

**WSR 09-04-021**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Filed January 27, 2009, 11:27 a.m.]

The Washington department of fish and wildlife is withdrawing the CR-102 for WAC 220-77-090 and 220-77-095, filed as WSR 08-15-179 on July 23, 2008.

The department will file a new CR-102 for these WACs at a later date.

Loreva M. Preuss  
 Criminal Justice Liaison and  
 Administrative Regulations Coordinator  
 Enforcement Program

**WSR 09-04-032**  
**PROPOSED RULES**  
**GAMBLING COMMISSION**

[Filed January 29, 2009, 1:24 p.m.]

Continuance of WSR 08-17-085.

Preproposal statement of inquiry was filed as WSR 08-05-031.

Title of Rule and Other Identifying Information: Amending WAC 230-15-030 Authorized nonhouse-banked card games; and new section WAC 230-16-157 Electronic poker tables.

Hearing Location(s): Red Lion Hotel, 2300 Evergreen Park Drive, Olympia, WA 98502, (360) 943-4000, on March 13, 2009, at 9:00 a.m.

Date of Intended Adoption: March 13, 2009.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail SusanA@wsgc.wa.gov, fax (360) 486-3625, by March 1, 2009.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by March 1, 2009, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: At their August 2008 meeting, the commission filed a petition for rule change submitted by PokerTek Inc. requesting that electronic poker gambling tables be authorized for use in card rooms. The electronic poker table, PokerPro, provides an opportunity to play poker without a center dealer and uses electronic facsimiles of cards and chips. No physical gambling chips or cards are used during play.

The petition was discussed at the September 2008 and January 2009 study sessions. It was discussed at the October 2008 and November 2008 commission meetings. The petitioner provided a demonstration of the PokerPro table at the October 2008 commission meeting. A commission meeting was not held in December 2008. We anticipate the petition will be discussed at the February 2009 study session and be up for final action at the March 13, 2009, commission meeting.

Reasons Supporting Proposal: After the November 2008 commission meeting, PokerTek submitted the PokerPro table to our electronic gambling lab for a full analysis. Our elec-

tronic gambling lab is reviewing the machine and we anticipate a report will be available for consideration at the March 2009 commission meeting.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Name of Proponent: David Malone, Attorney at Law, Representing PokerTek, Inc., private.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025 because the change would not impose additional costs on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

January 29, 2009

Susan Arland

Rules Coordinator

AMENDATORY SECTION (Amending Order 608, filed 4/10/07, effective 1/1/08)

**WAC 230-15-030 Authorized nonhouse-banked card games.** (1) Only the following nonhouse-banked card games are authorized:

- (a) Poker;
- (b) Hearts;
- (c) Pinochle;
- (d) Cribbage;
- (e) Rummy;
- (f) Panguingue (Pan);
- (g) Pitch; and
- (h) Bid Whist.

(2) Card game licensees must operate these games in the manner explained in the most current version of *The New Complete Hoyle, Revised* or *Hoyle's Modern Encyclopedia of Card Games*, or similar authoritative book on card games we have approved. Card game licensees may make immaterial modifications to the games.

(3) Card game licensees may offer poker with electronic poker tables, as authorized by WAC 230-16-157. The specific poker games offered must comply with the standard rules of play as referenced in subsection (2) of this section, and the following operational rules that are unique to electronic poker tables:

(a) A licensed card room employee must supervise all gaming conducted with the electronic poker table(s); and

(b) Every player must establish an account unique to each individual by presenting, at minimum, valid identification, proof of age, and a signature sample; and

(c) A player may fund his or her account with cash, funds drawn on U.S. bank accounts, or gaming chips issued by the card room licensee; and

(d) A player or card room employee must transfer funds from the player's account to a specified seat at a designated electronic poker table and activate play at the seat by use of a nonvalue identification card unique to the player; and

(e) Neither a player nor card room employee may insert cash or other instruments of value in the electronic poker table; and

(f) Players may purchase chips only at their assigned table through funds accessible from their individual account; and

(g) Fees may be assessed by time, per hand played, or by rake, and a licensed card room employee shall oversee the collection of all fees and the deposit of said fees in the table's electronic drop box; and

(h) A minimum of two or more players is required before a game can begin; and

(i) All wagers must be made with chips issued by and used as part of the electronic poker table; and

(j) Games offered on electronic poker tables must operate as center-dealt games; and

(k) All poker games offered with electronic poker tables must meet all applicable surveillance requirements; and

(l) If a player wins a player supported jackpot or other prize of five hundred dollars or more while playing on an electronic poker table, the winning combination of cards must be recorded by surveillance and an electronic or paper record of the card combination must be generated and retained in accordance with agency rules; and

(m) To cash out, a player must conclude play at the table, remove his or her player account card, and present it with valid photo identification to a licensed card room employee at the cashier's cage; the card room employee must confirm the player's identity and, if applicable, cause appropriate financial and/or tax reporting forms to be completed; and

(n) Because the electronic poker tables operate with a self-contained accounting system, no count room procedures are required; however, all fees collected by electronic poker tables will be recorded as part of the card room's daily records at least once every twenty-four hours.

#### NEW SECTION

**WAC 230-16-157 Electronic poker tables.** (1) Manufacturers of electronic poker tables must ensure their poker table system:

(a) Reproduces accurate facsimiles of a single, standard deck of cards; and

(b) Randomly shuffles cards before each round of play; and

(c) Reproduces accurate facsimiles of chips, clearly evidencing chip color and value; and

(d) Employs an accounting system or software to document the method of collection for game fees and, if applicable, player-supported jackpot funds and fees; and

(e) Contains a backup system that records and displays at least five previous rounds of play; and

(f) Contains security protocol which prevents unauthorized access; and

(g) May be operated only by card room personnel and does not allow players to play solely against the equipment; and

(h) Allows testing of the computer software; and

(i) Operates in accordance with approved internal controls specific to electronic poker tables.

(2) Manufacturers must have a licensed gaming laboratory test and certify the system complies with subsection (1) of this section.

(3) Manufacturers must also submit their system to us for testing, as explained in WAC 230-06-050, with the certification from the independent laboratory and receive our approval before electronic poker tables may be offered for play.

#### **WSR 09-04-049**

#### **PROPOSED RULES**

#### **STATE BOARD OF HEALTH**

[Filed January 30, 2009, 12:33 p.m.]

Continuance of WSR 08-15-174.

Preproposal statement of inquiry was filed as WSR 04-20-050.

Title of Rule and Other Identifying Information: Chapter 246-366A WAC, Primary and secondary schools, this chapter provides minimum health and safety rules for all schools in Washington state. The original CR-102 is being amended to provide notice of a new date of intended adoption.

Date of Intended Adoption: March 11, 2009.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The state board of health is filing a continuance to WSR 08-15-175 [08-15-174] to set a new adoption date. The purpose of the proposal is to update the current chapter 246-366 WAC to include provisions for water quality sampling, indoor air quality, and safety in areas such as playgrounds, labs, and shops. The proposal repeals the former chapter 246-366 WAC and recodifies it into a new chapter 246-366A WAC. The entire new chapter is organized to provide clarity for those provisions that are construction related and those provisions that are operation and maintenance related.

Reasons Supporting Proposal: Students, parents, and teachers requested the state board of health update [update] and strengthen the primary and secondary school rules to better protect children's health and safety. The last major update of the chapter was in 1971 and standards for health and safety have changed considerably since that time. Further, the rules needed to be rewritten to provide clarity.

Statutory Authority for Adoption: RCW 43.20.050.

Statute Being Implemented: RCW 43.20.050.

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

Name of Proponent: State board of health, governmental.

Name of Agency Personnel Responsible for Drafting: Ned Therien, Tumwater, Washington, (360) 236-4103; Implementation and Enforcement: Nancy Bernard, Tumwater, Washington, (360) 236-3072.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

**Brief Description of the Rule:** Approximately one million children attend schools in Washington state. The state board of health (the board) is required to establish rules for environmental health and safety in all schools and has done so since the 1960s. The current framework in chapter 246-366 WAC, Primary and secondary schools, has been in place since 1971. These rules apply to two hundred ninety-five public school districts with approximately two thousand three hundred school facilities as well as approximately four hundred fifty private schools. These rules are administered by local health jurisdictions.

In 2004, the board directed the department of health (the department) to begin a rule-making process in response to growing concerns that the rules were generally outdated and no longer adequate for indoor air quality, drinking water, and safety in areas such as laboratories and playgrounds. As a result, this proposal will repeal the current chapter 246-366 WAC and replace it with chapter 246-366A WAC that has been reorganized and rewritten to clarify those requirements that are construction related and those that are a part of on-going operation and maintenance of facilities. Many parts of the current chapter have been reorganized and rewritten for clarity, but have not changed significantly.

The current rules, chapter 246-366 WAC, establishes minimum environmental health and safety standards for schools in Washington state. The specific objectives of the proposed revisions are to protect students and users of school facilities from environmental hazards by:

- Delineating responsibilities of the school boards and officials, the local board of health and health officer, and the department;

| School Type     | Size of School (sq/ft) | Students per School | Start-up*O&M Costs per School | Start-up O&M Costs per Student | Annual On-going O&M Costs per School | Annual On-going O&M Costs per Student |
|-----------------|------------------------|---------------------|-------------------------------|--------------------------------|--------------------------------------|---------------------------------------|
| Elementary      | 65,000                 | 489                 | \$23,774                      | \$48.62                        | \$9,042                              | \$18.49                               |
| Middle/Jr. High | 95,000                 | 688                 | \$22,224                      | \$32.30                        | \$7,239                              | \$10.52                               |
| High School     | 225,000                | 1,442               | \$23,900                      | \$16.57                        | \$8,481                              | \$5.88                                |

\*Start-up costs reflect the one-time costs for water quality, HVAC retrofit, and policy development although actual implementation dates for these requirements will vary depending on the requirement and school type.

**Disproportionate Impact on Small Businesses:** The department has determined that these rules may impose a disproportionate impact on small businesses. The department assumes that private schools are generally located in smaller sized facilities with fewer students per school. Based on information from the Office of Superintendent of Public Instruction's web site, the approximate five hundred private schools serve on average one hundred fifty-four students each. Based on this fact and coupled with the reality of economies of scale, these privately-owned schools will incur a higher average cost per square foot and per student to comply with these rules than larger public schools. Thus, using any of the methods provided for in statute to gauge impact (cost per employee (teachers and other school staff), cost per hour of labor (custodial staff), or cost per hundred dollars of sales (tuition)), these rules will have a disproportionate impact on privately-owned schools.

- Improving indoor air quality;
- Improving playground safety;
- Improving water quality monitoring;
- Improving mold prevention and remediation; and
- Improving overall school safety.

**Small Business Economic Impact Statement Requirement:** The department has reviewed this proposal and has determined that a small business economic impact statement is required because these rules affect privately-owned schools, which, for the purposes of this analysis, are considered businesses. Small public schools are not included in this analysis as they are not considered a business under the Regulatory Fairness Act, chapter 19.85 RCW.

**Industries Affected by the Rule:** The industry affected by these rules is privately owned schools.

**Costs of Complying with the Rule:** The tables below reflect the incremental construction costs and operation and maintenance (O&M) costs for these rules. These costs are expressed as costs per school and cost per student. These costs are identified and explained in the preliminary significant analysis for these rules.

The department assumes, with few exceptions such as playground equipment standards and HVAC costs, these costs apply to a representative school regardless of ownership type, i.e., public or private.

| School Type     | Size of Representative School (sq/ft) | Incremental Construction Costs per School | Incremental Construction Costs per Square Foot |
|-----------------|---------------------------------------|---|--|
| Elementary      | 65,000                                | \$317,850                                 | \$4.89   |
| Middle/Jr. High | 95,000                                | \$519,650                                 | \$5.47   |
| High School     | 225,000                               | \$960,750                                 | \$4.27   |

**Mitigation Measures:** The following describes mitigation measures considered during the development of these rules.

**Reduce, modify, or eliminate substantive regulatory requirements:** These rules do not propose to reduce, modify, or eliminate substantive regulatory requirements for small businesses, to do so would create dual standards that, in effect, would provide different health and safety protection for students based on school size or school ownership type.

**Simplify, reduce, or eliminate record-keeping and reporting requirements:** These rules identify minimum record-keeping and reporting requirements necessary to achieve the intent of these rules.

**Reduce the frequency of inspections:** These rules establish consistent inspection frequency for all schools regardless of size or ownership type. However, the proposal grants local health jurisdictions the discretion to allow

schools to self-inspect two out of every three years as a way to reduce costs.

**Delay compliance timetables:** O&M - Two components of these rules have delayed implementation dates. The change from annual to periodic inspections is delayed one year from the effective date of these rules. Water quality monitoring for lead and copper have staggered effective dates starting with elementary schools in the first two years, junior high schools the third year, and senior high schools the fourth year.

**Construction -** There are conditions that modify the applicability of certain construction requirements of this chapter. The first in WAC 246-366A-005 provides for application of the existing construction requirements of chapter 246-366 WAC if the local permitting jurisdiction received a complete building permit application for school construction prior to September 1, 2010. The site review requirements of WAC 246-366A-030 allow for the same deviation from construction-related requirements if construction plan notification to the local health officer is made prior to September 1, 2010. WAC 246-366A-090 provides deviation from the new heating and ventilation construction requirements related to ducted air returns and upgraded duct lining if the local permitting jurisdiction received a complete building permit application prior to September 1, 2013.

**Reduce or modify fine schedules for noncompliance:** This mitigation measure is not possible to apply to this rule making as there are no fine schedules established in these rules.

**Other mitigation techniques:** The department will provide privately-owned schools with all model policies (e.g., approved use and management of hazardous materials, use of upholstered furniture, animals in schools, safety standards, etc.) to help schools comply with these rules with the lowest possible cost.

These rules allow for variance requests to the local health officer so that schools can meet the intent of these rules in alternative, less costly ways.

**Small Business Involvement in Rule Development:** The department invited private school representatives to serve on the original school rule development committee as well as the costing workshop and the later rule revision team. Proposals from the representatives of private schools were considered as part of the process of rule development, but did not include proposed rule changes to specifically accommodate the special needs of private schools.

**Jobs Created or Lost as a Result of the Rule:** The department assumes that private schools will meet the intent of these rules in the least costly manner, which could include approved variances through the local health officer. The department assumes that any additional costs incurred by private schools will be passed on to parents via increased tuition rates. Therefore, the department and the board conclude that these rules will not result in any jobs created or lost.

A copy of the statement may be obtained by contacting Vicki Bouvier, P.O. Box 47820, Olympia, WA 98504-7820, phone (360) 236-3011, fax (360) 236-2250, e-mail vicki.bouvier@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be

obtained by contacting Vicki Bouvier, P.O. Box 47820, Olympia, WA 98504-7820, phone (360) 236-3011, fax (360) 236-2250, e-mail vicki.bouvier@doh.wa.gov.

Craig McLaughlin  
Executive Director

## Chapter 246-366A WAC

### PRIMARY AND SECONDARY SCHOOLS

#### NEW SECTION

##### **WAC 246-366A-001 Introduction and purpose.**

These rules establish minimum environmental health and safety standards for school facilities and are intended to promote a healthy and safe school environment.

#### NEW SECTION

**WAC 246-366A-005 Applicability.** (1) These rules apply to all school facilities operated for the primary purpose of providing education at the kindergarten through twelfth grade (K-12) levels, and preschools that are part of such facilities except:

(a) Private residences used for home-based instruction as defined by RCW 28A.225.010(4);

(b) Facilities hosting educational programs where educational instruction is not a primary purpose, including, but not limited to, detention centers, jails, hospitals, mental health units, or long-term care facilities;

(c) Private facilities where tutoring is the primary purpose; and

(d) Public or private postsecondary education facilities providing instruction to students primarily enrolled in secondary school.

(2) These rules are in addition to all other requirements that apply to schools and do not affect the applicability of those requirements.

(3) Additional state board of health environmental health and safety rules that apply to school facilities include, but are not limited to:

(a) Chapter 246-215 WAC Food services;

(b) Chapter 246-217 WAC Food worker cards;

(c) Chapter 246-260 WAC Water recreation facilities;

(d) Chapter 246-262 WAC Recreational water contact facilities;

(e) Chapter 246-272A WAC On-site sewage systems;

(f) Chapter 246-272B WAC Large on-site sewage system regulations;

(g) Chapter 246-290 WAC Public water supplies; and

(h) Chapter 246-291 WAC Group B public water systems.

(4) These rules are not intended to replace or supersede the department of labor and industries' authority and jurisdiction over employee safety and health.

(5) For a school undergoing an alteration or addition, WAC 246-366A-040, 246-366A-060, 246-366A-090, 246-366A-100, 246-366A-110, 246-366A-120, 246-366A-150, and 246-366A-160 apply only to:

(a) Areas that are part of the addition;

(b) Areas undergoing alteration; and

(c) Changes to existing building systems, such as heating and ventilation systems, when those changes are included in construction documents or a building permit application describing the alteration or addition.

(6) If the local permitting jurisdiction received a complete building permit application for school construction prior to September 1, 2010, the construction-related requirements of chapter 246-366 WAC in effect at the time of application apply.

#### NEW SECTION

**WAC 246-366A-010 Definitions.** The following definitions apply to these rules:

(1) "Addition" means an extension or increase in floor area or height of a building or structure.

(2) "Air contaminants of public health importance" means pollutants in the indoor air that could, depending on dose and circumstances, have health impacts, including but not limited to:

(a) Volatile organic compounds, for example, formaldehyde and benzene;

(b) Combustion by-products, for example, carbon monoxide and nitrogen oxides;

(c) Vapors and gases, for example, chlorine, mercury, and ozone;

(d) Heavy metal dusts and fumes, for example, chromium and lead; and

(e) Particulates, for example, wood and ceramic dust.

(3) "Alteration" means any construction or renovation to an existing structure other than repair or addition.

(4) "Construction" or "construction project" means any activity subject to state or local building codes.

(5) "Construction documents" means written, graphic, and pictorial documents prepared or assembled for describing the design, location, and physical characteristics of the elements of a project necessary for obtaining a building permit.

(6) "Contaminant" means any hazardous material that occurs at greater than natural background levels.

(7) "Decibel (dB)" means a standard unit of measurement of sound pressure.

(8) "Decibel, A-weighted (dBA)" means a decibel measure that has been weighted in accordance with the A-weighting scale. The A-weighting adjusts sound level as a function of frequency to correspond approximately to the sensitivity of human hearing.

(9) "Department" means the Washington state department of health.

(10) "Drinking fountain" means the type of plumbing fixture that delivers a stream of water for drinking without actively cooling the water.

(11) "Emergency eye wash" means a hands-free device that:

(a) Irrigates and flushes both eyes simultaneously with tepid potable water;

(b) Activates an on-off valve in one second or less and remains on without user assistance until intentionally turned off; and

(c) Delivers at least 0.4 gallons (1.5 liters) of water per minute for at least fifteen minutes.

(12) "Emergency shower" means a hand-activated shower that delivers tepid potable water to cascade over the user's entire body at a minimum rate of 20 gallons (75 liters) per minute for at least fifteen minutes.

(13) "Equivalent sound level ( $L_{eq}$ )" means the level of a constant sound that, over a given time period, contains the same amount of sound energy as the measured fluctuating sound.

(14) "Faucet" means the type of plumbing fixture that is a valved outlet device attached to a pipe that normally serves a sink or tub and can discharge both hot and cold water.

(15) "First draw sample" means a water sample collected immediately upon opening a plumbing fixture that has not been used for at least eight hours prior to collection.

(16) "Flush sample" means a water sample collected after allowing cold water to run for at least thirty seconds from a plumbing fixture that has not been used for at least eight hours prior to collection.

(17) "Foot-candle" means a unit of measure of the intensity of light falling on a surface, equal to one lumen per square foot.

(18) "Hazardous materials" means toxic, corrosive, flammable, explosive, persistent, or chemically reactive substances that, depending on dose and circumstances, pose a threat to human health.

(19) "Imminent health hazard" means a significant threat or significant danger to health or safety that requires immediate action to prevent serious illness, injury, or death.

(20) "Laboratory" means instructional areas of the school facility where students might be exposed to greater potential health and safety hazards than typically exist in general academic classrooms. Laboratories include, but are not limited to, science laboratories (for example: Chemistry, physics, material science, and biology) and art laboratories (for example: Print-making, photography, and ceramics).

(21) "Local board of health" means the county or district board of health as defined in RCW 70.05.010(3).

(22) "Local health officer" means the legally qualified physician who has been appointed as the health officer for the county or district public health department as defined in RCW 70.05.010, or his or her authorized representative, including, but not limited to, the environmental health director.

(23) "Mechanical exhaust ventilation" means the removal of indoor air to the outside of the building by mechanical means.

(24) "Noise criterion (NC)" means a system for rating the noise level in an occupied area by comparing actual or calculated sound level spectra with a series of established octave band spectra.

(25) "Noise criterion 35 (NC35)" means the curve for specifying the maximum permissible sound pressure level for each frequency band.

(26) "Preschool" means an instructional curriculum and portion of a school facility designed to instruct children not old enough to attend kindergarten.

(27) "Portable" means any relocatable structure that is transported to a school site and is placed or assembled there for use by students as part of a school facility.

(28) "Repair" means the reconstruction or renewal of any part of an existing school facility for the purpose of its maintenance.

(29) "School" means any public, religious-affiliated, or private institution for instructing students in any grade from kindergarten through twelfth grade.

(30) "School board" means an appointed or elected board whose primary responsibility is to operate schools or to contract for school services and includes the governing body or owner of a private school.

(31) "School facility" means school-owned or leased buildings and grounds intended for student use including, but not limited to, portables, playgrounds and sports fields.

(32) "School officials" means those persons designated by the school board as responsible for planning, policy development, budgeting, management, or other administrative functions.

(33) "Shop" means instructional areas of the school facility where students are exposed to greater health and safety hazards than typically exist in general academic classrooms. Shops include, but are not limited to, industrial and agricultural shops, including career and technical education (for example: Metal-working, wood-working, construction, automotive, and horticulture).

(34) "Site" means any real property used or proposed to be used as a location for a school.

(35) "Source capture system" means a mechanical exhaust system designed and constructed to capture air contaminants at their source and release air contaminants to the outdoor atmosphere.

(36) "Tempered water" means water having a temperature range between eighty-five degrees Fahrenheit and one hundred ten degrees Fahrenheit.

(37) "Tepid water" means water having a temperature range between sixty degrees Fahrenheit and ninety-five degrees Fahrenheit.

(38) "Toxic" means having the properties to cause or significantly contribute to death, injury, or illness.

(39) "Variance" means an alternative to a specific requirement in these rules, approved by the local health officer, that provides a comparable level of protection.

(40) "Very low lead plumbing fixture" means plumbing fittings or fixtures used in the installation or repair of any plumbing providing water for human consumption that contain less than 0.3% lead by weight.

(41) "Water cooler" means the type of plumbing fixture that is a mechanical device affixed to drinking water supply plumbing that actively cools the water.

#### NEW SECTION

**WAC 246-366A-015 Guidance for rule implementation and compliance.** (1) The department, in cooperation with the office of superintendent of public instruction, shall:

(a) Update the *Health and Safety Guide for K-12 Schools in Washington* (the guide) at least every four years; and

(b) Make the guide available on the department's web site.

(2) The guide is the primary source of guidance for local health officers and school officials implementing these rules.

#### NEW SECTION

**WAC 246-366A-020 Responsibilities—General.** (1) Responsibilities of school officials. School officials shall:

(a) Maintain conditions within the school environment that will not endanger health and safety.

(b) Identify, assess, and mitigate or correct environmental health and safety hazards in their school facilities, establish necessary protective procedures, use appropriate controls, and take action to protect or separate those at risk from identified hazards, consistent with the level of risk presented by the specific hazard, until mitigation or correction is complete.

(c) When conditions are identified that pose an imminent health hazard:

(i) Take immediate action to mitigate hazards and prevent exposure;

(ii) Promptly notify the local health officer; and

(iii) Promptly inform school facility staff, students, and parents about the conditions and actions taken in response.

(d) Retain for at least six years, unless otherwise required by other state or federal laws, records pertaining to:

(i) Health and safety inspections of the school facilities, including the final report findings, correction schedules established in consultation with the local health officer, and recommended actions;

(ii) Imminent health hazards identified under this section and WAC 246-366A-190, and actions taken in response;

(iii) Site assessment, review, and approval as required under WAC 246-366A-030;

(iv) Construction project plan review and approval as required under WAC 246-366A-040; and

(v) Playground plan review and approval as required under WAC 246-366A-150.

(e) Have the records described in this subsection available for the public, except where otherwise provided by applicable public disclosure law.

(f) Prepare a report to the public and the school board at least annually about environmental health and safety conditions in the schools. The report must include an explanation of:

(i) Variances obtained from the local health officer regarding requirements of these rules;

(ii) Dates of environmental health and safety inspections conducted under requirements of these rules and any deficiencies not corrected within the time frame established by the local health officer in accordance with subsection (2) of this section;

(iii) Any imminent health hazards identified; and

(iv) A method for school officials to receive public comment about the report.

(2) Responsibilities of the local health officer.

(a) Except as provided in (b) of this subsection, the local health officer shall:

(i) Periodically conduct an environmental health and safety inspection of each school facility within his or her jurisdiction. Beginning September 1, 2011, those inspections must be conducted at least once each year.

(ii) Notify school officials at the time of discovery or immediately following the inspection if conditions that pose an imminent health hazard are identified, and recommend actions to mitigate the hazards and prevent exposure.

(iii) Consult with school officials upon completion of the inspection about findings and recommended follow-up actions. Approaches and timelines used to address noncompliant conditions will depend on the level of risk to health and safety presented by the condition, and may include a correction schedule developed in consultation with school officials.

(iv) Develop draft and final inspection reports, in consultation with school officials, within sixty days after conducting an inspection. The report must include inspection findings related to this rule and any required correction schedule.

(v) Confirm, as needed, that corrections are accomplished.

(vi) Retain for at least six years, unless otherwise required by other state or federal laws, records pertaining to:

(A) Health and safety inspections of the school facilities performed by the local health officer, including, but not limited to, the final inspection report and correction schedules; and

(B) Imminent health hazards identified under this section and WAC 246-366A-190, and local health officer actions taken in response.

(vii) Have the records described in this subsection available for the public, except where otherwise provided by applicable public disclosure law.

(b) The local health officer may allow a school official or qualified designee to conduct a required inspection under a program approved by the local health officer not more than two out of every three years. The program must include provisions for:

(i) Assuring that the school official or designee conducting the inspection has attended training in the standards, techniques, and methods used to conduct an environmental health and safety inspection;

(ii) Completing a standardized checklist at each inspection;

(iii) Providing a written report to the local health officer about the findings of the inspection;

(iv) Notifying the local health officer regarding any identified imminent health hazards and coordinating with the health officer to mitigate hazards and prevent exposure; and

(v) Consulting with the local health officer on follow-up and corrective actions needed to address noncompliant conditions that do not pose an imminent health hazard.

(3) Responsibilities of the department.

(a) The department shall:

(i) Report to the state board of health once every three years. The report must include a summary of:

(A) Variances granted by local health officers; and

(B) Rule implementation status.

(ii) Make technical assistance and training available to local health jurisdictions, educational service districts, school

districts, and school personnel for implementation of these rules, including:

(A) Inspection techniques and procedures;

(B) Inspection materials and checklists;

(C) Variance request evaluations; and

(D) Model environmental health and safety programs for schools and local health jurisdictions.

(b) The department, at the request of the local health officer, may assist in investigating environmental health and safety incidents at schools.

(c) Establish a school rule technical advisory committee to help promote consistent statewide interpretation and implementation of these rules.

#### NEW SECTION

**WAC 246-366A-030 Site assessment, review, and approval.** (1) A full site assessment and local health officer review and approval to determine environmental health and safety risk, is required for:

(a) Constructing a new school facility on a site that was previously undeveloped or developed for other purposes; or

(b) Converting an existing structure for primary use as a school facility.

