

WSR 09-20-060
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed October 2, 2009, 1:51 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-15-156.

Title of Rule and Other Identifying Information: The department intends to amend chapter 388-76 WAC, Adult family home minimum licensing requirement sections. The department intends to amend WAC 388-76-10000 Definitions, 388-76-10015 License—Adult family home—Compliance required, 388-76-10020 License—Ability to provide care and services, 388-76-10030 License capacity, 388-76-10050 License—Relinquishment, 388-76-10055 Application—Generally, 388-76-10080 Application—Coprovider, 388-76-10115 Granting or denying a license—Generally, 388-76-10120 License—Must be denied, 388-76-10125 License—May be denied, 388-76-10180 Employment—Certain criminal history—Prohibited, 388-76-10195 Adult family home—Staff—Generally, 388-76-10225 Reporting requirement, 388-76-10270 Tuberculosis—Testing method—Required, 388-76-10275 Tuberculosis—No testing, 388-76-10280 Tuberculosis—One step testing, 388-76-10285 Tuberculosis—Two step skin testing, 388-76-10290 Tuberculosis—Positive test results, 388-76-10295 Tuberculosis—Negative skin test results, 388-76-10300 Tuberculosis—Declining a skin test, 388-76-10305 Tuberculosis—Reporting—Required, 388-76-10310 Tuberculosis—Test records, 388-76-10420 Meals and snacks, 388-76-10455 Medication—Administration, 388-76-10490 Medication disposal—Written policy—Required, 388-76-10520 Resident rights—General notice, 388-76-10540 Resident rights—Disclosure of fees and notice requirements—Deposits, 388-76-10673 Abuse and neglect reporting—Mandated reporting to department—Required, 388-76-10685 Bedrooms, 388-76-10750 Safety and maintenance, 388-76-10820 Resident evacuation capabilities and location of resident bedrooms, 388-76-10840 Emergency food supply, 388-76-10845 Emergency drinking water supply, 388-76-10870 Resident evacuation capability levels—Identification required, 388-76-10880 Emergency evacuation adult family home bedrooms, 388-76-10920 Inspection and investigation reports—Provided by department, 388-76-10955 Remedies—Department must impose remedies, 388-76-10960 Remedies—Department may impose remedies, 388-10990 Informal dispute resolution (IDR), 388-76-10995 Notice, hearing rights, and effective dates relating to imposition of remedies, 388-76-11005 Resident protection program—Notification of preliminary finding to individual, 388-76-11010 Resident protection program—Notification of preliminary finding to others, 388-76-11015 Resident protection program—Disputing a preliminary finding, 388-76-11025 Resident protection program—Finalizing a preliminary finding, 388-76-11030 Resident protection program—Appeal of administrative law judge's initial order or finding, 388-76-11035 Resident protection program—Reporting final findings, and 388-76-

11040 Resident protection program—Disclosure of investigative and finding information.

The department intends to create the following new sections WAC 388-76-10002 Department authority, 388-76-10003 Department access, 388-76-10057 Application—General qualifications, 388-76-10063 Application—General training requirements, 388-76-10064 Application—Forty-eight hour class training requirements, 388-76-10103 Application—Liability insurance required, 388-76-10129 Qualifications—Adult family home personnel, 388-76-10191 Liability insurance required—Ongoing, 388-76-10192 Liability insurance required—Professional liability insurance coverage, 388-76-10193 Liability insurance required—Commercial general liability insurance or business liability insurance coverage, 388-76-10198 Adult family home—Personnel records, 388-76-10522 Resident rights notice—Policy on accepting medicaid as a payment source, 388-76-11004 Resident protection program—Individual defined, 388-76-11050 Management Agreements—General, 388-76-11055 Management Agreements—Adult family home, 388-76-11060 Terms of the management agreement, 388-76-11065 Management agreements—Department review, 388-76-11070 Management agreements—Resident funds, 388-76-11080 Notice—Complete, and 388-76-11085 Notice—Proof.

The department intends to repeal WAC 388-76-10190 Adult family home—Compliance with regulations—Required.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on December 8, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 9, 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 December 8, 2009.

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposed rule making is to make editorial and clarifying changes and to make them consistent with current laws and standards. The impact of the proposed rule is to make the rule clearer, easier to read, understand, and apply.

