(c) For each punch board or pull-tab, at least:

(i) Trade name of the game; and

(ii) Type of gambling equipment; and

(iii) Form number or other manufacturer-assigned method to specifically identify a board or series, including the size or number of chances; and

(iv) I.D. stamp number; and

(d) For each pull-tab dispenser, at least:

(i) Trade name of the dispenser; and

(ii) Type of dispenser; and

(iii) I.D. stamp number; and

(e) For each set of cards or collation of packets of disposable bingo cards, at least:

(i) Type of product, including product line; and

(ii) Description of product, including the number of cartons, "series," "on," "cut," and "up"; and

- (iii) I.D. stamp number; and
 - (iv) Serial number or, if packets, serial number of the top page; and
 - (v) Color and border pattern or, if packets, color and border pattern of the top page; and
 - (vi) The unit or package number when a series or collation has been divided; and
 - (vii) For disposable bingo cards to be sold for linked bingo prize games the beginning and ending sheet numbers sold to or returned from the operator; and
 - (f) For merchandise prizes, at least:
 - (i) The date of purchase; and
 - (ii) The company's name and complete business address;
 - and
 - (iii) A full description of each item purchased; and
 - (iv) The quantity of items purchased; and
 - (v) The cost per individual items purchased; and
 - (g) For sequentially prenumbered card game recordkeeping forms, at least:
 - (i) Type of form; and
 - (ii) Beginning and ending serial numbers; and
 - (iii) Quantity of forms; and
 - (h) For all other gambling equipment, at least:
 - (i) Trade name of device; and
 - (ii) Type of device; and
 - (iii) Serial number or other identification numbers or characteristics; and
- (2) Manufacturers and distributors must record and maintain information documenting the sales of progressive jackpot pull-tabs in a separate filing system. They may use a computerized system to separately track this information and provide immediate reports.

WSR 08-22-070
PERMANENT RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
 (Division of Banks)

[Filed November 4, 2008, 9:13 a.m., effective December 5, 2008]

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

Purpose: To implement compliance standards for Washington state-chartered commercial banks, savings banks and savings associations as to Federal Interagency Guidance on Nontraditional Mortgage Product Risks and Statement on Subprime Mortgage Lending, consistent with RCW 19.144.-040 [19.144.030] (section 4, chapter 108, Laws of 2008).

Statutory Authority for Adoption: RCW 19.144.040 [19.144.030] (section 4, chapter 108, Laws of 2008).

Adopted under notice filed as WSR 08-18-063 on September 2, 2008.

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

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

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

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

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

Date Adopted: November 4, 2008.

Brad Williamson
Director of Banks

NEW SECTION

WAC 208-512-400 Purpose of these rules. These rules are designed to help Washington state-chartered banks (Title 30 RCW), savings banks (Title 32 RCW) and savings associations (Title 33 RCW) establish, reiterate, integrate and maintain their own policies and procedures regarding subprime and nontraditional mortgage lending guidance. These policies and procedures are required by a new state law, chapter 108, Laws of 2008 (chapter 19.144 RCW).

NEW SECTION

WAC 208-512-410 What is the "guidance"? Because of concerns about problems with subprime mortgage lending, the federal government issued the *Interagency Guidance on Nontraditional Mortgage Product Risks* and a *Statement on Subprime Mortgage Lending* (collectively, "the guidance"). In 2007, the governor convened the Washington state task force for homeowner security. The task force recommended including the federal guidance in state legislation. The 2008 Washington state legislature enacted SHB 2770, requiring the department of financial institutions to apply the two guidance documents to financial institutions in Washington. Starting in 2008, credit unions, banks, savings banks, savings associations, mortgage brokers and other Washington state consumer loan companies (collectively, "financial institutions") must have policies and procedures that use the guidance.

NEW SECTION

WAC 208-512-420 What does the guidance require of banks, savings banks and savings associations? The stated intent of the guidance is to help borrowers to better understand adjustable rate mortgage (ARM) risks. The guidance requires financial institutions to have policies and procedures that focus on the various risks of subprime/nontraditional mortgage lending. The guidance requires financial institutions to be aware of portfolio and risk management practices, to use appropriate underwriting standards and to abide by consumer protection principles. Financial institutions also need to maintain strong internal control systems. Many of the recommendations in the guidance are good business practices and may already be followed by financial institutions.

Not all of the elements of the guidance may be applicable to all banks, savings banks and savings associations, or to

all other financial institutions. Banks, savings banks and savings associations must determine which elements are relevant to their operations, and incorporate only those subjects into their policies and procedures.

NEW SECTION

WAC 208-512-430 Is there a list of subjects that banks, savings banks and savings associations must include in their policies and procedures? Yes, the guidance requires all financial institutions, including banks, savings banks and savings associations, to focus on the following subjects and apply the relevant ones to their existing policies and procedures:

- Help borrowers understand ARM risks, including:
 - Low initial payment;
 - High or unlimited reset rate caps;
 - Low or no documentation loans;
 - Problems of frequent refinancing;
 - Risk layering;
 - Simultaneous second lien loans;
 - Prepayment penalties;
 - FDIC prohibited practices (banks, savings banks and savings associations);
 - OTS prohibited practices (savings associations).
- Understand portfolio and risk management practices, including:
 - Relationship between subprime lending and predatory lending;
 - Risks of loans based on foreclosed or liquidation value;
 - Problem of loan "flipping";
 - Fraud detection;
 - Use of qualifying standards;
 - Maintenance of appropriate capital levels;
 - Use of appropriate allowance for loan and lease loss levels;
 - Risks of stated income loans;
- Underwriting standards.
- Workout arrangements.
- Consumer protection principles, including:
 - Use of a summary disclosure form;
 - Avoidance of steering borrowers to inappropriate products;
 - Explanation of payment shock risk;
 - Explanation of prepayment penalty;
 - Explanation of balloon payment;
 - Explanation of costs of low documentation or stated income loans;
 - Compliance with the Truth in Lending Act and other federal requirements;
 - Importance of good consumer communications in promotional materials and product descriptions;
 - Explanation of borrower responsibility for taxes and insurance.
- Development and maintenance of strong internal controls, including:
 - Management of deals with third-party originators;
 - Management of secondary market risk;
 - Effective management information and reporting;
 - Use of stress testing and performance measures;

- Actual practices consistent with policies.

NEW SECTION

WAC 208-512-440 Where can I read the guidance documents? You can find the two federal guidance documents on the internet: <http://www.fdic.gov/news/news/press/2006/pr06086b.pdf>; and <http://www.fdic.gov/news/news/press/2007/pr07055a.html>.

You can also click on the links on the DFI web site at www.dfi.wa.gov.

If you do not have internet access, you may contact the department of financial institutions, division of banks (division of banks) for a copy of the documents.

Read these documents to ensure proper application of the law to your institution and to comply with the required integration of the guidance into your policies and procedures. If your institution needs help incorporating the guidance or reconciling it to your policies and procedures, contact your legal counsel.

NEW SECTION

WAC 208-512-450 Why do I need to read the federal guidance documents? The federal guidance consists of two lengthy documents that are very detailed. Because they are required by state statutory law, they apply in their entirety. Division of banks cannot merely summarize them or give you a checklist. You must read the documents in order to apply them to your particular institution by means of integrating the guidance into your own policies and procedures.

NEW SECTION

WAC 208-512-460 What will the division of banks do about compliance with guidance policies and procedures? Every state-chartered bank, savings banks and savings association is different. There is no "one-size-fits-all" guidance available. Division of banks will not issue model guidance, because the process of self-analysis that your institution needs to do, in order to develop its own guidance policies and procedures, is beneficial. The division of banks does not provide technical legal advice. Also, the guidance is complex and will result in variations in wording or applicability of guidance policies and procedures among institutions, depending upon the size and complexity of a particular institution, the overall characteristics of its mortgage lending market base, and the specific types of mortgage lending it does, if any.

For supervision purposes, the division of banks will:

(1) Verify that an institution has integrated the guidance into its policies and procedures, as part of its risk-focused examination. Division of banks will not mandate the length or exact wording used in the guidance policies and procedures.

(2) Review the guidance policies and procedures with the institution, if a consumer complaint indicates a problem or issue regarding subprime and nontraditional mortgage lending practices.

(3) Verify that an institution is following its policies and procedures.

The division of banks expects prompt compliance by banks, savings banks and savings associations with the requirements of this rule.

The law provides the division of banks with examination, enforcement and investigation authority to take appropriate action against banks, savings banks and savings associations that are in noncompliance with the guidance policies and procedures requirement.

WSR 08-22-072
PERMANENT RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS

(Division of Credit Unions)

[Filed November 4, 2008, 10:26 a.m., effective December 5, 2008]

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

Purpose: Implementation of credit union compliance standards for Federal Interagency Guidance on Nontraditional Mortgage Product Risks and Statement on Subprime Mortgage Lending.

Statutory Authority for Adoption: RCW 43.320.040, 19.144.040 (chapter 108, Laws of 2008).

Adopted under notice filed as WSR 08-18-065 on September 2, 2008.

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

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

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

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

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

Date Adopted: November 4, 2008.

Linda K. Jekel, Director
Division of Credit Unions

Chapter 208-490 WAC

"GUIDANCE" FOR CREDIT UNIONS

NEW SECTION

WAC 208-490-010 Purpose of these rules. These rules are designed to help Washington state-chartered credit unions establish, reiterate, integrate and maintain their own policies and procedures regarding subprime and nontraditional mortgage lending guidance. These policies and procedures are required by chapter 108, Laws of 2008 (chapter 19.144 RCW).

NEW SECTION

WAC 208-490-020 What is the "guidance"? Because of concerns about problems with subprime mortgage lending, the federal government issued the *Interagency Guidance on Nontraditional Mortgage Product Risks* and a *Statement on Subprime Mortgage Lending* (collectively, "the guidance").

In 2007, governor Christine Gregoire convened the Washington state task force for homeowner security. The task force recommended including the federal guidance in state legislation. The 2008 Washington state legislature enacted SHB 2770, requiring the department of financial institutions to apply the two guidance documents to financial institutions in Washington. Starting in 2008, credit unions, banks, mortgage brokers and other Washington state financial institutions must have "policies and procedures" that use the guidance.

NEW SECTION

WAC 208-490-030 What does the guidance require of credit unions? The stated intent of the guidance is to help borrowers to better understand adjustable rate mortgage (ARM) risks. The guidance requires credit unions and other financial institutions to have "policies and procedures" that focus on the various risks of subprime/nontraditional mortgage lending.

The guidance requires credit unions to be aware of portfolio and risk management practices, to use appropriate underwriting standards and to abide by consumer protection principles. Credit unions also need to maintain strong internal control systems. Many of the recommendations in the guidance are good business practices, and may already be followed by credit unions.

Not all of the elements of the guidance may be applicable to all credit unions. Credit unions must determine which elements are relevant to their operations, and incorporate only those subjects into their policies and procedures.

NEW SECTION

WAC 208-490-040 Is there a list of subjects that credit unions must consider for inclusion in their policies and procedures? Yes, the guidance requires all financial institutions, including credit unions, to focus on the following subjects and apply the relevant ones to their existing policies and procedures:

- Help borrowers understand ARM risks, including:
 - Low initial payment;
 - High or unlimited reset rate caps;
 - Low or no documentation loans;
 - Problems of frequent refinancing;
 - Risk layering;
 - Simultaneous second lien loans;
 - Prepayment penalties;
 - NCUA prohibited practices.
- Understand portfolio and risk management practices, including:
 - Relationship between subprime lending and predatory lending;
 - Risks of loans based on foreclosed or liquidation value;

- Problem of loan "flipping";
 - Fraud detection;
 - Use of qualifying standards;
 - Maintenance of appropriate capital levels;
 - Use of appropriate allowance for loan and lease loss levels;
 - Risks of stated income loans.
 - Underwriting standards.
 - Workout arrangements.
 - Consumer protection principles, including:
 - Use of a summary disclosure form;
 - Avoidance of steering borrowers to inappropriate products;
 - Explanation of payment shock risk;
 - Explanation of prepayment penalty;
 - Explanation of balloon payment;
 - Explanation of costs of low documentation or stated income loans;
 - Compliance with the Truth in Lending Act and other federal requirements;
 - Importance of good consumer communications in promotional materials and product descriptions;
 - Explanation of borrower responsibility for taxes and insurance.
 - Development and maintenance of strong internal controls, including:
 - Management of deals with third-party originators;
 - Management of secondary market risk;
 - Effective management information and reporting;
 - Use of stress testing and performance measures;
 - Actual practices consistent with policies.
- There may also be other subjects contained in the guidance that may be relevant to some credit unions.

NEW SECTION

WAC 208-490-050 Where can I read the guidance documents? You can find the two federal guidance documents on the internet: <http://www.fdic.gov/news/news/press/2006/pr06086b.pdf>; and <http://www.fdic.gov/news/news/press/2007/pr07055a.html>.

You can also click on the links on the DFI web site at www.dfi.wa.gov.

If you do not have internet access, you may contact the department of financial institutions, division of credit unions (DCU) for a copy of the documents.

Read these documents carefully to ensure your credit union's application of the law, and to comply with its required integration of the guidance into your policies and procedures. If your credit union needs help incorporating the guidance into your policies and procedures, contact your lawyer.

NEW SECTION

WAC 208-490-060 Why do I need to read the federal guidance documents? The federal guidance consists of two lengthy documents that are very detailed. Because they are required by state statutory law, they apply in their entirety. DCU cannot merely summarize them or give you a checklist. You must read the documents in order to apply the relevant

provisions to your particular credit union, by integrating the guidance into your own policies and procedures.

NEW SECTION

WAC 208-490-070 What will the division of credit unions do about compliance with guidance policies and procedures? Every state-chartered credit union is different. There is no one-size-fits-all guidance available. DCU will not issue model guidance, because the process of self-analysis that a credit union needs to do, in order to develop its own guidance policies and procedures, is beneficial. The DCU does not provide technical legal advice.

Also, the guidance is complex, and will result in variations in wording or applicability of guidance policies and procedures among credit unions, depending upon the size and complexity of that particular credit union, the characteristics of its membership base, and the type of mortgage lending it does, if any.

For supervision purposes, the division of credit unions will:

(1) Verify that a credit union has integrated the guidance into its policies and procedures, as part of its risk-focused exam. DCU will not mandate the length or exact wording used in the guidance policies and procedures.

(2) Review the guidance policies and procedures with the credit union, if a consumer complaint indicates a problem or issue regarding subprime and nontraditional mortgage lending practices.

(3) Verify that a credit union is following its policies and procedures.

The DCU expects prompt compliance by credit unions with the requirements of this rule.

The law provides DCU with examination, enforcement and investigation authority to take appropriate action against credit unions that are in noncompliance with the guidance policies and procedures requirement.

WSR 08-22-080
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed November 4, 2008, 11:11 a.m., effective January 1, 2009]

Effective Date of Rule: WAC 296-155-531 through 296-155-53112 - January 1, 2009. All other WACs will be effective January 1, 2010.

Purpose: The legislature passed chapter 27, Laws of 2007 (ESHB 2171) in response to a catastrophic tower crane accident that happened in Bellevue in November 2006. The department conducted two sets of statewide stakeholder meetings to gather input from the industry for use in developing draft rules. The first phase of this rule is for the construction crane certification program and operator qualifications, as outlined in RCW 49.17.400 through [49.17.]440. The statute requires the department to establish by rule a crane certification program for cranes used in the construction industry, to establish requirements to become an accredited crane certifier, and to establish requirements that must be met to be

considered a qualified crane operator. Five public hearings were held in the late summer of 2008.

WAC 296-155-529 Crane certifier accreditation and crane certification.

- This section is only a title. No requirements are located in this section.

WAC 296-155-52900 Scope.