(2) The local health officer shall determine, in consultation with school officials, the need for and scope of the site assessment, review, and approval process for:

(a) Constructing a new school facility on an existing school site;

(b) Constructing an addition to an existing school facility; and

(c) Converting part of an existing structure primarily used for other purposes into a school facility.

(3) A full site assessment must include:

(a) A Phase 1 Environmental Site Assessment (ESA) that meets the requirements of the *American Society for Testing and Materials (ASTM) Standard #1527-05* (published November 2005);

(b) Sampling and analysis of potential contaminants if the Phase 1 ESA indicates that hazardous materials may be present. Sampling and analysis must comply with applicable rules of the Washington state department of ecology;

(c) A noise assessment. Noise from any source must not exceed an hourly average of 55 dBA (the mean sound energy level for a specified time ( $Leq_{60\text{ minutes}}$ )) and must not exceed an hourly maximum (the maximum sound level recorded during a specified time period ( $L_{max}$ )) of 75 dBA during the time of day the school is in session. Sites exceeding these sound levels are acceptable if a plan for noise reduction is included in the new construction proposal and the plan for noise reduction is approved by the local health officer.

(4) School officials shall:

(a) Notify the local health officer within ninety days of starting preliminary planning for school construction that may require a site assessment with local health officer review and approval.

(b) Consult with the local health officer throughout the plan development phase regarding the scope of the site assessment and the timeline for completion of the site assessment.

(c) Have a site assessment completed when required under this section.

(d) Submit a written report to the local health officer assessing the potential impact of health and safety risks presented by the proposed site, including, but not limited to the following:

(i) The findings and results obtained under subsection (3) of this section;

(ii) Analysis of the findings;

(iii) Description of any mitigation proposed to address identified health and safety risks present at the site; and

(iv) Any site assessment-related information requested by the local health officer to complete the site assessment review and approval process.

(e) Obtain site review and written site approval from the local health officer when required under subsection (1) or (2) of this section.

(5) The local health officer shall:

(a) Conduct an inspection of the proposed site;

(b) Review the site assessment for environmental health and safety risk;

(c) For site assessments according to subsection (1) of this section, provide written approval, describe site deficiencies needing mitigation to obtain approval, or deny use of the proposed school facility site within sixty days of receiving a complete request unless the school officials and the local health officer agree to a different timeline; and

(d) For site assessments according to subsection (2) of this section, provide written approval or describe site deficiencies needing mitigation to obtain approval of the proposed school facility site within sixty days of receiving a complete request unless the school officials and the local health officer agree to a different timeline.

(6) If school officials notified the local health officer prior to September 1, 2010, that construction is planned for a particular site, the site review requirements in effect at the time of notification apply, provided that school officials comply with all agreed on timelines for completion.

#### NEW SECTION

##### **WAC 246-366A-040 Construction project review.** (1)

The following school facility construction projects are subject to review by the local health officer:

(a) Construction of a new school facility;

(b) Schools established in all or part of any existing structures previously used for other purposes;

(c) Addition to or alteration of an existing school facility consisting of more than five thousand square feet of floor area or having a value of more than ten percent of the total replacement value of the school facility;

(d) Any construction of a shop or laboratory for use by students; and

(e) Installation of a portable.

(2) Review and approval requirements for installation of a playground are established in WAC 246-366A-150.

(3) School officials shall:

(a) Consult with the local health officer during preliminary planning for school construction projects that are subject to the requirements of this section;

(b) Invite the local health officer to a predevelopment conference with school officials and project design professionals to participate in the discussion about the preliminary design to highlight health and safety matters and requirements of these rules;

(c) Obtain construction project review and written approval from the local health officer regarding environmental health and safety requirements in these rules before starting construction;

(d) Provide construction documents to the local health officer at the same time as the local building official to facilitate a concurrent and timely review; and

(e) Provide additional documents requested by the local health officer, which may include, but are not limited to, written statements signed by the project's licensed professional engineer verifying that design elements comply with requirements specified by these rules.

(4) The local health officer shall:

(a) Consult with school officials and determine what is required for plan review and approval;

(b) Review construction documents to confirm that the health and safety requirements of these rules are met;

(c) Identify and request any additional documents required to determine compliance with requirements specified by these rules; and

(d) Provide written approval, or describe plan deficiencies needing change to obtain approval, of the construction project within sixty days of receiving all documents needed to complete the review, unless the school officials and the local health officer agree to a different timeline.

#### NEW SECTION

##### **WAC 246-366A-050 Preoccupancy inspection of construction projects.** (1) School officials shall:

(a) Obtain a preoccupancy inspection by the local health officer of construction projects subject to WAC 246-366A-040(1) before allowing school facilities to be occupied; and

(b) Notify the local health officer at least five business days before a desired preoccupancy inspection.

(2) The local health officer:

(a) Shall coordinate all construction-related inspections with the on-site project manager or other appropriate person identified by school officials.

(b) May inspect for compliance with these rules during the construction phase.

(c) Shall conduct a preoccupancy inspection for construction projects subject to WAC 246-366A-040(1) to verify compliance with these rules before the building is occupied and not more than five business days after the date requested by school officials.

(i) If an imminent health hazard is identified, a solution must be identified and agreed to by school officials, the local health officer, and the local building official and implemented by school officials before the affected portion of the building is occupied.

(ii) If other conditions of noncompliance with these rules are identified, school officials shall be provided with a written list of items and consulted in developing a correction schedule, based on the level of risk to health and safety.



(d) May reinspect to confirm satisfactory correction of the items identified under (c) of this subsection.

#### NEW SECTION

**WAC 246-366A-060 General construction requirements.** School officials shall:

(1) Design school facilities to minimize conditions that attract, shelter, and promote the propagation of insects, rodents, bats, birds, and other pests of public health significance. This subsection does not mandate the installation of window screens nor does it prohibit the installation of retention ponds or rain gardens.

(2) Design school facilities with windows in sufficient number, size, and location to enable students to see outside at least fifty percent of the school day. Windows are optional in special purpose instructional areas including, but not limited to, theaters, music areas, multipurpose areas, gymnasiums, auditoriums, shops, laboratories, libraries, and seminar areas.

(3) Provide sun control to exclude direct sunlight from window areas and skylights of instructional areas, assembly rooms and meeting rooms during at least eighty percent of the normal school hours. Each area must be considered as an individual case. Sun control is not required for sun angles less than forty-two degrees up from the horizontal. Sun control is not required if air conditioning is provided or special glass is installed having a total solar energy transmission factor less than sixty percent.

(4) Provide surfaces on steps that reduce the risk of injury caused by slipping.

(5) Provide floors throughout the school facility that are appropriate for the intended use, easily cleanable and can be dried effectively to inhibit mold growth. These floor materials include, but are not limited to, wood, vinyl, linoleum, and tightly woven carpets with water impervious backing.

(6) Provide reasonably sufficient space for the storage of play equipment, instructional equipment, and outdoor clothing. The space must be reasonably accessible, lighted, and ventilated.

(7) Provide measures to reduce potential injury from fall hazards, including but not limited to, retaining walls; performance arts stages and orchestra pits; balconies; mezzanines; and other similar areas of drop-off to a lower floor.

(8) Prohibit the use of chromated copper arsenate or creosote treated wood where it is accessible to students.

(9) Provide the following items for health rooms, if health rooms are provided:

- (a) The means to visually supervise and provide privacy of room occupants;
- (b) Surfaces that can be easily cleaned and sanitized;
- (c) A handwashing sink in the room;
- (d) An adjoining restroom; and
- (e) Mechanical exhaust ventilation so that air does not flow from the health room to other parts of the school facility.

#### NEW SECTION

**WAC 246-366A-065 General operation and maintenance requirements.** School officials shall:

- (1) Keep school facilities clean and in good condition.

(2) Mitigate any environmental health and safety hazards.

(3) Control conditions that attract, shelter, and promote the propagation of insects, rodents, bats, birds, and other pests of public health significance. This subsection does not mandate the routine installation of window screens nor does it prohibit the proper operation of retention ponds or rain gardens.

(4) Label, use, store and dispose of hazardous materials to:

- (a) Prevent health and safety hazards;
- (b) Keep incompatible substances apart from each other;
- (c) Prevent unauthorized access and use; and
- (d) Follow procedures according to material safety data sheet instructions.

(5) Select supplies and methods of use that reduce exposure to hazardous materials.

(6) Allow only those hazardous materials in schools that school officials have approved for use. Types of commercial products that may contain hazardous materials include, but are not limited to, cleaners, sanitizers, maintenance supplies, pesticides, herbicides, and instruction-related supplies.

(7) Safely store play equipment, instructional equipment, and outdoor clothing where reasonably accessible.

(8) Use products that comply with American National Standards Institute/National Sanitation Foundation (ANSI/NSF) Standard 61 (2007) to coat, line, seal, or patch drinking water contact surfaces, if the interior of water piping or plumbing fixtures is coated or lined.

(9) Immediately clean and sanitize the contaminated area and prevent human exposure when sewage backups occur.

(10) Notify the local health officer when sewage backups:

- (a) Result from failure of an on-site sewage system serving the school facility;
- (b) Impact student use areas outside restrooms; or
- (c) Occur in a food preparation, food storage, or food service area.

(11) Allow upholstered furniture, such as couches and overstuffed chairs, in school facilities only if the furniture has been purchased or approved by school officials.

#### NEW SECTION

**WAC 246-366A-070 Moisture control, mold prevention, and remediation.** School officials shall:

(1) Visually monitor the school facility for water intrusion and moisture accumulation that may lead to mold growth, especially after severe weather events.

(2) Begin corrective action within twenty-four hours of discovering water intrusion or moisture accumulation to inhibit and limit mold growth by:

- (a) Identifying and eliminating the cause of the water intrusion or moisture accumulation; and
- (b) Drying the affected portions of the school facility.

(3) When mold growth is observed or suspected, use recognized remediation procedures such as those provided by the Environmental Protection Agency (Mold Remediation in Schools and Commercial Buildings, EPA 402-K-01-001,

March 2001). Begin recognized procedures within twenty-four hours to:

- (a) Identify and eliminate the cause of the moisture or water contributing to the mold growth;
- (b) Dry the affected portions of the school facility;
- (c) Investigate the extent of the mold growth, including evaluation of potentially affected materials and surfaces inside walls and under floor coverings, when moisture or water has entered those spaces;
- (d) Minimize exposure to indoor mold spores and fragments until mold remediation is complete using methods including, but not limited to, containment and negative air pressure; and
- (e) Remediate surfaces and materials contaminated with mold.

(4) When remediation is required under subsection (3) of this section and there is significant risk of exposure, including when the total area affected is greater than ten square feet, promptly inform school facility staff, students, and parents of the conditions and the plans and time frame for the remediation. The extent of this communication will depend on the likelihood of individual exposure, the scope of the remediation project, and the time required to complete it.

#### NEW SECTION

**WAC 246-366A-080 Safety—Animals in school facilities.** (1) School officials shall allow in school facilities only those animals, other than service animals, approved under written policies or procedures.

(2) School officials shall develop written policies or procedures for any animals allowed in school facilities to prevent:

- (a) Injuries caused by wild, dangerous, or aggressive animals;
- (b) Spread of diseases from animals known to commonly carry those diseases including, but not limited to, rabies, psittacosis, and salmonellosis;
- (c) Allergic reactions;
- (d) Exposure to animal wastes; and
- (e) Handling animals or their bedding without proper handwashing afterward.

(3) Written policies or procedures required under subsection (2) of this section shall address service animals in the school facility that are not well behaved or present a risk to health and safety.

#### NEW SECTION

**WAC 246-366A-090 Heating and ventilation—Construction requirements.** School officials shall:

(1) Provide mechanical exhaust ventilation that meets or exceeds the requirements in chapter 51-52 WAC at locations intended for equipment or activities that produce air contaminants of public health importance.

(2) Situate fresh air intakes away from building exhaust vents and other sources of air contaminants of public health importance in a manner that meets or exceeds the requirements in chapter 51-52 WAC. Sources of air contaminants include bus and vehicle loading zones, and might include, but

are not limited to, parking areas and areas where pesticides or herbicides are commonly applied.

(3) Use materials that will not deteriorate and contribute particulates to the air stream if insulating the interior of air handling ducts. Insulation materials must be designed to accommodate duct cleaning and exposure to air flow without deteriorating. This subsection does not apply if the local permitting jurisdiction received a complete building permit application prior to September 1, 2013.

(4) Use ducted air returns and not open plenum air returns consisting of the open space above suspended ceilings. This subsection does not apply to:

- (a) Alterations to school facilities;
- (b) Additions to school facilities that tie into existing ventilation systems that use open plenum air returns; and
- (c) Facilities for which the local permitting jurisdiction received a complete building permit application prior to September 1, 2013.

#### NEW SECTION

**WAC 246-366A-095 Heating and ventilation—Operation and maintenance requirements.** School officials shall:

(1) Heat occupied areas of school buildings during school hours and school-sponsored events to maintain a minimum temperature of sixty-five degrees Fahrenheit except for gymnasiums and hallways, which must be maintained at a minimum temperature of sixty degrees Fahrenheit.

(2) Ventilate occupied areas of school buildings during school hours and school-sponsored events. During periods of ventilation:

(a) For school facilities constructed under a building permit for which the local permitting jurisdiction received a completed building permit application on or after September 1, 2010, provide outdoor air according to chapter 51-52 WAC.

(b) For school facilities constructed under a building permit for which the local permitting jurisdiction received a completed building permit application before September 1, 2010, strive to provide outdoor air consistent with chapter 51-52 WAC. Except where indoor air quality problems have been identified, this requirement may be met through standard operation and maintenance best practices including, but not limited to, making timely repairs, removing obstructions, and replacing filters and fan drive belts.

(3) Use and maintain mechanical exhaust ventilation installed for equipment or activities that produce air contaminants of public health importance or moisture.

(4) Restrict the use of laminators to locations with mechanical exhaust ventilation or source capture systems.

(5) Limit student exposure to air contaminants of public health importance produced by laser printers, photocopiers, and other office equipment by locating, operating, and maintaining equipment as recommended by the manufacturer.

(6) Take preventive or corrective action when pesticides, herbicides, or air contaminants of public health importance are likely to be drawn or are drawn into the building or ventilation system.

NEW SECTION

**WAC 246-366A-100 Noise control—Construction requirements.** (1) School officials shall design ventilation equipment and other mechanical noise sources in classrooms to provide background sound which conforms to a noise criterion curve or equivalent not to exceed NC-35. School officials shall certify, or hire the appropriate person to certify, that ventilation equipment and other mechanical noise sources that have been installed meet the NC-35 noise criterion design standard.

(2) Portable classrooms constructed before January 1, 1990, moved from one site to another on the same school property or within the same school district, are exempt from the requirements of this section if the portable classrooms meet all of the following:

- (a) Noise abating or noise generating features are not altered in a manner that may increase noise levels;
- (b) The portable classrooms were previously in use for instruction;
- (c) Ownership of the portable classrooms remains the same; and
- (d) The new site meets the noise standard in WAC 246-366A-030 (3)(c).

NEW SECTION

**WAC 246-366A-105 Noise control—Operation and maintenance requirements.** School officials shall:

(1) Maintain the background noise at any student location within classrooms constructed after January 1, 1990, at or below 45 dBA (Leq<sub>x</sub>) where <sub>x</sub> is 30 seconds or more. Background noise levels must be determined when the ventilation system and the ventilation system's noise generating components, such as the condenser and heat pump, are operating and the room is unoccupied by students.

(2) Maintain the background noise level at any student location in laboratories and shops with local exhaust ventilation systems constructed after January 1, 1990, at or below 65 dBA (Leq<sub>x</sub>) where <sub>x</sub> is 30 seconds or more. Background noise levels must be determined when all ventilation equipment is operating and the room is unoccupied by students.

(3) Maintain noise exposure for students below the maximum levels in Table 1.

**Table 1  
Maximum Noise Exposures Permissible**

| Duration per day (hours) | Sound level (dBA) |
|--------------------------|-------------------|
| 8                        | 85                |
| 6                        | 87                |
| 4                        | 90                |
| 3                        | 92                |
| 2                        | 95                |
| 1-1/2                    | 97                |
| 1                        | 100               |
| 1/2                      | 105               |
| 1/4                      | 110               |

(4) Not allow student exposure to sound levels equal to or greater than 115 dBA.

(5) Provide and require students to use personal protective equipment, for example ear plugs and muffs, where noise levels exceed those specified in Table 1. Personal protective equipment must reduce student noise exposure to comply with the levels specified in Table 1.

NEW SECTION

**WAC 246-366A-110 Lighting—Construction requirements.** School officials shall equip school facilities with lighting systems designed to meet the requirements of WAC 246-366A-115. General, task or natural lighting may be used to achieve the minimum lighting intensities. Energy efficient lighting systems, lighting fixtures, or bulbs that meet the minimum lighting intensities in Table 2 of WAC 246-366A-115(1) may be used.

NEW SECTION

**WAC 246-366A-115 Lighting—Operation and maintenance requirements.** School officials shall:

(1) Provide light intensities that meet or exceed those specified in Table 2. General, task and/or natural lighting may be used to maintain the minimum lighting intensities. Energy efficient lighting systems, lighting fixtures, or bulbs that meet the minimum lighting intensities in Table 2 may be used.

**Table 2  
Lighting Intensities**

| Measured 30 inches above the floor or on working or teaching surfaces. Some lighting fixtures may require a start-up period before reaching maximum light output.   | Minimum foot-candle intensity |
|---|-------------------------------|
| General instructional areas, for example, study halls, lecture rooms, and libraries.  | 30                            |
| Special instructional areas where safety is of prime consideration or fine detail work is done, for example, family and consumer science laboratories, science laboratories (including chemical storage areas), shops, drafting rooms, and art and craft rooms. | 50                            |
| Noninstructional areas, for example, auditoriums, lunch rooms, assembly rooms, corridors, stairs, storerooms, and restrooms.  | 10                            |
| Gymnasiums: Main and auxiliary spaces, shower rooms, and locker rooms.  | 20                            |

(2) Control excessive brightness and glare in all instructional areas. Surface contrasts and direct or indirect glare

must not cause excessive eye accommodation or eye strain problems.

(3) Provide lighting in a manner that minimizes shadows and other lighting deficiencies on work and teaching surfaces.

#### NEW SECTION

**WAC 246-366A-120 Restrooms and showers—Construction requirements.** School officials shall:

(1) Provide shower facilities at grades nine and above for classes in physical education and for team sports. Showers must supply hot water between one hundred and one hundred twenty degrees Fahrenheit.

(2) Provide floor surfaces in shower areas that are water impervious, slip-resistant, and sloped to floor drains. Walls must be water impervious up to showerhead height. Upper walls and ceilings must have an easily cleanable surface.

(3) Locate drying areas, if provided, adjacent to showers and locker or dressing rooms. Walls and ceilings must have an easily cleanable surface and floor surfaces must be water impervious, slip-resistant, and sloped to floor drains.

(4) Provide locker or dressing rooms adjacent to showers or drying rooms. Walls and ceilings must have an easily cleanable surface. When drying areas are provided, floor surfaces in locker or dressing rooms must be appropriate for the intended use, easily cleanable and dryable to effectively inhibit mold growth. When drying areas are not provided, locker or dressing room floor surfaces must be water impervious, slip-resistant, and sloped to floor drains.

#### NEW SECTION

**WAC 246-366A-125 Restrooms and showers—Operation and maintenance requirements.** School officials shall:

(1) Provide in each restroom:

(a) Toilet paper in each toilet stall;

(b) Single service handwashing soap at each handwashing sink; and

(c) Single-service towels or an adequate number of warm-air dryers. Common use towels are not allowed.

(2) Provide hot water to all handwashing plumbing fixtures at a maximum temperature of one hundred twenty degrees Fahrenheit.

(3) Provide tempered water for those handwashing plumbing fixtures that do not allow the user to select water temperature.

(4) Provide any hand operated, self-closing handwashing plumbing fixtures with the capability of providing at least ten seconds of running water.

(5) Provide access to restrooms when:

(a) School buildings are in use; and

(b) Outdoor facilities or athletic fields are in use for school-sponsored events. School officials are not required to provide access to restrooms when outdoor facilities and athletic fields are in use after school hours or on weekends unless it is a school-sponsored event.

(6) Provide access to shower facilities with hot water between one hundred and one hundred twenty degrees Fahr-

enheit for classes in physical education and school-sponsored sports teams at grades nine and above.

(7) When cloth towels are supplied by the school, provide them for individual use and launder them after each use.

#### NEW SECTION

**WAC 246-366A-130 Water quality monitoring—**

**Lead.** (1) School officials shall:

(a) Sample plumbing fixtures that are regularly used for drinking or cooking.

(b) Use a laboratory to analyze all required water samples that is accredited by the department of ecology, or other appropriate agency if outside Washington state, according to EPA drinking water laboratory certification criteria.

(2) Water sampling protocols. School officials shall:

(a) Collect representative samples, according to the percentages required by subsections (3) and (4) of this section, from each type and age of plumbing fixture regularly used for drinking or cooking.

(i) For type of fixture, use at least the three types: Drinking fountains, water coolers and faucets.

(ii) For age of fixture, use at least two groupings: Those manufactured prior to 1999, and those manufactured since January 1, 1999.

(b) Sample as follows:

(i) Make sure cold water is the last to run through the fixture to be tested.

(ii) Allow water to sit in the plumbing system at least eight hours. No water may pass through the fixture during that time.

(iii) Place the 250 ml sample bottle under the faucet and open the cold water tap. Fill the bottle to the shoulder or the line marked "250 ml," turn off the water and cap the bottle tightly.

(3) Initial monitoring schedule for lead.

(a) School officials shall accomplish initial monitoring by sampling fifty percent of the plumbing fixtures regularly used for drinking or cooking in elementary schools or used by preschool children in K-12 schools by September 1, 2011. This may be either from fifty percent of the fixtures in each school or from all of the fixtures in fifty percent of the schools within a district. School districts shall sample the remaining fifty percent of the fixtures by September 1, 2012.

(b) School officials shall accomplish initial monitoring by sampling at least twenty-five percent of each type and age of plumbing fixture, as specified under subsection (2)(a) of this section, regularly used by students for drinking or cooking in:

(i) Middle and junior high schools by September 1, 2013; and

(ii) High schools by September 1, 2014.

(c) School officials may apply samples collected after September 1, 2003, toward meeting the initial monitoring requirement if all plumbing fixtures with lead results above 0.020 milligrams per liter or 20.0 parts per billion have been removed from service, or have been or are being addressed according to subsection (5) of this section, and samples were:

(i) From plumbing fixtures regularly used for drinking or cooking; and

(ii) Collected consistent with subsection (2) of this section.

(4) Ongoing monitoring for lead.

(a) School officials shall repeat lead monitoring every five years, beginning by:

(i) September 1, 2017, for elementary schools;

(ii) September 1, 2018, for middle and junior high schools; and

(iii) September 1, 2019, for high schools.

(b) School officials shall use sampling protocols in subsection (2) of this section to collect samples in all schools from:

(i) No less than twenty-five percent of each type and age of plumbing fixture which is not a "very low lead" plumbing fixture; and

(ii) No less than ten percent of each type of plumbing fixture which is a "very low lead" plumbing fixture.

(c) Schools that are Group A public water systems are not required to do ongoing lead monitoring required by (a) of this subsection if the schools meet the lead monitoring requirements in chapter 246-290 WAC.

(5) Corrective actions. School officials shall:

(a) For all plumbing fixtures with sample results of lead above 0.020 milligrams per liter or 20.0 parts per billion, immediately shut off these fixtures or make them inoperable.

(b) For all plumbing fixtures of the same type and age as any fixture with results above 0.020 milligrams per liter or 20.0 parts per billion:

(i) Take immediate corrective action according to (a) of this subsection; or

(ii) Collect first draw samples within ten business days. Upon receipt of sample results, immediately shut off or make inoperable all plumbing fixtures with results of lead above 0.020 milligrams per liter or 20.0 parts per billion.

(c) To provide drinking water at the location of these fixtures, take one or more of the following remedies:

(i) Bottled water. If bottled water is used, provide bottled water that is produced by a Washington state department of agriculture-approved bottling operation or out-of-state or international bottler whose product meets federal Food and Drug Administration regulations.

(ii) Manual flushing program. Manual flushing may be used only as a temporary remedy. If manual flushing is used:

(A) Take flush samples from twenty-five percent of each type and age of the fixtures planned to be included in the flushing program to determine the flushing time necessary to reduce lead to below 0.020 milligrams per liter or 20.0 parts per billion. Start by following the sample collection protocol of first-draw samples described in subsection (2)(b) of this section with the addition of letting the water run for thirty seconds before filling the bottle.

(B) Open the tap of every fixture included in the flushing program every morning before the facility opens and let the water run for the length of time established in (c)(ii)(A) of this subsection.

(iii) Automated flushing. If automated flushing is used, take samples from twenty-five percent of each type and age of the fixtures included in the flushing program to demonstrate that the automated system reduces lead to below 0.020 milligrams per liter or 20.0 parts per billion.

(iv) Fixture replacement. If individual plumbing fixtures are replaced:

(A) Precondition the plumbing fixtures by running water through the fixture continuously for twenty-four hours; and

(B) Collect first draw samples after preconditioning and verify sample results of lead below 0.020 milligrams per liter or 20.0 parts per billion. If the preconditioned plumbing fixture does not yield a sample result below this level, (a) of this subsection applies.

(v) Treatment. Before treatment is used, submit an engineering project report to the department, per WAC 246-290-110. Installation of treatment devices will result in the school's designation as a public water supply. School officials shall then ensure they comply with the Group A public water system rules and regulations, chapter 246-290 WAC and water works operator certification rules and regulations, chapter 246-292 WAC.

(6) Notification requirements. School officials shall:

(a) Notify school facility staff, students and parents, and the local health officer within five business days of the school officials receiving lead sampling results above 0.020 milligrams per liter or 20.0 parts per billion.

(b) Make all results available for review upon request.

#### NEW SECTION

**WAC 246-366A-135 Water quality monitoring—Copper.** (1) School officials shall collect water samples and have them tested for copper following the requirements of WAC 246-366A-130 (1) and (2)(b). The same water samples used for lead testing may be used for copper testing.

(2) School officials shall test water samples for copper from no less than twenty-five percent of each type and age of plumbing fixture regularly used for drinking or cooking.

(a) For type of fixture, use at least the three types: Drinking fountains, water coolers and faucets.

(b) For age of fixture, use at least two groupings: Those manufactured prior to 1999 and those manufactured since January 1, 1999.

(3) School officials shall complete water sampling of plumbing fixtures for copper in:

(a) Elementary schools by September 1, 2012;

(b) Middle and junior high schools by September 1, 2013; and

(c) High schools by September 1, 2014.

(4) If school officials include lead samples collected after September 1, 2003, toward meeting the initial monitoring requirement for lead, as specified in WAC 246-366A-130, they may wait to monitor those plumbing fixtures for copper until they conduct the next ongoing lead monitoring per WAC 246-366A-130(4).

(5) School officials may include samples collected after September 1, 2003, toward meeting monitoring requirements if all plumbing fixtures with copper results above 1.30 milligrams per liter or 1300 parts per billion have been or are being addressed according to subsection (6) of this section, and the samples were:

(a) From plumbing fixtures regularly used for drinking and cooking; and

(b) Collected using the sampling protocol specified in WAC 246-366A-130 (2)(b).

(6) Corrective actions. For all plumbing fixtures with first draw sample results of copper above 1.30 milligrams per liter or 1300 parts per billion, school officials shall:

(a) Within five business days of getting sample results, consult with the department to develop a corrective action plan; and

(b) Implement the corrective action plan.

(7) Notification requirements. School officials shall:

(a) Notify staff, students and parents, and the local health officer within five business days of the school officials receiving copper sampling results above 1.30 milligrams per liter or 1300 parts per billion; and

(b) Make all results available for review upon request.