Statutory Authority for Adoption: RCW 70.128.040.

Statute Being Implemented: Chapter 70.128 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: Maureen Lally, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-3204; Implementation and Enforcement: Lori

Melchiori, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2404.

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

Small Business Economic Impact Statement

SUMMARY OF PROPOSED RULES: The department of social and health services' residential care services (RCS) is proposing amendments to chapter 388-76 WAC, Adult family homes.

The purpose of this proposed rule making is to make editorial and clarifying changes and to make the rules consistent with current laws and standards.

Highlights of proposed changes:

- New sections on notice, liability insurance, management agreements, department authority, training requirements completed before application approved, qualifications of AFH personnel, personnel records.
- Repealing WAC 388-76-10190 Compliance with regulations—Required (duplicates another section).
- Clarified the definitions of physical abuse, adult family home, affiliated with an applicant, capacity, entity provider, entity representative, multiple facility provider, provider, and staff; added definitions for management agreement and manager.
- Clarified provider is ultimately responsible for the operation of the adult family home; financial obligations include personal and business obligations.
- Clarified determining factors in establishing the home's capacity.
- Added language the AFH license may be relinquished if no evidence of residents in the home for two consecutive inspections; if AFH fails to relinquish their license, remedies may be imposed.
- Consolidated disqualifying crime lists to make home and community services and RCS lists consistent.
- Clarified that license may be denied if department is not allowed access to all parts of the home as authorized in RCW 70.128.090.
- Added clarifying language regarding the AFH notifying the department when residents are discharged for more than twenty-four hours.
- Clarified tuberculosis testing requirements.
- Clarified the need for sufficient food, uncontaminated in both everyday and emergency food supplies; emergency drinking water treatment and storage clarified.
- Clarified practitioners administer medications and medication disposal for current residents and those that leave the home.
- Clarified the abuse and neglect reporting language from chapter 74.34 RCW.
- Clarified residents' bedrooms must have closets; AFH must provide safe and usable outdoor space for residents.
- Clarified resident evacuation capabilities.

- Clarified notice requirements for accepting medic-aid as a payment source; in the investigation findings what constitutes notice.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT (SBEIS): Chapter 19.85 RCW, the Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. This statute outlines information that must be included in an SBEIS. Preparation of an SBEIS is required when a proposed rule has the potential of placing more than a minor impact on a business.

RCW 19.85.020 defines a "small business" as "any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has fifty or fewer employees."

RCS analyzed these proposed rules and concludes that the new requirements of liability insurance may impose a new cost to the adult family home that does not have an existing contract with DSHS (approximately four hundred five adult family homes or 14.5% without liability insurance and 85.5% of adult family homes with liability insurance). The cost of liability insurance ranges in price, the estimate that seems most consistent is \$2,500 per year.

RCS understands that adult family homes can deduct the cost of liability insurance when filing taxes with the IRS. RCS does not believe that the proposed rules will result in any job losses or gains for adult family homes. The proposed rule amendments do not disproportionately [disproportionately] impact small businesses more than larger businesses.

EVALUATION OF PROBABLE COSTS AND PROBABLE BENEFITS: RCS has determined that some of the proposed rules are "significant legislative rules" as defined by [the] legislature. As required by RCW 34.05.328 (1)(c), RCS has analyzed the probable costs and probable benefits of the proposed amendments, taking into account both the qualitative and quantitative benefits and costs.

COSTS:

- The liability insurance requirement for all adult family homes may impose additional costs to those adult family homes that do not currently have a contract with DSHS.
- DSHS uses input from internal and external stakeholders to determine cost impacts for the drafting of the rule.
- In addition, the draft language was posted on the aging and disability services administration internet website for anyone in the public to review and comment.
- To date, the department has received and considered all written comments on the draft language.

COST SAVINGS: Clarity of the proposed rule will save providers costs in time and dollars by:

- Reducing unnecessary confusion, citations, hearings and appeals;
- Reducing time and legal costs of appealing unclear rules;
- Reducing amount of technical support requests and dear provider letters mailed to providers for clarifi-

cation of rule issues which reduces the amount of time providers need to keep current with requirements.