- Added language to this section relating to what this part covers. This section also includes specific exemptions to the rule.

WAC 296-155-52902 Definitions.

- This section contains applicable definitions relating to cranes. They are: Accredited crane certifier, apprentice operator or trainee, articulating boom crane, audible signal, bogie, boom (equipment other than tower crane), boom (tower cranes), boom angle indicator, boom hoist limiting device, boom length indicator, boom stop, boom suspension systems, certified crane inspector, climbing, counterjib (counterweight jib), counterweight, crane, crane/derrick type, crane operator, crawler crane, critical lift, crossover points, dedicated pile-driver, derrick, directly under the load, dismantling, drum rotation indicator, electrical contact, equipment, equipment criteria, fall protection equipment, flange points, floating cranes/derricks, free rated load test, hoist, hoisting, jib, land crane/derrick, load, load moment (or rated capacity) indicator, load moment (or rated capacity) limiter, locomotive crane, load sustaining/bearing parts, luffing boom, luffing jib limiting device, mobile cranes, multiple lift rigging, nationally recognized accrediting agency, nonstandard tower crane base, occasional or routine maintenance and repair work, operational aid, operational controls, operator, overhead and gantry cranes, pendants, powerhouse, power lines, qualified crane operator, qualified person, rated capacity, rated capacity indicator, rated capacity limiter, RPE, RPSE, running wire rope, safety devices, safety or health standard, taglines, tower crane, travel bogie (tower cranes), two blocking.

WAC 296-155-531 Crane certifier accreditation process.

- This section is only a title. No requirements are located in this section.

WAC 296-155-53100 Accreditation of certifiers of cranes and derricks—Requirements.

- This section requires that any person engaging in the testing, examination or inspection for the certification of a crane, used in lifting at a construction site must apply for and obtain a certificate of accreditation from the department.
- This section requires that any person authorized by the department to certify maritime cranes prior to the effective date of this rule may continue to perform services under this regulation until January 1, 2012.
- This section requires that crane certifiers accredited by any other state or governmental entity may be authorized to inspect cranes in Washington state provided the

certifier submits an application and resume along with the certificate of accreditation from that state or governmental entity, and the types of cranes they are authorized to inspect.

- This section requires that no person that has modified, altered, or repaired a crane which affected a load sustaining member of the crane may conduct the certifying inspection and proof load testing of that particular crane within the same certification period.

WAC 296-155-53102 Accreditation—Application form and applicant qualifications.

- This section requires a person to submit an application to the department along with successfully completing a written examination in order to become accredited to certify cranes.
- This section requires that an applicant must meet specific criteria in order to be accredited.
- This section requires that all applicants must demonstrate at least five years of crane related experience, of which two years must be actual crane inspection activities.

WAC 296-155-53104 Issuance of accreditation.

- This section requires that the department may impose restrictions on the scope and use of the accreditation, such as limiting it to specific types of cranes based on the qualifications of the applicant.
- This section requires that the department must deny issuance of an accreditation if the applicant does not satisfy the requirements of this proposed rule.

WAC 296-155-53106 Accreditation application—Processing time.

- This section requires that within forty-five calendar days of receipt of a completed application for an accreditation the department must inform the applicant in writing that it is either complete and accepted for filing or that it is deficient and what specific information or documentation is required to complete the application and will inform the applicant if the applicant is eligible to take the written examination.
- This section requires that within seventy-five calendar days from the date of completion of the written examinations the department must inform the applicant in writing of its decision regarding the issuance of the certificate of accreditation.

WAC 296-155-53108 Duration and renewal of an accreditation.

- This section requires that the accreditation will be valid for three years. Also, that crane certifiers must complete forty hours of crane related training every three years.
- This section requires that the application for renewal must be filed with the department not less than sixty days prior to expiration of the accredited crane certifier's certification.
- This section requires that an applicant is considered active if he/she has certified at least twenty-one cranes during their accreditation period.

- This section requires that at a minimum, all applicants for renewal must successfully complete the written examinations every six years.

WAC 296-155-53110 Revocation or suspension of an accreditation.

- This section requires that the department may suspend or revoke a certificate of accreditation if criteria listed in this section have been identified.
- This section requires that before any certificate can be suspended or revoked, the certificate holder must be given written notice of the department's intention. The notice must specify the reasons for the department action and must give the certificate holder the opportunity to attend a hearing before the department.
- This section requires that a hearing will be held at the department's headquarters office or at such other location as may be designated by the assistant director and must be presided over an authorized representative of the assistant director.
- This section requires that a final suspension or revocation decision may be appealed to the superior court for the state of Washington in either the county in which the certificate holder resides or in Thurston County within thirty days after the suspension or revocation order is entered.
- This section requires that the filing of an appeal must not stay the suspension or revocation, and such action must remain in effect until such time as the applicant presents proof that the specified written conditions required by the department are met or until otherwise ordered after resolution of the appeal.

WAC 296-155-53112 Monitoring of accredited crane certifiers.

- This section requires that the department must monitor accredited crane certifiers to ensure that these certifiers certify cranes in accordance with all applicable Washington state laws and regulations.

WAC 296-155-53114 Issuance of temporary and annual certificates of operation.

- This section requires that accredited crane certifiers must issue a temporary certificate of operation if upon inspection and load proof testing no deficiencies were found that would affect the safe operation of the crane.
- This section requires that the accredited crane certifier must submit inspection worksheets and proof of load testing to the department within ten working days from the completion of the inspection and proof load test.
- This section requires that the accredited crane certifier must notify the department within five working days if upon inspection the certifier identifies deficiencies that would affect the safe operation or load handling capabilities of the crane.
- This section requires that after the accredited crane certifier has verified that all deficiencies have been corrected and the crane has successfully passed a proof load test the accredited crane certifier will issue a temporary certificate of operation.

- This section requires that the accredited crane certifier must attach an identification sticker to each crane and crane component whether or not currently installed but that has been inspected and approved for use.
- This section requires that the accredited crane certifier must maintain complete and accurate records pertaining to each crane of all inspections, tests and other work performed as well as copies of all notices of crane safety deficiencies, verifications of correction of crane safety deficiencies, and crane certifications issued for the previous five years and provide these records to the department upon request.

WAC 296-155-532 Crane certification requirements for cranes.

- This section is only a title. No requirements are located in this section.

WAC 296-155-53200 General inspection criteria, wire rope inspection and removal criteria, and preproof load test requirements for all cranes.

- This section contains requirements relating to general inspection criteria, wire rope inspection and removal criteria, and preproof load testing for all cranes.

WAC 296-155-53202 Additional inspection criteria and proof load testing—Mobile cranes.

- This section contains additional requirements for inspection criteria and proof load testing for mobile cranes.

WAC 296-155-53204 Additional inspection criteria and proof load testing—Articulating boom cranes.

- This section contains additional requirements for inspection criteria and proof load testing for articulating boom cranes.

WAC 296-155-53206 Additional inspection criteria and proof load testing—Tower cranes.

- This section contains additional requirements for inspection criteria and proof load testing for tower cranes.

WAC 296-155-53208 Additional inspection criteria and proof load testing—Self-erecting tower cranes.

- This section contains additional requirements for inspection criteria and proof load testing for self-erecting tower cranes.

WAC 296-155-53210 Additional inspection criteria and proof load testing—Overhead and bridge cranes.

- This section contains additional requirements for inspection criteria and proof load testing for overhead and bridge cranes.

WAC 296-155-53212 Additional inspection criteria and proof load testing—Derricks.

- This section contains additional requirements for inspection criteria and proof load testing for derricks.

WAC 296-155-53214 Crane decertification and reinstatement.

- This section requires that if any of the following occurs the crane certification becomes invalid:
 - Contact with an energized power line.
 - Any overload, other than proof load testing, or one that has been approved in writing in advance by the crane manufacturer or s [a] registered professional engineer.
 - Any significant modification or significant repairs of a load sustaining/bearing part.
- This section requires that the owner or lessee must notify the crane certification section within twenty-four [hours] if any of the above occurs.
- This section requires that the certification can be reinstated only after affected components have been reinspected by an accredited crane certifier.

WAC 296-155-533 Crane operator qualifications and certification.

- This section is only a title. No requirements are located in this section.

WAC 296-155-53300 Operator qualifications and certification.

- This section contains requirements that the employer must ensure that prior to operating any crane covered under this chapter, the crane operator must meet the following criteria:
 - Have a valid crane operator certificate, for the type of crane to be operated, issued by a crane operator testing organization accredited by a nationally recognized accrediting agency.
 - Have crane hours of experience as indicated in this rule.
 - Has passed a substance abuse test conducted by a recognized laboratory.
- This section contains requirements relating to a prequalification/certification training period.
- This section requires that employers must obtain documentation showing hours of crane operator experience and crane related experience separated out by crane type and capacity.
- This section requires that the employer can accept a declaration from the crane operator attesting to actual hours of crane operator experience and crane related experience. Hours documented prior to 2010 will count towards the hour requirements of actual crane operating experience and crane related experience.
- This section requires that beginning January 1, 2010, crane operator experience and crane related experience must be documented and separated out by crane type and capacity.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Other Authority: RCW 49.17.400, 49.17.410, 49.17.420, 49.17.430, and 49.17.440.

Adopted under notice filed as WSR 08-15-161 on July 23, 2008.

Changes Other than Editing from Proposed to Adopted Version: As a result of written and oral comments received, the following sections are being changed as indicated below:

CHANGES TO THE RULES (proposed rule versus rule actually adopted):

WAC 296-155-52900 Scope.

- In subsection (2), the department added an exemption that reads, "Cranes having a maximum rated capacity of one ton or less are exempt from this rule for the purposes of crane certification and operator certification.
- In subsection (2)(d), the department modified the language. The phrase "to be installed or removed from utility poles" was deleted. It now reads, "Service trucks with mobile lifting devices designed specifically for use in the power line and electric service industries or handling associated materials."
- In subsection (2), the department added an exemption that conveyors would not have to follow this rule.
- In subsection (2), the department added an exemption relating to pump hoists that reads, "Pump hoists with booms that do not rotate."
- Renumbered the paragraphs in subsection (2).

WAC 296-155-52902 Definitions.

- The department added a definition for "dedicated drilling rig." It reads, "Dedicated drilling rig means a machine which creates boreholes and/or shafts in the ground."
- The department deleted "crane level indicator" from the definition of "Safety devices." It now reads, "Safety devices, examples of safety devices are, but are not limited to, the following: Horn, boom/jib or trolley stops, hydraulic holding device/check valve, rail clamps, rail stops, brakes, deadman control, or forced neutral return control, emergency stop switch, guards, handrails, audible and visual alarms, etc."

WAC 296-155-53108 Duration and renewal of an accreditation.

- In subsection (2), the department added the word "inspected." It now reads, "Application for renewal must be filed with the department not less than sixty days prior to expiration of the accredited crane certifier's certification. A renewal may be obtained by filing a completed application for renewal meeting the requirements of WAC 296-155-53102 hereof providing the applicant has been actively inspecting cranes during their prior accreditation period. An applicant is considered active if he/she has certified/inspected at least twenty-one cranes during their accreditation period. If the applicant certified cranes in another state, then that applicant must provide documentation showing they were active during their accreditation period. An applicant who has not certified/inspected at least twenty-one cranes during the accreditation period may take the written exam to become recertified."

WAC 296-155-53110 Revocation or suspension of an accreditation.

- The department amended the language relating to appealing a revocation or suspension to the superior court. We modified the language to say "board of industrial insurance appeals" instead of "superior court." The new language reads: "A suspension or revocation order may be appealed to the board of industrial insurance appeals within fifteen working days after the suspension or revocation order is entered. The notice of appeal may be filed with the department or the board of industrial insurance appeals. The board of industrial insurance appeals shall hold the hearing in

accordance with procedures established in RCW 49.17.140. Any party aggrieved by an order of the board of industrial insurance appeals may obtain superior court review in the manner provided in RCW 49.17.150."

WAC 296-155-53200 General inspection criteria, wire rope inspection and removal criteria, and preproof load test requirements for all cranes.

- The department amended the wire rope inspection/removal criteria table in subsection (5).

It now reads:

**Table 1 - Wire Rope Inspection/Removal Criteria
(See also Figure 1 - Wire Rope)**

Category of Cranes	Running Ropes* # of broken wires in		Rotation Resistant* # of broken wires in specified diameters		Standing Ropes* # of broken wires	
	1 rope lay	1 strand in 1 lay			In 1 lay beyond end connection	At end connection
Mobile	6	3	2 (in 6xd)	4 (in 30xd)	3	2
Articulating	6	3	Consult rope mfg.	Consult rope mfg.	3	2
Tower	12	4	2 (in 6xd)	4 (in 30xd)	3	3
Self-Erector	6	3	2 (in 6xd)	4 (in 30xd)	3	2
Overhead & Bridge	12	4	2 (in 6xd)	4 (in 30xd)	—	—
Derricks	6	3	Consult rope mfg.	Consult rope mfg.	3	2

- The department added a note after the wire rope inspection/removal criteria table, it reads, "xd means times the "diameter"."
- The department added a new subsection (6), it reads, "(6) Sheaves.
 - (a) Sheave grooves must be free from surface defects that could damage the rope. The cross-sectional radius at the bottom of the groove should be such as to form a close fitting saddle for the size of rope used. The sides of the groove must be tapered outward and rounded at the rim to facilitate entrance of the rope into the groove. Flange rims must run true about the axis of rotation.
 - (b) Sheave guards must be in place to:
 - (i) Guide the rope back into the sheave groove, when using ropes that can be momentarily unloaded.
 - (ii) Prevent ropes from becoming fouled when the block is lying on the ground with loose ropes.
 - (c) Sheave bearings, except for permanently lubricated ones, must have a means of lubrication.["]
- The department renumbered the proposed subsection "(6)" to "(7)."

WAC 296-155-53202 Additional inspection criteria and proof load testing—Mobile cranes.

- The department rewrote the language in subsection (1)(hh) and deleted the word "unusable." It now reads "Steps, ladders, handrails, and guards are in safe and usable condition."
- The department fixed a typographical error in subsection (4)(a). The letter "s" was deleted from the word "load" and added to the word "test." The paragraph now reads: "(4)(a) Proof load tests must be completed on all hoist lines. The test load must be at least one hundred percent but not to exceed one hundred and ten percent of rated capacity (i.e., for the crane's configuration of reeving, boom length, etc.). The rated capacity must be the capacity shown on the posted load chart or as limited by other factors such as hook block capacity or wire rope line pull if the crane is not fully reeved. The test load includes the weight of (or deduction values for) the hook, block, slings, and auxiliary lifting devices (and for some cranes hoist wire rope not accounted for in load charts), and the combined weight deduction values must be subtracted from the nominal test load in order to determine the amount of test weights to be used. Follow original equipment manufacturer

(OEM) load chart instructions for weight deduction values. Check accuracy of load indicators where installed. Test procedures for these cranes must follow OEM procedures and recommendations."

WAC 296-155-53204 Additional inspection criteria and proof load testing—Articulating boom cranes.

- The department fixed a typographical error in subsection (2)(c). The letter "s" was deleted from the word "test." It now reads: "(c) Hoist the test load to assure that the load is supported by the crane and held by the hoist brake(s)."

WAC 296-155-53210 Additional inspection criteria and proof load testing—Overhead and bridge cranes.

- In subsection (1)(b), the words "mousing device" were replaced with "safety latch." It now reads: "(b) Load hooks. Inspect for damage wear to hook nuts, safety latch and hook swivel. Check for deformation, cracks, excessive wear, or damage such as from chemicals or heat. Inspect blocks for wear to sheaves, check plates, and pins. Check for loose pins, bolts and guards;"

WAC 296-155-53300 Operator qualifications and certification.