#### NEW SECTION

**WAC 246-366A-140 Water quality monitoring—Other drinking water contaminants.** The local health officer may require:

(1) Sampling of drinking water when public health concerns exist about drinking water contaminants other than lead or copper;

(2) Corrective actions in response to sampling results for other contaminants; and

(3) School officials to notify school facility staff, students and parents, and the local health officer about test results.

#### NEW SECTION

**WAC 246-366A-150 Playgrounds—Construction and installation requirements.** (1) School officials shall:

(a) Consult with the local health officer regarding playground review and approval requirements consistent with the scope of the project when proposing to:

(i) Install new playground equipment or fall protection surfaces;

(ii) Add new playground features or equipment to an existing playground; or

(iii) Modify, other than repair and maintain, existing playground equipment, features, or fall protection surfaces.

(b) If required by the local health officer after consultation:

(i) Provide playground plans and equipment specifications and any additional information the local health officer requests; and

(ii) Obtain plan review and written approval from the local health officer before installing, adding, or modifying playground equipment or fall protection surfaces.

(c) Install playground equipment, including used equipment, and fall protection surfaces:

(i) That meet the ASTM F 1487-01: Standard Consumer Safety Performance Specification for Playground Equipment for Public Use; and

(ii) In a manner that is consistent with the manufacturer's instructions and *Consumer Product Safety Commission Handbook for Public Playground Safety*, 2008.

(d) Prohibit the use of chromated copper arsenate or creosote treated wood to construct or install playground equip-

ment or landscape and other structures on which students may play.

(2) The local health officer shall:

(a) Consult with school officials to determine what is required for playground plan review and approval consistent with the scope of the project.

(b) If playground review and approval is required:

(i) Review playground plans and equipment specifications to confirm that the requirements of these rules are addressed;

(ii) Identify and request any additional documents required to complete the review;

(iii) Provide written approval or denial of the playground plans and equipment specifications within thirty days of receiving all documents needed to complete the review, unless the school officials and the local health officer agree to a different timeline; and

(iv) Verify that playground installation complies with requirements of this section.

(c) Coordinate all playground-related inspections with school officials.

#### NEW SECTION

**WAC 246-366A-155 Playgrounds—Operation and maintenance requirements.** School officials shall:

(1) Monitor and operate playgrounds so that protective surfacing and use zones are maintained, and equipment is properly anchored and free of puncture, pinching, crushing, shearing, entanglement, and entrapment hazards.

(2) Prohibit the use of chromated copper arsenate or creosote treated wood to repair or maintain playground equipment or landscape and other structures on which students may play.

#### NEW SECTION

**WAC 246-366A-160 Laboratories and shops—Construction requirements.** School officials shall:

(1) Provide an emergency eyewash fountain for each laboratory and shop where hazardous materials are used or eye irritants are produced.

(2) Provide an emergency shower for each laboratory where hazardous materials are used and the potential for chemical spills exists.

(3) Assure that all emergency eyewash fountains and showers have unobstructed access and are reachable within ten seconds.

(4) Provide handwashing and appropriate drying facilities in an easily accessible location in each laboratory and shop.

(5) Provide emergency shut-offs for gas and for electricity connected to stationary machinery in laboratories and shops. Emergency shut-offs must:

(a) Be located in close proximity to the room exit door;

(b) Have unobstructed access; and

(c) Have signage readable from across the room for immediate identification during an emergency.

(6) Provide all stationary machinery in laboratories and shops with magnetic-type switches to prevent machines from

automatically restarting upon restoration of power after an electrical failure or activation of the emergency shut-off.

(7) Provide mechanical exhaust ventilation in hazardous material storerooms, and in laboratories and shops where equipment or activities may produce air contaminants of public health importance.

(8) When activities or equipment in laboratories or shops produce air contaminants of public health importance, provide an appropriate source capture system to prevent those contaminants from entering the student's breathing zone. These activities and equipment include, but are not limited to, spray painting, welding, pottery kilns, chemistry experiments, and wood-working.

(9) Design ventilation systems to operate so that air is not recirculated and does not flow from the laboratory or shop to other parts of the school facility. Open plenum air returns consisting of the space above suspended ceilings in laboratories and shops must not be used to recirculate air to other parts of the school facility.

#### NEW SECTION

**WAC 246-366A-165 Laboratories and shops—Operation and maintenance requirements.** In laboratories and shops, school officials shall:

(1) Select, label, use, store and dispose of hazardous materials in accordance with WAC 246-366A-065.

(2) Prohibit use and storage of compounds that are:

(a) Considered shock-sensitive explosives, for example, picric acid, dinitro-organics, isopropyl ether, ethyl ether, tetrahydrofuran, dioxane; or

(b) Lethal at low concentrations when inhaled or in contact with skin, for example, pure cyanides, hydrofluoric acid, toxic compressed gases, mercury liquid and mercury compounds, and chemicals identified as the P-list under WAC 173-303-9903.

(3) Adopt safety procedures and processes for instructing students regarding the proper use of hazardous materials and equipment.

(4) Provide and require use of appropriate personal protective equipment when exposure to potential hazards might occur. Potential hazards include, but are not limited to hazardous material exposures, burns, cuts, and punctures.

(5) Provide situation-specific emergency and protective equipment during demonstrations with hazardous materials and with hazardous procedures. Examples of protective equipment include, but are not limited to, safety shields for eyes, protective gloves that are fire retardant and chemical resistant, respiratory protection, and fire extinguishers.

(6) Properly maintain laboratory and shop equipment and mechanical exhaust ventilation.

(7) Provide single-use soap and single-use towels or warm-air dryers at handwashing sinks.

#### NEW SECTION

**WAC 246-366A-170 Variances.** (1) School officials:

(a) May request a variance from requirements in these rules from the local health officer if they wish to use an alternative to meet the intent of these rules.

(i) The request for a variance must be in writing and describe:

(A) The specific requirement the variance is requested to meet;

(B) The alternative proposed to meet the specific requirement; and

(C) How the proposed alternative will provide at least a comparable level of protection as that provided by the specific requirement.

(ii) The request for a variance must include information as needed to support and clarify the request, such as material descriptions and specifications, engineering reports, photos, drawings, or sketches.

(b) May implement a variance only after obtaining approval from the local health officer.

(2) The local health officer shall:

(a) Initially review documents submitted with the request for a variance and inform school officials if additional information is required.

(b) Compare the health and safety aspects of the specific requirement being addressed and the variance proposal to determine if the proposal provides at least a comparable level of protection as that provided by the specific requirement.

(c) Provide written approval or denial of a request for a variance within sixty days of receiving a complete written request, unless school officials and the local health officer agree to a different timeline.

(d) Submit an annual written report to the department regarding all variance requests. The report must be submitted by March 1st of each year, beginning in 2013, and cover the calendar period January through December of the previous year.

#### NEW SECTION

**WAC 246-366A-175 Temporary emergency waivers for disaster situations.** The local health officer may grant to school officials an emergency waiver from some or all of the requirements in these rules for the temporary use of a facility or site as a school when the facility normally used by the school is not safe to be occupied due to a natural or man-made disaster.

#### NEW SECTION

**WAC 246-366A-180 Appeals.** Decisions or actions of the local health officer may be appealed to the local board of health in a manner consistent with their established procedure.

#### NEW SECTION

**WAC 246-366A-190 Complaints.** (1) School officials shall establish a written complaint process, if such a written process does not already exist. The complaint process must clearly describe the means for a person to file a written complaint concerning failure of compliance with a provision of these rules that jeopardizes the health and safety of students. At a minimum, the process shall provide for:

(a) Promptly investigating all complaints;

(b) Promptly correcting conditions not in compliance with these rules;

(c) Providing notification for imminent health hazards in accordance with WAC 246-366A-020;

(d) Promptly communicating with the complainant regarding the outcome of the investigation, and the actions and time frame proposed to address any verified conditions not in compliance with these rules; and

(e) Communicating with the local health officer about the outcome of complaint investigations referred to school officials by the local health officer.

(2) The local health officer who has received a complaint concerning failure of compliance with a provision of these rules that jeopardizes the health and safety of students shall:

(a) Promptly inform school officials that a complaint has been filed with the local health officer and conduct a preliminary inquiry to determine if an imminent health hazard exists;

(b) Investigate the complaint in consultation with school officials if an imminent health hazard exists;

(c) Either refer the complaint to school officials or investigate the complaint in consultation with school officials if an imminent health hazard does not appear to exist; and

(d) Communicate with the complainant about the outcome of the complaint investigation.

#### REPEALER

The following chapter of the Washington Administrative Code is repealed:

|                 |  |
|-----------------|--|
| WAC 246-366-001 | Introduction.                          |
| WAC 246-366-010 | Definitions.                           |
| WAC 246-366-020 | Substitutions.                         |
| WAC 246-366-030 | Site approval.                         |
| WAC 246-366-040 | Plan review and inspection of schools. |
| WAC 246-366-050 | Buildings.                             |
| WAC 246-366-060 | Plumbing, water supply and fixtures.   |
| WAC 246-366-070 | Sewage disposal.                       |
| WAC 246-366-080 | Ventilation.                           |
| WAC 246-366-090 | Heating.                               |
| WAC 246-366-100 | Temperature control.                   |
| WAC 246-366-110 | Sound control.                         |
| WAC 246-366-120 | Lighting.                              |
| WAC 246-366-130 | Food handling.                         |
| WAC 246-366-140 | Safety.                                |
| WAC 246-366-150 | Exemption.                             |

#### **WSR 09-04-064**

#### **PROPOSED RULES**

#### **DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed February 2, 2009, 4:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-17-096.

Title of Rule and Other Identifying Information: The department is amending chapter 388-823 WAC, Division of developmental disabilities intake and determination of developmental disabilities, amending WAC 388-823-0010, 388-823-0040, 388-823-0140, 388-823-0150, 388-823-0160, 388-823-0170, 388-823-0200, 388-823-0210, 388-823-0310, 388-823-0410, 388-823-0420, 388-823-0510, 388-823-0515, 388-823-0600, 388-823-0610, 388-823-0615, 388-823-0800, 388-823-0810, 388-823-0820, 388-823-0830, 388-823-0840 and 388-823-1010; and repealing WAC 388-823-0700 and 388-823-0710.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on March 24, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than March 25, 2009.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSRPAU-RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on March 24, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by March 10, 2009, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsjl4@dshs.wa.gov](mailto:johnsjl4@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments combine the eligibility rules for "another neurological condition" with "other condition closely related to mental retardation or that requires treatment similar to that required for individuals with mental retardation." The phrase "adaptive functioning" has been replaced with "functional limitations" throughout the chapter. The adaptive behavior assessment system-second edition (ABAS-II) has been added as an acceptable assessment used to demonstrate certain developmental disabilities. Minor grammatical revisions have been incorporated.

Reasons Supporting Proposal: The department is defining the eligibility rules to conform to RCW 71A.10.020(3).

Statutory Authority for Adoption: RCW 71A.12.030, 71A.10.020(3).

Statute Being Implemented: Title 71A RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Debbie Roberts, 640 Woodland Square Loop S.E., Lacey,



WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail roberdx@dshs.wa.gov, (360) 725-3400, fax (360) 404-0955; Implementation: Linda Lunsford, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail LunsfLL@dshs.wa.gov, (360) 725-3440, fax (360) 404-0955; and Enforcement: Don Clintsman, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail clintdl@dshs.wa.gov, (360) 725-3421, fax (360) 404-0955.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The division of developmental disabilities has analyzed the rule amendments and has concluded that small businesses and small nonprofits are not significantly affected by these rules and that no jobs will be created or lost due to the implementation of these rules. Therefore, a small business economic impact statement is not required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Debbie Roberts, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, phone (360) 725-3400, fax (360) 404-0955, e-mail roberdx@dshs.wa.gov.

January 28, 2009  
Stephanie E. Schiller  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 09-05 issue of the Register.

**WSR 09-04-065**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Disability Services Administration)  
[Filed February 2, 2009, 4:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-12-070.

**Title of Rule and Other Identifying Information:** The department is amending WAC 388-105-0005 The daily medicaid payment rates for clients assessed using the comprehensive assessment reporting evaluation (CARE) tool and that reside in adult family homes (AFH) and boarding homes contracted to provide assisted living (AL), adult residential care (ARC), and enhanced adult residential care (EARC) services and 388-105-0045 Bed or unit hold—Medicaid resident discharged for a hospital or nursing home stay from an adult family home (AFH) or a boarding home contracted to provide adult residential care (ARC), enhanced adult residential care (EARC), or assisted living services (AL).

**Hearing Location(s):** Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on March 10, 2009, at 10:00 a.m.

**Date of Intended Adoption:** Not earlier than March 11, 2009.

**Submit Written Comments to:** DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSR-PAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on March 10, 2009.

**Assistance for Persons with Disabilities:** Contact Jenisha Johnson, DSHS rules consultant, by February 24, 2009, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

**Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:** The purpose of this rule making is to:

- Implement phase one of full implementation of a seventeen CARE level payment system for community residential providers effective July 1, 2008. The effect is to increase adult family home rates; and
- Clarify when a client currently receiving bed hold assistance returns to the facility, the client must be in residence for twenty-four hours before a departure will result in a new bed hold sequence. If the client leaves before the expiration of twenty-four hours, then the bed hold sequence on which the client's bed was held when the client returned will continue.

**Reasons Supporting Proposal:** Under chapter 329, Laws of 2008, the legislature required the implementation of the seventeen level payment system. The amendment to WAC 388-105-0045 prevents over expending bed hold funds by defining when a client has returned to a facility.

**Statutory Authority for Adoption:** RCW 74.39A.030, 18.20.290, and chapter 329, Laws of 2008.

**Statute Being Implemented:** RCW 74.39A.030 and 18.20.290.

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

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

**Name of Agency Personnel Responsible for Drafting:** Patricia Hague, Mailstop 45600, Olympia, Washington 98504, (360) 725-2447; **Implementation and Enforcement:** Ken Callaghan, Mailstop 45600, Olympia, Washington 98504, (360) 725-2499.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85-025(3), 19.85.030 (1)(a) and 34.05.310 (4)(f), the department is exempt from preparing a small business economic impact statement (SBEIS).

RCW 19.85.025(3), this chapter does not apply to the adoption of a rule described in RCW 34.05.310(4).

RCW 34.05.310(4), this section does not apply to: Subsection (f) Rules that set or adjust fees or rates pursuant to legislative standards; the adoption of rules to set or adjust fees is cost neutral.

RCW 19.85.030 (1)(a) In the adoption of a rule under chapter 34.05 RCW, an agency shall prepare an SBEIS: (a) If the proposed rule will impose more than minor costs on businesses in an industry.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b)(vi), the department is exempt from preparing a cost-benefit analysis for these rules. The rules set or adjust fees or rates pursuant to legislative standards.

RCW 34.05.328 (5)(b), this section does not apply to: Subsection (vi) Rules that set or adjust fees or rates pursuant to legislative standards.

January 27, 2009  
Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-19-017, filed 9/8/06, effective 10/9/06)

**WAC 388-105-0005 The daily Medicaid payment rates for clients assessed using the comprehensive assessment reporting evaluation (CARE) tool and that reside in adult family homes (AFH) and boarding homes contracted to provide assisted living (AL), adult residential care (ARC), and enhanced adult residential care (EARC) services.** For contracted AFH and boarding homes contracted to provide AL, ARC, and EARC services, the department pays the following daily rates for care of a Medicaid resident:

| COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE |                                       |  |                                       |                                       |                                       |
|---|---------------------------------------|--|---------------------------------------|---------------------------------------|---------------------------------------|
| KING COUNTY   |                                       |  |                                       |                                       |                                       |
|   |                                       |  | ARC                                   | EARC                                  | AFH                                   |
| CARE CLASSIFICATION   | AL Without Capital Add-on             | AL With Capital Add-on                 |                                       |                                       |                                       |
| A Low <del>((1))</del>  | <del>\$(65.30)</del><br><u>69.22</u>  | <del>\$(70.41)</del><br><u>74.64</u>   | <del>\$(46.18)</del><br><u>48.95</u>  | <del>\$(46.18)</del><br><u>48.95</u>  | <del>\$(46.82)</del><br><u>48.32</u>  |
| A Med <del>((2))</del>  | <del>\$(70.71)</del><br><u>74.95</u>  | <del>\$(75.82)</del><br><u>80.37</u>   | <del>\$(52.40)</del><br><u>55.54</u>  | <del>\$(52.40)</del><br><u>55.54</u>  | <del>\$(53.13)</del><br><u>54.83</u>  |
| A High <del>((3))</del>   | <del>\$(79.34)</del><br><u>84.10</u>  | <del>\$(84.45)</del><br><u>89.52</u>   | <del>\$(66.92)</del><br><u>61.00</u>  | <del>\$(66.92)</del><br><u>61.00</u>  | <del>\$(59.45)</del><br><u>61.35</u>  |
| B Low <del>((4))</del>  | <del>\$(65.30)</del><br><u>69.22</u>  | <del>\$(70.41)</del><br><u>74.64</u>   | <del>\$(46.18)</del><br><u>48.95</u>  | <del>\$(46.18)</del><br><u>48.95</u>  | <del>\$(46.82)</del><br><u>48.56</u>  |
| B Med <del>((5))</del>  | <del>\$(72.87)</del><br><u>77.24</u>  | <del>\$(77.98)</del><br><u>82.66</u>   | <del>\$(58.62)</del><br><u>62.14</u>  | <del>\$(58.62)</del><br><u>62.14</u>  | <del>\$(59.45)</del><br><u>61.66</u>  |
| <u>B Med-High</u>   | <u>\$87.48</u>                        | <u>\$92.90</u>                         | <u>\$66.07</u>                        | <u>\$66.07</u>                        | <u>\$66.06</u>                        |
| B High <del>((6))</del>   | <del>\$(86.88)</del><br><u>92.09</u>  | <del>\$(91.99)</del><br><u>97.51</u>   | <del>\$(75.23)</del><br><u>75.53</u>  | <del>\$(75.23)</del><br><u>75.53</u>  | <del>\$(67.85)</del><br><u>75.53</u>  |
| C Low <del>((7))</del>  | <del>\$(70.71)</del><br><u>74.95</u>  | <del>\$(75.82)</del><br><u>80.37</u>   | <del>\$(52.40)</del><br><u>55.54</u>  | <del>\$(52.40)</del><br><u>55.54</u>  | <del>\$(53.13)</del><br><u>54.83</u>  |
| C Med <del>((8))</del>  | <del>\$(79.34)</del><br><u>84.10</u>  | <del>\$(84.45)</del><br><u>89.52</u>   | <del>\$(66.92)</del><br><u>69.72</u>  | <del>\$(66.92)</del><br><u>69.72</u>  | <del>\$(67.85)</del><br><u>70.02</u>  |
| C <del>(High-9))</del> <u>Med-High</u>                            | <del>\$(98.77)</del><br><u>104.70</u> | <del>\$(103.88)</del><br><u>110.12</u> | <del>\$(87.68)</del><br><u>92.94</u>  | <del>\$(87.68)</del><br><u>92.94</u>  | <del>\$(88.89)</del><br><u>91.73</u>  |
| <u>C High</u>   | <u>\$105.74</u>                       | <u>\$111.16</u>                        | <u>\$93.82</u>                        | <u>\$93.82</u>                        | <u>\$93.01</u>                        |
| D Low <del>((10))</del>   | <del>\$(72.87)</del><br><u>77.24</u>  | <del>\$(77.98)</del><br><u>82.66</u>   | <del>\$(58.62)</del><br><u>75.07</u>  | <del>\$(58.62)</del><br><u>75.07</u>  | <del>\$(67.85)</del><br><u>71.38</u>  |
| D Med <del>((11))</del>   | <del>\$(79.34)</del><br><u>85.82</u>  | <del>\$(84.45)</del><br><u>91.24</u>   | <del>\$(66.92)</del><br><u>86.98</u>  | <del>\$(66.92)</del><br><u>86.98</u>  | <del>\$(76.28)</del><br><u>87.36</u>  |
| <u>D Med-High</u>   | <u>\$110.98</u>                       | <u>\$116.40</u>                        | <u>\$110.61</u>                       | <u>\$110.61</u>                       | <u>\$105.12</u>                       |
| D High <del>((12))</del>  | <del>\$(98.77)</del><br><u>119.59</u> | <del>\$(103.88)</del><br><u>125.01</u> | <del>\$(87.68)</del><br><u>119.59</u> | <del>\$(87.68)</del><br><u>119.59</u> | <del>\$(88.89)</del><br><u>119.69</u> |
| <u>E Med</u>  | <u>\$144.53</u>                       | <u>\$149.95</u>                        | <u>\$144.53</u>                       | <u>\$144.53</u>                       | <u>\$144.63</u>                       |
| <u>E High</u>   | <u>\$169.47</u>                       | <u>\$174.89</u>                        | <u>\$169.47</u>                       | <u>\$169.47</u>                       | <u>\$169.57</u>                       |

| COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE<br>METROPOLITAN COUNTIES* |                                |                                 |                                |                                |                                |
|---|--------------------------------|---------------------------------|--------------------------------|--------------------------------|--------------------------------|
| CARE CLASSIFICATION   | AL                             |                                 | ARC                            | EARC                           | AFH                            |
|   | Without Capital                | With Capital                    |                                |                                |                                |
|   | Add-on                         | Add-on                          |                                |                                |                                |
| A Low ((1))   | <del>\$(59.90)</del><br>63.49  | <del>\$(64.54)</del><br>68.41   | <del>\$(46.18)</del><br>48.95  | <del>\$(46.18)</del><br>48.95  | <del>\$(46.82)</del><br>48.32  |
| A Med ((2))   | <del>\$(63.15)</del><br>66.94  | <del>\$(67.79)</del><br>71.86   | <del>\$(50.32)</del><br>53.34  | <del>\$(50.32)</del><br>53.34  | <del>\$(51.03)</del><br>52.66  |
| A High ((3))  | <del>\$(77.18)</del><br>81.81  | <del>\$(81.82)</del><br>86.73   | <del>\$(63.81)</del><br>58.17  | <del>\$(63.81)</del><br>58.17  | <del>\$(56.28)</del><br>58.08  |
| B Low ((4))   | <del>\$(59.90)</del><br>63.49  | <del>\$(64.54)</del><br>68.41   | <del>\$(46.18)</del><br>48.95  | <del>\$(46.18)</del><br>48.95  | <del>\$(46.82)</del><br>48.56  |
| B Med ((5))   | <del>\$(68.54)</del><br>72.65  | <del>\$(73.18)</del><br>77.57   | <del>\$(55.51)</del><br>58.84  | <del>\$(55.51)</del><br>58.84  | <del>\$(56.28)</del><br>58.37  |
| <u>B Med-High</u>   | <u>\$82.29</u>                 | <u>\$87.21</u>                  | <u>\$62.57</u>                 | <u>\$62.57</u>                 | <u>\$62.60</u>                 |
| B High ((6))  | <del>\$(84.73)</del><br>89.81  | <del>\$(89.37)</del><br>94.73   | <del>\$(71.08)</del><br>73.40  | <del>\$(71.08)</del><br>73.40  | <del>\$(64.70)</del><br>73.40  |
| C Low ((7))   | <del>\$(63.15)</del><br>66.94  | <del>\$(67.79)</del><br>71.86   | <del>\$(50.32)</del><br>53.56  | <del>\$(50.32)</del><br>53.56  | <del>\$(51.03)</del><br>53.05  |
| C Med ((8))   | <del>\$(77.18)</del><br>81.81  | <del>\$(81.82)</del><br>86.73   | <del>\$(63.81)</del><br>68.82  | <del>\$(63.81)</del><br>68.82  | <del>\$(64.70)</del><br>68.31  |
| C ((High-9)) <u>Med-High</u>  | <del>\$(95.52)</del><br>101.25 | <del>\$(100.16)</del><br>106.17 | <del>\$(81.45)</del><br>86.34  | <del>\$(81.45)</del><br>86.34  | <del>\$(82.59)</del><br>85.23  |
| <u>C High</u>   | <u>\$102.26</u>                | <u>\$107.18</u>                 | <u>\$91.84</u>                 | <u>\$91.84</u>                 | <u>\$90.43</u>                 |
| D Low ((10))  | <del>\$(68.54)</del><br>72.65  | <del>\$(73.18)</del><br>77.57   | <del>\$(55.51)</del><br>74.04  | <del>\$(55.51)</del><br>74.04  | <del>\$(64.70)</del><br>69.80  |
| D Med ((11))  | <del>\$(77.18)</del><br>83.48  | <del>\$(81.82)</del><br>88.40   | <del>\$(63.81)</del><br>85.24  | <del>\$(63.81)</del><br>85.24  | <del>\$(72.06)</del><br>85.01  |
| <u>D Med-High</u>   | <u>\$107.33</u>                | <u>\$112.25</u>                 | <u>\$107.87</u>                | <u>\$107.87</u>                | <u>\$101.92</u>                |
| D High ((12))   | <del>\$(95.52)</del><br>116.30 | <del>\$(100.16)</del><br>121.22 | <del>\$(81.45)</del><br>116.30 | <del>\$(81.45)</del><br>116.30 | <del>\$(82.59)</del><br>115.79 |
| <u>E Med</u>  | <u>\$140.04</u>                | <u>\$144.96</u>                 | <u>\$140.04</u>                | <u>\$140.04</u>                | <u>\$139.53</u>                |
| <u>E High</u>   | <u>\$163.78</u>                | <u>\$168.70</u>                 | <u>\$163.78</u>                | <u>\$163.78</u>                | <u>\$163.27</u>                |

\*Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, and Yakima counties.

| COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE<br>NONMETROPOLITAN COUNTIES** |                               |                               |                               |                               |                               |
|---|-------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
| CARE CLASSIFICATION   | AL                            |                               | ARC                           | EARC                          | AFH                           |
|   | Without Capital               | With Capital                  |                               |                               |                               |
|   | Add-on                        | Add-on                        |                               |                               |                               |
| A Low ((1))   | <del>\$(58.83)</del><br>62.36 | <del>\$(63.77)</del><br>67.60 | <del>\$(46.18)</del><br>48.95 | <del>\$(46.18)</del><br>48.95 | <del>\$(46.82)</del><br>48.32 |
| A Med ((2))   | <del>\$(63.15)</del><br>66.94 | <del>\$(68.09)</del><br>72.18 | <del>\$(49.29)</del><br>52.25 | <del>\$(49.29)</del><br>52.25 | <del>\$(49.98)</del><br>51.58 |
| A High ((3))  | <del>\$(77.18)</del><br>81.81 | <del>\$(82.12)</del><br>87.05 | <del>\$(62.78)</del><br>57.23 | <del>\$(62.78)</del><br>57.23 | <del>\$(55.24)</del><br>57.01 |

| NONMETROPOLITAN COUNTIES**     |                              |                               |                              |                              |                              |
|--------------------------------|------------------------------|-------------------------------|------------------------------|------------------------------|------------------------------|
| CARE CLASSIFICATION            | AL Without Capital           | AL With Capital               | ARC                          | EARC                         | AFH                          |
|                                | Add-on                       | Add-on                        |                              |                              |                              |
| B Low ((4))                    | \$((58.83))<br><u>62.36</u>  | \$((63.77))<br><u>67.60</u>   | \$((46.18))<br><u>48.95</u>  | \$((46.18))<br><u>48.95</u>  | \$((46.82))<br><u>48.56</u>  |
| B Med ((5))                    | \$((68.54))<br><u>72.65</u>  | \$((73.48))<br><u>77.89</u>   | \$((54.48))<br><u>57.75</u>  | \$((54.48))<br><u>57.75</u>  | \$((55.24))<br><u>57.29</u>  |
| <u>B Med-High</u>              | <u>\$82.29</u>               | <u>\$87.53</u>                | <u>\$61.40</u>               | <u>\$61.40</u>               | <u>\$61.38</u>               |
| B High ((6))                   | \$((84.73))<br><u>89.81</u>  | \$((89.67))<br><u>95.05</u>   | \$((69.00))<br><u>69.42</u>  | \$((69.00))<br><u>69.42</u>  | \$((63.66))<br><u>69.42</u>  |
| C Low ((7))                    | \$((63.15))<br><u>66.94</u>  | \$((68.09))<br><u>72.18</u>   | \$((49.29))<br><u>52.25</u>  | \$((49.29))<br><u>52.25</u>  | \$((49.98))<br><u>51.58</u>  |
| C Med ((8))                    | \$((77.18))<br><u>81.81</u>  | \$((82.12))<br><u>87.05</u>   | \$((62.78))<br><u>65.05</u>  | \$((62.78))<br><u>65.05</u>  | \$((63.66))<br><u>65.70</u>  |
| C ((High (9))) <u>Med-High</u> | \$((95.52))<br><u>101.25</u> | \$((100.46))<br><u>106.49</u> | \$((78.34))<br><u>83.04</u>  | \$((78.34))<br><u>83.04</u>  | \$((79.44))<br><u>81.98</u>  |
| <u>C High</u>                  | <u>\$102.26</u>              | <u>\$107.50</u>               | <u>\$86.81</u>               | <u>\$86.81</u>               | <u>\$85.52</u>               |
| D Low ((10))                   | \$((68.54))<br><u>72.65</u>  | \$((73.48))<br><u>77.89</u>   | \$((54.48))<br><u>69.99</u>  | \$((54.48))<br><u>69.99</u>  | \$((63.66))<br><u>66.01</u>  |
| D Med ((11))                   | \$((77.18))<br><u>83.48</u>  | \$((82.12))<br><u>88.72</u>   | \$((62.78))<br><u>80.57</u>  | \$((62.78))<br><u>80.57</u>  | \$((69.96))<br><u>80.39</u>  |
| <u>D Med-High</u>              | <u>\$107.33</u>              | <u>\$112.57</u>               | <u>\$101.96</u>              | <u>\$101.96</u>              | <u>\$96.37</u>               |
| D High ((12))                  | \$((95.52))<br><u>109.93</u> | \$((100.46))<br><u>115.17</u> | \$((78.34))<br><u>109.93</u> | \$((78.34))<br><u>109.93</u> | \$((79.44))<br><u>109.48</u> |
| <u>E Med</u>                   | <u>\$132.36</u>              | <u>\$137.60</u>               | <u>\$132.36</u>              | <u>\$132.36</u>              | <u>\$131.92</u>              |
| <u>E High</u>                  | <u>\$154.80</u>              | <u>\$160.04</u>               | <u>\$154.80</u>              | <u>\$154.80</u>              | <u>\$154.36</u>              |

\*\* Nonmetropolitan counties: Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Orielle, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla and Whitman.