OTHER BENEFITS: The rules result in several benefits which include:

- The amendments are clearer, and easier to read, understand and apply;
- Residents will ultimately benefit from the rule revision because providers will be able to better understand and follow the requirements; and
- By adding liability insurance requirements for the 14.5% of adult family homes who currently may not have liability coverage, consumer protection will be assured all residents in adult family homes.

CONCLUSION: RCS concludes that the benefits of the proposed amendments exceed any possible cost. These rules continue to implement state laws and regulations related to adult family homes. RCS has complied with the appropriate sections of the Administrative Procedure Act and is prepared to proceed with the rule filing.

Please contact me by e-mail at lallyma@dshs.wa.gov or by telephone at (360) 725-3204 if you have questions.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Maureen Lally, Program Manager, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-3204, fax (360) 438-7903, e-mail lallyma@dshs.wa.gov.

September 30, 2009
Stephanie E. Vaughn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-03-029, filed 1/12/09, effective 2/12/09)

WAC 388-76-10000 Definitions. "Abandonment" means action or inaction by a person or entity with a duty of care for a frail elder or vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

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

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

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

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

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

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

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

"Adult family home" means:

(1) A residential home in which a person or an entity (~~(are)~~) is licensed to provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to ~~((the person or persons providing the services; and))~~ a licensed operator, resident manager, or caregiver, who resides in the home.

(2) ~~((For the purposes of))~~ As used in this chapter, ((any person or entity who has been granted a license)) the term "entity" includes corporations, partnerships and limited liability companies, and the term "adult family home" includes the person or entity that is licensed to operate an adult family home.

"Affiliated with an applicant" means any person listed on the application as a partner, officer, director, resident manager, or majority owner of the applying entity, or is the spouse or domestic partner of the applicant.

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

"Capacity" means the maximum number of persons in need of personal or special care who are permitted to reside in an adult family home at a given time ~~((and))~~. The capacity includes:

(1) The number of related children or adults in the home who receive personal or special care and services; plus

(2) The number of residents the adult family home may admit and retain - the resident capacity. The capacity number listed on the license is the "resident capacity".

"Caregiver" for purposes other than training, means any person eighteen years of age or older responsible for providing direct personal or special care to a resident and who is not the provider, entity representative, a student or volunteer.

"Dementia" is defined as a condition documented through the assessment process required by WAC 388-76-10335.

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

"Department case manager" means the department authorized staff person or designee assigned to negotiate, monitor, and facilitate a care and services plan for residents receiving services paid for by the department.

"Developmental disability" means:

(1) A person who meets the eligibility criteria defined by the division of developmental disabilities under WAC 388-823-0040; or

(2) A person with a severe, chronic disability which is attributable to cerebral palsy or epilepsy, or any other condition, other than mental illness, found to be closely related to mental retardation which results in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation, and requires treatment or services similar to those required for these persons (i.e., autism); and

(a) The condition was manifested before the person reached age eighteen;

(b) The condition is likely to continue indefinitely; and

(c) The condition results in substantial functional limitations in three or more of the following areas of major life activities:

- (i) Self-care;
- (ii) Understanding and use of language;
- (iii) Learning;
- (iv) Mobility;
- (v) Self-direction; and
- (vi) Capacity for independent living.

"Direct supervision" means oversight by a person who has demonstrated competency in the basic training and specialty training if required, or who has been exempted from the basic training requirements and is:

- (1) On the premises; and
- (2) Quickly and easily available to the caregiver.

"Domestic partners" means two adults who meet the requirements for a valid state registered domestic partnership as established by RCW 26.60.030 and who have been issued a certificate of state registered domestic partnership.

~~("Entity provider" means any corporation, partnership, association, or limited liability company that is licensed under this chapter to operate an adult family home.)~~

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

"Entity representative" means the individual designated by ~~((an entity))~~ a provider who is responsible for the daily operation of the adult family home and who meets the requirements of this chapter and chapter 388-112 WAC.

"Home" means adult family home.

"Indirect supervision" means oversight by a person who:

- (1) Has demonstrated competency in the basic training and specialty training if required; or
- (2) Has been exempted from the basic training requirements; and
- (3) Is quickly and easily available to the care giver, but not necessarily on-site.