- The title of Table 1 was changed to "Crane Operator Experience for Cranes Used in the Construction Industry."
- One of the headings in Table 1, was reworded from saying "Crane Type" to "The Five Categories of Cranes and their Types."
- In Table 1, the department fixed a typographical error in the lattice boom crawler crane (LBC) cell. It was changed from "300 tons and above - 1000 hours" to "Under 300 tons - 500 hours."
- The department added another type of mobile crane with fewer hours required. The type that was added was a mobile crane under five tons, the hours of actual experience is eight hours, and related experience is sixteen hours.
- In Table 1, the category of cranes was renumbered.
- In Table 1, articulating boom cranes were moved to it[s] own separate category.
- In subsection (2)(d)(v), the words "excluding tower cranes and" were deleted. It now reads: "(2)(d)(v) Critical lifts, as defined in WAC 296-155-52902, can only be accomplished by the trainee/apprentice when the qualified crane operator determines that the trainee's/apprentice's skills are sufficient for this high-skill work."
- In subsection (5), the word "signed" was added. It now reads, "For experience obtained prior to January 1, 2010, the employer may accept a signed declaration from the crane operator attesting to actual hours of crane operator experience and crane related experience separated out by crane type and capacity. Hours documented prior to 2010 will count towards the hour requirements of actual crane operating experience and crane related experience."

- After subsection (5) a note was added. It reads: "**Note:** For experience obtained while working outside of the department's jurisdiction, the employer may accept a signed declaration from the crane operator attesting to actual hours of crane operator experience and crane related experience separated out by crane type and capacity."

A final cost-benefit analysis is available by contacting Cindy Ireland, Department of Labor and Industries, P.O. Box 44620, Olympia, WA 98504-4620, phone (360) 902-5522, fax (360) 902-5619, e-mail mooc235@lni.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 23, 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 23, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 23, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 23, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 4, 2008.

Judy Schurke
Director

NEW SECTION

WAC 296-155-529 Crane certifier accreditation and crane certification.

NEW SECTION

WAC 296-155-52900 Scope. (1) Except as provided in subsection (2) of this section, this part applies to power-operated cranes and derricks used in construction that can hoist, lower and horizontally move a suspended load (with or without attachments). Such equipment includes, but is not limited to: Articulating boom cranes (such as knuckle-boom cranes); crawler cranes; floating cranes; cranes on barges; locomotive cranes; mobile cranes (such as wheel-mounted, rough-terrain, all-terrain, commercial truck-mounted, and boom truck cranes); multipurpose machines when configured to hoist and lower (by means of a winch or hook) and horizontally move a suspended load; industrial cranes (such as carry-deck cranes); dedicated pile drivers; service/mechanic trucks with a hoisting device; a crane on a monorail; tower cranes (such as fixed jib ("hammerhead boom"), luffing boom and self-erecting); pedestal cranes; portal cranes; overhead and gantry cranes; straddle cranes; side-boom tractors; derricks; and variations of such equipment.

(2) Exemptions. WAC 296-155-529 through 296-155-53214 do not apply to the following:

(a) Cranes having a maximum rated capacity of one ton or less are exempt from this rule for the purposes of crane certification and operator certification.

(b) Equipment included in subsection (1) of this section while it has been converted or adapted for nonhoisting/lifting use. Such conversions/adaptations include, but are not limited to, power shovels, excavators and concrete pumps.

(c) Power shovels, excavators, wheel loaders, backhoes, loader backhoes, track loaders. This machinery is also excluded when used with chains, slings or other rigging to lift suspended loads.

(d) Automotive wreckers and tow trucks when used to clear wrecks and haul vehicles.

(e) Service trucks with mobile lifting devices designed specifically for use in the power line and electric service industries or handling associated materials.

(f) Equipment originally designed as vehicle-mounted aerial devices (for lifting personnel) and self-propelled elevating work platforms.

(g) Hydraulic jacking systems, including telescopic/hydraulic gantries.

(h) Stacker cranes.

(i) Powered industrial trucks (forklifts).

(j) Mechanic's truck with a hoisting device when used in activities related to equipment maintenance and repair.

(k) Equipment that hoists by using a come-a-long or chainfall.

(l) Dedicated drilling rigs.

(m) Gin poles used for the erection of communication towers.

(n) Tree trimming and tree removal work.

(o) Anchor handling with a vessel or barge using an affixed A-frame.

(p) Roustabouts.

(q) Service cranes with booms that rotate manually.

(r) Machines equipped with a boom that is limited to up and down movement only and does not rotate.

(s) Conveyors.

(t) Pump hoists with booms that do not rotate.

(u) Cranes used on-site in manufacturing facilities or powerhouses for occasional or routine maintenance and repair work; and

(v) Crane operators operating cranes on-site in manufacturing facilities or powerhouses for occasional or routine maintenance and repair work.

(3) Where provisions of this standard direct an operator, crewmember, or other employee to take certain actions, the employer must establish, effectively communicate to the relevant persons, and enforce work rules, to ensure compliance with such provisions.

NEW SECTION

WAC 296-155-52902 Definitions. Accredited crane certifier means a crane inspector who has been accredited by the department.

Apprentice operator or trainee means a crane operator who has not met requirements established by the department under RCW 49.17.430.

Articulating boom crane means a crane whose boom consists of a series of folding, pin connected structural members, typically manipulated to extend or retract by power from hydraulic cylinders.

Audible signal means a signal made by a distinct sound or series of sounds. Examples include, but are not limited to, sounds made by a bell, horn, or whistle.

Bogie. See "travel bogie."

Boom (equipment other than tower crane) means an inclined spar, strut, or other long structural member which supports the upper hoisting tackle on a crane or derrick. Typically, the length and vertical angle of the boom can be varied to achieve increased height or height and reach when lifting loads. Booms can usually be grouped into general categories of hydraulically extendible, cantilevered type, latticed section, cable supported type or articulating type.

Boom (tower cranes) on tower cranes: If the "boom" (i.e., principal horizontal structure) is fixed, it is referred to as a jib; if it is moveable up and down, it is referred to as a boom.

Boom angle indicator means a device which measures the angle of the boom relative to horizontal.

Boom hoist limiting device includes boom hoist disengaging device, boom hoist shut-off, boom hoist disconnect, boom hoist hydraulic relief, boom hoist kick-outs, automatic boom stop device, or derricking limiter. This type of device disengages boom hoist power when the boom reaches a predetermined operating angle. It also sets brakes or closes valves to prevent the boom from lowering after power is disengaged.

Boom length indicator indicates the length of the permanent part of the boom (such as ruled markings on the boom) or, as in some computerized systems, the length of the boom with extensions/attachments.

Boom stop includes boom stops (belly straps with struts/standoff), telescoping boom stops, attachment boom stops, and backstops. These devices restrict the boom from moving above a certain maximum angle and toppling over backward.

Boom suspension systems means a system of pendants, running ropes, sheaves, and other hardware which supports the boom tip and controls the boom angle.

Certified crane inspector means a crane certifier accredited by the department.

Climbing means the process in which a tower crane is raised to a new working height, either by adding additional tower sections to the top of the crane (top climbing), or by a system in which the entire crane is raised inside the structure (inside climbing).

Counterjib (counterweight jib) means a horizontal member of the tower crane on which the counterweights and usually the hoisting machinery are mounted.

Counterweight means weight used to supplement the weight of equipment in providing stability for lifting loads by counterbalancing those loads.

Crane means power-operated equipment used in construction that can hoist, lower, and horizontally move a suspended load. "Crane" includes, but is not limited to: Articulating boom cranes, such as knuckle-boom cranes; crawler cranes; floating cranes; cranes on barges; locomotive cranes;

mobile cranes, such as wheel-mounted, rough-terrain, all-terrain, commercial truck mounted, and boom truck cranes; multipurpose machines when configured to hoist and lower by means of a winch or hook and horizontally move a suspended load; industrial cranes, such as carry-deck cranes; dedicated pile drivers; service/mechanic trucks with a hoisting device; a crane on a monorail; tower cranes, such as fixed jib, hammerhead boom, luffing boom, and self-erecting; pedestal cranes; portal cranes; overhead and gantry cranes; straddle cranes; side-boom tractors; derricks; and variations of such equipment.

Crane/derrick type means cranes or derricks as established by American Society of Mechanical Engineers (ASME). Crane operator means an individual engaged in the operation of a crane.

Crawler crane means equipment that has a type of base mounting which incorporates a continuous belt of sprocket driven track.

Critical lift means a lift that:

- Exceeds seventy-five percent of the crane or derrick rated load chart capacity; or
- Requires the use of more than one crane or derrick.

Crossover points means locations on a wire rope which is spooled on a drum where one layer of rope climbs up on and crosses over the previous layer. This takes place at each flange of the drum as the rope is spooled onto the drum, reaches the flange, and begins to wrap back in the opposite direction.

Dedicated drilling rig means a machine which creates bore holes and/or shafts in the ground.

Dedicated pile-driver is a machine that is designed to function exclusively as a pile-driver. These machines typically have the ability to both hoist the material that will be pile-driven and to pile-drive that material.

Derrick is an apparatus consisting of a mast or equivalent member held at the end by guys or braces, with or without a boom, for use with a hoisting mechanism and operating ropes.

Directly under the load means a part or all of an employee is directly beneath the load.

Dismantling includes partial dismantling (such as dismantling to shorten a boom or substitute a different component).

Drum rotation indicator is a device on a crane or hoist which indicates in which direction and at what relative speed a particular hoist drum is turning.

Electrical contact means when a person, object, or equipment makes contact or comes close in proximity with an energized conductor or equipment that allows the passage of current.

Equipment means equipment covered by this part.

Equipment criteria means instructions, recommendations, limitations and specifications.

Fall protection equipment means guardrail systems, safety net systems, personal fall arrest systems, positioning device systems or fall restraint systems.

Flange points means a point of contact between rope and drum flange where the rope changes layers.

Floating cranes/derricks means equipment designed by the manufacturer (or employer) for marine use by permanent

attachment to a barge, pontoons, vessel or other means of flotation.

Free rated load test means testing stability and operation of crane, carrier, wheels, tires, tracks, brakes, etc., under load, when lifting without outriggers and/or traveling with the load are permitted at the activity for the type of crane being tested.

Hoist means a mechanical device for lifting and lowering loads by winding rope onto or off a drum.

Hoisting means the act of raising, lowering or otherwise moving a load in the air with equipment covered by this standard. As used in this standard, "hoisting" can be done by means other than wire rope/hoist drum equipment.

Jib means an extension attached to the boom point to provide added boom length for lifting specified loads. The jib may be in line with the boom or offset to various angles in the vertical plane of the boom. For tower cranes, see boom (tower cranes).

Land crane/derrick means equipment not originally designed by the manufacturer for marine use by permanent attachment to barges, pontoons, vessels, or other means of flotation.

Load is the weight of the object being lifted or lowered, including the weight of the load-attaching equipment such as the load block, ropes, slings, shackles, and any other auxiliary attachment.

Load moment (or rated capacity) indicator means a system which aids the equipment operator by sensing the overturning moment on the equipment, i.e., load X radius. It compares this lifting condition to the equipment's rated capacity, and indicates to the operator the percentage of capacity at which the equipment is working. Lights, bells, or buzzers may be incorporated as a warning of an approaching overload condition.

Load moment (or rated capacity) limiter means a system which aids the equipment operator by sensing the overturning moment on the equipment, i.e., load X radius. It compares this lifting condition to the equipment's rated capacity, and when the rated capacity is reached, it shuts off power to those equipment functions which can increase the severity of loading on the equipment, e.g., hoisting, telescoping out, or luffing out. Typically, those functions which decrease the severity of loading on the equipment remain operational, e.g., lowering, telescoping in, or luffing in.

Locomotive crane means a crane mounted on a base or car equipped for travel on a railroad track.

Load sustaining/bearing parts means those parts of a crane that support the crane or load and upon failure could cause dropping, uncontrolled shifting, or uncontrolled movement of the crane or load.

Luffing boom is a member hinged to the rotating superstructure and used for supporting the hoisting tackle.

Luffing jib limiting device is similar to a boom hoist limiting device, except that it limits the movement of the luffing jib.

Mobile cranes means a lifting device incorporating a cable suspended latticed boom or hydraulic telescopic boom designed to be moved between operating locations by transport over the road. These are referred to in Europe as a crane mounted on a truck carrier.

Multiple lift rigging means a rigging assembly manufactured by wire rope rigging suppliers that facilitates the attachment of up to five independent loads to the hoist rigging of a crane.

Nationally recognized accrediting agency is an organization that, due to its independence and expertise, is widely recognized as competent to accredit testing organizations.

Nonstandard tower crane base means any deviation from the structural support or base configuration recommended by the crane manufacturer.

Occasional or routine maintenance and repair work means regular, customary and foreseeable work necessary to keep equipment in good repair and/or condition. This also includes regular, customary and foreseeable work necessary to return equipment to sound condition after damage.

Operational aid means an accessory that provides information to facilitate operation of a crane or that takes control of particular functions without action of the operator when a limiting condition is sensed. Examples of such devices include, but are not limited to, the following: Anti-two-block device, rated capacity indicator, rated capacity (load) limiter, boom angle or radius indicator, lattice boom hoist disconnect device, boom length indicator, crane level indicator, drum rotation indicator, load indicator, and wind speed indicator.

Operational controls means levers, switches, pedals and other devices for controlling equipment operation.

Operator is a person who is operating the equipment.

Overhead and gantry cranes includes overhead/bridge cranes, semigantry, cantilever gantry, wall cranes, storage bridge cranes, launching gantry cranes, and similar equipment, irrespective of whether it travels on tracks, wheels, or other means.

Pendants includes both wire and bar types. Wire type: A fixed length of wire rope with mechanical fittings at both ends for pinning segments of wire rope together. Bar type: Instead of wire rope, a bar is used. Pendants are typically used in a latticed boom crane system to easily change the length of the boom suspension system without completely changing the rope on the drum when the boom length is increased or decreased.

Powerhouse means a plant wherein electric energy is produced by conversion from some other form of energy (e.g., chemical, nuclear, solar, mechanical, or hydraulic) by means of suitable apparatus. This includes all generating station auxiliaries and other associated equipment required for the operation of the plant. Not included are stations producing power exclusively for use with communication systems.

Power lines means electrical distribution and electrical transmission lines.

Qualified crane operator means a crane operator who meets the requirements established by the department under RCW 49.17.430.

Qualified person means a person who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training and experience, successfully demonstrated the ability to solve/resolve problems relating to the subject matter, the work, or the project.

Rated capacity means the maximum working load permitted by the manufacturer under specified working conditions. Such working conditions typically include a specific

combination of factors such as equipment configuration, radii, boom length, and other parameters of use.

Rated capacity indicator, see load moment indicator.

Rated capacity limiter, see load moment limiter.

RPE means a registered professional engineer licensed under RCW 18.43.040(1).

RPSE means a registered professional structural engineer licensed under RCW 18.43.040(1).

Running wire rope is a wire rope that moves over sheaves or drums.

Safety devices, examples of safety devices are, but are not limited to, the following: Horn, boom/jib or trolley stops, hydraulic holding device/check valve, rail clamps, rail stops, brakes, deadman control or forced neutral return control, emergency stop switch, guards, handrails, audible and visual alarms, etc.

Safety or health standard means a standard adopted under this chapter.

Taglines means a rope (usually fiber) attached to a lifted load for purposes of controlling load spinning and pendular motions or used to stabilize a bucket or magnet during material handling operations.

Tower crane means a type of lifting structure which utilizes a vertical mast or tower to support a working boom (jib) suspended from the working boom. While the working boom may be fixed horizontally or have luffing capability, it can always rotate about the tower center to swing loads. The tower base may be fixed in one location or ballasted and moveable between locations.