**AMENDATORY SECTION** (Amending WSR 06-19-017, filed 9/8/06, effective 10/9/06)

**WAC 388-105-0045 Bed or unit hold—Medicaid resident discharged for a hospital or nursing home stay from an adult family home (AFH) or a boarding home contracted to provide adult residential care (ARC), enhanced adult residential care (EARC), or assisted living services (AL).** (1) When an AFH, ARC, EARC, or AL contracts to provide services under chapter 74.39A RCW, the AFH, ARC, EARC, and AL contractor must hold a Medicaid eligible resident's bed or unit when:

- (a) Short-term care is needed in a nursing home or hospital;
- (b) The resident is likely to return to the AFH, ARC, EARC, or AL; and
- (c) Payment is made under subsection (3) of this section.

(2)(a) When the department pays the contractor to hold the Medicaid resident's bed or unit during the resident's short-term nursing home or hospital stay, the contractor must hold

the bed or unit for up to twenty days. If during the twenty day bed hold period, a department case manager determines that the Medicaid resident's hospital or nursing home stay is not short term and the Medicaid resident is unlikely to return to the AFH, ARC, EARC or AL facility, the department will cease paying for the bed hold the day the case manager notifies the contractor of his/her decision.

(b) A Medicaid resident's discharge from an AFH, ARC, EARC, or an AL facility for a short term stay in a nursing home or hospital must be longer than twenty-four hours before subsection (3) of WAC 388-105-0045 applies.

(c) When a Medicaid resident on bed hold leave returns to an AFH, ARC, EARC, or an AL facility but remains less than twenty-four hours, the bed hold leave on which the resident returned applies after the resident's discharge. A new bed hold leave will begin only when the returned resident has resided in the facility for more than twenty-four hours before the resident's next discharge.

(3) The department will compensate the contractor for holding the bed or unit for the:

(a) First through seventh day at seventy percent of the Medicaid daily rate paid for care of the resident before the hospital or nursing home stay; and

(b) Eighth through the twentieth day, at eleven dollars a day.

(4) The AFH, ARC, EARC, or AL facility may seek third-party payment to hold a bed or unit for twenty-one days or longer. The third-party payment shall not exceed the Medicaid daily rate paid to the facility for the resident. If third-party payment is not available and the returning Medicaid resident continues to meet the admission criteria under chapter 388-71 and/or 388-106 WAC, then the Medicaid resident may return to the first available and appropriate bed or unit.

(5) The department's social worker or case manager determines whether the:

(a) Stay in a nursing home or hospital will be short-term; and

(b) Resident is likely to return to the AFH, ARC, EARC, or AL facility.

(6) When the resident's stay in the hospital or nursing home exceeds twenty days or the department's social worker or case manager determines that the Medicaid resident's stay in the nursing home or hospital is not short-term and the resident is unlikely to return to the AFH, ARC, EARC, or AL facility, then only subsection (4) of this section applies to any private contractual arrangements that the contractor may make with a third party in regard to the discharged resident's unit or bed.

### WSR 09-04-066

#### PROPOSED RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed February 2, 2009, 4:31 p.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 08-12-071.

Title of Rule and Other Identifying Information: The department is creating new WAC 388-96-758 and 388-96-759 to increase compensation for low-wage workers in nursing homes beginning July 1, 2008, and to establish a system of reporting to ensure that the low-wage add-on increased the compensation/benefits for low-wage workers, increased staff, and/or paid for wage compression when low-wage workers' compensation was increased.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/tpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on March 10, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than March 11, 2009.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS

RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on March 10, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by February 24, 2009, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsjl4@dshs.wa.gov](mailto:johnsjl4@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The legislature directed the department to increase compensation for low-wage workers in nursing homes beginning July 1, 2008. The department shall provide an add-on per resident day, per facility, based on the total funding divided by the total number of fiscal year 2009 medicaid patient days as forecasted by the caseload forecast council (CFC), not to exceed \$1.57. The department may reduce the level of add-on if necessary to fit within this appropriation if the caseload forecasted days increase from the February 2008 forecast. The department by rule shall implement reporting requirements and a settlement process to ensure that the funds are spent according to this subsection.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: Section 206(9), chapter 329, Laws of 2008.

Statute Being Implemented: Chapter 74.46 RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Patricia Hague, Mailstop 45600, Olympia, Washington 98504, (360) 725-2447; Implementation and Enforcement: Ed Southon, Mailstop 45600, Olympia, Washington 98504, (360) 725-2469.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3), [19.85.]030 (1)(a), and 34.05.310 (4)(f), the department is exempt from preparing a small business economic impact statement (SBEIS).

RCW 19.85.025(3), this chapter does not apply to the adoption of a rule described in RCW 34.05.310(4).

RCW 34.05.310(4), this section does not apply to: Subsection (f) Rules that set or adjust fees or rates pursuant to legislative standards; the adoption of rules to set or adjust fees is cost neutral.

RCW 19.85.030 (1)(a) In the adoption of a rule under chapter 34.05 RCW, an agency shall prepare an SBEIS: (a) If the proposed rule will impose more than minor costs on businesses in an industry.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b)(vi), the department is exempt from preparing a cost-benefit analysis for these rules. The rules set or adjust fees or rates pursuant to legislative standards.

RCW 34.05.328 (5)(b), this section does not apply to: Subsection (vi) Rules that set or adjust fees or rates pursuant to legislative standards.

January 28, 2009

Stephanie E. Schiller  
Rules Coordinator

NEW SECTION**WAC 388-96-758 Add-on for low-wage workers.** (1)

Under section 206, chapter 329, Laws of 2008, effective July 1, 2008, the department will grant a low wage add-on payment not to exceed one dollar and fifty-seven cents per resident day to any nursing home provider that has indicated a desire to receive the add-on by May 30, 2008. A nursing home may use the add-on only for in-house staff and not for allocated, home office, or purchased service increases. A nursing home may use the add on to:

(a) Increase wages, benefits, and/or staffing levels for certified nurse aides;

(b) Increase wages and/or benefits but not staffing levels for dietary aides, housekeepers, laundry aides, or any other category of worker whose statewide average dollars-per-hour wage was less than fifteen dollars in calendar year 2006, according to cost report data. The department has determined that the additional categories of workers qualifying under this standard are:

- (i) Activities directors and assistants;
- (ii) Patient choices coordinators;
- (iii) Central supply/ward clerks;
- (iv) Expanded community service workers; and
- (v) Social workers; and

(c) Address wage compression for related job classes immediately affected by wage increases to low-wage workers.

(2) A nursing home that received effective July 1, 2008 a low-wage add-on under chapter 329, Laws of 2008 shall report to the department its expenditure of that add-on by:

- (a) Completing Cost Report Schedule L 1; and
- (b) Returning it to the department by January 31, 2009.

(3) By examining Cost Report Schedule L 1, the department will determine whether the nursing home complied with the statutory requirements for distribution of the low wage add-on. When the department is unable to determine or unsure that the statutory requirements have been met, it will conduct an on site audit.

(4) When the department determines that the statutory requirements have been met, the low wage add-on will be reconciled at the same time as the regular settlement process but as a separate reconciliation. The reconciliation process will compare gross dollars received in the add-on to gross dollars spent.

(5) When the department determines that the low wage add-on has not been spent in compliance with the statutory requirements, then it will recoup the noncomplying amount as an overpayment.

(6) The department also will require the completing of Cost Report Schedule L 1 for any calendar year in which the low wage add-on is paid for six months or more. Subsections (1) through (5) of this section will apply to all completions of Cost Report Schedule L 1 irrespective of the calendar year in which it is paid.

(7) If the legislature extends the low-wage worker add-on in the state fiscal year 2010 budget, nursing home providers will have the opportunity again to elect whether they wish to receive the add-on in their July 1, 2009 rates.

NEW SECTION**WAC 388-96-759 Standards for low-wage workers**

**add-on.** (1) In accordance with WAC 388-96-758, the low-wage worker add-on must be used to provide increases in wages or benefits, or to address resulting wage compression beginning on or after the date on which the add-on is first included in the rate. For the first year, that date is July 1, 2008. It may be used to increase staffing levels for certified nurse aides only. The add-on may not be used after July 1 to pay for increases beginning before that date.

(2) Any type of traditional employee benefit is allowable. Such benefits typically fall in one of two categories: retirement, and life or health insurance. However, nontraditional benefits are also allowable (for example, wellness benefits, subsidized meals, or assistance with daycare).

(3) The employer's share of payroll taxes associated with wages and benefits may be covered with the add-on.

(4) For purposes of wage compression, an "immediately affected" job class is one that is related to the low-wage worker category, either in the organizational structure (for example, it supervises the low-wage worker category) or by existing practice (for example, the facility has a benchmark of paying that job class a certain percentage more than the low-wage worker category). Facilities must be able to explain the basis of the relationship if requested. Because the statute refers to "resulting wage compression," a facility must use a portion of the add-on to increase wages or benefits before it may use any of the add-on to address any wage compression caused by such increase.

(5) A facility may use the add-on in relation to any of the job categories listed in WAC 388-96-758, regardless of whether the average wage it pays to its own employees is above fifteen dollars per hour, either before or after including the additional wages funded by the add-on.

(6) Wages or benefits, including employee bonuses, otherwise properly paid with the add on will not be considered as unallowable costs per RCW 74.46.410 (2)(x).

**WSR 09-04-067****PROPOSED RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed February 2, 2009, 4:37 p.m.]

Supplemental Notice to WSR 09-01-181.

Preproposal statement of inquiry was filed as WSR 08-19-032.

Title of Rule and Other Identifying Information: Amending WAC 388-519-0100 Eligibility for the medically needy program and 388-519-0110 Spenddown of excess income for the medically needy program; and other related rules as appropriate.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions>.)

html or by calling (360) 664-6094), on March 10, 2009, at 10:00 a.m.

Date of Intended Adoption: Not sooner than March 11, 2009.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on March 10, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by February 24, 2009, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarifying text was inadvertently left out of the proposed rule filed under WSR 09-01-181 on December 24, 2008. In WAC 388-519-0100 (5)(d), additional text has been added to include language clarifying eligibility for income deductions.

Reasons Supporting Proposal: To comply with federal regulations and provide program transparency.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.09.500.

Statute Being Implemented: 42 C.F.R. 435.831 (3)(e) and (f).

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

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

Name of Agency Personnel Responsible for Drafting: Jonell Blatt, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1571; Implementation and Enforcement: Catherine Fisher, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1357.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not increase or impose new costs or otherwise impact small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Per RCW 34.05.328 (5)(b)(vii), client eligibility rules for financial and medical assistance programs are exempt from the cost-benefit analysis requirement.

January 27, 2009

Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

**WAC 388-519-0100 Eligibility for the medically needy program.** (1) ~~((A person))~~ An individual who meets the following conditions ~~((is considered))~~ may be eligible for medically needy (MN) coverage under the special rules in chapters 388-513 WAC(-) and 388-515 WAC:

(a) ~~((A person who meets the institutional status requirements of WAC 388-513-1320))~~ Meets the institutional status requirements of WAC 388-513-1320; ~~((or))~~

(b) ~~((A person who receives waiver services under chapter 388-515 WAC))~~ Resides in a medical institution as described in WAC 388-513-1395; or

(c) Receives waiver services under a medically needy in-home waiver (MNIW) according to WAC 388-515-1550 or a medically needy residential waiver (MNRW) according to WAC 388-515-1540.

~~(2) ((MN coverage is considered under this chapter when a person:~~

~~(a) Is not excluded under subsection (1) of this section; and~~

~~(b) Is not eligible for categorically needy (CN) medical coverage because they have CN countable income which is above the CN income standard))~~ An SSI-related individual who lives in a department contracted alternate living facility may be eligible for MN coverage under the rules described in WAC 388-513-1305.

~~(3) ((MN coverage is available for children, for persons who are pregnant or for persons who are SSI-related. MN coverage is available to an aged, blind, or disabled ineligible spouse of an SSI recipient even though that spouse's countable income is below the CN income standard. Adults with no children must be SSI-related in order to be qualified for MN coverage))~~ An individual may be eligible for MN coverage under this chapter when he or she is:

(a) Not covered under subsection (1) and (2) of this section; and

(b) Eligible for categorically needy (CN) medical coverage in all other respects except that his or her CN countable income is above the CN income standard.

~~(4) ((A person not eligible for CN medical and who is applying for MN coverage has the right to income deductions in addition to those used to arrive at CN countable income. The following deductions are used to calculate their countable income for MN. Those deductions to income are applied to each month of the base period and determine MN countable income))~~ MN coverage may be available if the individual is:

~~(a) ((All health insurance premiums expected to be paid by the client during the base period are deducted from their income))~~ A child; ~~((and))~~

~~(b) ((For persons who are SSI-related and who are married, see the income provisions for the nonapplying spouse in WAC 388-450-0210))~~ A pregnant woman; ~~((and))~~

~~(c) ((For persons who are not SSI-related and who are married, an income deduction is allowed for a nonapplying spouse:~~

~~(i) If the nonapplying spouse is living in the same home as the applying person; and~~

~~(ii) The nonapplying spouse is receiving community and home based services under chapter 388-515 WAC; then~~

~~(iii) The income deduction is equal to the one person MNIL less the nonapplying spouse's actual income))~~ A refugee;

(d) An SSI-related individual including an aged, blind or disabled individual with countable income under the CN income standard, who is an ineligible spouse of an SSI recipient; or

(e) A hospice client with countable income which is above the special income level (SIL).

~~(5) ((A person who meets the above conditions is eligible for MN medical coverage if their MN countable income is at or below the medically needy income level (MNIL) in WAC~~

388-478-0070. They are certified as eligible for up to twelve months of MN medical coverage. Certain SSI or SSI-related clients have a special MNIL. That MNIL exception is described in WAC 388-513-1305)) An individual who is not eligible for CN medical and who is applying for MN coverage has the right to income deductions in addition to, or instead of, those used to arrive at CN countable income. Deductions to income are applied to each month of the base period to determine MN countable income. The following deductions are used to calculate countable income for MN:

(a) All health insurance premiums, with the exception of medicare Part A, Part B, Part C and Part D premiums expected to be paid by the individual during the base period(s);

(b) Any allocations to a spouse or to dependents for an SSI-related individual who is married or who has dependent children. Rules for allocating income are described in WAC 388-475-0900;

(c) For an SSI-related individual who is married and lives in the same home as his or her spouse who receives home and community based waiver services under chapter 388-515 WAC, an income deduction equal to the medically needy income level (MNIL) minus the nonapplying spouse's income; and

(d) A child or pregnant woman who is applying for MN coverage is eligible for income deductions allowed under TANF/SFA rules and not under the rules for CN programs based on the federal poverty level. See WAC 388-450-0210(4) for exceptions to the TANF/SFA rules which apply to medical programs and not to the cash assistance program.

(6) ~~((A person whose MN countable income exceeds the MNIL may become eligible for MN medical coverage when they have or expect to have medical expenses. Those medical expenses or obligations may be used to offset any portion of their income which is over the MNIL))~~ The MNIL for individuals who qualify for MN coverage under subsection (1) of this section is based on rules in chapter 388-513 and 388-515 WAC.

(7) ~~((That portion of a person's MN countable income which is over the department's MNIL standard is called "excess income."))~~ The MNIL for all other individuals is described in WAC 388-478-0070. If an individual has countable income which is at or below the MNIL, he or she is certified as eligible for up to twelve months of MN medical coverage.

(8) ~~((When a person has or will have "excess income" they are not eligible for MN coverage until they have medical expenses which are equal in amount to that excess income. This is the process of meeting "spenddown"))~~ If an individual has countable income which is over the MNIL, the countable income that exceeds the department's MNIL standards is called "excess income."

(9) When individuals have "excess income" they are not eligible for MN coverage until they provide evidence to the department of medical expenses incurred by themselves, their spouse or family members who live in the home for whom they are financially responsible. See WAC 388-519-0110(8). An expense has been incurred when:

(a) The individual has received the medical treatment or medical supplies, is financially liable for the medical expense but has not yet paid the bill; or

(b) The individual has paid for the expense within the current or retroactive base period described in WAC 388-519-0110.

(10) Incurred medical expenses or obligations may be used to offset any portion of countable income that is over the MNIL. This is the process of meeting "spenddown."

(11) The department calculates the amount of an individual's spenddown by multiplying the monthly excess income amount by the number of months in the certification period as described in WAC 388-519-0110. The qualifying medical expenses must be greater than or equal to the total calculated spenddown amount.

(12) An ~~((person))~~ individual who is considered for MN coverage under this chapter may not spenddown excess resources to become eligible for the MN program. Under this chapter ~~((a person is))~~ individuals are ineligible for MN coverage if their resources exceed the program standard in WAC 388-478-0070. ~~((A person))~~ An individual who is considered for MN coverage under ~~((chapter 388-513))~~ WAC 388-513-1395, 388-505-0250 or 388-505-0255 is allowed to spenddown excess resources.

~~((10) No extensions of coverage or automatic redetermination process applies to MN coverage. A client must submit an application for each eligibility period under the MN program.))~~

(13) There is no automatic redetermination process for MN coverage. An individual must submit an application for each eligibility period under the MN program.

(14) An individual who requests a timely administrative hearing under WAC 388-458-0040 is not eligible for continued benefits beyond the end of the original certification date under the medically needy program.

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

**WAC 388-519-0110 Spenddown of excess income for the medically needy program.** (1) ~~((The person applying for MN medical))~~ An individual who applies for medical assistance and is eligible for medically needy (MN) coverage with a spenddown may choose~~((s))~~ a three month or a six month base period ~~((for spenddown calculation)).~~ A base period is a time period used to compute the amount of the spenddown liability. The months must be consecutive calendar months unless one of the conditions in subsection (4) of this section ~~((apply))~~ applies.

(2) A ~~((person's))~~ base period begins on the first day of the month ~~((of application)),~~ in which an individual applies for medical assistance, subject to the exceptions in subsection (4) of this section.

(3) An individual may request a separate base period ~~((may be made for a retroactive period. The retroactive base period is made up of the))~~ to cover the time period up to three calendar months immediately prior to the month of application. This is called a retroactive base period.

(4) A base period may vary from the terms in subsections (1), (2), or (3) of this section if:



(a) A three month base period would overlap a previous eligibility period; or

(b) ~~((A client is not or will not be resource eligible for the))~~ The individual has countable resources that are over the applicable standard for any part of the required base period; or

(c) The client is not or will not be able to meet the TANF-related or SSI-related requirement for the required base period; or

(d) ~~The ((client))~~ individual is ((or will be)) eligible for categorically needy (CN) coverage for part of the required base period; or

(e) The client was not otherwise eligible for MN coverage for each of the months of the retroactive base period.

(5) ~~((The amount of a person's ))~~ An individual's spenddown((") liability is calculated by the department. The MN countable income from each month of the base period is compared to the medically needy income level (MNIL). ((The excess income from each of the)) Income which is over the MNIL (based on the individual's household size) in each month((s)) in the base period is added together to determine the total ((")spenddown((" for the base period)) amount. The MNIL standard is found at [http://www.dshs.wa.gov/pdf/esa/manual/standards\\_C\\_MedAsstChart.pdf](http://www.dshs.wa.gov/pdf/esa/manual/standards_C_MedAsstChart.pdf) and is updated annually in January.

(6) ~~If household income varies and ((a person's))~~ an individual's MN countable income falls below the MNIL for one or more months, the difference is used to offset the excess income in other months of the base period. If this results in a spenddown amount of zero dollars and cents, see WAC ((388-519-0100(5))) 388-519-0100(7).

(7) ~~((Once a person's spenddown amount is known, their qualifying medical expenses are subtracted from that spenddown amount to determine the date of eligibility. The following medical expenses are used to meet spenddown:~~

(a) ~~First, Medicare and other health insurance deductibles, coinsurance charges, enrollment fees, or copayments;~~

(b) ~~Second, medical expenses which would not be covered by the MN program;~~

(c) ~~Third, hospital expenses paid by the person during the base period;~~

(d) ~~Fourth, hospital expenses, regardless of age, owed by the applying person;~~

(e) ~~Fifth, other medical expenses, potentially payable by the MN program, which have been paid by the applying person during the base period; and~~

(f) ~~Sixth, other medical expenses, potentially payable by the MN program which are owed by the applying person))~~ If an individual's income decreases, the department approves CN coverage for each month in the base period when the individual's countable income and resources are equal to or below the applicable CN standards. Children under the age of nineteen and pregnant women who become CN eligible in any month of the base period remain continuously eligible for CN coverage for the remainder of the certification even if there is a subsequent increase in income.

(8) ~~((If a person meets the spenddown obligation at the time of application, they are eligible for MN medical coverage for the remainder of the base period. The beginning date of eligibility would be determined as described in WAC 388-~~

~~416-0020))~~ Once an individual's spenddown amount has been determined, qualifying medical expenses are deducted. To be considered a qualifying medical expense, the expense must:

(a) Be an expense for which the individual is financially liable;

(b) Not have been used to meet another spenddown;

(c) Not be the confirmed responsibility of a third party. The department allows the entire expense if the third party has not confirmed its coverage of the expense within:

(i) Forty-five days of the date of service; or

(ii) Thirty days after the base period ends.

(d) Be an incurred expense for the individual:

(i) The individual's spouse;

(ii) A family member, residing in the home of the individual, for whom the individual is financially responsible; or

(iii) A relative, residing in the home of the individual, who is financially responsible for the individual.

(e) Meet one of the following conditions:

(i) Be an unpaid liability at the beginning of the base period;

(ii) Be for medical services either paid or unpaid and incurred during the base period;

(iii) Be for medical services incurred and paid during the three month retroactive base period if eligibility for medical assistance was not established in that base period. Paid expenses that meet this requirement may be applied towards the current base period; or

(iv) Be for medical services incurred during a previous base period and either unpaid or paid for, if it was necessary for the individual to make a payment due to delays in the certification for that base period.

(9) ~~((If a person's spenddown amount is not met at the time of application, they are not eligible until they present evidence of additional expenses which meets the spenddown amount))~~ An exception to the provisions in subsection (8) of this section exists for qualifying medical expenses that have been paid on behalf of the individual by a publicly administered program during the current or the retroactive base period. The department uses the qualifying medical expenses to meet the spenddown liability. To qualify for this exception the program must:

(a) Not be federally funded or make the payments from federally matched funds;

(b) Not pay the expenses prior to the first day of the retroactive base period; and

(c) Provide proof of the expenses paid on behalf of the individual.

(10) ~~((To be counted toward spenddown, medical expenses must))~~ Once the department has determined that the expenses meet the definition of a qualified expense as defined in subsection (8) or (9) of this section, the expenses are subtracted from the spenddown liability to determine the date the individual is eligible for medical coverage to begin. Qualifying medical expenses are deducted in the following order:

(a) ~~((Not have been used to meet a previous spenddown))~~ First, medicare and other health insurance deductibles, coinsurance charges, enrollment fees, copayments and premiums that are the individual's responsibility under medicare Part A,

Part B, Part C and Part D. (Health insurance premiums are income deductions under WAC 388-519-0100(5)); ~~((and))~~

~~(b) ((Not be the confirmed responsibility of a third party. The entire expense will be counted unless the third party confirms its coverage within:~~

- ~~(i) Forty five days of the date of the service; or~~
- ~~(ii) Thirty days after the base period ends; and~~
- ~~(c) Meet one of the following conditions:~~

~~(i) Be an unpaid liability at the beginning of the base period and be for services for:~~

~~(A) The applying person; or~~

~~(B) A family member legally or blood related and living in the same household as the applying person.~~

~~(ii) Be for medical services either paid or unpaid and incurred during the base period; or~~

~~(iii) Be for medical services paid and incurred during a previous base period if that client payment was made necessary due to delays in the certification for that base period))~~

Second, medical expenses incurred and paid by the individual during the three month retroactive base period if eligibility for medical assistance was not established in that base period;

(c) Third, current payments on, or unpaid balance of, medical expenses incurred prior to the current base period which have not been used to establish eligibility for medical coverage in any other base period. The department sets no limit on the age of an unpaid expense; however, the expense must still be a current liability and be unpaid at the beginning of the base period;

(d) Fourth, other medical expenses that would not be covered by the department's medical programs, minus any third party payments which apply to the charges. The items or services allowed as a medical expense must have been provided or prescribed by a licensed health care provider;

(e) Fifth, other medical expenses which have been incurred by the individual during the base period that are potentially payable by the MN program (minus any confirmed third party payments that apply to the charges), even if payment is denied for these services because they exceed the department limits on amount, duration or scope of care. Scope of care is described in WAC 388-501-0060 and 388-501-0065; and

(f) Sixth, other medical expenses that have been incurred by the individual during the base period that are potentially payable by the MN program (minus any confirmed third party payments that apply to the charges) and that are within the department limits on amount, duration or scope of care.

(11) ((An exception to the provisions in subsection (10) of this section exists. Medical expenses the person owes are applied to spenddown even if they were paid by or are subject to payment by a publicly administered program during the base period. To qualify, the program cannot be federally funded or make the payments of a person's medical expenses from federally matched funds. The expenses do not qualify if they were paid by the program before the first day of the base period)) If an individual submits verification of qualifying medical expenses with his or her application that meets or exceeds the spenddown liability, he or she is eligible for MN medical coverage for the remainder of the base period unless their circumstances change. See WAC 388-418-0005 to determine which changes must be reported to the department.