"Inspection" means a review by department personnel to determine the adult family home's compliance with this chapter and chapters 70.128, 70.129, 74.34 RCW, and other applicable rules and regulations. The department's review may include an on-site visit.

"Management agreement" means a written, executed agreement between the adult family home and another individual or entity regarding the provision of certain services on behalf of the adult family home.

"Mandated reporter" means an employee of the department, law enforcement, officer, social worker, professional school personnel, individual provider, an employee of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW. For the purpose of the definition of a mandated reporter, **"Facility"** means a residence licensed or required to be licensed under chapter 18.20 RCW (boarding homes), chapter 18.51 RCW (nursing homes), chapter 70.128 RCW (adult family homes), chapter 72.36 RCW (soldiers' homes), chapter 71A.20 RCW (residential habilitation centers), or any other facility licensed by the department.

"Medical device" as used in this chapter, means any piece of medical equipment used to treat a resident's assessed need.

(1) A medical device is not always a restraint and should not be used as a restraint;

(2) Some medical devices have considerable safety risks associated with use; and

(3) Examples of medical devices with known safety risks when used are transfer poles, Posey or lap belts, and side rails.

"Medication administration" means giving resident medications by a person legally authorized to do so, such as a physician, pharmacist or nurse.

"Medication organizer" is a container with separate compartments for storing oral medications organized in daily doses.

"Mental illness" is defined as an Axis I or II diagnosed mental illness as outlined in volume IV of the Diagnostic and Statistical Manual of Mental Disorders (a copy is available for review through the aging and disability services administration).

"Multiple facility provider" means ~~((an individual or entity))~~ a provider who is licensed to operate more than one adult family home.

"Neglect" means:

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

(2) An act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.41.100.

"Nurse delegation" means a registered nurse transfers the performance of selected nursing tasks to competent nursing assistants in selected situations. The registered nurse delegating the task retains the responsibility and accountability for the nursing care of the resident.

"Over-the-counter medication" is any medication that can be purchased without a prescriptive order, including but not limited to vitamin, mineral, or herbal preparations.

"Personal care services" means both physical assistance and/or prompting and supervising the performance of direct personal care tasks as determined by the resident's needs and does not include assistance with tasks performed by a licensed health professional.

"Physical restraint" means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, is used for discipline or convenience, and is not required to treat the resident's medical symptoms.

"Practitioner" includes a physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant licensed in the state of Washington.

"Prescribed medication" refers to any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

"Provider" means:

(1) Any person ~~((or entity that))~~ who is licensed ((under this chapter)) to operate an adult family home and meets the requirements of this chapter and chapter 388-112 WAC; or

(2) Any corporation, partnership, or limited liability company that is licensed under this chapter to operate an adult family home and meets the requirements of this chapter.

~~((**"Qualified staff"** means a person who:~~

~~(1) Is employed, directly or by contract, by an adult family home; and~~

~~(2) Meets all of the requirements of a provider, entity representative, resident manager or caregiver.))~~

"Resident" means any adult unrelated to the provider who lives in the adult family home and who is in need of care. Except as specified elsewhere in this chapter, for decision-making purposes, the term "resident" includes the resident's surrogate decision maker acting under state law.

"Resident manager" means a person employed or designated by the provider ~~((or entity representative))~~ to manage the adult family home and who meets the requirements of this chapter and chapter 388-112 WAC.

"Significant change" means:

(1) A lasting change, decline or improvement in the resident's baseline physical, mental or psychosocial status;

(2) The change is significant enough so the current assessment and/or negotiated care plan do not reflect the resident's current status; and

(3) A new assessment may be needed when the resident's condition does not return to baseline within a two week period of time.

"Special care" means care beyond personal care services as defined in this section.

"Staff" means any person who:

(1) Is employed or used by an adult family home, directly or by contract, ((by an adult family home; and

~~(2))~~ to provide((s)) care and services to any resident.

(2) Staff must meet all of the requirements in this chapter and chapter 388-112 WAC.

"Unsupervised" means not in the presence of:

(1) Another employee or volunteer from the same business or organization; or

(2) Any relative or guardian of any of the children or developmentally disabled persons or vulnerable adults to which the employee, student or volunteer has access during the course of his or her employment or involvement with the business or organization.