Travel bogie (tower cranes) means an assembly of two or more axles arranged to permit vertical wheel displacement and equalize the loading on the wheels.

Two blocking means a condition in which a component that is uppermost on the hoist line such as the load block, hook block, overhaul ball, or similar component, comes in contact with the boom tip, fixed upper block or similar component. This binds the system and continued application of power can cause failure of the hoist rope or other component.

NEW SECTION

WAC 296-155-531 Crane certifier accreditation process.

NEW SECTION

WAC 296-155-53100 Accreditation of crane certifiers of cranes and derricks—Requirements. (1) Any person engaging in the testing, examination or inspection for the certification of a crane, used in lifting at a construction site, must apply for and obtain a certificate of accreditation from the department pursuant to this rule. For the purposes of this rule an "accredited crane certifier" refers to any individual holding a certificate of accreditation pursuant to this regulation.

(2) Any person authorized by the department to certify maritime cranes prior to the effective date of this rule may continue to perform services under this regulation until January 1, 2012. Any accredited crane certifier desiring to continue providing services pursuant to this rule must have applied for and obtained a certificate of accreditation under these rules from the department prior to January 1, 2012.

Maritime certifiers wishing to perform construction crane certifications must notify the department that they will perform construction crane certifications. In addition, the maritime certifier must specify which cranes they are qualified to inspect under their maritime certificate. The department may issue these individuals a provisional accreditation specifying the crane types they are authorized to inspect which will be valid through December 31, 2011, or upon expiration of their maritime certification, whichever is earlier. Any provisionally accredited crane certifier desiring to continue providing services pursuant to this rule must have applied for and obtained a certificate of accreditation under these rules from the department prior to January 1, 2012.

(3) Crane certifiers accredited by any other state or governmental entity may be authorized to inspect cranes in Washington state provided the certifier submits an application and resume along with the certificate of accreditation from that state or governmental entity, and the types of cranes they are authorized to inspect. The department may issue these individuals a provisional accreditation specifying the crane types they are authorized to inspect which will be valid through December 31, 2011, or upon expiration of their out-of-state certification, whichever is earlier. Any provisionally accredited crane certifier desiring to continue providing services pursuant to this rule must have applied for and obtained a certificate of accreditation under these rules from the department prior to January 1, 2012.

(4) No person that has modified, altered, or repaired a crane which affected a load sustaining member of the crane may conduct the certifying inspection and proof load testing of that particular crane within the same certification period.

NEW SECTION

WAC 296-155-53102 Accreditation—Application form and applicant qualifications. (1) An accreditation to certify cranes pursuant to this rule may be obtained by submitting a completed application to the division of occupational safety and health (DOSH) and successfully completing written examinations developed and administered by the department or its authorized representative. Application forms may be obtained by calling the:

Crane certification section of DOSH 360-902-4943 or by written request to:

P.O. Box 44650, Olympia, WA 98504-4650

(2) An applicant seeking an accreditation must satisfy all of the following criteria:

(a) An application with an attached resume must be submitted to the department based on experience with the various crane types per the ASME B30 series. The application and resume must include knowledge, training and experience with verifiable references.

(b) All applicants must possess knowledge of chapter 296-155 WAC, Safety standards for construction work, as well as American Society of Mechanical Engineers (ASME) standards, relating to the design, testing, inspection and operation of cranes, including those specifically applicable to the types of cranes for which an accreditation will be issued.

(c) All applicants must demonstrate at least five years crane related experience, of which two years must be actual crane inspection activities. The other three years may include experience in duties such as a crane operator, crane mechanic, crane shop foreman, crane operations supervision, or rigging specialist. Related education may be substituted for related experience at a ratio of two years of education for one year of experience up to three years. Related education could include such courses in engineering, physics, applied mathematics, applied science courses in nondestructive testing, construction technology, technical courses in heavy equipment mechanic, welding technology, etc.

(3) Application form. Any application for accreditation will be accepted by the department upon the filing of a completed application. All information and attachments must be given under penalty of perjury. The application must include, but not be limited to, the following:

(a) A statement of the crane types per the ASME B30 series the applicant desires to certify pursuant to the accreditation.

(b) A statement of qualifications and experience, including their capacities, satisfying at a minimum the criteria set forth in this section as well as any and all other qualifications the applicant wishes the department to consider.

(c) Any other relevant information the applicant desires to be considered by the department.

(4) Written examinations. Applicants to be approved for accreditation must successfully complete the written examinations administered by the department or its authorized representative.

(a) Once the department receives the application and resume, the department will make the determination and notify the applicant if they meet the minimum qualifications to take the written examinations.

(b) The first written examination will include a general knowledge of operation, testing, inspection and maintenance requirements, and the duties and recordkeeping responsibilities required by this rule.

(c) The other written examinations will include safe operating and engineering principles and practices with respect to specific crane types subject to the accreditation, including inspection and proof loading requirements.

NEW SECTION

WAC 296-155-53104 Issuance of accreditation. (1) The department may impose restrictions on the scope and use of the accreditation, such as limiting it to specific types of cranes based upon the qualifications of the applicant. The accreditation issued by the department will identify any limitations imposed by the department and the types of cranes the certifier is authorized to certify.

(2) The department must deny issuance of an accreditation if the applicant does not satisfy the requirements of this rule.

NEW SECTION

WAC 296-155-53106 Accreditation application—Processing time. (1) Within forty-five calendar days of receipt of a completed application for an accreditation, the

department must inform the applicant in writing that it is either complete and accepted for filing or that it is deficient and what specific information or documentation is required to complete the application and will inform the applicant if the applicant is eligible to take the written examination. An application is considered complete if it is in compliance with the requirements of this rule.

(2) Within seventy-five calendar days from the date of completion of the written examinations, the department must inform the applicant in writing of its decision regarding the issuance of the certificate of accreditation.

NEW SECTION

WAC 296-155-53108 Duration and renewal of an accreditation. (1) The accreditation will be valid for three years. Crane certifiers must complete forty hours of crane related training every three years, in courses recognized by the department.

(2) Application for renewal must be filed with the department not less than sixty days prior to expiration of the accredited crane certifier's certification. A renewal may be obtained by filing a completed application for renewal meeting the requirements of WAC 296-155-53102 hereof providing the applicant has been actively inspecting cranes during their prior accreditation period. An applicant is considered active if he/she has certified/inspected at least twenty-one cranes during their accreditation period. If the applicant certified cranes in another state, then that applicant must provide documentation showing they were active during their accreditation period. An applicant who has not certified/inspected at least twenty-one cranes during the accreditation period may take the written exam to become recertified.

(3) At a minimum, all applicants for renewal must successfully complete the written examinations every six years.

NEW SECTION

WAC 296-155-53110 Revocation or suspension of an accreditation. (1) The department may suspend or revoke a certificate issued under the provisions of these rules upon the following grounds:

(a) Permitting the duplication or use of one's own accreditation certificate by another;

(b) Performing work for which accreditation has not been received;

(c) Any person who obtains accreditation through fraudulent representation of accreditation requirements such as education, training, professional registration, or experience;

(d) Any person who falsifies training documentation;

(e) The holder of the certificate is found to be incompetent to carry out the work for which the certificate was issued;

(f) Gross negligence, gross incompetence, a pattern of incompetence, or fraud in the certification of a crane;

(g) Willful or deliberate disregard of any occupational safety standard while certifying a crane;

(h) Misrepresentation of a material fact in applying for, or obtaining, a license to certify under this chapter;

(i) Failure by an accredited crane certifier to maintain records;

(j) Failure by an accredited crane certifier to report crane safety deficiencies affecting the safe operation of a crane while in the process of conducting an annual certification inspection;

(k) Failure to meet or comply with the requirements of this rule or the limitations imposed on the accreditation; or

(l) Performance of work not in compliance with applicable laws and regulations.

(2) Before any certificate may be suspended or revoked, the certificate holder must be given written notice of the department's intention, mailed by certified mail, return receipt requested to the address as shown on the application form. The notice must specify the reasons for the department action. The department must also include within the notice of revocation or suspension specific conditions which must be met before the applicant will be entitled to apply for a new certification.

(3) A suspension or revocation order may be appealed to the board of industrial insurance appeals within fifteen working days after the suspension or revocation order is entered. The notice of appeal may be filed with the department or the board of industrial insurance appeals. The board of industrial insurance appeals shall hold the hearing in accordance with procedures established in RCW 49.17.140. Any party aggrieved by an order of the board of industrial insurance appeals may obtain superior court review in the manner provided in RCW 49.17.150.

(4) The filing of an appeal must not stay the suspension or revocation, and such action must remain in effect until such time as the applicant presents proof that the specified written conditions required by the department are met or until otherwise ordered after resolution of the appeal.

NEW SECTION

WAC 296-155-53112 Monitoring of accredited crane certifiers. The division of occupational safety and health must monitor accredited crane certifiers to ensure that these certifiers certify cranes in accordance with all applicable Washington state laws and regulations. Monitoring activities will include, but not be limited to, audits of crane certifier's activities, complaint inspections, referrals, or accident investigations.

NEW SECTION

WAC 296-155-53114 Issuance of temporary and annual certificates of operation. (1) Accredited crane certifiers will issue a temporary certificate of operation if upon inspection and load proof testing no deficiencies were found that would affect the safe operation of the crane.

(2) The accredited crane certifier will submit inspection worksheets and proof of load testing to the department within ten working days from the completion of the inspection and load proof test for consideration of the department for the issuance of a permanent certificate of operation.

(3) If the accredited crane certifier upon inspection of a crane identifies deficiencies that would affect the safe operation or load handling capabilities of the crane, the accredited crane certifier must notify the department within five working days from completion of the on-site inspection by submit-

ting the worksheet that identifies the deficiencies. If deficiencies are found that affect the safe operation or load handling capabilities of the crane, no temporary certificate of operation will be issued until all identified deficiencies have been corrected and verified by an on-site visit by an accredited crane certifier.

(4) After the accredited crane certifier has verified that all deficiencies have been corrected and the crane has successfully passed a load proof test, the accredited crane certifier will issue a temporary certificate of operation. The accredited crane certifier will submit inspection worksheets and proof of load testing to the owner or lessee and within ten days of completion of the inspection to the department for consideration of the department for the issuance of an annual certificate of operation.

(5) The accredited crane certifier must attach an identification sticker if not already attached and legible to each crane and crane component (component meaning: Luffing boom, swing-away jibs, fly sections, jibs at variable offsets and boom sections). The identification sticker number must be entered on the inspection worksheet submitted to the department. Identification stickers may only be removed by a department representative or an accredited crane certifier.

Note: Certified components may be installed without voiding the annual proof load test, providing the component was proof load tested within the prior four-year period.

(6) Certificates of operation issued by the department under the crane certification program established in this section are valid for one year from the effective date of the temporary operating certificate issued by the certified crane inspector.

(7) The temporary or annual certificate of operation must be posted in the operator's cab or with the operator's manual.

(8) Maintaining required records. Accredited crane certifiers are required to maintain complete and accurate records pertaining to each crane of all inspections, tests and other work performed as well as copies of all notices of crane safety deficiencies, verifications of correction of crane safety deficiencies, and crane certifications issued for the previous five years and provide these records to the department upon request. Failure by an accredited crane certifier to maintain required records may result in accreditation suspension or revocation.

NEW SECTION

WAC 296-155-532 Crane certification requirements for cranes.

NEW SECTION

WAC 296-155-53200 General inspection criteria, wire rope inspection and removal criteria, and preproof load test requirements for all cranes. (1) The accredited crane certifier must review the following documents as part of the crane certification process:

(a) Crane maintenance records of critical components to ensure maintenance of these components has been performed in accordance with the manufacturer's recommendations.

(b) Crane periodic and frequent inspection documentation.

(2) Safety devices. Make sure all safety devices are installed on equipment in accordance with the requirements located in chapter 296-155 WAC, Part L.

(3) Operational aids. Operations must not begin unless operational aids are in proper working order, except where the owner or lessee meets the specified temporary alternative measures. See chapter 296-155 WAC, Part L for the list of operational aids.

Note: All accredited crane certifiers must meet and follow the requirements relating to fall protection, located in chapter 296-155 WAC, Part C-1, Fall restraint and fall arrest.

(4) General.

(a) The accredited crane certifier must determine that the configurations of the crane are in accordance with the manufacturer's equipment criteria.

(b) Where the manufacturer equipment criteria are unavailable, a registered professional engineer (RPE), familiar with the type of equipment involved, must ensure criteria are developed for the equipment configuration.

(5) Wire rope.

(a) Wire ropes must meet the crane or wire rope manufacturer's specifications for size, type and inspection requirements. In the absence of the manufacturer's specifications, follow the requirements for removal criteria located in this section, including Table 1.

**Table 1 - Wire Rope Inspection/Removal Criteria
(See also Figure 1 - Wire Rope)**

Category of Crane Types	Running Ropes* # of broken wires in		Rotation Resistant* # of broken wires in		Standing Ropes* # of broken wires	
	1 rope lay	1 strand in 1 lay	Specified diameters		In 1 lay beyond end connection	At end connection
Mobile	6	3	2 (in 6xd)	4 (in 30xd)	3	2
Articulating	6	3	Consult rope mfg.	Consult rope mfg.	3	2
Tower	12	4	2 (in 6xd)	4 (in 30xd)	3	3
Self-Erector	6	3	2 (in 6xd)	4 (in 30xd)	3	2
Overhead & Bridge	12	4	2 (in 6xd)	4 (in 30xd)	—	—

Table 1 - Wire Rope Inspection/Removal Criteria
(See also Figure 1 - Wire Rope)

Category of Crane Types	Running Ropes* # of broken wires in		Rotation Resistant* # of broken wires in		Standing Ropes* # of broken wires	
	1 rope lay	1 strand in 1 lay	Specified diameters		In 1 lay beyond end connection	At end connection
Derricks	6	3	Consult rope mfg.	Consult rope mfg.	3	2

*Also remove if you detect 1 wire broken at the contact point with the core or adjacent strand; so called valley breaks or evidence from any heat damage from any cause.

Note: xd means times the "diameter."

(b) The accredited crane certifier must perform a complete and thorough inspection covering the surface of the working range plus three additional wraps on the drum of the wire ropes.

(c) If a deficiency is identified, an immediate determination must be made by the accredited crane certifier as to whether the deficiency constitutes a safety hazard. If the deficiency is determined to constitute a safety hazard, the crane must not be certified until:

(i) The wire rope is replaced and verified by the accredited crane certifier; or

(ii) If the deficiency is localized, the problem is corrected by severing the wire rope; the undamaged portion may continue to be used. Joining lengths of wire rope by splicing is prohibited.

(d) Remove wire rope from service if reductions from nominal diameter are greater than those shown below in Table 2.

Table 2 - Maximum Allowable Reduction from Nominal Diameter

Rope Diameter	Maximum Allowable Reduction from Nominal Diameter
Up to 5/16 inch (8 mm)	1/64 inch (0.4 mm)
3/8 inch (9.5 mm) to 1/2 inch (13 mm)	1/32 inch (0.8 mm)
9/15 inch (14.5 mm) to 3/4 inch (19 mm)	3/64 inch (1.2 mm)
7/8 inch (22 mm) to 1 1/8 inch (29 mm)	1/16 inch (1.6 mm)
Over 1 1/8 inch (32 mm) to 1 1/2 inch (38 mm)	3/32 inch (2.4 mm)

(e) Replacement rope must be of a compatible size and have a strength rating at least as great as the original rope furnished or recommended by the crane manufacturer.