The beginning of eligibility is determined as described in WAC 388-416-0020.

(12) ((The following medical expenses which the person owes are applied to spenddown. Each dollar of an expense or obligation may count once against a spenddown cycle that leads to eligibility for MN coverage:

(a) Charges for services which would have been covered by the department's medical programs as described in WAC 388-501-0060 and 388-501-0065, less any confirmed third party payments which apply to the charges; and

(b) Charges for some items or services not typically covered by the department's medical programs, less any third party payments which apply to the charges. The allowable items or services must have been provided or prescribed by a licensed health care provider; and

(c) Medical insurance and Medicare copayments or coinsurance (premiums are income deductions under WAC 388-519-0100(4)); and

(d) Medical insurance deductibles including those Medicare deductibles for a first hospitalization in sixty days)) If an individual cannot meet the spenddown amount at the time the application is submitted, the individual is not eligible until he or she provides proof of additional qualifying expenses that meet the spenddown liability.

(13) Each dollar of a qualifying medical expense(§) may ((be used more than once if)) count once against a spenddown period that leads to eligibility for MN coverage. However, medical expenses may be used more than once under the following circumstances:

(a) The ((person)) individual did not meet ((their)) his or her total spenddown ((amount)) liability and ((did not)) become eligible in ((that)) a previous base period and the bill remains unpaid; ((and)) or

(b) The medical expense was ((applied to that unsuccessful spenddown and remains an unpaid)) a bill incurred and paid within three months of the current application and the department could not establish eligibility for medical assistance for the individual in the retroactive base period.

(14) ((To be considered toward spenddown, written proof of)) The individual must provide the proof of qualifying medical expenses ((for services rendered to the client must be presented)) to the department. The deadline for ((presenting)) providing medical expense information is thirty days after the base period ends unless there is a good ((cause)) reason for delay ((can be documented)).

(15) ((The medical expenses applied to the spenddown amount are the client's financial obligation and are not reimbursed by the department (see WAC 388-502-0100).

(16)) Once ((a person)) an individual meets ((their)) the spenddown ((and they are issued a medical identification card for MN coverage)) requirement and the certification begin date has been established, newly identified expenses cannot be considered toward that spenddown unless there is a good reason for the delay in submitting the expense or there was a department error in determining the correct begin date. ((Once the application is approved and coverage begins the beginning date of the certification period cannot be changed due to a clients failure to identify or list medical expenses.))

(16) Good reasons for delay in providing medical expense information to the department include, but are not limited to:

(a) The individual did not receive a timely bill from his or her medical provider or insurance company;

(b) The individual has medical issues that prevents him or her from submitting proof in a timely manner; or

(c) The individual meets the criteria for needing a supplemental accommodation under chapter 388-472 WAC.

(17) The department is not responsible to pay for any expense or portion of an expense that has been assigned to an individual's spenddown liability. If an expense is potentially payable under the MN program, and only a portion of the medical expense has been assigned to meet spenddown, the medical provider may not bill the individual for more than the amount which was assigned to the remaining spenddown liability. See WAC 388-502-0160 Billing a client.

(18) The department determines whether any payment is due to the medical provider on medical expenses that have been partially assigned to meet a spenddown liability, according to WAC 388-502-0100.

(19) If the medical expense assigned to spenddown was incurred outside of a period of MN eligibility, or if the expense is not the type that is covered by the department's medical assistance programs, the department is not responsible for any portion of the bill.

#### WSR 09-04-074

##### WITHDRAWAL OF PROPOSED RULES

##### GAMBLING COMMISSION

(By the Code Reviser's Office)

[Filed February 3, 2009, 8:19 a.m.]

WAC 230-15-035, proposed by the gambling commission in WSR 08-15-109 appearing in issue 08-15 of the State Register, which was distributed on August 6, 2008, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

#### WSR 09-04-079

##### PROPOSED RULES

##### DEPARTMENT OF LICENSING

[Filed February 3, 2009, 11:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-14-114.

Title of Rule and Other Identifying Information: WAC 308-390-102 UCC records delivery and time of filing.

Hearing Location(s): 405 Black Lake Boulevard, Room 2209, Olympia, WA 98502, on March 10, 2009, at 9:00 a.m.

Date of Intended Adoption: March 12, 2009.

Submit Written Comments to: Margaret Vogeli, P.O. Box 9660, Olympia, WA 98507-9660, e-mail UCC@DOL.WA.GOV, fax (360) 586-4414, by March 6, 2009.

Assistance for Persons with Disabilities: Contact Margaret Vogeli by March 6, 2009, TTY (360) 664-8885 or (360) 664-1530.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To align rule with national standards and new system requirements; changing the file time assigned to records delivered by postal service, describing acceptable means of communication; and clarifying the only means to indicate that a debtor is a transmitting utility.

Reasons Supporting Proposal: The International Association of Commercial Administrators establish model rules for UCC filing offices. These changes reflect recent changes in the model rules and contribute to more accurate reporting on performance by the filing office.

Statutory Authority for Adoption: RCW 62A.9A-526.

Statute Being Implemented: RCW 62A.9A-515, 62A.9A-516, 62A.9A-519.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Margaret Vogeli, Olympia, Washington, (360) 664-1530; Implementation and Enforcement: Nancy Skewis, Olympia, Washington, (360) 664-1446.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Internal procedures and policies. No impact.

A cost-benefit analysis is not required under RCW 34.05.328. The department of licensing is exempt from the provisions of this law.

January 30, 2009

Nancy Skewis

Administrator

AMENDATORY SECTION (Amending WSR 04-15-100, filed 7/19/04, effective 8/19/04)

**WAC 308-390-102 Means to deliver UCC records ((delivery)) and time of filing.** UCC ~~((documents))~~ records may be tendered for filing at the filing office as follows:

(1) Personal delivery, at the filing office's street address between ~~((8:30))~~ 8:00 a.m. and ~~((4:30))~~ 5:00 p.m., Monday through Friday except state holidays. The file time for a UCC ~~((document))~~ record delivered by this method is when the UCC ~~((document))~~ record is ~~((received))~~ first examined by ~~((the))~~ a filing ((office)) officer for processing, even though the UCC ~~((document))~~ record may not yet have been accepted for filing and subsequently may be rejected~~((t))~~.

(2) ~~((Express mail delivery, at the filing office's street address during regular business hours. The file time for a UCC document delivered by this method is 5:00 p.m. on the day of delivery (even though the UCC document may not yet have been accepted for filing and may be subsequently rejected). A UCC document delivered after regular business hours or on a day the filing office is not open for business will~~

~~have a filing time of 5:00 p.m. on the next day the filing office is open for business-))~~ Courier delivery at the filing office's street address. Delivery by courier is considered personal delivery under subsection (1) of this section and the same rules apply.

(3) Postal service delivery, to the filing office's mailing address. The file time for a UCC ~~((document))~~ record delivered by this method is ((5:00 p.m. on the day of delivery-)) when the UCC record is first examined by a filing officer for processing, even though the UCC ((document)) record may not yet have been accepted for filing and subsequently may be ((subsequently)) rejected((?)). ((A UCC document delivered after regular business hours or on a day the filing office is not open for business will have a filing time of 5:00 p.m. on the next day the filing office is open for business-))

(4) Electronic mail and telefacsimile delivery~~((to the filing office's e-mail address or the filing office's fax filing telephone number,))~~ are not accepted.

(5) Electronic filing. ~~((Financing statements))~~ UCC records may be ((entered on-line after July 1, 2001, as described in WAC 308-390-313 and 308-390-315)) transmitted electronically using the XML Format prescribed by the filing office. The time of filing of a ((financing statement delivered by direct on-line access or by web page data entry)) UCC record delivered by this method is the time ((that)) the filing office's information management system ((analyzes the relevant transmission-)) determines that all the required elements of the transmission have been received in ((@)) the required format~~((, and acknowledges acceptance to that system))~~.

(6) Direct web page data entry. UCC records may be delivered by on-line data entry using the filing office's web site on the internet. The file time for a UCC record delivered by this method is the time the entry of all required elements of the UCC record in the proper format is acknowledged by the on-line entry system.

(7) Means of communication. Regardless of the method of delivery, information in UCC records communicated to the filing office must be machine-readable and only in the form of characters included in the American National Standards Institute (ANSI) character set 0-255. Handwriting is not an acceptable means of completing any UCC form.

(8) Transmitting utility. The only means to indicate to the filing office that an initial financing statement is being filed against a debtor that is a transmitting utility, in order to affect the filing office's determination of lapse date, is to check the appropriate box on a UCC1 Addendum filed with the initial financing statement or by transmitting the information in the proper field in an electronic filing of the initial financing statement.

Preproposal statement of inquiry was filed as WSR 09-01-041.

Title of Rule and Other Identifying Information: Chapter 132P-08 WAC, Yakima Valley Community College practice and procedure.

Hearing Location(s): M.L. King, Jr. Room, Hopf Union Building, Yakima Campus, South 16th Avenue and Nob Hill Boulevard, Yakima, Washington, on March 24, 2009, at 3:00 p.m.

Date of Intended Adoption: April 9, 2009.

Submit Written Comments to: Mr. Mark Rogstad, Yakima Valley Community College, P.O. Box 22520, Yakima, WA 98908-2520, e-mail mrogstad@yvcc.edu, fax (509) 574-4675, by March 23, 2009.

Assistance for Persons with Disabilities: Contact Mr. Mark Rogstad by March 23, 2009, TTY (relay service) 1-800-833-6388 to (509) 574-4676.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 132P-08 WAC was authorized by chapter 28B.19 RCW, which was repealed in 1989 and replaced with the Washington administrative hearings rules and regulations. The proposal is to repeal chapter 132P-08 WAC so that the college's rules conform with the RCW.

Reasons Supporting Proposal: The proposal is to repeal chapter 132P-08 WAC so that the college's rules conform to chapter 28B.19 RCW.

Statutory Authority for Adoption: RCW 28B.50.140 (13) and (20).

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

Name of Proponent: Yakima Valley Community College, public.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mark Rogstad, Prior Annex Room P123, South 16th Avenue and Nob Hill Boulevard, Yakima, Washington, (509) 574-4676.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Repealer - no impact.

A cost-benefit analysis is not required under RCW 34.05.328. No impact.

February 6 [3], 2009

Mark L. Rogstad

Director of Human

Resource Services

**WSR 09-04-086**

**PROPOSED RULES**

**YAKIMA VALLEY**

**COMMUNITY COLLEGE**

[Filed February 3, 2009, 2:11 p.m.]

Original Notice.

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

Chapter 132P-08

**WSR 09-04-091**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Health and Recovery Services Administration)

[Filed February 4, 2009, 7:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-05-011.

Title of Rule and Other Identifying Information: The department is repealing sections in chapter 388-544 WAC and creating a new chapter 388-547 WAC for hearing aids services.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on March 10, 2009, at 10:00 a.m.

Date of Intended Adoption: Not sooner than March 11, 2009.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on March 10, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by February 24, 2009, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsj14@dshs.wa.gov](mailto:johnsj14@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing the following changes to the hearing aids and services rules:

- Repeal WAC 388-544-1010, 388-544-1100, 388-544-1200, 388-544-1300, and 388-544-1400;
- Create new chapter 388-547 WAC, Hearing aids and services;
- Separate criteria for adults and children within the chapter;
- Define adults as twenty-one years of age and older and children as twenty years of age and younger;
- Change the criteria for replacement of ear molds for adults to once a year regardless of whether they are soft or hard;
- Add pocket talkers and similar devices to the non-covered list for adults;
- Remove the prior authorization requirements for bone conduction hearing aids for adults;
- Clarify eligibility requirements by adding the TAKE CHARGE program under the list of clients not eligible;
- Remove the requirement that providers receive a stamped authorization approval from the local children with special health care needs (CSHCN) coordinator;
- Remove digital and programmable hearing aids from the noncovered list;

- Lower the average degree of hearing loss from 50 decibels (dBHL) to 45 decibels (dBHL); and
- Clarify record requirements.

Reasons Supporting Proposal: The intent of these proposed rule changes is to bring the hearing aids and services program in line with current industry standards as much as possible. Also, the department removed the cumbersome and costly prior authorization process for children as requested by its hearing aid providers; thus allowing quicker access to hearing aids and services for children. The department also lowered the average degree of hearing loss decibel requirement[s] which expands the availability of hearing aids to a larger population.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.530.

Statute Being Implemented: RCW 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting: Wendy Boedigheimer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1306; Implementation and Enforcement: Jean Gowen, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-2005.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the rules and determined that no new costs will be imposed on small businesses or nonprofit organizations.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Jean Gowen, Health and Recovery Services Administration, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-2005, fax (360) 586-9727.

January 29, 2009

Stephanie E. Schiller  
Rules Coordinator

## Chapter 388-547 WAC

### HEARING AIDS

#### NEW SECTION

**WAC 388-547-0100 Hearing aids—General.** Unless otherwise defined in WAC 388-547-0200, the terms within this chapter are intended to correspond with the terms in chapter 18.35 RCW.

(1) The department covers the hearing aid services listed in this chapter, according to department rules and subject to the limitations and requirements in this chapter.

(2) The department pays for hearing aids and services when:

(a) Covered. Refer to WAC 388-547-0400 for covered hearing aids and services for adults; and refer to WAC 388-547-0800 for covered hearing aids and services for children;

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

(c) Medically necessary as defined under WAC 388-500-0005;

(d) Authorized, as required within this chapter, chapters 388-501 and 388-502 WAC, and the department's published billing instructions and numbered memoranda;

(e) Billed according to this chapter, chapters 388-501 and 388-502, and the department's published billing instructions and numbered memoranda; and

(f) The client:

(i) Completes a hearing evaluation, including an audiogram performed and/or interpreted by a hearing healthcare professional;

(ii) Has an average degree of hearing loss at forty-five decibels (dBHL) in the better ear based on a pure-tone audiometric evaluation by a licensed audiologist or licensed hearing instrument fitter/dispenser at one thousand, two thousand, three thousand, and four thousand Hertz (Hz) with effective masking as indicated; and

(iii) Is referred by a hearing healthcare professional for a hearing aid.

(3) The department requires prior authorization for covered hearing aid services when the clinical criteria set forth in this chapter are not met. The department evaluates these requests on a case-by-case basis to determine whether they are medically necessary, according to the process found in WAC 388-501-0165.

#### NEW SECTION

**WAC 388-547-0200 Hearing aids—Definitions.** "Digital hearing aids" - Hearing aids that use a digital circuit to analyze and process sound.

"FM systems" - Devices used to improve and augment access to auditory information in poor acoustic conditions (helps mitigate a negative impact of noise and reverberation on the ability to understand) that are found in classrooms, auditoriums, theaters, restaurants, etc. These devices use frequency modulated (FM) radio signals to transmit the primary auditory signal from a microphone/transmitter to a receiver worn by the person.

"Hearing aids" - Wearable sound-amplifying devices that are intended to compensate for hearing loss. Hearing aids are described by where they are worn in the ear as In-the-Ear (ITE), Behind-the-Ear (BTE), etc. Hearing aids can also be described by how they process the amplified signal. This would include analog conventional, analog programmable, digital conventional, and digital programmable.

"Hearing healthcare professional" - An audiologist or hearing aid fitter/dispenser licensed under chapter 18.35 RCW, or an otorhinolaryngologist or otologist licensed under chapter 18.71 RCW.

"Maximum allowable fee" - The maximum dollar amount that the department will pay a provider for specific services, supplies and equipment.

"Prior authorization" - A form of authorization used by the provider to obtain approval for a specific hearing aid and service(s). The approval is based on medical necessity and must be received before the service(s) are provided to clients as a precondition for payment.

#### NEW SECTION

**WAC 388-547-0300 Hearing aids—Eligibility—Adults.** (1) Hearing aid services are available to clients twenty one years of age or older covered under:

- (a) A categorically needy (CN) medicaid program; or
- (b) General assistance (GAU/ADATSA) (within Washington state and designated border cities).

(2) Clients who are enrolled in a department-contracted managed care plan are eligible under fee-for-service for covered hearing aid services that are not covered by their plan, subject to the provisions of this chapter and other applicable WAC.

#### NEW SECTION

**WAC 388-547-0400 Hearing aids—Covered services—Adults.** The department covers all of the following without prior authorization:

(1) One new, nonrefurbished, monaural hearing aid, which includes the ear mold, for an adult client every five years when the hearing aid meets the client's specific hearing needs and is under warranty for a minimum of one year.

(2) One replacement hearing aid, which includes the ear mold, in a five year period when the client's hearing aid(s) is lost or beyond repair and all warranties are expired.

(3) A replacement ear mold once a year when the client's existing ear mold is damaged or no longer fits the client's ear.

(4) A maximum of two repairs, per hearing aid, per year, when the repair is cost effective as determined by the department. To receive payment, all of the following must be met:

- (a) All warranties are expired; and
- (b) The repair is under warranty for a minimum of ninety days.

(5) Rental hearing aid(s) for up to two months while the client's own hearing aid is being repaired.

#### NEW SECTION

**WAC 388-547-0500 Hearing aids—Noncovered services—Adults.** The department does not cover the following hearing and hearing aid-related items for adults:

- (1) Batteries;
- (2) Tinnitus maskers;
- (3) FM systems; or
- (4) Pocket talkers or similar devices.

#### NEW SECTION

**WAC 388-547-0600 Hearing aids—Prior authorization—Adults.** (1) The department requires prior authorization for binaural hearing aids.

(2) The department evaluates requests for covered services that are subject to limitations or other restrictions and approves such services beyond those limitations or restrictions as described in WAC 388-501-0169.

(3) To request prior authorization from the department, a provider must fax the prior authorization request to the department using the appropriate fax number listed in published hearing aid services billing instructions.

(4) When the department authorizes hearing aids and/or services, the prior authorization indicates only that the specific service is medically necessary; it is not a guarantee of payment. The client must be eligible for covered services at the time those services are provided.

(5) To receive payment, hearing aids and/or services must be ordered and dispensed within the authorized time-frame.

#### NEW SECTION

**WAC 388-547-0700 Hearing aids—Eligibility—Children.** (1) Clients twenty years of age and younger who are receiving services under any medical assistance program, except for the family planning only program and the TAKE CHARGE program:

(a) Are eligible for covered hearing aids and services under this chapter and for the audiology services under WAC 388-545-0700;

(b) Must have a complete hearing evaluation, including an audiogram performed by a hearing healthcare professional; and

(c) Must be referred by a licensed audiologist, otorhinolaryngologist or otologist for a hearing aid.

(2) Clients eighteen through twenty years of age must have a referral by a screening provider under the early and periodic screening, diagnosis, and treatment (EPSDT) program.

(3) Clients who are enrolled in a department-contracted managed care plan are eligible under fee-for-service for covered hearing aid services that are not covered by their plan, subject to the provisions of this chapter and other applicable WAC.

#### NEW SECTION

**WAC 388-547-0800 Hearing aids—Covered services—Children.** (1) The department covers new, nonrefurbished, monaural or binaural hearing aid(s), which includes the ear mold, for eligible children. In order for the provider to receive payment, the hearing aid must meet the client's specific hearing needs and be under warranty for a minimum of one year.

(2) The department pays for:

(a) Replacement hearing aid(s), which includes the ear mold, for children when:

(i) The client's hearing aid(s) are:

(A) Lost;

(B) Beyond repair; or

(C) Not sufficient for the client's hearing loss; and

(ii) All warranties are expired.

(b) Replacement ear mold(s) when the client's existing ear mold is damaged or no longer fits the client's ear.

(c) A maximum of two repairs, per hearing aid, per year, when the department determines it is cost effective to repair. To receive payment, all of the following must be met:

(i) All warranties are expired; and

(ii) The repair is under warranty for a minimum of ninety days.

(d) A rental hearing aid(s) for up to two months while the client's own hearing aid is being repaired.

#### NEW SECTION

**WAC 388-547-0900 Hearing aids—Noncovered services—Children.** (1) The department does not cover the following hearing and hearing aid-related items and services for children:

(a) Batteries or tinnitus maskers;

(b) Group screenings for hearing loss, except as provided under the early and periodic screening, diagnosis and treatment (EPSDT) program under WAC 388-534-0100; or

(c) Computer-aided hearing devices for FM systems used in school.

(2) When EPSDT applies, the department evaluates a noncovered service, equipment, or supply according to the process in WAC 388-501-0165 to determine if it is medically necessary, safe, effective, and not experimental (see WAC 388-534-0100 for EPSDT rules).

#### NEW SECTION

**WAC 388-547-1000 Hearing aids—Prior authorization—Children.** (1) Prior authorization is not required for children twenty years of age and under for hearing aid(s) and services. Providers should send claims for children directly to the department. Providers do not have to obtain authorization from the local children with special health care needs (CSHCN) coordinator.

(2) The department evaluates requests for covered services that are subject to limitations or other restrictions and approves such services beyond those limitations or restrictions as described in WAC 388-501-0169.

(3) To request prior authorization from the department, a provider must fax the prior authorization request to the department using the appropriate fax number listed in the department's published hearing aid services billing instructions.

(4) When the department authorizes hearing aids and/or services the prior authorization indicates only that the specific service is medically necessary; it is not a guarantee of payment. The client must be eligible for covered services at the time those services are provided.

#### NEW SECTION

**WAC 388-547-1100 Hearing aids—Reimbursement—General.** (1) The department's payment for hearing aids includes:

(a) A prefitting evaluation;

(b) An ear mold; and

(c) A minimum of three post-fitting consultations.

(2) The department denies payment for hearing aids and/or services when claims are submitted without the required prior authorization number or the appropriate diagnosis or procedure code(s).

(3) The department does not pay for hearing aid charges paid by insurance or other payer source.

(4) To receive payment, the provider must keep documentation in the client's medical file to support the medical necessity for the specific make and model of the hearing aid ordered for the client. This documentation must include the record of the audiology testing providing evidence that the

client's hearing loss meets the eligibility criteria for a hearing aid.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

|                  |  |
|------------------|--|
| WAC 388-544-1010 | Definitions.                               |
| WAC 388-544-1100 | Hearing aid services—General.              |
| WAC 388-544-1200 | Hearing aid services—For adults.           |
| WAC 388-544-1300 | Hearing aid services—For children.         |
| WAC 388-544-1400 | Hearing aid services—Non-covered services. |

#### **WSR 09-04-095**

#### **PROPOSED RULES**

#### **DEPARTMENT OF HEALTH**

[Filed February 4, 2009, 10:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-10-090.

Title of Rule and Other Identifying Information: Chapter 246-330 WAC, Ambulatory surgical facilities, establishing a new chapter in WAC for licensing requirements, operational standards and a fee schedule for ambulatory surgical facilities.

Hearing Location(s): Department of Health, Point Plaza East, 310 Israel Road S.E., Rooms 152 and 153, Tumwater, WA 98501, on March 10, 2009, at 9:30 a.m.

Date of Intended Adoption: April 7, 2009.

Submit Written Comments to: John Hilger, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by March 10, 2009.

Assistance for Persons with Disabilities: Contact John Hilger by March 9, 2009, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to establish a new chapter in WAC to promote safe and adequate care of individuals in ambulatory surgical facilities. The proposal is in response to legislation passed in 2007 (ESHB 1414) which added a new chapter to Title 70 RCW and directed the department to license ambulatory surgical facilities by July 1, 2009. Ambulatory surgical facilities are defined as entities that provide specialty or multi-specialty outpatient surgical services in which patients are admitted to and discharged by the facility within twenty-four hours and do not require inpatient hospitalization. The anticipated effects of licensing these facilities will be overall quality improvement of patient services, increased patient safety and positive health outcomes.

Reasons Supporting Proposal: (1) Rules will ensure that ambulatory surgical facilities are licensed by July 1, 2009, as mandated by ESHB 1414; (2) rules will promote safe and adequate care of individuals in ambulatory surgical facilities through the development, establishment and enforcement of minimum standards for maintenance and operation; and (3) rules will promote positive health outcomes for patients.

Statutory Authority for Adoption: Chapter 70.230 RCW.

Statute Being Implemented: Chapter 70.230 RCW.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Byron Plan, 310 Israel Road S.E., Tumwater, WA, (360) 236-2916; Implementation: Linda Foss, 310 Israel Road S.E., Tumwater, WA, (360) 236-2920; and Enforcement: Steve Saxe, 310 Israel Road S.E., Tumwater, WA, (360) 236-2902.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

#### Small Business Economic Impact Statement

**Describe Scope of Proposed Rule Package:** The 2007 legislature passed ESHB 1414, which required the secretary of health to create a license and survey program for ambulatory surgical facilities (ASF) in Washington state. ASFs are defined as entities that provide specialty or multispecialty outpatient surgical services in which patients are admitted to and discharged by the facility within twenty-four hours and do not require inpatient hospitalization. These facilities must be licensed starting July 1, 2009. The secretary of health is authorized to adopt rules that are intended to establish minimum health and safety standards to protect the health and welfare of patients.

Of the 220 Washington state medicare certified ambulatory surgery centers, the department estimates that one hundred of these centers will also be required to obtain a license as an ASF. ASFs that are currently medicare certified or accredited will need to submit an application and fee but will not be required to complete an on-site survey prior to receiving an initial license. Medicare certified and accredited ASFs will have at least one on-site survey by the department in order to receive a renewal license. It is anticipated that the number of ASFs that are neither certified or accredited, and thus required to submit an initial application along with completing an on-site survey, is a very low number.

ASFs provide a range of surgical services, typically in the following areas: Ear, nose and throat (ENT), gastroenterology, gynecology, orthopedics, ophthalmology, pain management, plastic surgery, podiatry, and urology.

These rules place additional requirements beyond those for medicare certification. Examples of these differences include requiring ASFs to review and revise policies to help direct the activities of their staff, potentially hire new staff to function as circulating nurses in operating rooms and to report adverse events. Some ASFs may need to purchase additional emergency equipment to assure that equipment is available as required.



A license is not required for an ambulatory surgical facility that is maintained and operated by a hospital or a dental office, or for outpatient surgical services that do not require general anesthesia and are routinely and customarily performed in the office of a practitioner in an individual or group practice.

**Minor Cost Threshold Determination Summary:** The department calculated the minor cost thresholds for businesses using both methods prescribed in RCW. The values are shown in the table below.