"Usable floor space" means resident bedroom floor space exclusive of:

(1) Toilet rooms;

(2) Closets;

(3) Lockers;

(4) Wardrobes;

(5) Vestibules, and

(6) The space required for the door to swing if the bedroom door opens into the resident bedroom.

"Water hazard" means any body of water over twenty-four inches in depth that can be accessed by a resident, and includes but not limited to:

(1) In-ground, above-ground, and on-ground pools;

(2) Hot tubs, spas;

(3) Fixed-in-place wading pools;

(4) Decorative water features;

(5) Ponds; or

(6) Natural bodies of water such as streams, lakes, rivers, and oceans.

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

"Vulnerable adult" includes a person:

(1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself;

(2) Found incapacitated under chapter 11.88 RCW;

(3) Who has a developmental disability as defined under RCW 71A.10.020;

(4) Admitted to any facility;

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW;

(6) Receiving services from an individual provider; or

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

NEW SECTION

WAC 388-76-10002 Department authority. Under chapter 70.128 RCW, the department is authorized to take actions in response to adult family home noncompliance or violations of requirements of this chapter or rules adopted under chapters 70.128, 70.129, and 74.34 RCW.

NEW SECTION

WAC 388-76-10003 Department access. (1) The applicant must allow the department staff to inspect all rooms in the home during the initial licensing of the home.

(2) During inspections, the adult family home must allow the department staff to examine all areas and articles in the home that are used to provide care or support to residents, including the physical premises and residents' records and accounts. The physical premises includes the buildings, grounds, and equipment. The provider's personal records unrelated to the operation of the adult family home are not subject to department review. The provider's separate bedroom will not be subject to review and inspection unless it is used to provide direct care to a resident.

(3) During complaint investigations, the adult family home must give department staff access to the entire premises and all records related to the residents or operation of the home. Department staff are authorized to interview the provider, family members, and individuals residing in the home including residents.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10015 License—Adult family home—Compliance required. (1) The licensed adult family home must comply with all the requirements established in chapters 70.128, 70.129, 74.34 RCW ~~((and))~~, this chapter ~~((or))~~ and other applicable laws and regulations including chapter 74.39A RCW; and

(2) The provider ~~((or entity representative))~~ is ultimately responsible for the operation of the adult family home.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10020 License—Ability to provide care and services. The ~~((adult family home))~~ provider must have the:

(1) Understanding, ability, emotional stability and physical health ~~((suited))~~ necessary to meet the psychosocial, personal, and special care needs of vulnerable adults; and

(2) Ability to meet all personal and business financial obligations.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10030 License capacity. (1) The ~~((department will only issue an))~~ adult family home ~~((license for))~~ capacity is more than one but not more than six, this includes residents and the number of children or adults in the home who receive personal or special care services.

(2) The resident capacity will be listed on the license and the home must not exceed the resident capacity.

(3) In determining the home's resident capacity, the department must consider the:

(a) Structural design of the house;

(b) Number and accessibility of bathrooms;

(c) Number and qualifications of staff;

~~((or))~~ (d) Total number of people living in the home who require personal or special care, including:

(i) Children; and

(ii) Other household members;

~~((or))~~ (e) The number of people for whom the home provides adult day care; and

~~((or))~~ (f) The ability for the home to safely evacuate all people living in the home.

(4) The adult family home resident capacity may be adjusted due to changes to the household mix or structure.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10050 License—Relinquishment. (1) The adult family home must relinquish ~~((the adult family home))~~, or surrender, its license to the department:

(a) Within thirty days of the last resident leaving the home; or

(b) When the home moves all residents out of the home for purposes other than remodeling or construction; or

(c) When there has been no evidence of residents in the home during the last two inspections.

(2) ~~((The department may revoke the license if the home does not))~~ The home may not be required to relinquish or surrender the license if circumstances such as a fire or flooding, result in the adult family home discharging residents because the home is not habitable for an extended period. In this circumstance the adult family home must:

(a) ~~((Relinquish the adult family home license))~~ Inform the department that there are no residents in the home and where current residents have been relocated; ~~((or))~~

(b) ~~((Relinquish the adult family home license within the specified time frame))~~ Tell the department approximately how long it will be before the home will be able to admit residents again;

(c) Inform the department when the home has been approved by the building inspectors and the adult family home is ready to admit residents again; and

(d) Not admit residents until the department has completed an inspection.