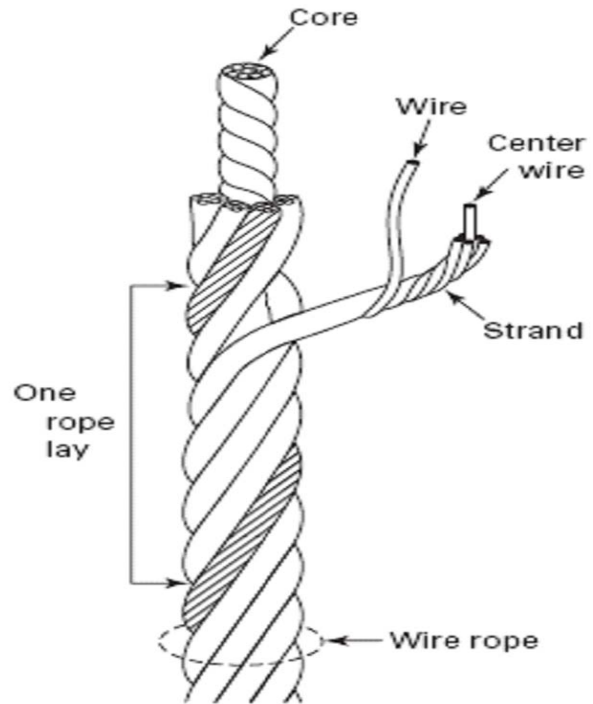


Figure 1 - Wire Rope

(6) Sheaves.

(a) Sheave grooves must be free from surface defects that could damage the rope. The cross-sectional radius at the bottom of the groove should be such as to form a close fitting saddle for the size of rope used. The sides of the groove must be tapered outward and rounded at the rim to facilitate entrance of the rope into the groove. Flange rims must run true about the axis of rotation.

(b) Sheave guards must be in place to:

(i) Guide the rope back into the sheave groove, when using ropes that can be momentarily unloaded.

(ii) Prevent ropes from becoming fouled when the block is lying on the ground with loose ropes.

(c) Sheave bearings, except for permanently lubricated ones, must have a means of lubrication.

(7) Prior to performing a proof load test:

(a) A safe test area must be selected and all traffic and unauthorized personnel and equipment must be cleared from

test area. This test area must be roped off or otherwise secured to prevent entry of unauthorized personnel and equipment;

(b) Rigging gear must be inspected by a qualified person prior to using for load test of crane;

(c) The employer must ensure all load test personnel understand the safety procedures of the test;

(d) Proof load tests, with the exception of tower cranes, are overload tests and extreme caution must be observed at all times. Personnel must remain clear of suspended loads and areas where they could be struck in the event of boom failure. The test load must be raised only to a height sufficient to perform the test;

(e) During tests, safe operating speeds must be employed. Rated speeds in accordance with manufacturer's specifications need not be attained. Emphasis must be placed on the ability to safely control loads through all motions at normal speeds;

(f) Proof load tests require the use of certified weights, or scaled weights using a certified scale with a current certificate of calibration;

(g) Proof load tests must not exceed the manufacturer's specifications. Where these specifications are unavailable, a registered professional engineer familiar with the type of equipment involved must develop written specifications.

NEW SECTION

WAC 296-155-53202 Additional inspection criteria and proof load testing—Mobile cranes. (1) After it is determined that the crane configurations meet the criteria in WAC 296-155-53200, the accredited crane certifier must conduct a visual inspection of the following components, if applicable, which can be visually inspected without disassembly (not including removal of inspection covers):

(a) All control and drive mechanisms for adjustments interfering with proper operation and for excessive wear or contamination by lubricants or other foreign matter;

(b) Air, hydraulic, and other pressurized lines for deterioration or leakage, particularly those which flex in normal operation;

(c) Hydraulic system for proper fluid level;

(d) Safety latches on hooks for damage;

(e) Hooks for deformation, cracks, excessive wear, or damage such as from chemicals or heat;

(f) A legible and applicable operator's manual and load chart is in the operator's cab or station;

(g) A portable fire extinguisher, with a basic minimum extinguishing rating of ten BC must be installed in the cab or at the machinery housing;

(h) Crane cleanliness and housekeeping. Inspect for trash, oil, grease, debris or excessive dirt on crane components and catwalks, if applicable;

(i) Wire rope reeving for compliance with the manufacturer's specifications;

(j) Wire rope, in accordance with WAC 296-155-53200(5);

(k) Electrical apparatus for malfunctioning, signs of apparent excessive deterioration, dirt or moisture accumulation;

(l) Tires (when in use) for proper inflation and condition;

(m) Ground conditions around the equipment for proper support, including ground settling under and around outriggers and supporting foundations, ground water accumulation, or similar conditions;

(n) The equipment for level position;

(o) Operator cab windows for significant cracks, breaks, or other deficiencies that would hamper the operator's view;

(p) Rails, rail stops, rail clamps and supporting surfaces when the equipment has rail traveling;

(q) Equipment structure (including the boom and, if equipped, the jib):

(i) Structural members: Deformed, cracked, or significantly corroded.

(ii) Bolts, rivets and other fasteners: Loose, failed or significantly corroded.

(iii) Welds for cracks.

(r) Sheaves and drums for cracks or significant wear;

(s) Parts such as pins, bearings, shafts, gears, rollers and locking devices for distortion, cracks or significant wear;

(t) Brake and clutch system parts, linings, pawls and ratchets for excessive wear;

(u) Safety devices and operational aids for proper operation (including significant inaccuracies);

(v) Gasoline, diesel, electric, or other power plants for safety-related problems (such as leaking exhaust and emergency shut-down feature), condition and operation;

(w) Chains and chain drive sprockets for excessive wear of sprockets and excessive chain stretch;

(x) Travel steering, brakes, and locking devices, for proper operation;

(y) Tires for damage or excessive wear;

(z) Hydraulic, pneumatic and other pressurized hoses, fittings and tubing, as follows:

(i) Flexible hose or its junction with the fittings for indications of leaks.

(ii) Threaded or clamped joints for leaks.

(iii) Outer covering of the hose for blistering, abnormal deformation or other signs of failure/impending failure.

(iv) Outer surface of a hose, rigid tube, or fitting for indications of excessive abrasion or scrubbing.

(aa) Hydraulic and pneumatic pumps and motors, as follows:

(i) Performance indicators: Unusual noises or vibration, low operating speed.

(ii) Loose bolts or fasteners.

(iii) Shaft seals and joints between pump sections for leaks.

(bb) Hydraulic and pneumatic cylinders, as follows:

(i) Drifting.

(ii) Rod seals and welded joints for leaks.

(iii) Cylinder rods for scores, nicks and dents.

(iv) Case (barrel) for significant dents.

(v) Rod eyes and connecting joints: Loose or deformed.

(cc) Outrigger pads/floats and slider pads for excessive wear or cracks; cribbing/dunnage for proper installation;

(dd) Electrical components and wiring for cracked or split insulation and loose or corroded terminations;

(ee) Legible warning labels and decals as required by the manufacturer;

- (ff) Operator seat: Missing or unusable;
- (gg) Equipped with original, or the equivalent, steps, ladders, handrails, guards;
- (hh) Steps, ladders, handrails, and guards are in safe and usable condition;

(2) Crane deficiencies. If the accredited crane certifier determines other findings need to be monitored, the accredited crane certifier must provide written notification to the owner or lessee.

(3) Operational testing. An operational test must be made without a load applied to the hook of the following items if they are applicable to the crane to ensure they function correctly:

- (a) Load lifting/hoisting and lowering mechanisms;
- (b) Boom lifting/hoisting and lowering mechanisms;
- (c) Boom extension and retraction mechanism;
- (d) Swing mechanism;
- (e) Travel mechanism;
- (f) Brakes and clutches;
- (g) Limit, locking, and safety devices;
- (h) Suspension systems for cranes that work on rubber (tires); and
- (i) During the operational testing, special attention must be paid to hydraulic and pneumatic valves: Spools (sticking, improper return to neutral, and leaks); leaks; valve housing cracks; relief valves.

(4) Annual and quadrennial proof load testing.

(a) Proof load tests must be completed on all hoist lines. The test load must be at least one hundred percent but not to exceed one hundred and ten percent of rated capacity (i.e., for the crane's configuration of reeving, boom length, etc.). The rated capacity must be the capacity shown on the posted load chart or as limited by other factors such as hook block capacity or wire rope line pull if the crane is not fully reeved. The test load includes the weight of (or deduction values for) the hook, block, slings, and auxiliary lifting devices (and for some cranes hoist wire rope not accounted for in load charts), and the combined weight deduction values must be subtracted from the nominal test load in order to determine the amount of test weights to be used. Follow original equipment manufacturer (OEM) load chart instructions for weight deduction values. Check accuracy of load indicators where installed. Test procedures for these cranes must follow OEM procedures and recommendations.

(b) Annual proof load testing. After the crane has passed the visual and operational tests, a proof load test must be conducted in the as-configured condition and must be performed within the structural and stability section of the manufacturer's load chart, as applicable. This test must be documented on the form or in the format approved by the department. A copy of this completed form and inspection worksheets must be sent to the department within ten working days upon completion of the examination.

(c) Quadrennial proof load testing. No major component (luffing boom, swing-away jibs, fly sections, jibs at variable offsets and boom sections) may be used unless it has been proof load tested within the prior four-year period. For jibs with variable offset angles, tests at the maximum offset used and maximum extension of all boom sections.

(i) This test must be performed in accordance with this section and documented on the form or in the format approved by the department.

(ii) A copy of this completed form and inspection worksheets must be sent to the department within ten working days upon completion of the inspection.

(d) Free rated load test ("on rubber"). Check the stability and operation of crane, carrier, wheels, tires, tracks, brakes, etc., under load by performing the following tests, when lifting without outriggers and/or traveling with the load are permitted at the activity for the type of crane being tested.

Note: Ensure all free rated load tests "on rubber" lifting requirements established by the OEM are complied with. Attach taglines to the load to control oscillation. For cranes with outriggers, extend outriggers and maintain minimal clearance (three to four inches) above ground. Test personnel must stand clear of tires during load tests. This test is only required if the owner/lessee wants an "on rubber" certification. If the crane has "on rubber" capabilities and the owner does not desire this certification, the crane certifier must document it on the certification document.

(i) Maximum free rated load. Hoist maximum free rated test load at minimum possible radius over the rear (or over the front as required by the OEM). Slowly boom down to the maximum radius for the load. With boom and load hoist pawls (dogs) engaged where applicable, complete (d)(i)(A) and (B) of this subsection.

(A) Rotate through the appropriate working arc;

(B) Travel a minimum of fifty feet with test load over the rear (or front as required by the OEM) with the boom parallel to the longitudinal axis of the crane carrier.

(ii) Stability test. Repeat the step in (d)(i) of this subsection with a test load corresponding to the radii determined as follows: For telescoping boom cranes, test with the boom approximately halfway between fully retracted and fully extended but do not exceed OEM's boom length limitation for lifting on rubber. If no ratings are governed by stability, no stability test is required.

Note: When lifting test loads, always lift the load well within the maximum radius and slowly boom down to a premeasured radius. Lift the test load only high enough to perform the required tests.

NEW SECTION

WAC 296-155-53204 Additional inspection criteria and proof load testing—Articulating boom cranes. (1) After it is determined that the crane configurations meet the criteria in WAC 296-155-53200, the accredited crane certifier must visually inspect the following items, if applicable, on cranes for sound physical condition and that they are functional within the manufacturer's recommendations (not including removal of inspection covers):

(a) All control and drive mechanisms for adjustments interfering with proper operation and for excessive wear or contamination by lubricants or other foreign matter;

(b) Safety devices for malfunction;

(c) All hydraulic hoses, particularly those which flex in normal operation of crane functions;

(d) Hooks and latches for deformation, chemical damage, cracks, and wear;

- (e) Rope reeving for compliance with crane manufacturer's specifications;
- (f) Electrical apparatus for malfunctioning, signs of excessive deterioration, dirt, and moisture accumulation;
- (g) Hydraulic system for proper oil level and leaks;
- (h) Excessively worn or damaged tires. Recommended inflation pressure, cuts, and loose wheel nuts;
- (i) Connecting pins and locking device for wear and damage;
- (j) Deformed, cracked, or corroded members in the crane structure and carrier;
- (k) Loose bolts, particularly mounting bolts;
- (l) Cracked or worn sheaves and drums;
- (m) Worn, cracked, or distorted parts such as pins, bearings, shafts, gears, rollers, and locking devices;
- (n) Excessive wear on brake and clutch system parts and lining;
- (o) Travel steering, braking, and locking devices, for malfunction;
- (p) Hydraulic, pneumatic and other pressurized hoses, fittings and tubing, as follows:
 - (i) Flexible hose or its junction with the fittings for indications of leaks.
 - (ii) Threaded or clamped joints for leaks.
 - (iii) Outer covering of the hose for blistering, abnormal deformation or other signs of failure/impending failure.
 - (iv) Outer surface of a hose, rigid tube, or fitting for indications of excessive abrasion or scrubbing;
- (q) Hydraulic and pneumatic pumps and motors, as follows:
 - (i) Performance indicators: Unusual noises or vibration, low operating speed.
 - (ii) Loose bolts or fasteners.
 - (iii) Shaft seals and joints between pump sections for leaks;
 - (r) Hydraulic and pneumatic cylinders, as follows:
 - (i) Drifting.
 - (ii) Rod seals and welded joints for leaks.
 - (iii) Cylinder rods for scores, nicks and dents.
 - (iv) Case (barrel) for significant dents;
 - (s) Crane cleanliness and housekeeping. Inspect for trash, oil, grease, debris or excessive dirt on crane components and catwalks, if applicable;
 - (t) Legible warning labels and decals as required by the manufacturer;
 - (u) A portable fire extinguisher, with a basic minimum extinguishing rating of ten BC must be installed in the cab or at the machinery housing;
 - (v) A legible and applicable operator's manual and load chart is in the operator's cab or station.
- (2) Annual proof load testing of articulating boom cranes.
 - (a) Annual proof load testing. After the crane has passed the visual and operational tests, the accredited crane certifier must ensure a proof load test is conducted and must be performed within the structural and stability section of the manufacturer's load chart, as applicable. This test must be documented on the form or in the format approved by the department. A copy of this completed form and inspection work-

sheets must be sent to the department within ten working days upon completion of the examination.

- (b) Test loads must not be less than one hundred percent or more than one hundred and ten percent of the rated load, unless otherwise recommended by the manufacturer.

- (c) Hoist the test load to assure that the load is supported by the crane and held by the hoist brake(s).

- (d) Swing the crane, if applicable, the full range of its swing.

- (e) Boom the crane up and down within allowable working radius for the test load.

- (f) Lower the test load, stop and hold the load with the brake(s).

- (3) Quadrennial proof load testing. If the articulating boom crane has a jib or boom extension, these components may not be used unless it has been proof load tested within the prior four-year period.

NEW SECTION

WAC 296-155-53206 Additional inspection criteria and proof load testing—Tower cranes. (1) Tower cranes and tower crane assembly parts must be inspected by a crane certifier both prior to assembly, following erection of the tower crane, after each climbing operation, or reconfiguring the boom, jib, or counterjib before placing the crane in service.

- (2) The accredited crane certifier must verify a registered professional structural engineer, licensed under chapter 18.43 RCW, has certified that the crane foundations and underlying soil are adequate support for the tower crane with its maximum overturning movement.

- (3) Prior to erecting a tower crane on a nonstandard tower crane base, the accredited crane certifier must verify that the engineering configuration of this base has been reviewed and acknowledged as acceptable by an independent registered professional structural engineer, licensed under chapter 18.43 RCW.

- (4) The accredited crane certifier must review the following documents as part of the crane certification process for the current location and inspection period:

- (a) Crane maintenance records of critical components to ensure maintenance of these components has been performed in accordance with the manufacturer's recommendations;

- (b) Crane periodic and frequent inspection documentation.