Freestanding Ambulatory Surgical and Emergency Center  
North American Industry Classification System (NAICS)  
Code (621493)

| Data Year | Minor Cost Threshold Type | Minor Cost Threshold Dollar Amount |
|-----------|---------------------------|------------------------------------|
| 2002      | .3% of Average Receipts   | \$6,976                            |
| 2006      | 1% of Average Payroll     | \$9,489                            |

**Total Probable Cost of Rule:**

| WAC Section   | Initial Low | Costs High | Annual Low | Cost High | Notes  |      |  |
|---|-------------|------------|------------|-----------|--|------|--|
| 246-330-115<br>Governance                               | \$4,000     | \$8,000    | \$0        | \$0       | No additional state requirements, existing cost of being certified or accredited.          |      |  |
| 246-330-120<br>Leadership                               |             |            | \$250      | \$750     | Annual review of specific state requirements.  |      |  |
| 246-330-125<br>Patient rights and organizational ethics |             |            | \$500      | \$1,500   | State requires responding to unanticipated outcomes.                                       |      |  |
| 246-330-140<br>Management of human resources            |             |            | \$100      | \$200     | State requires annually providing infection control information and training to staff.     |      |  |
| 246-330-145<br>Medical staff                            |             |            | \$100      | \$200     | State requires reporting practitioners.  |      |  |
| 246-330-150<br>Management of information                |             |            | \$200      | \$750     | Reviewing state imposed system requirements and revising policies as needed.               |      |  |
| 246-330-176<br>Infection control                        |             |            | \$10,000   | \$20,000  | State requirements more specific, probably requiring a dedicated person part time.         |      |  |
| 246-330-205<br>Patient care services                    |             |            | \$250      | \$500     | Annual review and possible revision of policies and procedures.                            |      |  |
| 246-330-210<br>Surgical services                        |             |            | \$250      | \$500     | Annual review and possible revision of policies and procedures.                            |      |  |
| 246-330-215<br>Anesthesia services                      |             |            | \$250      | \$500     | Annual review and possible revision of policies and procedures.                            |      |  |
| 246-330-220<br>Recovery care                            |             |            | \$40,000   | \$60,000  | Immediate availability of an RN or physician, RN current in advanced cardiac life support. |      |  |
| 246-330-100<br>Application                              |             |            | \$50       | \$50      | \$50   | \$50 | Complete and submit application.   |
| 246-330-105<br>ASF responsibilities                     |             |            | \$50       | \$50      | \$50   | \$50 | Notify DOH of accreditation status. Costs incurred by less than 20% of ASFs. |
| 246-330-110<br>Exemptions                               | \$0         | \$0        | \$0        | \$0       | The costs of seeking exemptions are a benefit not a mandated cost.                         |      |  |
| 246-330-130<br>Adverse events                           | \$0         | \$0        | \$1,000    | \$4,000   | Assumes one adverse event per year.  |      |  |
| 246-330-155<br>CQIP                                     | \$2,000     | \$6,000    | \$1,000    | \$3,000   | Costs due to specific state requirements.  |      |  |
| 246-330-199<br>Fees                                     | \$600       | \$600      | \$567      | \$567     | Annualized three year license cost for a medium sized ASF.                                 |      |  |
| 246-330-200<br>Pharmaceuticals                          | \$1,000     | \$2,000    | \$3,000    | \$6,000   | Assumes a contract pharmacist in charge.   |      |  |

\*Taken from Information from NAICS - U.S. Census Bureau. For more information, see Appendix A & B

**Cost Estimate of the Proposed Rule on Impacted Businesses:**

**Total Rule Costs:** The rules are designed to protect and improve the health and safety of people who receive care at ASFs. This analysis shows ASFs could incur \$9,200 to \$20,700 for initial one time costs. It also shows ASFs incur ongoing annual costs from \$58,117 to \$99,919. These costs include record keeping, reporting, professional services (consultants), equipment, and administration. The department believes that although there are significant costs for ASFs to comply with the requirements in this rule, the overall benefit of providing safe facilities, reducing patient health complications, reducing disability that could potentially save a person's life outweighs the total probable costs.

| WAC Section                           | Initial Low | Costs High | Annual Low | Cost High | Notes   |
|---------------------------------------|-------------|------------|------------|-----------|---|
| 246-330-225<br>Emergency services     | \$500       | \$1,000    | \$300      | \$600     | Assumes no emergency equipment costs.                                     |
| 246-330-230<br>Environment management | \$1,000     | \$3,000    | \$250      | \$750     | Develop, review and update facility plan, policy and procedures.          |
| 246-330-500<br>Construction           | \$0         | \$0        | \$0        | \$0       | Only applies for ASFs planning new construction. No annual cost estimate. |
| Total:                                | \$9,200     | \$20,700   | \$58,117   | \$99,917  |   |

**Determination if the Proposed Rule Imposes More than Minor Costs on the Average Business:**

Estimated initial one-time costs

Low: \$9,200  
High: \$20,700

Estimated on-going annual costs

Low: \$58,117  
High: \$99,917

Minor cost threshold - 1% \$9,489 (82 businesses - 2006) payroll

Minor cost threshold - .3% \$6,976 (63 businesses - 2002) Receipts

Does the average cost per business exceed the minor cost threshold? (Yes)

**Disproportionate Cost Analysis (Comparing Costs for Compliance for Small Versus Large Businesses):**

**Disproportionate Analysis Findings**

| # | Cost Basis Per Employee                    | Largest 10% of Large Businesses | Small Businesses |
|---|--|---------------------------------|------------------|
| 1 | # of employees per business                | 175                             | 13               |
| 2 | Initial one time cost of rule per business |                                 |                  |
|   | Low  | \$53                            | \$708            |
|   | High                                       | \$118                           | \$1,592          |
| 3 | Ongoing annual cost of rule per business   |                                 |                  |
|   | Low  | \$332                           | \$4,471          |
|   | High                                       | \$571                           | \$7,686          |

The table above shows that the probable costs of this rule will cost more per employee for small businesses, as compared to the cost per employee for the largest 10% of large businesses. Therefore, this rule will have a disproportionate impact on small businesses.

The following shows how the department attempted to mitigate this disparity.

(1) The department worked to reduce, modify, or eliminate substantive regulatory requirements.

The department worked closely with constituents and the public to minimize the burden of this rule. The department held numerous meeting[s] beginning in 2007 to establish a reasonable fee schedule. During 2008 the department provided the community four separate review and comment periods. The department accomplished this by providing draft rule documents electronically and getting comments and sug-

gested changes back electronically. The department compiled the comments, responded to each one and made suggested changes. Since the rules are not intended to impose an unreasonable burden upon an applicant or licensee, reduced or eliminated language. The following example demonstrates the efforts to reduce the impact on the regulated facilities.

**Example #1:** Circulating nurse, the department drafted rules requiring a nurse circulator. Many attempts were made to modify the type of staff who could qualify to be a nurse circulator to provide flexibility to ASFs. This approach ended up not being acceptable under professional licensing requirements. The department ended up looking at where a circulating nurse was needed and concluded that, this oversight was related to the type of anesthesia or level of sedation. As a result the department proposed requiring a nurse circulator only when using general anesthesia and deep sedation.

**Example #2:** Adverse events, originally the department proposed to list all of the reportable adverse events in rule. The proposed rules were later altered to exclude certain events that would likely not occur in an ASF. It was determined that the least burdensome and costly approach would be to require what is identified in the law by simply referencing the RCW in the proposed rule.

**Example #3:** Medical staff, the department originally proposed rule language that closely mirrored the hospital rules. Based on stakeholder input it was determined that this was too burdensome. The proposed rules reflect stakeholder input and are less burdensome

**Example #4:** Pharmacy section, originally the rules were proposed requiring similar standards to the hospital pharmacy rule. Stakeholders felt this was overly burdensome. The department revised the section to be less burdensome and more consistent with the requirements that ASFs already follow under medicare.

(2) The department worked to simplify, reduce, or eliminate record-keeping and reporting requirements. The department made every effort to require only record keeping related to patient care, health and safety. The department created a simple application process, allow phone, electronic mail or fax communication for reporting an adverse event, and allow facilities to develop their own policies and procedures specific to their care delivery model and business plan.

(3) The department is proposing issuing a time limited provisional license. The department would issue this type of license to allow a facility that needs time to correct a violation or complete the July 1, 2009, application without having to close their business.

**Small Businesses Involvement and Input in Rule Development:** A large majority of the impacted businesses

are small businesses. The department of health conducted several work group meetings before starting the draft rule writing process as mandated in the law. The department's efforts began in September 2007 by openly inviting all interested parties to meet with us to establish a reasonable fee schedule and what types of requirements should be included in the rule.

Out of the first meeting, the department established seven working groups that reviewed and made recommendations on the following: Fees, construction, facility management and staffing, survey process, facility safety, coordinated quality improvement plan, and definitions. Members of the workgroups represented all sizes of ambulatory surgical facilities (small, medium, large) and types (ear, nose and throat (ENT), gastroenterology, gynecology, orthopedics, ophthalmology, pain management, plastic surgery, podiatry, and urology). These workgroups spent three months developing recommendations that they provided to the department in a December 2007 report. Those recommendations became the basis for the rules.

Once the department created a draft document, members of these work groups and other interested parties provided the department comments during four stakeholder review periods. Participants in the stakeholder review process were encouraged to comment and make suggested changes, deletions or additions to the rule document. The department reviewed, responded to and compiled the comments in a report after each stakeholder review period. The department incorporated several proposed changes into the next stakeholder rule review document that addressed concerns expressed by these small business representatives. The department followed these steps throughout the stakeholder comment period.

**Estimate of the Number of Jobs That Will Be Created or Lost as a Result of Compliance with the Proposed Rule:** Information from the NAICS estimates that on average, freestanding ambulatory surgical and emergency centers generate \$2,325,492. Given the economic impact on these firms, the department's analysis concludes that there will not be any jobs created or lost as a result of the proposed rule. The department assumes that any additional costs incurred by individual ASFs from these rules will be incorporated as a cost of business and passed on to patients receiving care.

Appendix A  
**Minor Cost Threshold (Payroll)**  
 For Freestanding Ambulatory Surgical  
 and Emergency Centers (#621493)

| ASF Rule<br>Chapter 246-330 WAC<br>January 29, 2009 |                 |                                   |  |
|---|-----------------|-----------------------------------|--|
| SBEIS<br>Disproportionate<br>Analysis Template      | # in NAICS      | Average<br>Employee<br>Assumption | Employee<br>Per Firm<br>Size<br>Estimate |
| Total number of establishment[s] in Washington      | 82 <sup>1</sup> |                                   |  |
| Total employees                                     | 1267            |                                   |  |

| SBEIS<br>Disproportionate<br>Analysis Template      | # in NAICS   | Average<br>Employee<br>Assumption | Employee<br>Per Firm<br>Size<br>Estimate |
|---|--------------|-----------------------------------|--|
| Average employees per business                      | 15           |                                   |  |
| Total annual payroll                                | \$77,807,000 |                                   |  |
| Average payroll per business                        | \$948,866    |                                   |  |
| Minor cost threshold - 1% of payroll                | \$9,489      |                                   |  |
| Number of firms with 1-4                            | 30           | 2.5                               | 75                                       |
| Number of firms with 5-9                            | 11           | 7                                 | 77                                       |
| Number of firms with 10-19                          | 21           | 15                                | 315                                      |
| Number of firms with 20-49                          | 17           | 35                                | 595                                      |
| Number of firms with 50-99                          | 2            | 75                                | 150                                      |
| Number of firms with 100-249                        | 1            | 175                               | 175                                      |
| Number of firms with 250-499                        | 0            | 375                               | 0  |
| Number of firms with 500-999                        | 0            | 750                               | 0  |
| Number of firms with 1000 or more                   | 0            | 1000                              | 0  |
| Summed employees estimate for industry              |              |                                   | 1387                                     |
| Average employees per small business                |              |                                   | 13                                       |
| Average employees per large business                |              |                                   | 108.3333                                 |
| Average employees per largest 10% of large business |              |                                   | 175                                      |
| Information taken from NAICS web site               |              |                                   |  |
| Data year   | 2006         |                                   |  |

**Information from NAICS - U.S. Census Bureau.**

<sup>1</sup>Department of health staff estimates that there are approximately one hundred ASF[s] that have to comply with this rule. The eighty-two business figure was taken from the NAICS for the year 2006.

Appendix B  
**Minor Cost Threshold (Gross Receipts)**  
 For Freestanding Ambulatory Surgical  
 and Emergency Centers (#621493)

| Establishments                 | Receipts (1000) | Employees |
|--------------------------------|-----------------|-----------|
| 63                             | 146,506         | 890       |
| Receipts                       | 146,506,000     |           |
| Receipts per business          | 2,325,492       |           |
| 3/10% of receipts per business | \$6,976.48      |           |

**Information from NAICS - U.S. Census Bureau.  
 2002 data for sixty-three firms (the department assumes that current gross receipts in the calendar year**

**2009 would be substantially greater than the figures for 2002. In addition to an increase in the number of ASFs, there has been a subsequent growth in surgical procedures performed in ASFs).**

A copy of the statement may be obtained by contacting John Hilger, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-2929, fax (360) 236-2901, e-mail john.hilger@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting John Hilger, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-2929, fax (360) 236-2901, e-mail john.hilger@doh.wa.gov.

February 4, 2009

Mary C. Selecky  
Secretary

## Chapter 246-330 WAC

### AMBULATORY SURGICAL FACILITIES

#### NEW SECTION

**WAC 246-330-001 Purpose and applicability of chapter.** The Washington state department of health adopts this chapter to implement chapter 70.230 RCW and establish minimum health and safety requirements for the licensing, inspection, operation, maintenance, and construction of ambulatory surgical facilities.

(1) Compliance with the regulations in this chapter does not constitute release from the requirements of applicable federal, state and local codes and ordinances. Where regulations in this chapter exceed other codes and ordinances, the regulations in this chapter will apply.

(2) The department will update or adopt references to codes and regulations in this chapter as necessary.

#### NEW SECTION

**WAC 246-330-010 Definitions.** For the purposes of this chapter, the following words and phrases will have the following meanings unless the context clearly indicates otherwise:

(1) "Abuse" means injury or sexual abuse of a patient indicating the health, welfare, and safety of the patient is harmed:

(a) "Physical abuse" means acts or incidents which may result in bodily injury or death.

(b) "Emotional abuse" means to impose willful or reckless mental or emotional anguish by threat, verbal behavior, harassment, or other verbal or nonverbal actions which may result in emotional or behavioral stress or injury.

(2) "Advanced registered nurse practitioner" means an individual licensed under chapter 18.79 RCW.

(3) "Adverse health event" or "adverse event" means the list of serious reportable events adopted by the national quality forum in 2002 (and as updated), in its consensus report on serious reportable events in health care.

(4) "Agent," when referring to a medical order or procedure, means any power, principle, or substance, whether

physical, chemical, or biological, capable of producing an effect upon the human body.

(5) "Alteration" means any change, addition, functional change, or modification to an existing ambulatory surgical facility or a portion of an existing ambulatory surgical facility.

"Minor alteration" means renovation that does not require an increase in capacity to structural, mechanical or electrical systems, does not affect fire and life safety, and does not add facilities in addition to that for which the ambulatory surgical facility is currently licensed. Minor alterations do not require prior review and approval by the department.

(6) "Ambulatory surgical facility" means any distinct entity that operates for the primary purpose of providing specialty or multispecialty outpatient surgical services in which patients are admitted to and discharged from the facility within twenty-four hours and do not require inpatient hospitalization, whether or not the facility is certified under Title XVIII of the federal Social Security Act. Excluded from this definition are a dental office, an ambulatory surgical facility licensed as part of a hospital under chapter 70.41 RCW or a practitioner's office where surgical procedures are conducted without general anesthesia.

(7) "Assessment" means the:

(a) Systematic collection and review of patient-specific data;

(b) A process for obtaining appropriate and necessary information about individuals seeking entry into the ambulatory surgical facility or service; and

(c) Information used to match an individual with an appropriate setting or intervention. The assessment is based on the patient's diagnosis, care setting, desire for care, response to any previous treatment, consent to treatment, and education needs.

(8) "Authentication" means the process used to verify an entry is complete, accurate, and final.

(9) "Change of ownership" means:

(a) A sole proprietor who transfers all or part of the ambulatory surgical facility's ownership to another person or persons;

(b) The addition, removal, or substitution of a person as a general, managing, or controlling partner in an ambulatory surgical facility owned by a partnership where the tax identification number of that ownership changes; or

(c) A corporation that transfers all or part of the corporate stock which represents the ambulatory surgical facility's ownership to another person where the tax identification number of that ownership changes.

(10) "Clinical evidence" means the same as original clinical evidence used in diagnosing a patient's condition or assessing a clinical course and includes, but is not limited to:

(a) X-ray films;

(b) Digital records;

(c) Laboratory slides;

(d) Tissue specimens; or

(e) Medical photographs.

(11) "Department" means the Washington state department of health.

(12) "Double-checking" means verifying patient identity, agent to be administered, route, quantity, rate, time, and interval of administration by two persons.

(13) "Drugs" as defined in RCW 18.64.011(3) means:

(a) Articles recognized in the official United States pharmacopoeia or the official homeopathic pharmacopoeia of the United States;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) Substances (other than food) intended to affect the structure or any function of the body of man or other animals; or

(d) Substances intended for use as a component of any substances specified in (a), (b), or (c) of this subsection but not including devices or component parts or accessories.

(14) "Emergency medical condition" means a condition manifesting itself by acute symptoms of severity (including severe pain, symptoms of mental disorder, or symptoms of substance abuse) that absent of immediate medical attention could result in:

(a) Placing the health of an individual in serious jeopardy;

(b) Serious impairment to bodily functions;

(c) Serious dysfunction of a bodily organ or part; or

(d) With respect to a pregnant woman who is having contractions:

(i) That there is inadequate time to provide a safe transfer to a hospital before delivery; or

(ii) That the transfer may pose a threat to the health or safety of the woman or the unborn child.

(15) "Emergency services" means health care services medically necessary to evaluate and treat a medical condition that manifests itself by the acute onset of a symptom or symptoms, including severe pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, and that the absence of immediate medical attention could reasonably be expected to result in serious impairment to bodily functions or serious dysfunction of an organ or part of the body, or would place the person's health, or in the case of a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.

(16) "Family" means individuals designated by a patient who need not be relatives.

(17) "General anesthesia" means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body, in which the patient is without protective reflexes and is unable to maintain an airway. Lower levels of sedation that unintentionally progress to the point at which the patient is without protective reflexes and is unable to maintain an airway is not considered general anesthesia.

(18) "Governing authority/body" means the person or persons responsible for establishing the purposes and policies of the ambulatory surgical facility.

(19) "Hospital" means any institution, place, building, or agency providing accommodations, facilities, and services as defined in chapter 70.41 RCW.

(20) "Individualized treatment plan" means a written and/or electronically recorded statement of care planned for a patient based upon assessment of the patient's developmental, biological, psychological, and social strengths and problems, and including:

(a) Treatment goals, with stipulated time frames;

(b) Specific services to be utilized;

(c) Designation of individuals responsible for specific service to be provided;

(d) Discharge criteria with estimated time frames; and

(e) Participation of the patient and the patient's designee as appropriate.

(21) "Invasive medical procedure" means a procedure involving puncture or incision of the skin or insertion of an instrument or foreign material into the body including, but not limited to, percutaneous aspirations, biopsies, cardiac and vascular catheterizations, endoscopies, angioplasties, and implantations. Excluded are venipuncture and intravenous therapy.

(22) "Maintenance" means the work of keeping something in safe, workable or suitable condition.

(23) "Medical equipment" means equipment used in a patient care environment to support patient treatment and diagnosis.

(24) "Medical staff" means practitioners and advanced registered nurse practitioners appointed by the governing authority.

(25) "Medication" means any substance, other than food or devices, intended for use in diagnosing, curing, mitigating, treating, or preventing disease.

(26) "Near miss" means an event which had the potential to cause serious injury, death, or harm but did not happen due to chance, corrective action or timely intervention.

(27) "Neglect" means mistreatment or maltreatment; a disregard of consequences or magnitude constituting a clear and present danger to an individual patient's health, welfare, and safety.

(a) "Physical neglect" means physical or material deprivation, such as lack of medical care, lack of supervision, inadequate food, clothing, or cleanliness.

(b) "Emotional neglect" means acts such as rejection, lack of stimulation, or other acts that may result in emotional or behavioral problems, physical manifestations, and disorders.

(28) "New construction" means any renovation, alteration or new facility to be licensed as an ambulatory surgical facility.

(29) "Nonambulatory" means an individual physically or mentally unable to walk or traverse a normal path to safety without the physical assistance of another.

(30) "Operating room" means a room intended for invasive and noninvasive procedures.

(31) "Patient" means an individual receiving (or having received) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative health services.

(32) "Patient care areas" means all areas of the ambulatory surgical facility where direct patient care is delivered and where patient diagnostic or treatment procedures are performed.

(33) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, and the legal successor thereof.

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

(35) "Pharmacy" means every place properly licensed by the board of pharmacy where the practice of pharmacy is conducted.

(36) "Physician" means an individual licensed under chapter 18.71 RCW, Physicians, chapter 18.22 RCW, Podiatric medicine and surgery, or chapter 18.57 RCW, Osteopathy—Osteopathic medicine and surgery.

(37) "Practitioner" means any physician or surgeon licensed under chapter 18.71 RCW, an osteopathic physician or surgeon licensed under chapter 18.57 RCW, or a podiatric physician or surgeon licensed under chapter 18.22 RCW.

(38) "Prescription" means an order for drugs or devices issued by a practitioner authorized by law or rule in the state of Washington for a legitimate medical purpose.

(39) "Procedure" means a particular course of action to relieve pain, diagnose, cure, improve, or treat a patient's condition or that directs care for a patient.

(40) "Protocols" and "standing order" mean written or electronically recorded descriptions of actions and interventions for implementation by designated ambulatory surgical facility staff under defined circumstances recorded in policy and procedure.

(41) "Recovery unit" means a physical area for the segregation, concentration, and close or continuous nursing observation of patients for less than twenty-four hours immediately following anesthesia, surgery, or other diagnostic or treatment procedures.

(42) "Registered nurse" means an individual licensed under chapter 18.79 RCW.

(43) "Restraint" means any method used to prevent or limit free body movement including, but not limited to, involuntary confinement, a physical or mechanical device, or a drug given not required to treat a patient's symptoms.

(44) "Room" means a space set apart by floor-to-ceiling partitions on all sides with proper access to a corridor and with all openings provided with doors or windows.

(45) "Sedation" means the administration of drugs to obtund, dull, reduce the intensity of pain or awareness, allay patient anxiety and control pain during a diagnostic or therapeutic procedure where the administration of those drugs by any route carries the risk of loss of protective reflexes to include any of the following:

(a) "Minimal sedation or anxiolysis" is a state during which patients respond normally to verbal commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are unaffected;

(b) "Moderate or conscious sedation" is a depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained; and

(c) "Deep sedation" is a depression of consciousness during which patients cannot be easily aroused but respond pur-

posefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

(46) "Sexual assault" means one or more of the following:

- (a) Rape or rape of a child;
- (b) Assault with intent to commit rape or rape of a child;
- (c) Incest or indecent liberties;
- (d) Child molestation;
- (e) Sexual misconduct with a minor;
- (f) Custodial sexual misconduct;
- (g) Crimes with a sexual motivation; or
- (h) An attempt to commit any of the offenses in (a) through (h) of this subsection.

(47) "Severe pain" means a level of pain reported by a patient of 8 or higher based on a 10-point scale with 1 being the least and 10 being the most pain.

(48) "Staff" means paid employees, leased or contracted persons, students, and volunteers.

(49) "Surgical services" means invasive medical procedures that:

(a) Utilize a knife, laser, cautery, cytogenics, or chemicals; and

(b) Remove, correct, or facilitate the diagnosis or cure of disease, process or injury through that branch of medicine that treats diseases, injuries and deformities by manual or operative methods by a practitioner.

(50) "Surrogate decision-maker" means an individual appointed to act on behalf of another when an individual is without capacity or has given permission.

(51) "Transfer agreement" means a written agreement providing an effective process for the transfer of a patient requiring emergency services to a hospital providing emergency services and for continuity of care for that patient.

(52) "Treatment" means the care and management of a patient to combat, improve, or prevent a disease, disorder, or injury, and may be:

- (a) Pharmacologic, surgical, or supportive;
- (b) Specific for a disorder; or
- (c) Symptomatic to relieve symptoms without effecting a cure.

(53) "Vulnerable adult" means:

(a) As defined in chapter 74.34 RCW, a person sixty years of age or older who lacks the functional, physical, or mental ability to care for him or herself;

(b) An adult with a developmental disability per RCW 71A.10.020;

(c) An adult with a legal guardian per chapter 11.88 RCW;

(d) An adult living in a long-term care facility (an adult family home, boarding home or nursing home);

(e) An adult living in their own or a family's home receiving services from an agency or contracted individual provider; or

(f) An adult self-directing their care per RCW 74.39.050;

(g) For the purposes of requesting background checks pursuant to RCW 43.43.832, it shall also include adults of

any age who lack the functional, mental, or physical ability to care for themselves.

(54) "Well-being" means free from actual or potential harm, abuse, neglect, unintended injury, death, serious disability or illness.

## PART I OPERATIONAL RULES

### NEW SECTION

**WAC 246-330-020 Department responsibilities—Licensing, change of ownership—Adjudicative proceeding.** This section outlines the actions and roles of the department for licensing an ambulatory surgical facility.

(1) Before issuing an initial license to facilities that exist prior to July 1, 2009, the department will verify compliance with chapter 70.230 RCW and this chapter by:

(a) Receipt and approval of the initial license application;

(b) Receipt of the correct licensing fee;

(c) Receipt of a completed and accepted inspection conducted by:

(i) The Centers for Medicare and Medicaid Services;

(ii) The Joint Commission;

(iii) The Accreditation Association for Ambulatory Health Care;

(iv) The American Association for Accreditation of Ambulatory Surgery Facilities; or

(d) For facilities that have not been inspected by Medicare or one of the accrediting organizations listed in (c) of this subsection, the following:

(i) Receipt of a certificate of need, when needed, as provided in chapter 70.38 RCW;

(ii) Receipt of a certificate of occupancy by the local jurisdiction;

(iii) Receipt of the ambulatory surgical facility's safety and emergency training program; and

(iv) Successfully completing an on-site licensing inspection conducted by the department.

(2) Before issuing an initial license after July 1, 2009, the department will verify compliance with chapter 70.230 RCW and this chapter including, but not limited to:

(a) Approval of construction documents in accordance with this chapter;

(b) Receipt of a certificate of need, when needed, as provided in chapter 70.38 RCW;

(c) Receipt and approval of the initial license application;

(d) Receipt of the correct license fee;

(e) Receipt of the ambulatory surgical facility's safety and emergency training program; and

(f) Receipt of a completed and accepted inspection conducted by:

(i) The Centers for Medicare and Medicaid Services;

(ii) The Joint Commission;

(iii) The Accreditation Association for Ambulatory Health Care;

(iv) The American Association for Accreditation of Ambulatory Surgery Facilities; or

(g) Successfully completing an on-site licensing inspection conducted by the department.

(3) Before reissuing a renewal license, the department will:

(a) Approve the amended ambulatory surgical facility application form; and

(b) Confirm receipt of the correct fee.

(4) Before issuing a change of ownership license, the department will:

(a) Approve the change of ownership application;

(b) Confirm receipt of the change of ownership fee; and

(c) Confirm the change of ownership will not alter the certificate of need status or require a certificate of need review.

**Note:** A change of ownership application does not require a construction review or on-site inspection. A change of ownership may or may not require a certificate of need review and approval per chapter 70.38 RCW.

(5) The department may issue a provisional license to allow the operation of an ambulatory surgical facility, if the department determines that the applicant or licensed ambulatory surgical facility failed to comply with chapter 70.230 RCW or this chapter.

(6) The department may deny, suspend, modify, or revoke a license when it finds an applicant or ambulatory surgical facility has failed or refused to comply with chapter 70.230 RCW or this chapter. The department's notice of a license denial, suspension, modification, or revocation will be consistent with RCW 43.70.115. The proceeding is governed by the Administrative Procedure Act chapter 34.05 RCW, this chapter, and chapter 246-10 WAC. An applicant or license holder has the right to an adjudicative proceeding to contest the decision as described in WAC 246-330-100 (4)(c) of this chapter.

### NEW SECTION

**WAC 246-330-025 Department responsibility—On-site survey and complaint investigation.** This section outlines the department's on-site survey and complaint investigation activities and roles.

(1) Surveys. The department will:

(a) Conduct on-site surveys of each ambulatory surgical facility every eighteen months or more often using the health and safety standards in this chapter and chapter 70.230 RCW;

(b) Accept, in accordance with RCW 70.230.100(2), as a substitute for the department's eighteen months on-site survey, on-site surveys conducted by the Joint Commission, Accreditation Association for Ambulatory Health Care, American Association for Accreditation of Ambulatory Surgery Facilities or the Centers for Medicare and Medicaid Services as substituting for the eighteen month state survey requirement once every three years;

(c) Notify the ambulatory surgical facility in writing the survey findings following each on-site survey;

(d) Require each ambulatory surgical facility to submit a corrective action plan addressing each deficient practice identified in the survey findings; and

(e) Notify the ambulatory surgical facility when their submitted plan of correction adequately addresses the survey findings.