(3) The department may revoke the license if the home does not relinquish, or surrender, the adult family home license as required.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10055 Application—Generally. ~~((+))~~ The applicant must send an application to the department for:

~~((a))~~ (1) An initial adult family home license;

~~((b))~~ (2) A change of ownership of the adult family home; or

~~((c))~~ (3) A change of the adult family home location or address.

~~((2))~~ Prior to sending the application to the department, the applicant must ensure:

(a) The people listed on the application meet the minimum qualifications listed in WAC 388-76-10130 through 388-76-10145 as required; and

(b) ~~After January 1, 2007, the provider and entity representative must successfully complete the department approved forty-eight hour adult family home administration and business planning class as required in chapter 388-112 WAC.)~~

NEW SECTION

WAC 388-76-10057 Application—General qualifications. Before sending the application to the department, the applicant must ensure that the people listed on the application meet the minimum qualifications listed in WAC 388-76-10130 through 388-76-10145.

NEW SECTION

WAC 388-76-10063 Application—General training requirements. An applicant must ensure that each person listed on the application has successfully completed the training required in this chapter and chapter 388-112 WAC.

NEW SECTION

WAC 388-76-10064 Application—Forty-eight hour class training requirements. (1) The applicant, and the entity representative must successfully complete the department approved forty-eight hour adult family home administration and business planning class as required in chapter 388-112 WAC.

(2) An applicant and entity representative may not be required to take the forty-eight hour class if there is a change in ownership and the applicant and entity representative are already participants in the operation of a currently licensed home.

(3) An applicant and entity representative must take the forty-eight hour class when the application is for an additional licensed home and the forty-eight hour class has not already been successfully taken.

AMENDATORY SECTION (Amending WSR 09-03-030, filed 1/12/09, effective 2/12/09)

WAC 388-76-10080 Application—Co-provider. Couples (~~considered~~) who are legally married or domestic partners under Washington state law:

- (1) May not apply for separate licenses; and
- (2) May apply jointly (~~as~~) to be co-providers.

NEW SECTION

WAC 388-76-10103 Application—Liability insurance required. (1) The applicant must submit insurer executed evidence of liability insurance coverage with the application.

(2) The coverage and evidence of coverage must comply with the requirements of WAC 388-76-10192 and 388-76-10193.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10115 Granting or denying a license—Generally. In making a determination of whether to grant an adult family home license, the department must consider:

- (1) Separately and jointly (~~as applicants~~) each person and entity named in an application, including each person or entity affiliated with the applicant;
- (2) Information in the application;

(3) Other documents and information the department deems relevant which may include, but not be limited to:

(a) Inspection and complaint investigation findings in each facility or home in which the applicant, person affiliated with the applicant, or owner of five percent or more of the entity provided care or services to children or vulnerable adults; and

(b) Credit information.

(4) The history of (~~each individual listed on the application for negative findings identified~~) convictions and other circumstances listed in WAC 388-76-10120 and 388-76-10125(~~;~~) for each individual listed on the application including, but not limited to the following:

(a) Applicant;

(b) Person affiliated with the applicant;

(c) Entity representative;

(d) Caregiver;

(e) An owner who:

(i) Exercised daily control over the operations; or

(ii) Owns fifty-one percent or more of the entity.

(f) Any person who (~~has~~) would have unsupervised access to residents in the home; and

(g) Any person who lives in the home and is not a resident.

(~~5~~) Applicants who are licensed to care for children in the same home to determine if:

(a) It is necessary to allow a resident's child(ren) to live in the same home as the resident or allow a resident's child(ren) who turn eighteen to stay in the home;

(b) The applicant provides satisfactory evidence to the department of the home's ability to meet the needs of children and adults residing in the home; and

(c) The total number of persons receiving care and services in the home do not exceed the licensed capacity of the adult family home;

AMENDATORY SECTION (Amending WSR 09-03-028, filed 1/12/09, effective 2/12/09)

WAC 388-76-10120 License—Must be denied. The adult family home license will not be granted if:

(1) (~~The department must not grant a license until~~) The applicant has not successfully completed a department-approved forty-eight hour adult family home administration and business planning class except as provided in WAC 388-76-10064.