- (5) After it is determined that the crane configurations meet the criteria in WAC 296-155-53200, the accredited crane certifier must visually inspect the following items, if applicable, on tower cranes for sound physical condition and that they are functional within the manufacturer's recommendations (not including removal of inspection covers):

- (a) All control and drive mechanisms for interfering with proper operation and for excessive wear or contamination by lubricants or other foreign matter;

- (b) Motion limiting devices for proper operation with the crane unloaded; each motion should be inched into its limiting device by carefully running at slow speed;

- (c) Load limiting devices for proper operation and accuracy of settings;

(d) Air, hydraulic, and other pressurized lines for deterioration or leakage, particularly those which flex in normal operation;

(e) Hydraulic system for proper fluid level;

(f) Hydraulic, pneumatic and other pressurized hoses, fittings and tubing, as follows:

(i) Flexible hose or its junction with the fittings for indications of leaks.

(ii) Threaded or clamped joints for leaks.

(iii) Outer covering of the hose for blistering, abnormal deformation or other signs of failure/impending failure.

(iv) Outer surface of a hose, rigid tube, or fitting for indications of excessive abrasion or scrubbing;

(g) Hydraulic and pneumatic pumps and motors, as follows:

(i) Performance indicators: Unusual noises or vibration, low operating speed.

(ii) Loose bolts or fasteners.

(iii) Shaft seals and joints between pump sections for leaks;

(h) Hydraulic and pneumatic cylinders, as follows:

(i) Drifting.

(ii) Rod seals and welded joints for leaks.

(iii) Cylinder rods for scores, nicks and dents.

(iv) Case (barrel) for significant dents;

(i) Electrical components for malfunctioning, signs of apparent excessive deterioration, dirt or moisture accumulation, wiring for cracked or split insulation, and loose or corroded terminations;

(j) Stationary cranes for manufacturer's recommended grounding of structure and power supply. Rail traveling cranes for grounding of each rail and the power supply per the manufacturer's recommendations;

(k) Runway rail and clamps. Inspect for loose, broken or missing clamps;

(l) Hooks and safety latches for deformation, cracks, excessive wear, or damage such as from chemicals or heat;

(m) Wedges and supports of climbing cranes for looseness or dislocation;

(n) Braces or guys supporting cranes' masts (towers) and anchor bolt base connections for looseness;

(o) Crane structure (including the boom, jib and counter jib):

(i) Structural members: Deformed, cracked, or significantly corroded.

(ii) Bolts, rivets and other fasteners: Loose, failed or significantly corroded.

(iii) Welds for cracks.

(p) Cracked or worn sheaves and drums;

(q) Worn, cracked, or distorted parts such as pins, bearings, shafts, gears, rollers, locking and clamping devices, sprockets, and drive chains or belts;

(r) Excessive wear on brake and clutch system parts, linings, pawls, and ratchets;

(s) Load, wind, and other indicators for inaccuracies outside the tolerances recommended by the manufacturer;

(t) Travel mechanisms for malfunction, excessive wear or damage;

(u) A legible and applicable operator's manual and load chart is in the operator's cab;

(v) Crane cleanliness and housekeeping. Inspect for trash, oil, grease, debris or excessive dirt on crane components and catwalks, if applicable;

(w) A portable fire extinguisher, with a basic minimum extinguishing rating of ten BC must be installed in the cab or at the machinery housing;

(x) When applicable, tower tie-in collars, struts, and connections to building structure are structurally sound, free of cracks, distortion, excessive wear or corrosion. Pins and structural bolts are tight and installed per the manufacturer's specification;

(y) Ballast blocks in place and secured per manufacturer's recommendations;

(z) For cranes that telescope, the raising mechanism operates within the manufacturer's specifications;

(aa) For cranes that top climb, the climbing frame operates within the manufacturer's specifications;

(bb) A means to prevent traveling tower cranes running into stops while under power;

(cc) A functional audible warning alarm that automatically sounds whenever the traveling tower crane travels;

(dd) Wire rope reeving for compliance with the manufacturer's specifications;

(ee) Wire rope, in accordance with WAC 296-155-53200(5);

(ff) Safety devices and operational aids for proper operation (including significant inaccuracies);

(gg) Legible warning labels and decals as required by the manufacturer;

(hh) Steps, ladders, handrails and guards are in safe and usable condition.

(6) Additional requirements for tower cranes prior to performing a proof load test.

Note: General requirements relating to preproof load tests for all cranes are located in WAC 296-155-53200.

(a) When tower cranes are erected, and before placing in service, all functional motions, motion limiting, load limiting devices, locking and safety devices, brakes and clutches must be tested for operation and be within the manufacturer's specification prior to placing the crane in operation.

(b) Proof load tests require the use of certified weights, or scaled weights using a certified scale with a current certificate of calibration.

(c) Functional motion test must be at crane manufacturer's rated load. Each test must include:

(i) Load hoisting and lowering;

(ii) Jib (boom) hoisting and lowering, or trolley travel;

(iii) Slewing motion;

(iv) Travel motion when rail mounted;

(v) Brakes and clutches; and

(vi) Limit, locking, and safety devices.

Note: Functional motion tests made after climbing or telescoping may be performed without a load.

(d) The functional motion test listed in (c) of this subsection must continue until all controls, drives, and braking systems have been engaged and have functioned per the crane manufacturer's specifications.

(e) Order in which tests of tower cranes are to be performed is as follows:

(i) Functional motion test without rated load;

(ii) Functional motion test at crane manufacturer's rated load. For other than traveling cranes, these tests may be combined with test of base structural support or foundation system given in (c) of this subsection;

(iii) Test of base structural support or foundation under (f) of this subsection.

(f) During functional motion tests, the crane's base structural support or foundation system must be visually checked by the accredited crane certifier. If any part of the crane's base structural support or foundation system shows excessive visual displacement, visual distress, or audible distress, then the lifted load must be lowered at hoist creep speed and all crane operations are to cease. An evaluation must then be made by the accredited crane certifier.

(7) Proof load testing of tower cranes. Setting hoist load limits for tower cranes.

(a) Annual proof load testing. After the crane has passed the visual and operational tests, the accredited crane certifier must ensure a proof load test is conducted and must be performed according to the manufacturer's recommendations. This test must be documented on the form or in the format approved by the department. A copy of this completed form and inspection worksheets must be sent to the department within ten working days upon completion of the examination.

(b) Tower crane hoist load limit switches must be set in accordance with the manufacturer's specifications using specified certified weights. Procedure is to be verified by the accredited crane certifier. In the absence of the manufacturer's specifications, hoist load limit switches must be verified by means of a static test using test loads of one hundred and two and one-half percent to one hundred and ten percent of the applicable ratings. Test loads are to be lifted at creep speed until just clear of the ground.

(c) Setting of hoist load limits must be documented on the form provided by the department. A copy of the completed form and inspection worksheets must be sent to the department within ten days upon completion of the examination.

(d) After erection of fixed freestanding tower cranes, the base structural support or foundation system on which the crane is supported must be tested before placing the crane in service. The test must be conducted with the crane manufacturer's rated load placed at maximum radius permitted by site conditions. When the base structural support or foundation is symmetrical, the crane's jib (boom) must be rotated through ninety degrees with ten minute stops at the starting position and at each forty-five degree position. When the support is asymmetrical, the crane's jib (boom) must be rotated through three hundred and sixty degrees with ten minute stops at the starting position and at each forty-five degree position.

(e) After erection of rail traveling tower cranes, the base structural support or foundation system to which the rail is attached must be tested before placing the crane in service. The test must be conducted with the crane manufacturer's rated load placed at maximum radius permitted by site conditions. The jib (boom) must be located over the bogie. The crane must travel the entire length of runway, returning with the same load over the bogie on the opposite rail.

NEW SECTION

WAC 296-155-53208 Additional inspection criteria and proof load testing—Self-erecting tower cranes. (1)

After it is determined that the crane configurations meet the criteria in WAC 296-155-53200, the accredited crane certifier must visually inspect the following items, if applicable, on cranes for sound physical condition and that they are functional within the manufacturer's recommendations (not including removal of inspection covers):

(a) For cranes that telescope the internal tower by a climbing frame, the climbing mechanism is structurally sound; is free of cracks, distortion, excessive wear or corrosion; operates within the manufacturer's specifications;

(b) Structural bolts are tightened;

(c) All control and drive mechanisms for interfering with proper operation and for excessive wear or contamination by lubricants or other foreign matter;

(d) Motion limiting devices for proper operation with the crane unloaded; each motion should be inched into its limiting device by carefully running at slow speed;

(e) Load limiting devices for proper operation and accuracy of settings;

(f) Air, hydraulic, and other pressurized lines for deterioration or leakage, particularly those which flex in normal operation;

(g) Hydraulic system for proper fluid level;

(h) Hydraulic, pneumatic and other pressurized hoses, fittings and tubing, as follows:

(i) Flexible hose or its junction with the fittings for indications of leaks.

(ii) Threaded or clamped joints for leaks.

(iii) Outer covering of the hose for blistering, abnormal deformation or other signs of failure/impending failure.

(iv) Outer surface of a hose, rigid tube, or fitting for indications of excessive abrasion or scrubbing;

(i) Hydraulic and pneumatic pumps and motors, as follows:

(i) Performance indicators: Unusual noises or vibration, low operating speed.

(ii) Loose bolts or fasteners.

(iii) Shaft seals and joints between pump sections for leaks;

(j) Hydraulic and pneumatic cylinders, as follows:

(i) Drifting.

(ii) Rod seals and welded joints for leaks.

(iii) Cylinder rods for scores, nicks and dents.

(iv) Case (barrel) for significant dents;

(k) Electrical components for malfunctioning, signs of apparent excessive deterioration, dirt or moisture accumulation, wiring for cracked or split insulation, and loose or corroded terminations;

(l) Ensure crane is grounded per manufacturer's specifications;

(m) Hooks and safety latches for deformation, cracks, excessive wear, or damage such as from chemicals or heat;

(n) Crane structure (including the boom, jib and counter jib):

(i) Structural members: Deformed, cracked, or significantly corroded.

- (ii) Bolts, rivets and other fasteners: Loose, failed or significantly corroded.
 - (iii) Welds for cracks;
 - (o) Cracked or worn sheaves and drums;
 - (p) Worn, cracked, or distorted parts such as pins, bearings, shafts, gears, rollers, locking and clamping devices, sprockets, and drive chains or belts;
 - (q) Excessive wear on brake and clutch system parts, linings, pawls, and ratchets;
 - (r) Load, wind, and other indicators for inaccuracies outside the tolerances recommended by the manufacturer;
 - (s) A legible and applicable operator's manual and load chart is in the operator's station;
 - (t) Crane cleanliness and housekeeping. Inspect for trash, oil, grease, debris or excessive dirt on crane components and catwalks, if applicable;
 - (u) A portable fire extinguisher, with a basic minimum extinguishing rating of ten BC must be installed in the cab or at the machinery housing;
 - (v) Ballast blocks in place and secured per manufacturer's recommendations;
 - (w) Wire rope reeving for compliance with the manufacturer's specifications;
 - (x) Wire rope, in accordance with WAC 296-155-53200(5);
 - (y) Safety devices and operational aids for proper operation (including significant inaccuracies);
 - (z) Legible warning labels and decals as required by the manufacturer;
 - (aa) Steps, ladders, handrails and guards are in safe and usable condition.
- (2) Additional requirements for self-erecting tower cranes prior to performing a proof load test.

Note: General requirements relating to preproof load tests for all cranes are located in WAC 296-155-53200.

- (a) Functional motion test must be at crane manufacturer's rated load. Each test must include:
 - (i) Load hoisting and lowering;
 - (ii) Jib (boom) hoisting and lowering, or trolley travel;
 - (iii) Slewing motion;
 - (iv) Brakes and clutches;
 - (v) Limit, locking, and safety devices.
- (b) The functional motion test listed in (a) of this subsection must continue until all controls, drives, and braking systems have been engaged and have functioned per the crane manufacturer's specifications.
- (c) Order in which tests of self-erecting tower cranes are to be performed is as follows:
 - (i) Functional motion test without rated load;
 - (ii) Functional motion test at crane manufacturer's rated load. These tests may be combined with test of base structural support or foundation system given in (a) of this subsection.
- (d) During functional motion tests, the crane's base structural support or foundation system must be visually checked by the accredited crane certifier. If any part of the crane's base structural support or foundation system shows excessive visual displacement, visual distress, or audible distress, then the lifted load must be lowered at hoist creep speed and all

crane operations are to cease. An evaluation must then be made by the accredited crane certifier.

(3) Annual proof load testing of self-erecting tower cranes.

(a) Annual proof load testing. After the crane has passed the visual and operational tests, the accredited crane certifier must ensure a proof load test is conducted and must be performed according to the manufacturer's recommendations. This test must be documented on the form or in the format approved by the department. A copy of this completed form and inspection worksheets must be sent to the department within ten working days upon completion of the examination.

(b) The structural support or foundation examination during proof load test:

(i) This test must be conducted with the rated load placed at maximum radius permitted by site conditions. The superstructure must be rotated through three hundred sixty degrees with five-minute stops at each outrigger position. If any part of the support structure becomes displaced or distressed, all crane operations must stop until an evaluation is made by a qualified person.

(ii) For rail-mounted cranes, a load test must be conducted with the jib in the position causing maximum loading on one wheel or bogie. The test must comprise traveling the entire length of the runway, then returning with the same load on the other rail. If a sleeper or support becomes displaced or damaged, crane operations must stop until an evaluation is made by a qualified person or until track ballast has been reset, or repairs made and a satisfactory test performed.

(c) Self-erecting tower crane hoist load limit switches must be set in accordance with the manufacturer's specifications using specified certified weights. Procedure is to be verified by the accredited crane certifier.

(d) Setting of hoist load limits must be documented on the form provided by the department. A copy of the completed form and inspection worksheets must be sent to the department within ten days upon completion of the examination.

NEW SECTION

WAC 296-155-53210 Additional inspection criteria and proof load testing—Overhead and bridge cranes. (1) After it is determined that the crane configurations meet the criteria in WAC 296-155-53200, the accredited crane certifier must visually inspect, without disassembly, and if applicable, the following items on overhead and bridge cranes for sound physical condition and that they are functional within the manufacturer's recommendations (not including removal of inspection covers):

(a) Controllers. Control mechanisms for interfering with proper operation. Control and drive mechanisms for apparent excessive wear of components and contamination by lubricants, water or other foreign matter;

(b) Load hooks. Inspect for damage wear to hook nuts, safety latch and hook swivel. Check for deformation, cracks, excessive wear, or damage such as from chemicals or heat. Inspect blocks for wear to sheaves, check plates, and pins. Check for loose pins, bolts and guards;

(c) Sheaves and bearings. Check all sheaves and bearings for lubrication and excessive wear. Ensure sheaves turn freely. Check sheave pin locking device;

(d) Structural supports. Inspect for damage or bent girders, girder seat top plate, diaphragms and structural column connections. Check for loose bolts or rivets, and cracks;

(e) Bridge inspection.

(i) Check complete structure for broken, cracked, damaged, missing, or corroded parts and members.