(2) Complaint investigations. The department will:

(a) Conduct an investigation of every complaint against an ambulatory surgical facility that concerns patient well-being;

(b) Notify the ambulatory surgical facility in writing of complaint investigation findings following each complaint investigation;

(c) Require each ambulatory surgical facility to submit a corrective action plan addressing each deficient practice identified in the complaint investigation findings; and

(d) Notify the ambulatory surgical facility when the facility submitted plan of correction adequately addresses the complaint investigation findings.

(3) The department may:

(a) For the purpose of meeting the every eighteen month survey requirement in RCW 70.230.100(2), allow an ambulatory surgical facility to conduct a self-survey once every three years if the previous three department inspections did not reveal any significant deficient practice;

(b) Direct an ambulatory surgical facility on how to implement a corrective action plan based on the findings from an on-site survey or complaint investigation; or

(c) Contact an ambulatory surgical facility to discuss the findings of the Joint Commission, Accreditation Association for Ambulatory Health Care or American Association for Accreditation of Ambulatory Surgery Facilities on-site accreditation survey.

#### NEW SECTION

**WAC 246-330-030 Operating without a license—Adjudicative proceeding.** This section outlines the department's responsibility and authority over ambulatory surgical facilities that operate after July 1, 2009, without a department issued license.

(1) The department will investigate complaints of an ambulatory surgical facility operating without a license.

(2) Upon confirming that an ambulatory surgical facility is operating without a license, the secretary of the department may:

(a) Issue a notice of intention to issue a cease and desist order; or

(b) Issue a temporary cease and desist order after making a written finding of fact that the public interest will be irreparably harmed by delay in issuing the order. The temporary cease and desist order will remain in effect until further order by the secretary of the department.

(3) The person receiving a temporary cease and desist order is entitled to a prompt hearing. Actions taken under this section are governed by the Administrative Procedure Act chapter 34.05 RCW, this chapter, and chapter 246-10 WAC.

#### NEW SECTION

**WAC 246-330-035 Exemptions, interpretations, alternative methods.** (1) The department may exempt an ambulatory surgical facility from complying with portions of this chapter when:

(a) The exemption will not change the purpose and intent of chapter 70.230 RCW or this chapter;

(b) Patient safety, health or well-being is not threatened;

(c) Fire and life safety regulations, infection control standards or other codes or regulations would not be reduced; and

(d) Structural integrity of the building is not compromised.

(2) The department will send a written interpretation of a rule within thirty calendar days after the department has received complete information relevant to the request for interpretation.

(3) The department may approve an ambulatory surgical facility to use alternative materials, designs, and methods if the documentation and supporting information:

(a) Meets the intent and purpose of these rules; and

(b) Is equivalent to the methods prescribed in this chapter.

(4) The department will keep copies of each exemption, alternative, or interpretation issued.

#### NEW SECTION

**WAC 246-330-100 Application for license—Annual update of ambulatory surgical facilities information—License renewal—Right to contest a license decision.** This section identifies the actions and responsibilities of an applicant or ambulatory surgical facility for a license.

(1) Initial license. An applicant must submit an application packet and fee to the department at least sixty days before the intended opening date of the new ambulatory surgical facility.

(2) Annual update. Before December 31st of each calendar year, a licensed ambulatory surgical facility must submit to the department an annual update documentation form.

(3) License renewal. No later than thirty days before the license expiration date, a licensed ambulatory surgical facility must submit to the department a renewal application form and fee.

(4) An applicant or ambulatory surgical facility has the right to contest a department decision to deny, modify, suspend or revoke a license by:

(a) Sending a written request for an adjudicative proceeding within twenty-eight days of receipt of the department's licensing decision showing proof of receipt with the office of the Adjudicative Service Unit, Department of Health, P.O. Box 47879, Olympia, WA 98504-7879; and

(b) Include as part of the written request:

(i) A specific statement of the issues and law involved;

(ii) The grounds for contesting the department decision; and

(iii) A copy of the contested department decision.

(c) The adjudicative proceeding is governed by the Administrative Procedure Act chapter 34.05 RCW, this chapter, and chapter 246-10 WAC.

#### NEW SECTION

**WAC 246-330-105 Ambulatory surgical facility responsibilities.** This section identifies the actions and responsibilities of a licensed ambulatory surgical facility.



(1) An ambulatory surgical facility must comply with chapter 70.230 RCW and this chapter;

(2) An ambulatory surgical facility certified by the Centers for Medicare and Medicaid Services or accredited by the Joint Commission, Accreditation Association for Ambulatory Health Care or American Association for Accreditation of Ambulatory Surgery Facilities must:

(a) Notify the department of a certification or an accreditation survey within two business days following completion of the survey; and

(b) Notify the department in writing of the accreditation decision and any changes in accreditation status within thirty calendar days of receiving the accreditation report.

#### NEW SECTION

**WAC 246-330-110 Requests for exemptions, interpretations, alternative methods.** This section outlines a process to request an exemption, interpretation, or approval to use an alternative method and the department's response. This section is not intended to prevent use of systems, materials, alternate design, or methods of construction as alternatives to those prescribed by this chapter.

(1) A licensed ambulatory surgical facility requesting exemption from this chapter must:

(a) Send a written request to the department;

(b) Include in the request:

(i) The specific section of this chapter to be exempted;

(ii) Explain the reasons for requesting the exemption;

(iii) How the exemption will not change the purpose and intent of chapter 70.230 RCW or this chapter;

(iv) Why the exemption does not threaten patient safety or health;

(v) How the exemption will not reduce or alter fire and life safety or infection control requirements; and

(vi) Why the exemption does not compromise structural integrity of the building.

(2) A licensed ambulatory surgical facility or person requesting an interpretation of a rule in this chapter must:

(a) Send a written request to the department;

(b) Include in the request:

(i) The specific section of this chapter to be interpreted;

(ii) Explain the reason or circumstances for requesting the interpretation; and

(iii) Where or how the rule is being applied.

(c) Provide additional information when required by the department.

(3) A licensed ambulatory surgical facility requesting use of alternative materials, design, and methods must:

(a) Send a written request to the department; and

(b) Explain and support with technical documentation the reasons the department should consider the request.

(4) The licensed ambulatory surgical facility must keep and make available copies of each exemption, alternative, or interpretation received from the department.

(5) The department will, in response to a written request for an exemption or approval to use alternative materials, designs, and methods, send a written determination within thirty days after the department has received complete information relevant to the request.

#### NEW SECTION

**WAC 246-330-115 Governance.** This section outlines the organizational guidance and oversight responsibilities of ambulatory surgical facility resources and staff to support safe patient care.

An ambulatory surgical facility must have a governing authority that is responsible for determining, implementing, monitoring and revising policies and procedures covering the operation of the facility that includes:

(1) Selecting and periodically evaluating a chief executive officer or administrator;

(2) Appointing and periodically reviewing a medical staff;

(3) Approving the medical staff bylaws;

(4) Reporting practitioners according to RCW 70.230.-120;

(5) Informing patients of any unanticipated outcomes according to RCW 70.230.150;

(6) Establishing and approving a coordinated quality performance improvement plan according to RCW 70.230.-080;

(7) Establishing and approving a facility safety and emergency training program according to RCW 70.230.060;

(8) Reporting adverse events and conducting root cause analyses according to RCW 70.56.020;

(9) Providing a patient and family grievance process including a time frame for resolving each grievance according to RCW 70.230.080 (1)(d);

(10) Defining who can give and receive patient care orders that are consistent with professional licensing laws; and

(11) Defining who can authenticate written or electronic orders for all drugs, intravenous solutions, blood, and medical treatments that are consistent with professional licensing laws.

#### NEW SECTION

**WAC 246-330-120 Leadership.** This section describes leadership's role in assuring care is provided consistently throughout the facility according to patient needs.

The ambulatory surgical facility leaders must:

(1) Identify patient care responsibilities for all nursing personnel;

(2) Assure nursing services are provided in accordance with state nurse licensing law and recognized standards of practice;

(3) Assure a registered nurse is available for emergency treatment at all times a patient is present in the facility;

(4) Establish and implement a facility-wide procedure for double-checking certain drugs, biologicals, and agents;

(5) Ensure immediate staff access to and appropriate dosages for emergency drugs;

(6) Require individuals conducting business in the ambulatory surgical facility comply with facility policies and procedures;

(7) Post the complaint hotline notice according to RCW 70.230.160; and

(8) Adopt and implement policies and procedures to report suspected abuse within forty-eight hours to local

police or appropriate law enforcement agency according to RCW 26.44.030.

#### NEW SECTION

**WAC 246-330-125 Patient rights and organizational ethics.** The purpose of this section is to improve patient care and outcomes by respecting every patient and maintaining ethical relationships with the public.

Ambulatory surgical facilities must:

(1) Adopt and implement policies and procedures that define each patient's right to:

- (a) Be treated and cared for with dignity and respect;
- (b) Confidentiality, privacy, security, complaint resolution, spiritual care, and communication. If communication restrictions are necessary for patient care and safety, the facility must document and explain the restrictions to the patient and family;
- (c) Be protected from abuse and neglect;
- (d) Access protective services;
- (e) Complain about their care and treatment without fear of retribution or denial of care;
- (f) Timely complaint resolution;
- (g) Be involved in all aspects of their care including:
  - (i) Refusing care and treatment; and
  - (ii) Resolving problems with care decisions.
- (h) Be informed of unanticipated outcomes according to RCW 70.230.150;
  - (i) Be informed and agree to their care; and
  - (j) Family input in care decisions.
- (2) Provide each patient a written statement of patient rights from subsection (1) of this section.
- (3) Adopt and implement policies and procedures to address research, investigation, and clinical trials including:
  - (a) How to authorize research;
  - (b) Require staff to follow informed consent laws; and
  - (c) Not hindering a patient's access to care if a patient refuses to participate.

#### NEW SECTION

**WAC 246-330-130 Adverse events.** (1)(a) For the purpose of this section, "serious disability" means a physical or mental impairment that substantially limits the major life activities of a patient.

(b) Ambulatory surgical facilities must:

- (i) Notify the department according to RCW 70.56.020 whenever an adverse event is confirmed in the facility; and
- (ii) Send the department a report regarding the event according to RCW 70.56.020.
- (2) The department will assure all notifications and reports submitted to the department are maintained confidentially according to RCW 70.56.050.

#### NEW SECTION

**WAC 246-330-140 Management of human resources.** This section ensures that ambulatory surgical facilities provide competent staff consistent with scope of services.

Ambulatory surgical facilities must:

- (1) Create and periodically review job descriptions for all staff;
- (2) Supervise staff performance to assure competency;
- (3) Verify and document licensure, certification, or registration of staff;
- (4) Complete tuberculosis screening for new and current employees consistent with the *Guidelines for Preventing the Transmission of Mycobacterium Tuberculosis in Healthcare Facilities*, 2005. *Morbidity Mortality Weekly Report (MMWR) Volume 54*, December 30, 2005;
- (5) Provide infection control information to staff upon hire and annually which includes:
  - (a) Education on general infection control according to chapter 296-823 WAC blood borne pathogens exposure control; and
  - (b) General and specific infection control measures related to patient care.
- (6) Establish and implement an education plan that verifies staff training on prevention, transmission, and treatment of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) consistent with RCW 70.24.310.

#### NEW SECTION

**WAC 246-330-145 Medical staff.** This section requires development of a medical staff structure, consistent with clinical competence, to ensure a safe patient care environment.

The medical staff must:

- (1) Be accountable to the governing body;
- (2) Adopt bylaws, rules, regulations, and organizational structure including an appointment and reappointment process;
- (3) Be legally and professionally qualified for the positions to which they are appointed and for the performance of privileges in accordance with recommendations from qualified medical personnel;
- (4) Periodically review and reappraise medical staff privileges using peer review data;
- (5) Periodically review and amend the scope of procedures performed in the ambulatory surgical facility;
- (6) If the ambulatory surgical facility assigns patient care responsibilities to practitioners other than physicians, it must have established policies and procedures, approved by the governing body, for overseeing and evaluating their clinical activities; and
- (7) Report practitioners for discipline of unprofessional conduct according to RCW 70.230.120.

#### NEW SECTION

**WAC 246-330-150 Management of information.** The purpose of this section is to improve patient outcomes and ambulatory surgical facility performance through obtaining, managing, and use of information.

An ambulatory surgical facility must:

- (1) Provide medical staff, employees and other authorized persons with access to patient information systems, resources, and services;

- (2) Maintain confidentiality, security, and integrity of information;
- (3) Initiate and maintain a medical record for every patient assessed or treated including a process to review records for completeness, accuracy, and timeliness;
- (4) Create medical records that:
  - (a) Identify the patient;
  - (b) Have clinical data to support the diagnosis, course and results of treatment for the patient;
  - (c) Have signed consent documents;
  - (d) Promote continuity of care;
  - (e) Have accurately written, signed, dated, and timed entries;
  - (f) Indicates authentication after the record is transcribed;
  - (g) Are promptly filed, accessible, and retained according to chapter 5.46 RCW; and
  - (h) Include verbal orders that are accepted and transcribed by qualified personnel.
- (5) Establish a systematic method for identifying each medical record, identification of service area, filing, and retrieval of all patient's records; and
- (6) Adopt and implement policies and procedures that address:
  - (a) Who has access to and release of confidential medical records according to chapter 70.02 RCW;
  - (b) Retention and preservation of medical records;
  - (c) Transmittal of medical data to ensure continuity of care; and
  - (d) Exclusion of clinical evidence from the medical record.

#### NEW SECTION

**WAC 246-330-155 Coordinated quality improvement program.** The purpose of this section is to ensure the establishment and on-going maintenance of a coordinated quality improvement program. The intent is to improve the quality of health care services provided to patients and to identify and prevent medical malpractice.

An ambulatory surgical facility must:

- (1) Have a facility-wide approach to process design and performance measurement, assessment, and improving patient care services according to RCW 70.230.080 including, but not limited to:
  - (a) A written performance improvement plan that is periodically evaluated;
  - (b) Performance improvement activities that are interdisciplinary and include at least one member of the governing authority;
  - (c) Prioritize performance improvement activities;
  - (d) Implement and monitor actions taken to improve performance;
  - (e) Education programs dealing with performance improvement, patient safety, medication errors, injury prevention; and
  - (f) Review serious or unanticipated patient outcomes in a timely manner.

- (2) Systematically collect, measure and assess data on processes and outcomes related to patient care and organization functions;
- (3) Collect, measure and assess data including, but not limited to:
  - (a) Operative, other invasive, and noninvasive procedures that place patients at risk;
  - (b) Infection rates, pathogen distributions and antimicrobial susceptibility profiles;
  - (c) Death;
  - (d) Medication management or administration related to wrong medication, wrong dose, wrong time, near misses and any other medication errors and incidents;
  - (e) Injuries, falls; restraint use; negative health outcomes and incidents injurious to patients in the ambulatory surgical facility;
  - (f) Adverse events according to chapter 70.56 RCW;
  - (g) Discrepancies or patterns between preoperative and postoperative (including pathologic) diagnosis, including pathologic review of specimens removed during surgical or invasive procedures;
  - (h) Adverse drug reactions (as defined by the ambulatory surgical facility);
  - (i) Confirmed transfusion reactions;
  - (j) Patient grievances, needs, expectations, and satisfaction; and
  - (k) Quality control and risk management activities.

#### NEW SECTION

**WAC 246-330-176 Infection control program.** The purpose of this section is to identify and reduce the risk of acquiring and transmitting infections and communicable diseases between patients, staff, medical staff, and visitors.

An ambulatory surgical facility must:

- (1) Develop, implement and maintain a written infection control and surveillance program;
- (2) Designate staff to:
  - (a) Manage the activities of the infection control program;
  - (b) Assure the infection control program conforms with patient care and safety policies and procedures; and
  - (c) Provide consultation on the infection control program, policies and procedures throughout the entire facility.
- (3) Ensure staff managing the infection control program have:
  - (a) A minimum of two years experience in a health related field; and
  - (b) Training in the principles and practices of infection control;
  - (c) Develop and implement infection control policies and procedures consistent with the guidelines of the centers for disease control and prevention (CDC);
  - (d) Assure the infection control policies and procedures address, but are not limited to the following:
    - (a) Routine surveillance, outbreak investigations and interventions including pathogen distributions and antimicrobial susceptibility profiles consistent with the 2006 CDC healthcare infection control practices advisory committee

guideline, *Management of Multidrug-Resistant Organisms in Healthcare Settings*;

- (b) Patient care practices in all clinical care areas;
  - (c) Receipt, use, disposal, sterilizing, processing, or reuse of equipment to prevent disease transmission;
  - (d) Preventing cross contamination of soiled and clean items during sorting, processing, transporting, and storage;
  - (e) Environmental management and housekeeping functions;
  - (f) Approving and properly using disinfectants, equipment, and sanitation procedures;
  - (g) Cleaning areas used for surgical procedures before, between, and after use;
  - (h) Facility-wide daily and periodic cleaning;
  - (i) Occupational health consistent with current practice;
  - (j) Clothing;
  - (k) Traffic patterns;
  - (l) Antisepsis;
  - (m) Handwashing;
  - (n) Scrub technique and surgical preparation;
  - (o) Biohazardous waste management according to applicable federal, state, and local regulations;
  - (p) Barrier, transmission and isolation precautions; and
  - (q) Pharmacy and therapeutics.
- (6) Establish and implement a plan for:
- (a) Reporting communicable diseases including cluster or outbreaks of postoperative infections according to chapter 246-100 WAC; and
  - (b) Surveying and investigating communicable disease occurrences in the ambulatory surgical facility consistent with chapter 246-100 WAC; and
  - (c) Collecting, measuring and assessing data on infection rates, pathogen distributions and antimicrobial susceptibility profiles.

#### NEW SECTION

**WAC 246-330-199 Fees—License, survey, change of ownership, refund process.** This section establishes the license, survey, and change of ownership fees, a late penalty fee and request for refund of an initial fee. The license and survey fee are good for the entire three-year license period. The change of ownership fee is good for that transaction and does not change the original license ending date.

- (1) Initial license. Applicants for an initial license must send the department:
  - (a) An initial license fee of two hundred dollars; and
  - (b) An initial survey fee based on the number of known or expected annual visits as follows:
    - (i) One thousand two hundred dollars for under one thousand annual patient visits;
    - (ii) One thousand six hundred dollars for one thousand one to five thousand annual patient visits; or
    - (iii) Two thousand two hundred dollars for more than five thousand annual patient visits.
- (2) Renewal license. Licensees must send the department a license renewal and survey fee at least thirty days before the license expiration date as follows:
  - (a) One thousand three hundred dollars for under one thousand annual patient visits;

- (b) One thousand seven hundred dollars for one thousand one to five thousand annual patient visits; or

- (c) Two thousand three hundred dollars for more than five thousand annual patient visits.

(3) Late fee. A licensee must send the department a late fee in the amount of twenty-five dollars per day, not to exceed five hundred dollars, whenever the renewal fee is not paid by thirty days before the license expiration (date as indicated by the postmark).

(4) Change of ownership. The person purchasing or taking over ownership of a licensed ambulatory surgical facility must:

- (a) Send the department a change of ownership fee in the amount of two hundred fifty dollars. The fee is paid thirty days before the change of ownership becomes final; and

- (b) Receive from the department a new license valid for the remainder of the current license period.

(5) An applicant may request a refund for initial licensure as follows:

- (a) Two-thirds of the initial fee paid after the department has received an application and not conducted an on-site survey or provided technical assistance; or

- (b) One-third of the initial fee paid after the department has received an application and conducted either an on-site survey or provided technical assistance but not issued a license.

#### NEW SECTION

**WAC 246-330-200 Pharmaceutical services.** This section assures patient pharmaceutical needs are met in a planned and organized manner. This section is consistent with the requirements for a health care entity license under RCW 18.64.450 and chapter 246-904 WAC.

An ambulatory surgical facility must:

(1) Designate a pharmacist in charge who is licensed in Washington state. The pharmacist in charge can be either employed by the facility or be a pharmacy consultant. The pharmacist in charge is responsible for:

- (a) Assure drugs are stored, compounded, delivered or dispensed according to all applicable state and federal rules and regulations;

- (b) Creating and implementing policy and procedures related to:

- (i) Purchasing, ordering, storing, compounding, delivering, dispensing and administering of controlled substances or legend drugs;

- (ii) Maintaining accurate inventory records and patient medical records related to the administration of controlled substances and legend drugs;

- (iii) Maintaining any other records required by state and federal regulations;

- (iv) Security of legend drugs and controlled substances; and

- (v) Controlling access to controlled substances and legend drugs.

- (c) Completing all forms for the purchase and order of legend drugs and controlled substances; and

(d) Verifying receipt of all legend drugs and controlled substances purchased and ordered by the ambulatory surgical facility.

(2) Only administer, dispense or deliver legend drugs and controlled substances to patients receiving care in the facility;

(3) Assure drugs dispensed to patients are dispensed and labeled consistent with the requirements of RCW 18.64.246, and chapters 69.41 and 69.50 RCW; and

(4) Establish and use a process for selecting medications based on evaluating their relative therapeutic merits, safety, and cost.

#### NEW SECTION

**WAC 246-330-205 Patient care services.** This section guides the development of a plan for patient care. The ambulatory surgical facility accomplishes this by supervising staff, establishing, monitoring, and enforcing policies and procedures that define and outline the use of materials, resources, and promote the delivery of care.

An ambulatory surgical facility must:

(1) Provide personnel, space, equipment, reference materials, training, and supplies for the appropriate care and treatment of patients;

(2) Have a registered nurse available for consultation in the ambulatory surgical facility at all times patients are present;

(3) Adopt, implement, review and revise patient care policies and procedures designed to guide staff that address:

(a) Criteria for patient admission;

(b) Reliable method for personal identification of each patient;

(c) Conditions that require patient transfer to outside facilities;

(d) Patient safety measures;

(e) Staff access to patient care areas;

(f) Use of physical and chemical restraints or seclusion consistent with CFR 42.482;

(g) Use of preestablished patient care guidelines or protocols. When used, these must be documented in the medical record and be preapproved or authenticated by an authorized practitioner or advanced registered nurse practitioner;

(h) Care and handling of patients whose condition require special medical or medical-legal consideration;

(i) Preparation and administration of blood and blood products; and

(j) Discharge planning.

(4) Have a system to plan and document care in an interdisciplinary manner, including:

(a) Development of an individualized patient plan of care, based on an initial assessment;

(b) Assessment for risk of falls, skin condition, pressure ulcers, pain, medication use, therapeutic effects and side or adverse effects.

(5) Complete and document an initial assessment of each patient's physical condition, emotional, and social needs in the medical record. Initial assessment includes:

(a) Dependent upon the procedure and the risk of harm or injury, a patient history and physical assessment including but not limited to falls, mental status and skin condition;

(b) Current needs;

(c) Need for discharge planning;

(d) When treating pediatric patients, the immunization status;

(e) Physical examination, if within thirty days prior to admission, and updated as needed if patient status has changed; and

(f) Discharge plans when appropriate, coordinated with:

(i) Patient, family or caregiver; and

(ii) Receiving agency, when necessary.

#### NEW SECTION

**WAC 246-330-210 Surgical services.** The purpose of this section is to guide the development and management of surgical services.

An ambulatory surgical facility must:

(1) Adopt and implement policies and procedures that:

(a) Identify areas where surgery and invasive procedures may be performed;

(b) Define staff access to areas where surgery and invasive procedures are performed;

(c) Identify practitioner and advanced registered nurse practitioner's privileges for operating room staff; and

(d) Define staff qualifications and oversight.

(2) Use facility policies and procedures which define standards of care;

(3) Implement a system to identify and indicate the correct surgical site prior to beginning a surgical procedure;

(4) Provide emergency equipment, supplies, and services to surgical and invasive areas;

(5) Provide separate refrigerated storage equipment with temperature alarms, when blood is stored in the surgical department; and

(6) Assure a registered nurse qualified by training and experience functions as the circulating nurse in every operating room whenever deep sedation or general anesthesia are used during surgical procedures.

#### NEW SECTION

**WAC 246-330-215 Anesthesia services.** The purpose of this section is to guide the management and care of patients receiving anesthesia and sedation.

An ambulatory surgical facility must:

(1) Adopt and implement policies and procedures that:

(a) Identify the types of anesthesia and sedation that may be used;

(b) Identify areas where each type of anesthesia and sedation may be used; and

(c) Define the staff qualifications and oversight for administering each type of anesthesia and sedation used in the facility.

(2) Use facility policies and procedures which define standards of care; and

(3) Assure emergency equipment, supplies and services are immediately available in all areas where anesthesia is used.

NEW SECTION

**WAC 246-330-220 Recovery care.** The purpose of this section is to guide the management of patients recovering from anesthesia and sedation.

An ambulatory surgical facility must:

(1) Adopt and implement policies and procedures that define the qualifications and oversight of staff delivering recovery services;

(2) Assure a physician or advanced registered nurse practitioner capable of managing complications and providing cardiopulmonary resuscitation is immediately available for patients recovering from anesthesia; and

(3) Assure a registered nurse trained and current in advanced cardiac life support measures is immediately available for patients recovering from anesthesia.

NEW SECTION

**WAC 246-330-225 Emergency services.** The purpose of this section is to guide the management and care of patients receiving emergency services.

An ambulatory surgical facility must:

(1) Develop, implement and maintain a facility safety and emergency training program that includes:

(a) On-site equipment, medication and trained personnel to manage any medical emergency that may arise from the services provided or sought;

(b) A written and signed transfer agreement with one or more local hospitals that has been approved by the ambulatory surgical facility's medical staff;

(c) Policies and a procedural plan for handling medical emergencies; and

(d) Define the qualifications and oversight of staff delivering emergency care services.

(2) Assure at least one registered nurse skilled and trained in emergency care services on duty and in the ambulatory surgical facility at all times a patient is present, who is:

(a) Immediately available to provide care; and

(b) Trained and current in advanced cardiac life support.

(3) Assure communication with agencies and health care providers as indicated by patient condition; and

(4) Assure emergency equipment, supplies and services necessary to meet the needs of patients are immediately available.

## PART II ENVIRONMENT OF CARE

NEW SECTION

**WAC 246-330-230 Management of environment for care.** The purpose of this section is to manage environmental hazards and risks, prevent accidents and injuries, and maintain safe conditions for patients, visitors, and staff.

(1) An ambulatory surgical facility must create and follow an environment of care management plan that addresses safety, security, hazardous materials and waste, emergency preparedness, fire safety, medical equipment, utility systems and physical environment.

(2) An ambulatory surgical facility must assure the environment of care management plan contains the following items:

(a) Safety:

(i) Policies and procedures on safety-related issues such as but not limited to physical hazards and injury prevention;

(ii) Method to educate and periodically review with staff the safety policies and procedures;

(iii) Process to investigate, correct and report safety-related incidents; and

(iv) Process to keep the physical environment free of hazards.

(b) Security:

(i) Policies and procedures to protect patients, visitors, and staff while in the facility including preventing patient abduction;

(ii) Method to educate and periodically review security policies and procedures with staff; and

(iii) When the facility has security staff, train the security staff to a level of skill and competency for their assigned responsibility.

(c) Hazardous materials and waste:

(i) Establish and implement a program to safely control hazardous materials and waste according to federal, state, and local regulations;

(ii) Provide space and equipment for safe handling and storage of hazardous materials and waste;

(iii) Process to investigate all hazardous material or waste spills, exposures, and other incidents, and report as required to appropriate authority; and

(iv) Method to educate staff on hazardous materials and waste policies and procedures.

(d) Emergency preparedness:

(i) Establish, implement and periodically review a disaster plan for internal and external disasters that is specific to the facility and community;

(ii) Process to educate and train staff on the disaster plan;

(iii) Process to periodically conduct drills to test the plan.

(e) Fire safety:

(i) Policies and procedures on fire prevention and emergencies including an evacuation plan; and

(ii) Process to orient, educate, and conduct drills with staff fire prevention, emergency and evacuation policies and procedures.