(ii) Handrails, walkways, and ladders. Inspect for loose, missing, bent, deteriorated or misaligned members, loose bolts, rivets, broken welds and hangers;

(f) Brackets. Check for cracked or corroded welds, missing or loose bolts, bent or cracked brackets;

(g) End stops. Inspect for damaged wheels, broken welds, loose or missing bolts, damaged bumpers, missing pins or damaged plates;

(h) Runway rail and clamps. Inspect for loose, broken or missing clamps. Check the condition of railhead and side wear, rail splice plates and/or welds, rail gaps and associated bolts, wedges, connectors and rail switches;

(i) Crane alignment. Inspect for proper bridge end float while crane travels in both directions on runway. Check all corner connections for rust, shear marks, loose or missing bolts, nuts and washers. Inspect square marks and legibility of dimension;

(j) Wheels and bearings. Inspect wheels for wear, flat spots, chips, flange wear, cracks, loose axle pins, or securing devices. Check bearing clearance, chatter, loose bearing caps and lubrication;

(k) Trolley. Check for loose, missing, broken or bent members. Inspect for loose, faulty or missing coupling guards. Check for broken, loose or missing axle pins. Inspect for axle pins displaying excessive wear;

(l) Trolley rail. Inspect for bent or damaged members, loose bolts, rivets, guards, trolley rail clamps, end stops and broken welds. Check condition of rail head and side wear, rail splice plates and/or welds and rail gaps;

(m) Trolley conductors. Inspect insulators and clamps, loose connectors, bent, pitted or damaged wires or collectors;

(n) Shafts, couplings, and bearings. Inspect shafts for vibration, cuts and nicks, loose or worn keyways and misalignment. Check coupling for wear, loose bolts or keys and misalignment. Inspect bearing for clearance, chatter, loose bearing caps and proper lubrication;

(o) Gearing. Inspect gears for worn teeth, cracked teeth, superficial root cracks, pitting, unusual indentation or wear marks, full contact or end loading, loose set screws and keys. Check guards and covers. Inspect gear cases for excessive noise and vibration, proper lubrication and leaking;

(p) Wire rope and drum. Inspect wire rope for damage. Check rope clip fittings and associated mounting hardware for wear and damage. Inspect drum grooves for excessive wear. Inspect drum pedestal and bearing condition. Check for cracks in drum;

(q) Electrical items. Check all contacts for proper alignment and evidence of excess heating or unusual arcing. Inspect all coils, contact leads, shunts and wires, fuses or overload devices for loose connections and evidence of overheating. Inspect panel board and arc shields for cracks, loose

bolts, dirt and moisture. Check panel marking for legibility. Inspect speed control resistors for damaged insulation, cracked or broken grids, loose connections, bolts and brackets;

(r) Motor. Inspect for damage, bearing noise, vibration and lubrication, spark and cleanliness of commutator and brush wear, loose hold down bolts and motor brackets. Inspect commutator or slip rings for evidence of overheating and brush sparking. Inspect motor leads and insulators, damaged or deteriorated insulation and loose connections. Inspect brush holder for proper clearance to commutator or slip rings, and freedom of brushes;

(s) Brakes. Inspect for wear in linkage, pins and cams, weakness of springs, wear and condition of lining, smoothness of the drum, heat check crack and clearance between drum or disk. Inspect for improper solenoid air gap; evidence of overheating; damaged brass, and loose core laminations; delay or restriction in opening of brakes;

(t) Hoist brakes. Inspect for wear in linkage, pins and cams, weakness of springs, wear and condition of lining, smoothness of drum, heat check cracks and clearance between drum or disk. Inspect for improper solenoid air gap; evidence of overheating; damaged brass, and loose core laminations; delay or restriction in opening of brakes;

(u) Limit switches. Remove covers and inspect all electrical and mechanical components for malfunction including contacts, springs, ratchets, pins, arm and insulators, rollers, cams and dogs. Inspect cover gaskets, counterweight guides. Check all securing bolts and guards. Check for weather or moisture damage. Check for proper operation;

(v) Crane cleanliness and housekeeping. Inspect for trash, oil, grease, debris or excessive dirt on crane components and catwalks, if applicable;

(w) Operation of crane controls. Operate all crane controls and check for proper operation. Check for smooth and regular motions without abnormal sensations, hesitations, binding, vibrations, shimmy, or irregularity;

(x) Warning device/fire protection. Inspect for proper operation of sirens, horns, bells and lights. Check switches and inspect wiring and connections;

(y) A legible and applicable operator's manual and load chart is in the operator's cab or station;

(z) A portable fire extinguisher, with a basic minimum extinguishing rating of ten BC must be installed in the cab or at the machinery housing.

(2) Annual proof load testing of bridge/overhead cranes.

(a) Annual proof load testing. After the crane has passed the visual and operational tests, the accredited crane certifier must ensure a proof load test is conducted and must be performed according to the manufacturer's recommendations or a registered professional structural engineer (RPSE). This test must be documented on the form or in the format approved by the department. A copy of this completed form and inspection worksheets must be sent to the department within ten working days upon completion of the examination.

(b) The proof load test must be at least one hundred percent but not to exceed one hundred twenty-five percent of the rated capacity.

(c) This test must be documented on the form or in the format approved by the department. A copy of this com-

pleted form and inspection worksheets must be sent to the department within ten working days upon completion of the examination.

(d) Hoist the test load a distance to assure that the load is supported by the crane and held by the hoist brake(s).

(e) Transport the test load by means of the trolley for the full length of the bridge, as practical.

(f) Transport the test load by means of the bridge for the full length of the runway in one direction with the trolley as close to the extreme right-hand end of the crane as practical, and in the other direction with the trolley as close to the left-hand end of the crane as practical.

(g) Lower the test load, and stop and hold the test load with the brake(s).

(h) Mechanical load brake tests. Hoist test load and hold for five minutes.

Release the holding brake, either mechanically or electrically to verify mechanical load brake function or hoist the rated load then lower, monitoring the hoist for any speed control issues.

NEW SECTION

WAC 296-155-53212 Additional inspection criteria and proof load testing—Derricks. (1) After it is determined that the derrick configurations meet the criteria in WAC 296-155-53200, the accredited derrick certifier must visually inspect the following items, if applicable, on derricks for sound physical condition and that they are functional within the manufacturer's recommendations (not including removal of inspection covers):

(a) All control and drive mechanisms for adjustments interfering with proper operation and for excessive wear or contamination by lubricants or other foreign matter;

(b) All chords and lacing, tension in guys, plumb of the mast, external indication of deterioration or leakage in air or hydraulic systems;

(c) Derrick hooks for deformation or cracks, distortion causing an increase in throat opening of five percent not to exceed one-quarter inch or as recommended by the manufacturer. Any wear exceeding ten percent (or as recommended by the manufacturer) of the original section dimension of the hook;

(d) Rope reeving for noncompliance with derrick manufacturer's specifications;

(e) Hoist brakes, clutches, and operating levers;

(f) Electrical apparatus for malfunctioning, signs of excessive deterioration, dirt and moisture accumulation;

(g) Structural members for deformation, cracks, and corrosion;

(h) Crane cleanliness and housekeeping. Inspect for trash, oil, grease, debris or excessive dirt on crane components and catwalks, if applicable;

(i) Bolts and rivets for tightness;

(j) Parts such as pins, bearings, shafts, gears, sheaves, drums, rollers, locking and clamping devices, for wear, cracks, and distortion;

(k) Gudgeon pin for cracks, wear and distortion;

(l) Foundation or supports for continued ability to sustain the imposed loads;

(m) A legible and applicable operator's manual and load chart is in the operator's cab or station;

(n) A portable fire extinguisher, with a basic minimum extinguishing rating of ten BC must be installed in the cab or at the machinery housing.

(2) Annual proof load testing of derricks.

(a) Annual proof load testing. After the derrick has passed the visual and operational tests, the accredited derrick certifier must ensure a proof load test is conducted and must be performed at the maximum and minimum boom angles or radii or as close to these as practical and at such intermediate radii as the derrick manufacturer or RPSE may deem necessary. This test must be documented on the form or in the format approved by the department. A copy of this completed form and inspection worksheets must be sent to the department within ten working days upon completion of the examination.

(b) Proof load tests and safe working load ratings must be based on the designed load ratings at the ranges of boom angle or operating radii. Proof loads must be as per the manufacturer's recommendations. When the manufacturer recommendations are not available follow the requirements in Table 3 below:

Table 3 - Derrick Load Test

Safe Working Load SWL	Proof Load
Up to 20 tons	25 percent in excess
20-50 tons	5 tons in excess
Over 50 tons	10 percent in excess

(c) Hoist the test load a few inches and hold to verify that the load is supported by the derrick and held by the hoist brake(s).

(d) Swing the derrick, if applicable, the full range of its swing, at the maximum allowable working radius for the test load.

(e) Boom the derrick up and down within the allowable working radius for the test load.

(f) Lower the test load, stop and hold the load with the brake(s).

(g) After satisfactory completion of a proof load test, the derrick and all component parts thereof shall be carefully examined in all applicable requirements in this section.

(h) This test must be documented on the form or in the format approved by the department. A copy of this completed form and inspection worksheets must be sent to the department within ten working days upon completion of the examination.

NEW SECTION

WAC 296-155-53214 Crane decertification and reinstatement. (1) If any of the following occur, the certification becomes invalid:

(a) Contact with an energized power line;

(b) Any overload, other than proof load testing, or one that has been approved in writing in advance by the crane manufacturer or a RPE;

(c) Any significant modifications or significant repairs of a load sustaining/bearing part.

Note: Replacement of hoisting rope does not constitute decertification.

(2) The owner or lessee must notify the crane certification section by phone within twenty-four hours if any of the above occurs.

(3) The certification may be reinstated only after affected components have been reinspected by an accredited crane certifier. If the accredited crane certifier identifies any deficiencies during the reinspection, the deficiencies must be corrected before the certification can be reinstated. If the accredited crane certifier believes proof load testing should be conducted prior to reinstatement of the certification, proof load testing shall be conducted. In the case of major modifications or repairs to important load sustaining/bearing parts, proof load testing shall be performed prior to reinstatement. The accredited crane certifier must notify the department that the certification has been reinstated.

NEW SECTION

WAC 296-155-533 Crane operator qualifications and certification.

Crane Operator Experience for Cranes Used in the Construction Industry
Table 1

The 5 Categories of Cranes and their Types	Number of Hours of Actual Crane Operating Experience	Number of Hours of Crane Related Experience
(1) Mobile Cranes		
(a) Lattice Boom Crawler Cranes (LBC)	300 tons and above 1000 Hours	300 tons and above 1000 Hours
	Under 300 tons 500 Hours	Under 300 tons 500 Hours
(b) Lattice Boom Truck Cranes (LBT)	300 tons and above 1000 Hours	300 tons and above 1000 Hours
	Under 300 tons 500 Hours	Under 300 tons 500 Hours
(c) Large Telescopic Boom Cranes (Swing Cab) (TLL)	Over 130 tons 750 Hours	Over 130 tons 750 Hours
	Over 40 tons to 130 tons 250 Hours	Over 40 tons to 130 tons 250 Hours
	40 tons and under 40 Hours	40 tons and under 40 Hours
(d) Small Telescopic Boom Cranes (Fixed Cab) (TSS)	15 tons and above 40 Hours	15 tons and above 40 Hours
	Over 5 tons to 15 tons 20 Hours	Over 5 tons to 15 tons 20 Hours
	5 tons and under 8 hours	5 tons and under 16 hours
(2) Articulating Boom Cranes	20 Hours	20 Hours

NEW SECTION

WAC 296-155-53300 Operator qualifications and certification. (1) Prior to operating any crane covered under chapter 296-155 WAC, Part L, with the exception of the trainee/apprentice requirements outlined in subsection (2) of this section, the employer must ensure that the crane operator:

(a) Has a valid crane operator certificate, for the type of crane to be operated, issued by a crane operator testing organization accredited by a nationally recognized accrediting agency. The operator certification must include a successful passing of a written and practical examination.

- Notes:**
- An operator's certificate issued by the accredited testing agency is valid for a five-year period, and must be renewed to ensure operators maintain qualified operator status.
 - For self-erecting tower cranes, the department will accept a tower crane certification issued by a nationally accrediting testing agency.
 - For derricks, the department will accept, at a minimum, a lattice boom truck or crawler mobile crane operator's certificate.

(b) Has crane hours of experience as shown in Table 1; and

(c) Pass a substance abuse test conducted by a recognized laboratory.

Exemption: When it is necessary in the performance of their duties, manufacture representatives, factory representatives and maintenance personnel are not required to be certified crane operators.

Crane Operator Experience for Cranes Used in the Construction Industry
Table 1

The 5 Categories of Cranes and their Types	Number of Hours of Actual Crane Operating Experience	Number of Hours of Crane Related Experience
(3) Tower Cranes		
(a) Hammerhead	500 Hours	500 Hours
(b) Luffer	500 Hours	500 Hours
(c) Self-Erecting	50 Hours	50 Hours
(4) Overhead Cranes		
(a) Cab Operated	40 Hours	40 Hours
(b) Pendant/Remote	40 Hours	40 Hours
(5) Derricks		
Hours of actual crane operating experience. For all cranes: Time while the operator is at the controls of the crane; and/or has direct control of that crane; and/or a combination of operating hours within the same crane type. For mobile cranes: It also includes time while installing/removing boom sections, luffing boom, jib, extending and retracting outriggers/stabilizers, leveling crane, and replacing hoisting rope. For tower cranes: It includes time while jumping (increasing the height of the tower/mast).		
Note: Additional actual crane operator experience may account for crane related experience.		
Hours of crane related experience: Time as a signalman/bellman, oiler, crane mechanic, crane inspector, formal classroom training, crane simulator operation, and a combination of operating hours on other categories of cranes.		

Note: Cranes and other lifting machines that are exempt can be found in WAC 296-155-52900(2).

(2) Prequalification/certification training period. An employee who is not a qualified crane operator as outlined in subsection (1) of this section is permitted to operate the crane as part of his/her training providing the following requirements are met:

(a) The employee ("trainee/apprentice") must be provided with sufficient training prior to operating the crane to enable the trainee to operate the crane safely under limitations established by this section (including continuous supervision) and any additional limitations established by the employer.

(b) The tasks performed by the trainee/apprentice while operating the crane must be within the trainee's ability, as determined by the supervising qualified crane operator.

(c) Qualified crane operator. While operating the equipment, the trainee/apprentice must be continuously supervised by a qualified crane operator who meets the following requirements:

(i) The qualified crane operator is an employee or agent of the trainee's/apprentice's employer.

(ii) The qualified crane operator under this section is familiar with the proper use of the equipment's controls.

(iii) While supervising the trainee/apprentice, the qualified crane operator performs no tasks that detract from the qualified crane operator's ability to supervise the trainee/apprentice.

(iv) For cranes other than tower cranes: The qualified crane operator and the trainee/apprentice must be in direct line of sight of each other. In addition, they must communicate verbally or by hand signal.

(v) For tower cranes: The qualified crane operator and the trainee/apprentice must be in direct communication with each other.

(d) The trainee/apprentice must not operate the crane in any of the following circumstances:

(i) If any part of the crane, load line or load (including rigging and lifting accessories), if operated up to the crane's maximum working radius in the work zone, could get within twenty feet of a power line that is up to three hundred fifty kV, or within fifty feet of a power line that is over three hundred fifty kV;

(ii) If the crane is used to hoist personnel;

(iii) In a multiple-crane lift situation; or

(iv) Multiple-lift rigging, as defined in WAC 296-155-52902, can only be accomplished by the trainee/apprentice when the qualified crane operator determines that the trainee's/apprentice's skills are sufficient for this high-skill work.

(v) Critical lifts, as defined in WAC 296-155-52902, can only be accomplished by the trainee/apprentice when the qualified crane operator determines that the trainee's/apprentice's skills are sufficient for this high-skill work.

(3) The employer must obtain documentation showing hours of crane operator experience and crane related experience separated out by crane type and capacity.

(4) The department may recognize crane operator certification from another state or territory of the United States as equivalent to qualified crane operator requirements if the department determines that the other jurisdiction's credentialing standards are substantially similar to the qualified crane operator requirements.

(5) For experience obtained prior to January 1, 2010, the employer may accept a signed declaration from the crane operator attesting to actual hours of crane operator experience and crane related experience separated out by crane type and capacity. Hours documented prior to 2010 will count towards the hour requirements of actual crane operating experience and crane related experience.

Note: For experience obtained while working outside of the department's jurisdiction, the employer may accept a signed declaration from the crane operator attesting to actual hours of crane operator experience and crane related experience separated out by crane type and capacity.

(6) Beginning January 1, 2010, crane operator experience and crane related experience must be documented and separated out by crane type and capacity. If the employer is documenting crane operating and/or related crane experience hours, the employer must provide a copy of the hours to the operator as soon as practical, if requested.

WSR 08-22-081
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed November 4, 2008, 11:11 a.m., effective December 5, 2008]

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

Purpose: The purpose of this rule making is to repeal sections of chapter 296-150M WAC that were moved into chapter 296-150I WAC on June 30, 2008. The program consolidated all the requirements for mobile and manufactured home installation into one chapter and needs to repeal the information for clarity and ease of use.

Citation of Existing Rules Affected by this Order: Repealing WAC 296-150M-0600 Who establishes standards for installation of manufactured homes?, 296-150M-0610 What instructions are used for a manufactured home installation?, 296-150M-0614 How may I obtain a copy of the American National Standards Institute (ANSI) A225.1-Manufactured Homes Installation?, 296-150M-0615 What are the requirements for temporary placement of manufactured (mobile) homes?, 296-150M-0620 Do local enforcement agencies have special requirements for installing manufactured homes in hazardous areas?, 296-150M-0630 Who may install a manufactured home?, 296-150M-0640 Does a person who installs a manufactured home need an installation permit?, 296-150M-0650 Does a manufactured home installation require an inspection?, 296-150M-0655 How does the local enforcement agency gain access to the manufacturer's installation instructions?, 296-150M-0660 What are the requirements for on-site structures and who regulates them?, and 296-150M-0670 What happens if a dispute arises concerning an installation requirement?

Statutory Authority for Adoption: Chapter 43.22 RCW.

Adopted under notice filed as WSR 08-17-069 on August 19, 2008.

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 11.

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 11.

Date Adopted: November 4, 2008.

Judy Schurke
Director

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-150M-0600	Who establishes standards for installation of manufactured homes?
WAC 296-150M-0610	What instructions are used for a manufactured home installation?
WAC 296-150M-0614	How may I obtain a copy of the American National Standards Institute (ANSI) A225.1-Manufactured Homes Installation?
WAC 296-150M-0615	What are the requirements for temporary placement of manufactured (mobile) homes?
WAC 296-150M-0620	Do local enforcement agencies have special requirements for installing manufactured homes in hazardous areas?
WAC 296-150M-0630	Who may install a manufactured home?
WAC 296-150M-0640	Does a person who installs a manufactured home need an installation permit?
WAC 296-150M-0650	Does a manufactured home installation require an inspection?
WAC 296-150M-0655	How does the local enforcement agency gain access to the manufacturer's installation instructions?
WAC 296-150M-0660	What are the requirements for on-site structures and who regulates them?
WAC 296-150M-0670	What happens if a dispute arises concerning an installation requirement?

WSR 08-22-083**PERMANENT RULES****DEPARTMENT OF
FINANCIAL INSTITUTIONS**

[Filed November 4, 2008, 11:17 a.m., effective December 5, 2008]

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

Purpose: The purpose of the proposed rule is to provide guidance to those affected by the law, including commercial and alien banks under Title 30 RCW, savings banks under Title 32 RCW, savings associations under Title 33 RCW, credit unions under chapter 31.12 RCW, consumer loan companies under chapter 31.04 RCW, and mortgage brokers under chapter 19.146 RCW.

Statutory Authority for Adoption: RCW 43.320.040, chapter 19.144 RCW.

Adopted under notice filed as WSR 08-18-082 on September 3, 2008.

Changes Other than Editing from Proposed to Adopted Version: 1. WAC 208-600-200 (2)(f)(i). The sentence is amended to clarify that when calculating the fully indexed rate, the current value of the rate index is taken from the time the loan was made. 2. WAC 208-600-200 [(2)](j). The definition of yield spread premium is removed. 3. WAC 208-600-200 (4)(a). A sentence is added to instruct the form preparer where the contents of (a) are placed on the form. 4. WAC 208-600-200 (4)(o). Rate lock information is added as a material term. 5. WAC 208-600-200(9). The section is renumbered to (7) and moved to follow (6); the rest of the section is renumbered accordingly.

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

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

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

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

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

Date Adopted: November 4, 2008.

Deborah Bortner, Director
Division of Consumer Services

Chapter 208-600 WAC**MORTGAGE LENDING AND HOME OWNERSHIP**NEW SECTION

WAC 208-600-100 Reserved.

NEW SECTION**WAC 208-600-200 Residential mortgage loan one page disclosure summary. (1) Purpose and scope of rule.**

This rule is the result of legislation recommended by the Washington state task force on homeowner security. The legislation was enacted by the Washington state legislature, at chapter 108, Laws of 2008, and codified in chapter 19.144 RCW. The stated intent of the law is to enhance responsible mortgage lending, protect borrowers, and preserve access to credit in the residential real estate market. The law requires disclosure of certain material terms of residential mortgage loans. The law also provides the department of financial institutions (DFI) with the discretionary regulatory authority to require disclosure of additional information, to clarify material terms, and to otherwise protect borrowers as needed in the residential mortgage loan market. The law mandates the one page disclosure summary in RCW 19.144.020(2), and authorizes DFI, under RCW 19.144.020(3), to require additional disclosures for the purpose of protecting borrowers.

(2) **Definitions.** For the purposes of this section, the following definitions apply:

(a) "Application" means the same as in the Real Estate Settlement Procedures Act (RESPA), Regulation X, 24 C.F.R. Sec. 3500.2(b).

(b) "Business day" means any day of the week except Sunday and federally recognized bank holidays.

(c) "Closing" means the process of signing the loan documents and disbursing the loan funds under the following two scenarios:

(i) Where the borrower is provided a right of rescission under the Truth in Lending Act, closing occurs at the expiration of the rescission period; or

(ii) Where the borrower is not provided a right of rescission under the Truth in Lending Act, closing occurs at the time the loan documents are signed.

(d) "Discount points" or "points" refer to a fee paid by the borrower to the lender to reduce the interest rate. The points are expressed as a percent of the loan amount. The higher the points paid, the lower the interest rate.

(e) "Finance charge" means the same as in the Truth in Lending Act, Regulation Z, 12 C.F.R. Sec. 226.4 excluding prepaid finance charges.

(f) The "fully indexed rate" is:

(i) The current value of the rate index used by a particular adjustable rate mortgage (ARM) at the time a residential mortgage loan is made; plus

(ii) A margin applied to that ARM which may vary from one transaction to another but stays the same throughout the life of that particular ARM.

(g) The "maximum interest rate" is the highest interest rate allowed under the loan agreement. It is not the default rate.

(h) "Reduced documentation" or "stated income" loan means a loan for which the lender may charge more because the borrower does not provide full documentation of income or assets.

(i) "Residential mortgage loan" means an extension of credit secured by residential real property located in this state upon which is constructed or intended to be constructed, a single-family dwelling or multiple-family dwelling of four or

less units. It does not include a reverse mortgage or a borrower credit transaction that is secured by rental property. It does not include a bridge loan. It does not include loans to individuals making or acquiring a residential mortgage loan solely with his or her own funds for his or her own investment. For purposes of this subsection, a "bridge loan" is any temporary loan, having a maturity of one year or less, for the purpose of acquisition or construction of a dwelling intended to become the borrower's principal dwelling.

For purposes of this definition, residential mortgage loan means a loan used to purchase an owner-occupied, primary residence, or second home.

For purposes of this definition, a residential mortgage loan does not include an extension of credit secured by residential real property located in this state for business, commercial, or agricultural purposes, or an extension of credit secured by residential real property located in this state for the primary purpose of financing income or investment property.

For purposes of this definition, a residential mortgage loan does not include an extension of credit secured by residential real property located in this state for an open or closed-end home equity line of credit (HELOC).

(3) Do I have to provide borrowers with a disclosure summary in addition to all other required disclosures at loan application? Yes. State law now requires a clear, brief one page summary to help borrowers understand their loan terms. See RCW 19.144.020.

(4) What information must be provided in the disclosure summary? The disclosure summary must provide at a minimum the following material terms:

(a) Loan fees that are charged and retained by the broker or lender (for example, processing, underwriting, or document preparation fees). These fees go on the form under "Other Fees."

(b) Discount points the borrower will pay to reduce the interest rate.

(c) Interest rates (initial, fully indexed, maximum).

(d) Broker fee or lender's origination fee.

(e) Broker yield spread premium, expressed as a dollar amount.

(f) Whether the loan contains a prepayment penalty.

(g) Whether the loan contains a balloon payment.

(h) Whether the property taxes and property insurance are included (escrowed) in the loan payment.

(i) Amount of the initial loan payment.

(j) Amount of the fully indexed loan payment.

(k) Amount of the maximum loan payment.

(l) Whether the loan cost or rate is based on reduced documentation.

(m) Principal amount of the loan.

(n) The date the loan resets to a higher interest rate.

(o) Whether the interest rate is locked.

(5) How must I provide the disclosure summary to the borrower? The disclosure summary must be provided on one page separate from any other documents and must use clear, simple, plain language terms that are reasonably understandable to the average person.

(6) When must I provide the disclosure summary?

(a) You must provide the initial disclosure summary to the borrower within three business days following your receipt of a complete loan application.

(b) You must redisclose material loan terms within three days of a significant change, or at least three days before closing, whichever is earlier.

(c) For purposes of this disclosure, "provide" includes sending the disclosure to the borrower's address via the United States Postal Service or other common carrier within the statutory time frames.

(7) Can I provide the disclosure summary electronically? Yes. You may provide the disclosure summary in electronic form, in a manner consistent with the procedure for delivery of electronic disclosure under Regulation Z of the Truth in Lending Act, 12 C.F.R. Part 226, currently in effect, which implements the E-Sign Act of 2000, 15 U.S.C. Sec. 7001 et seq.

(8) What type of change in a material term triggers redisclosure? You must redisclose any significant change in a material term. A "significant change" is any change which results in an increase in the borrower's loan amount or fees as follows:

(a) Any increase in the principal loan amount by five percent or more from the most recently disclosed loan amount;

(b) Any increase in the interest rate greater than one-eighth of one percent;

(c) A change in the loan type (fixed to adjustable or adjustable to fixed);

(d) Any increase in the broker's yield spread premium, the loan origination fee, discount point fees, or any other fees considered finance charges under the Truth in Lending Act, by five hundred dollars or more;

(e) A "significant change" also means any change in the following:

(i) Whether the loan contains a prepayment penalty;

(ii) Whether the loan contains a balloon payment;

(iii) Whether the property taxes and property insurance are included (escrowed) in the loan payment;

(iv) Whether the loan cost or rate is based on reduced documentation.

(9) Will the department create a form I can use? Yes. The department of financial institutions will make a model form available to you. However, you may choose to use a form that you design, as long as it is clear, accurate, contains all of the material terms, uses simple language, and fits on one page.

(10) Do I have to provide borrowers with the disclosure summary if their loan application is denied within three days of being taken? No. If the borrower's loan application is canceled, withdrawn, or denied within three days of being taken, you do not have to provide the disclosure summary.

NEW SECTION

WAC 208-600-300 Reserved.

NEW SECTION

WAC 208-600-400 Reserved.

NEW SECTION

WAC 208-600-500 Reserved.

NEW SECTION

WAC 208-600-600 Reserved.

NEW SECTION

WAC 208-600-700 Reserved.

NEW SECTION

WAC 208-600-800 Reserved.

NEW SECTION

WAC 208-600-900 Reserved.

WSR 08-22-084

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed November 4, 2008, 12:02 p.m., effective December 5, 2008]

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

Purpose: WAC 16-390-060 What are the fees for inspecting beans, peas, lentils, hay and straw?, directs readers to the location of the fees for these services in the Washington Administrative Code. The citations are updated with current references. No substantive changes are made to WAC 16-390-060.

Citation of Existing Rules Affected by this Order: Amending WAC 16-390-060.

Statutory Authority for Adoption: RCW 15.17.030 and chapter 34.05 RCW.

Adopted under notice filed as WSR 08-18-070 on September 2, 2008.

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: November 4, 2008.

Robert W. Gore
Acting Director

AMENDATORY SECTION (Amending WSR 04-11-078, filed 5/18/04, effective 6/18/04)

WAC 16-390-060 ((What are the)) Fees for inspecting beans, peas, lentils, hay and straw((?)), Inspection fees for beans, peas, lentils, hay, and straw are found in the following rule sections:

((WAC Section	Title
WAC 16-239-071	Straight time rate.
WAC 16-239-0902	Fees for official sampling and inspecting without weighing and fees for official sampling only.
WAC 16-239-0904	Fees for other official weighing services.
WAC 16-239-0905	Fees for inspection of submitted samples.
WAC 16-239-0906	Fees for factor analysis.
WAC 16-239-0909	Fees for other stowage examination services.
WAC 16-401-023	Schedule of fees and charges—Establishing hourly rates.)

Beans, Peas, Lentils	
WAC Section	Title
<u>16-240-010</u>	<u>Definitions.</u>
<u>16-240-020</u>	<u>Washington state grain and commodity service points.</u>
<u>16-240-030</u>	<u>Commodities covered by chapter 22.09 RCW.</u>
<u>16-240-032</u>	<u>Grades and standards adopted by Washington state.</u>
<u>16-240-034</u>	<u>Service requests.</u>
<u>16-240-036</u>	<u>Permanent staffing requests.</u>
<u>16-240-038</u>	<u>Revenue minimum.</u>
<u>16-240-040</u>	<u>Official commercial inspection services.</u>
<u>16-240-042</u>	<u>Payment of fees and charges.</u>
<u>16-240-044</u>	<u>GIPSA, FGIS scale authorization.</u>
<u>16-240-046</u>	<u>Straight time rate.</u>
<u>16-240-048</u>	<u>Rates for working outside established business hours (overtime).</u>
<u>16-240-050</u>	<u>Calculating travel time, mileage and per diem.</u>
<u>16-240-052</u>	<u>Fees for stowage examination.</u>
<u>16-240-054</u>	<u>Service cancellation fee.</u>
<u>16-240-060</u>	<u>WSDA grain program fees for service.</u>
<u>16-240-080</u>	<u>Fees for services under the Agricultural Marketing Act of 1946.</u>

<u>Beans, Peas, Lentils</u>	
<u>WAC Section</u>	<u>Title</u>
16-240-090	Fees for other services performed by <u>WSDA</u> .

<u>Hay, Straw</u>	
<u>WAC Section</u>	<u>Title</u>
16-470-900	<u>Schedule of fees and charges—Billing policies and procedures.</u>
16-470-912	<u>Schedule of fees and charges—Applicable fees and charges.</u>

**WSR 08-22-093
PERMANENT RULES
GAMBLING COMMISSION**

[Order 634—Filed November 5, 2008, 9:00 a.m., effective January 1, 2009]

Effective Date of Rule: January 1, 2009.

Purpose: Expedited adoption to fix incorrect citations [citation] to another rules [rule].

Citation of Existing Rules Affected by this Order: Amending WAC 230-17-085.

Statutory Authority for Adoption: RCW 9.46.070 and 34.05.353.

Adopted under notice filed as WSR 08-17-078 on August 19, 2008, and published September 3, 2008.

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: November 5, 2008.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 615, filed 10/24/07, effective 1/1/08)

WAC 230-17-085 Initial orders. (1) Initial orders must be entered in accordance with RCW 34.05.461(3).

(2) An initial order becomes the final order unless a party files a petition for review of the initial order as explained in WAC ((230-17-560)) 230-17-090.