(f) Medical equipment:

(i) Method to operate and maintain medical equipment properly, safely and according to manufacturer's recommendations;

(ii) Perform and document preventive maintenance; and

(iii) Process to investigate, report, and evaluate procedures in response to equipment failures.

(g) Utility systems:

(i) Policies and procedures to operate and maintain a safe and comfortable environment; and

(ii) Process to investigate and evaluate utility systems problems, failures, or user errors and report incidents.

(h) Physical environment:

(i) Process to keep the physical environment clean including cleaning the operating room between surgical procedures;

- (ii) Operate and maintain a water supply providing hot and cold water under pressure which conforms to chapter 246-290 WAC, (department of health, division of drinking water);
- (iii) Assure hot water for handwashing does not exceed 120°F;
- (iv) Assure cross connection controls meet the requirements of the state plumbing code; and
- (v) Operate and maintain ventilation to prevent objectionable odors and excessive condensation.

### PART III NEW CONSTRUCTION

Note: The new construction regulations apply only to facilities submitted to the construction review program after July 1, 2009. Facilities participating in the medicare/medicaid program prior to July 1, 2009, must be able to show compliance with the federal requirements for existing facilities. Facilities participating in medicare/medicaid submitted after July 1, 2009, must comply with the federal requirements for new facilities.

#### NEW SECTION

**WAC 246-330-500 Applicability of WAC 246-330-500 through 246-330-510.** The purpose of the new construction regulations is to provide minimum standards for the construction, maintenance and operation of ambulatory surgical facilities and the establishment of a safe and adequate care and treatment environment. These rules are consistent with other accrediting organizations and federal agency rules and regulations without redundancy and contradictory requirements. Compliance with these new construction regulations does not relieve an ambulatory surgical facility of the need to comply with applicable state and local building and zoning codes.

- (1) These regulations apply to ambulatory surgical facilities as defined in RCW 70.230.010:
  - (a) New buildings to be licensed as an ambulatory surgical facility;
  - (b) Conversion of an existing building or portion thereof for use as an ambulatory surgical facility;
  - (c) Additions to an existing ambulatory surgical facility;
  - (d) Alterations to an existing ambulatory surgical facility.
- (2) This requirement does not apply to:
  - (a) Any ambulatory surgical facility existing and operating prior to July 1, 2009, that is certified by the Centers for Medicare and Medicaid Services or accredited by the Joint Commission, the Accreditation Association for Ambulatory Health Care, or the American Association for Accreditation of Ambulatory Surgery Facilities that is not doing any of the things described in subsection (1)(b) through (d) of this section after July 1, 2009;
  - (b) Any minor alteration to an ambulatory surgical facility; or
  - (c) Any area of an ambulatory surgical facility unaffected by an alteration of that ambulatory surgical facility.
- (3) The requirements of this chapter in effect at the time the application, fee, and construction documents are submitted to the department for review will apply for the duration of the construction project.

#### NEW SECTION

**WAC 246-330-505 Department responsibilities—Construction review, approval of plans.** (1) This section identifies the actions and responsibilities of the department for reviewing and approving new construction of ambulatory surgical facilities.

(2) Before issuing an approval of plans, the department will verify compliance with chapter 70.230 RCW and this chapter which includes, but is not limited to:

- (a) Review of all construction documents for compliance with these standards and other applicable federal and state regulations;
- (b) Assure the issuance of a certificate of need, when needed, as provided in chapter 70.38 RCW;
- (c) Receipt of the application for construction review services and a full plan review fee based on chapter 246-314 WAC;
- (d) Approval by the local jurisdiction has been obtained;
- (e) Approval of the initial license application;
- (f) Verify compliance with the applicable chapters of the *2006 Guidelines for the Design and Construction of Health-care Facilities*.

#### NEW SECTION

**WAC 246-330-510 Design, construction review, and approval of plans.** (1) Drawings and specifications for new construction, must be prepared by, or under the direction of, an architect registered under chapter 18.08 RCW. The services of a consulting engineer registered under chapter 18.43 RCW must be used for the various branches of the work where appropriate. The services of a registered professional engineer may be used in lieu of the services of an architect if work involves engineering only.

(2) An ambulatory surgical facility must submit construction documents for proposed new construction to the department for review and approval prior to new construction as required in RCW 70.230.050 (1)(b).

- (3) The facility must submit:
  - (a) A written functional program containing, at a minimum:
    - (i) Information concerning surgical services to be provided and operational methods to be used; and
    - (ii) Description of work, patient, soiled waste and clean processing flows.
  - (b) Two sets of construction drawings and specifications to include coordinated civil, architectural, structural, mechanical, fire sprinkler, fire alarm and electrical work. Each room, area, and item of fixed equipment and major movable equipment must be identified on all drawings to demonstrate that the required facilities for each function are provided.
  - (c) Floor plan of the building showing the alterations and additions including location of any service or support areas.
  - (d) For additions and/or alterations:
    - (i) A plan to show how the ambulatory surgical facility will ensure the health and safety of occupants during construction and installation of finishes. This includes taking appropriate infection control measures, keeping the surrounding area free of dust and fumes, and assuring rooms or

areas are well-ventilated, unoccupied, and unavailable for use until free of volatile fumes and odors.

(ii) A plan to show how the ambulatory surgical facility will provide safety during construction consistent with the fire code showing required paths of egress, exit discharge and interim life safety measures serving the alterations or additions.

(4) An ambulatory surgical facility must:

(a) Respond to requests for additional or corrected documents;

(b) Submit to the department for review and approval any addenda or modifications to the original department approved construction documents;

(c) Assure construction is completed in compliance with the final "department approved" documents; and

(d) Notify the department when construction is completed and provide a copy of the local jurisdiction's approval for occupancy if requested by the department.

(5) An ambulatory surgical facility will not use any new construction, alterations or additions until:

(a) The construction documents are approved by the department; and

(b) The local jurisdictions have issued an approval to occupy; and

(c) Notification to the department that the construction has been completed, the proposed occupancy date, final declared construction cost and that any additional fees have been paid.

#### WSR 09-04-096

#### PROPOSED RULES

#### STATE BOARD OF HEALTH

[Filed February 4, 2009, 10:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-23-015.

Title of Rule and Other Identifying Information: WAC 246-282-006 *Vibrio parahaemolyticus* control plan.

Hearing Location(s): Department of Health, Point Plaza East, Room 152/153, 310 Israel Road S.E., Tumwater, WA 98501, on March 11, 2009, at 2:00 p.m.

Date of Intended Adoption: March 11, 2009.

Submit Written Comments to: Jessie DeLoach, Department of Health, Office of Shellfish Water Protection, P.O. Box 47824, Olympia, WA 98504-7824, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2257, by March 4, 2009.

Assistance for Persons with Disabilities: Contact Amber Scott by March 4, 2009, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the control plan is to protect public health by revising the state-specific control plan to reduce the incidence of *vibrio parahaemolyticus*-related illness (vibriosis). The control plan consists of time-to-temperature controls, training, illness response, record-keeping requirements, and modified hazard analysis critical control points plan.

Reasons Supporting Proposal: The state board of health adopted revisions to the *vibrio parahaemolyticus* control plan in 2008 to better protect shellfish consumers from vibriosis. There were forty-four commercial cases of vibriosis and three recreational cases reported for the summer months of 2008. This proposed revision is needed to further clarify rule requirements to provide consistent implementation of the rule for all growing areas in Washington state and to further reduce the number of illnesses associated with *vibrio parahaemolyticus*.

Statutory Authority for Adoption: RCW 69.30.030.

Statute Being Implemented: RCW 69.30.030.

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

Name of Proponent: State board of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jessie DeLoach, Department of Health, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-3302.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Jessie DeLoach, Department of Health, Office of Shellfish and Water Protection, P.O. Box 47824, Olympia, WA 98504-7824, Olympia, WA 98504-7824, phone (360) 236-3302, fax (360) 236-2257, e-mail [jessie.deloach@doh.wa.gov](mailto:jessie.deloach@doh.wa.gov).

February 4, 2009

Craig McLaughlin

Executive Director

AMENDATORY SECTION (Amending WSR 08-11-051, filed 5/15/08, effective 5/19/08)

**WAC 246-282-006 Washington state *Vibrio parahaemolyticus* control plan.** (1) The Washington state *Vibrio parahaemolyticus* control plan, also known as the control plan, establishes harvest, temperature control, and ~~((transport))~~ transportation requirements for oysters intended for raw consumption during the months of May through September. This section does not apply to shucked oyster meats labeled "for cooking only." The requirements of this section are in addition to Chapter VIII of the ~~((2005))~~ 2007 National Shellfish Sanitation Program Model Ordinance (NSSP), Requirements for Harvesters, .03 Shellfish Temperature, Control Option 2; and consists of:

(a) Time~~((-))~~ of harvest to~~((-))~~ temperature control~~((s))~~ based on the growing area and month of the year;

(b) Harvest record requirements;

(c) *Vibrio* illness response requirements;

(d) Training requirements; and

(e) Hazard Analysis Critical Control Point (HACCP) plan and harvest checklist requirements.

(2) All Puget Sound growing areas, including the Strait of Juan de Fuca, are subject to the requirements of this section. Growing areas in Grays Harbor and Willapa Bay where



oysters have been epidemiologically associated (~~((linked))~~) as the source of any *Vibrio parahaemolyticus* (~~((-associated))~~) illness are also subject to the requirements of this section.

(3) The department may grant an annual exemption to the control plan for Puget Sound growing areas, including the Strait of Juan de Fuca, where there has been no epidemiologically associated (~~((linked))~~) *Vibrio parahaemolyticus* (~~((-associated))~~) illness (~~((if the licensed harvester or dealer can demonstrate safe and effective harvest and transportation methods, as developed in a written agreement))~~) after review and approval of a written exemption request.

(a) The written exemption request must include the following information:

- (i) Name of the growing area;
- (ii) Description of the harvesting methods;
- (iii) Description of the temperature control methods; and
- (iv) Description of the transportation methods.

(b) The department shall review the exemption request within five business days of submittal.

(c) If approved, the licensed harvester or dealer shall comply with the department-approved exemption.

(d) The department-approved exemption expires October 1 of the calendar year for which it is approved. If the growing area is epidemiologically associated as the source of a *Vibrio parahaemolyticus* illness at any time after approval of the exemption, the department shall issue an order revoking the exemption.

(4) Time~~((-))~~ of harvest to~~((-))~~ temperature controls are:

**Table 1  
Puget Sound Growing Areas  
(including the Strait of Juan de Fuca):**

| <b>Months of Control</b> | <b>Time<del>((-))</del> of harvest to<del>((-))</del> Temperature Control</b> |
|--------------------------|---|
| May                      | Twelve hours  |
| June and September       | Five hours  |
| July and August          | Four hours  |

**Table 2  
Coastal Growing Areas:**

| <b>Months of Control</b> | <b>Time<del>((-))</del> of harvest to<del>((-))</del> Temperature Control</b> |
|--------------------------|---|
| July and August          | Ten hours   |

(5) Licensed dealers and harvesters shall maintain harvest records showing the time of harvest (~~((to assure compliance with the control plan))~~) and the time oysters are placed under temperature control to demonstrate compliance with the control plan. If ownership of oysters is transferred prior to the time that time of harvest to temperature control requirements must be met, the licensed dealer or harvester shall include in the harvest record date, time, and person or entity to whom the oysters were transferred. If the new owner is a licensed dealer, the dealer shall meet the time of harvest to temperature control requirements established in this section. The harvest times begin as follows:

(a) Intertidal (exposed) time of harvest (~~((—Time must))~~) begins after the first oysters to be harvested are exposed to the air by the receding tide.

(b) Submerged time of harvest (~~((—Time must))~~) begins after the first oysters harvested are exposed to the air and have been placed onto a conveyance, such as a barge or boat. Submerged harvest includes dredge harvesting or retrieval of harvest tubs, bags, baskets, or other containers of oysters previously filled which have been under water for a minimum of one hour for coastal areas and four hours for Puget Sound growing areas.

(c) Temperature control is achieved when harvested oysters are placed in a controlled environment with an ambient temperature of 45°F (7.2°C) or less.

~~((In the event of two sporadic *Vibrio parahaemolyticus*-associated illnesses within thirty days where oysters from a single growing area are epidemiologically associated (linked) as the source, all licensed harvesters and dealers in the implicated growing area shall reduce the time to temperature control by one hour. The implicated growing area shall remain under the reduced time to temperature control throughout the control months for that area as defined in Table 1 or 2 of subsection (4) of this section.~~

~~((In the event of two additional sporadic *Vibrio parahaemolyticus*-associated illnesses within thirty days under the one hour reduced time to temperature control where oysters from a single growing area are epidemiologically associated (linked) as the source, the growing area shall be closed to harvest and shipment of oysters intended for raw consumption throughout the control months as defined in Table 1 or 2 of subsection (4) of this section. If the two additional *Vibrio parahaemolyticus*-associated illnesses are attributed to the same licensed harvester or dealer as the first two illnesses, the department shall conduct an investigation in accordance with the requirements as stated in the 2005 NSSP, Chapter II, Risk Assessment and Risk Management, to determine if the illnesses resulted from dealer practices or the growing area.~~

~~((An exemption to closure identified in subsection (7) of this section may be granted if the licensed harvester or dealer can demonstrate to the department, as developed in a written agreement, that an additional one hour reduction in time to temperature controls can be successfully implemented. If approved, the licensed harvester or dealer shall remain under the reduced time to temperature control throughout the control months for that area as defined in Table 1 or 2 of subsection (4) of this section.~~

~~((9)) All licensed harvesters and dealers in a growing area shall reduce the time of harvest to temperature control as defined in Table 1 or 2 of subsection (4) of this section by one hour if oysters from the growing area:~~

- (a) Are epidemiologically associated as the probable source of two sporadic *Vibrio parahaemolyticus* illnesses; and
- (b) Were harvested within thirty days of each other.

(7) A growing area shall be closed to harvest and shipment of oysters intended for raw consumption throughout the remainder of the control months for the calendar year when the following conditions are met:

(a) Oysters from the growing area are epidemiologically associated as the probable source of two additional sporadic *Vibrio parahaemolyticus* illnesses;

(b) Oysters from the growing area were harvested in compliance with the reduced time of harvest to temperature control provisions of subsection (6) of this section; and

(c) Oysters from the growing area were harvested within thirty days of the previous illnesses.

(8) If the two additional *Vibrio parahaemolyticus* illnesses specified in subsection (7) of this section are attributed to the same licensed harvester or dealer as the first two illnesses, the department shall conduct an investigation in accordance with the requirements as stated in the 2007 NSSP, Chapter II, Risk Assessment and Risk Management, to determine if the illnesses are the result of harvester or dealer practices or are linked to the growing area as the probable source. If the harvester or dealer practices are reasonably likely to have caused the illnesses:

(a) The harvester or dealer shall retake the training identified in subsection (12) of this section prior to renewal of their next year's license;

(b) The department may take disciplinary action against the harvester or dealer license; and

(c) The department will evaluate whether to associate the illnesses with the growing area.

(9)(a) The department may grant an exemption to closure identified in subsection (7) of this section if the licensed harvester or dealer can demonstrate in a written exemption request that an additional one hour reduction in the time of harvest to temperature control as identified in subsection (6) of this section can be successfully implemented. The written exemption request must include the following information:

(i) Name of the growing area;

(ii) Description of the harvesting methods;

(iii) Description of the temperature control methods; and

(iv) Description of the transportation methods.

(b) The department shall review the request within five business days of submittal.

(c) If approved, the licensed harvester or dealer shall comply with the requirements of the department-approved exemption throughout the remainder of the applicable control months for the particular growing area.

(10)(a) If the required time of harvest to temperature control period is not met, the licensed harvester or dealer shall either:

~~(i)~~ (i) Destroy the oysters; or

~~(ii)~~ (ii) Remove all oysters from containers, disperse them within the original growing area, and allow a minimum of twenty-four hours for purging before reharvesting.

~~(b)~~ (b) If the required time of harvest to temperature control period is not met, the licensed harvester or dealer shall record the disposition of the oysters on the harvest record.

(11) In the event of a *Vibrio parahaemolyticus* illness outbreak where oysters from a particular growing area are epidemiologically associated as the source, the requirements as stated in the 2007 NSSP, Chapter II, Risk Assessment and Risk Management, shall apply.

~~(12)~~ (12) All licensed harvesters and dealers shall complete an initial department-approved training specific to the requirements of this section prior to harvesting or shipping oysters intended for raw consumption during the months of May through September. All licensed harvesters and dealers shall complete department-approved refresher training following any revision of this section considered significant under RCW 34.05.328. Licensed harvesters and dealers who complete the training shall provide the training to those responsible for the on-site management of harvest activities for their operation, and document the training for responsible employees in their operational records.

~~(13)~~ (13) Following completion of the training required in subsection ~~(12)~~ of this section:

(a) All licensed harvesters planning to harvest oysters intended for raw consumption from May through September shall develop a harvest plan that describes the harvest, temperature control, and transportation methods that meet the requirements of subsections (4) and (6) of this section. Licensed harvesters shall obtain department approval of the harvest plan prior to harvesting oysters for raw consumption.

(b) All licensed dealers planning to harvest oysters intended for raw consumption from May through September shall amend their Hazard Analysis Critical Control Point (HACCP) plans to define the harvest, temperature control, and transportation methods that meet the requirements of subsections (4) and (6) of this section. Licensed dealers shall obtain department approval of the amended HACCP plan prior to harvesting oysters for raw consumption.

## WSR 09-04-097

### PROPOSED RULES

### DEPARTMENT OF HEALTH

[Filed February 4, 2009, 10:21 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-282-005 Sanitary control of shellfish—Minimum performance standards.

Hearing Location(s): Department of Health, Point Plaza East, Rooms 152 and 153, 310 Israel Road S.E., Tumwater, WA, on March 11, 2009, at 2:00 p.m.

Date of Intended Adoption: March 11, 2009.

Submit Written Comments to: Jan Jacobs, Office of Shellfish and Water Protection, P.O. Box 47824, Olympia, WA 98504-7824, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2257, by March 4, 2009.

Assistance for Persons with Disabilities: Contact Jan Jacobs by March 3, 2009, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Currently, WAC 246-282-005 references the United States Food and Drug Administration (FDA) 2005 NSSP guide, which all shellfish-producing states are required to follow in order to place molluscan shellfish into interstate commerce. The FDA has now adopted a 2007 version of the NSSP guide, leaving the current rules out of date. This rule making will amend the section to update the reference to the current code. The document below summarizes differences between the 2005 and 2007 version of the NSSP guide.

Reasons Supporting Proposal: The FDA oversees a cooperative program between the shellfish-producing states and the shellfish industry for the production and processing of shellfish in a manner specified by the NSSP. The FDA evaluates each state's shellfish sanitation control program to ensure compliance with the NSSP. Therefore, an update to WAC 246-282-005 is needed so that Washington state remains compliant with the NSSP and molluscan shellfish products from the state can continue to be placed into interstate commerce.

Statutory Authority for Adoption: RCW 69.30.030.

Statute Being Implemented: RCW 69.30.030.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Jan Jacobs, 111 Israel Road S.E., Tumwater, WA, (360) 236-3316; Implementation and Enforcement: Maryanne Guichard, 111 Israel Road S.E., Tumwater, WA, (360) 236-3391.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3) and 19.85.061, this proposed rule is exempt from the requirements of chapter 19.85 RCW because it adopts national consensus codes without material change. By federal rule/statute (list C.F.R./U.S.C. citation), the FDA requires shellfish-producing states to follow the NSSP guide in order to place molluscan shellfish into interstate commerce.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b)(viii), this proposed rule is exempt from the requirements of RCW 34.05.328 because it adopts a national consensus code without material change. By federal rule/statute (list C.F.R./U.S.C. citation), the FDA requires shellfish-producing states to follow the NSSP guide in order to place molluscan shellfish into interstate commerce.

February 4, 2009  
Craig McLaughlin  
Executive Director  
State Board of Health

**AMENDATORY SECTION** (Amending WSR 07-20-014, filed 9/20/07, effective 10/21/07)

**WAC 246-282-005 Minimum performance standards.** (1) Any person engaged in a shellfish operation or possessing a commercial quantity of shellfish or any quantity

of shellfish for sale for human consumption must comply with and is subject to:

(a) The requirements of the ((2005)) 2007 National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish, published by the United States Department of Health and Human Services, Public Health Service, Food and Drug Administration (copies available through the U.S. Food and Drug Administration, Shellfish Sanitation Branch, and the Washington state department of health, office of food safety and shellfish programs);

(b) The provisions of 21 Code of Federal Regulations (CFR), Part 123 - Fish and Fishery Products, adopted December 18, 1995, by the United States Food and Drug Administration, regarding Hazard Analysis Critical Control Point (HACCP) plans (copies available through the U.S. Food and Drug Administration, Office of Seafood, and the Washington state department of health, office of food safety and shellfish programs); and

(c) All other provisions of this chapter.

(2) If a requirement of the NSSP Guide for the Control of Molluscan Shellfish or a provision of 21 CFR, Part 123, is inconsistent with a provision otherwise established under this chapter or other state law or rule, then the more stringent provision, as determined by the department, will apply.

**WSR 09-04-099**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**

[Filed February 4, 2009, 10:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-14-009.

Title of Rule and Other Identifying Information: WAC 246-830-475 amending and updating the continuing education requirements for massage practitioners and adding a new section WAC 246-830-477 Inactive credential.

Hearing Location(s): Department of Health, Point Plaza East, Room 152/153, 310 Israel Road S.E., Tumwater, WA 98501, on March 16, 2009, at 9:15 a.m.

Date of Intended Adoption: March 16, 2009.

Submit Written Comments to: Kris Waidely, Board of Massage, P.O. Box 47867, Olympia, WA 98504-7867, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 664-9077, by March 2, 2009.

Assistance for Persons with Disabilities: Contact Kris Waidely by March 2, 2009, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule establishes the requirements for continuing education (CE) as a prerequisite for massage practitioner license renewal. The proposed rule adds an additional eight hours of continuing education every two years to the current sixteen required hours, for a total of twenty-four hours. The proposed rule also establishes requirements for maintaining an inactive status and converting from inactive to active status which requires a fifty hour refresher course for practitioners who have been inactive for ten years or longer. The proposed rules will set the inactive credential fee in rule. Fees are

authorized by the health professions and facility fees addendum DOH 2008 in the conference operating budget as referenced in ESHB 2687. RCW 43.70.250 requires all fees established in rule cover the costs to administer the program. Additionally, all costs must be borne by the members of that profession.

Reasons Supporting Proposal: SHB 2859 (chapter 25, Laws of 2008) passed during the 2008 legislative session. The new legislation creates an inactive credential for massage practitioners. The new legislation also authorizes the board to revise and clarify the current CE and improve the clarity of the requirements. The current rule is outdated and unclear because it limits the types of activities a practitioner can do to meet their CE requirement. RCW 43.70.250 requires fees to be established in rule to cover the costs to administer the program.

Statutory Authority for Adoption: RCW 18.108.025, 18.108.125, and 43.70.250.

Statute Being Implemented: RCW 18.108.025 and 18.108.125.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kris Waidely, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4847.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kris Waidely, P.O. Box 47867, Olympia, WA 98504-7867, phone (360) 236-4847, fax (360) 664-9077, e-mail kris.waidely@doh.wa.gov.

February 4, 2009

Mary C. Selecky

Secretary

Kris Waidely

on behalf of Scott Miller

Board Chair

AMENDATORY SECTION (Amending WSR 95-11-108, filed 5/23/95, effective 6/23/95)

**WAC 246-830-475 (~~Qualification of program for~~) Continuing education (~~credit~~) requirements.** (~~Completion of a formal program of learning which serves to enhance the professional knowledge and development of the licensee shall qualify as continuing education credit.~~) (1) To renew a license, licensed massage practitioners must complete twenty-four hours of continuing education every two years.

(a) A minimum of eight hours must be direct supervised massage skills training; and

(b) A minimum of four hours must be in professional ethics, communication, and/or Washington state massage laws and regulations. Two of these hours must include professional roles and boundaries; and

(c) The remaining twelve hours may be met by meeting the requirements in subsection (2) of this section.

~~(2) For the purposes of this chapter, ((a formal program of learning shall be)) continuing education is defined as any of the following activities that involve direct application of massage therapy knowledge, skills, and business practices:~~

~~((1)) (a) Attendance at a local, state, national, or international continuing education program ((having a featured speaker));~~

~~((2)) (b) First aid, CPR, or emergency related classes(;~~  
~~(3) Viewing of educational video tapes not to exceed four credits;);~~

~~((4)) (c) Self study through the use of multimedia devices or the study of books, research materials, and/or other publications.~~

(i) Multimedia devices. The required documentation for this activity is a letter or other documentation from the organization. A maximum of twelve hours is allowed per reporting period.

(ii) Books, research materials, and/or other publications. The required documentation for this activity is a two-page synopsis of what was learned written by the licensee. A maximum of two hours is allowed per reporting period.

(d) Teaching a (~~seminar~~) course for the first time, not to exceed eight hours(;

~~((5)) (e) Business and management courses not to exceed ((six)) eight hours(;~~

~~((6)) (f) Specialized training ((in an aspect of massage therapy)). Training must be provided for a fee by an individual who has no less than three years of expertise in that area(;~~  
~~has been licensed in this state for no less than three years, and who charges a fee;~~

~~(7) Courses from a state, county, or city school or program or approved massage school, program, or apprenticeship trainer in massage therapy or related topics; or~~

~~(8) Training provided by a health care professional certified or licensed in their area of expertise);~~

(g) Distance learning. Distance learning includes, but is not limited to, correspondence course, webinar, print, audio/video broadcasting, audio/video conferencing, computer aided instruction, e-learning/on-line-learning, or computer broadcasting/webcasting. A maximum of twelve hours is allowed per reporting period.

(h) Active service on boards or committees.

#### NEW SECTION

**WAC 246-830-477 Inactive credential.** (1) A licensed massage practitioner may obtain an inactive credential.

(2) Licensed massage practitioners with an inactive credential for four years or less who wish to return to active status must meet the requirements of chapter 246-12 WAC, Part 4.

(3) Licensed massage practitioners with an inactive credential for more than four years but less than ten years who wish to return to active status must:

(a) Successfully pass a Washington state approved licensure exam;

(b) Complete continuing education for the two most recent years as specified in WAC 246-830-475; and

(c) Complete the requirements of chapter 246-12 WAC, Part 4.

(4) Licensed massage practitioners with an inactive credential for more than ten years must:

(a) Successfully pass a Washington state approved licensure exam;

(b) Complete continuing education for the two most recent years as specified in WAC 246-830-475;

(c) Successfully complete a refresher course of at least fifty hours by a Washington state board approved massage school or massage apprenticeship program; and

(d) Complete the requirements of chapter 246-12 WAC, Part 4.

(5) Licensed massage practitioners with a Washington state inactive credential who have been in active practice in another United States jurisdiction, and who wish to return to active status must:

(a) Submit verification of active credential from any other United States jurisdiction;

(b) Complete continuing education for the two most recent years as specified in WAC 246-830-475; and

(c) Complete the requirements of chapter 246-12 WAC, Part 4.

AMENDATORY SECTION (Amending WSR 08-15-014, filed 7/7/08, effective 7/7/08)

**WAC 246-830-990 Massage fees and renewal cycle.**

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

(2) The following nonrefundable fees will be charged:

| <b>Title of Fee</b>                        | <b>Fee</b>   |
|--|--------------|
| Written examination and reexamination      | \$65.00      |
| Practical examination and reexamination    | 50.00        |
| Initial license                            | 90.00        |
| Renewal                                    | 65.00        |
| Late renewal penalty                       | 50.00        |
| Expired license reissuance                 | 50.00        |
| <u>Inactive license renewal</u>            | <u>50.00</u> |
| <u>Expired inactive license reissuance</u> | <u>50.00</u> |
| Certification of license                   | 10.00        |
| Duplicate license                          | 10.00        |
| Intraoral massage endorsement              | 25.00        |
| UW library access fee                      | 25.00        |