(2) (~~The department must deny a license if the department finds that~~) It has been less than twenty years since the applicant surrendered or relinquished an adult family home license after receiving notice that the department intended to deny, suspend, not renew or revoke the license.

(3) (~~The department must deny a license if the department finds that~~) The applicant or the applicant's spouse, domestic partner, or any partner, officer, director, managerial employee or majority owner of the applying entity:

(a) Has a history of significant noncompliance with federal or state laws or regulations in the provision of care or services to children or vulnerable adults;

(b) Has been convicted of a crime in federal court or in any other state, and the department determines that the crime

is equivalent to a crime under subsections (3)(c) (~~(and)~~), (3)(d), or (3)(e) below;

(c) Has been convicted of a "crime against children or other persons" as defined in RCW 43.43.830, unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years has passed since conviction;

(d) Has been convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in third degree and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years has passed since conviction;

(e) Has been found convicted of:

(i) Violation of the imitation controlled substance act (VICSA);

(ii) Violation of the uniform controlled substances act (VUCSA);

(iii) Violation of the uniform legend drug act (VULDA);

(iv) Violation of the uniform precursor drug act (VUPDA); or

(v) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct.

(f) Has been found in any final decision issued by a disciplining authority to have abused, neglected, exploited, or abandoned a minor or vulnerable adult;

~~((f))~~ (g) Is listed on a state registry with a finding of abuse, neglect, financial exploitation, or abandonment of a minor or vulnerable adult; or

~~((g))~~ (h) Has been the subject of a finding or conclusion by a court of law, or any comparable state or federal law, that the individual abused, neglected, financially exploited or abandoned a minor or vulnerable adult. Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceeding under Title 26 RCW, and vulnerable adult protection proceedings under chapter 74.34 RCW.

AMENDATORY SECTION (Amending WSR 09-03-028, filed 1/12/09, effective 2/12/09)

WAC 388-76-10125 License—May be denied. The ~~((department))~~ adult family home license may ~~((deny a license))~~ be denied if ~~((the department finds that))~~ the applicant or the applicant's spouse, domestic partner, or any partner, officer, director, managerial employee or majority owner of the applying entity:

(1) Has been convicted of:

(a) Simple assault, theft in third degree, assault in the fourth degree, or prostitution and more than three years has passed since conviction;

(b) Forgery or theft in the second degree and more than five years has passed since conviction;

(c) Any felony that the department determines is reasonably related to the competency of the person to be involved in the ownership or operation of an adult family home; or

(d) A crime involving a firearm used in commission of a felony or in any act of violence against a person.

(2) Has engaged in the illegal use, sale or distribution of drugs or excessive use of alcohol or drugs without the evidence of rehabilitation;

(3) Has committed an act of domestic violence toward a family or household member;

(4) Has been found in any final decision of a federal or state agency to have abandoned, neglected, abused or financially exploited a vulnerable adult, unless such decision requires a license denial under WAC 388-76-10120;

(5) Has had a license for the care of children or vulnerable adults denied, suspended, revoked, or not renewed;

(6) Has a history of prior violations of chapter 70.128 RCW or any law regulating residential care facilities that resulted in revocation, suspension, or nonrenewal of a license;

(7) Has been enjoined from operating a facility for the care and services of children or adults;

(8) Has had a medicaid or medicare provider agreement or any other contract for the care and treatment of children or vulnerable adults, terminated, cancelled, suspended, or not renewed by any public agency, including a state Medicaid agency;

(9) Has been the subject of a sanction or corrective or remedial action taken by federal, state, county, or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;

(10) Has obtained or attempted to obtain a license by fraudulent means or misrepresentation;

(11) Knowingly, or with reason to know, made a false statement of material fact on his or her application for a license or any data attached to the application, or in any matter involving the department;

(12) Permitted, aided, or abetted the commission of any illegal act on the adult family home premises;

(13) Willfully prevented or interfered with or failed to cooperate with any inspection, investigation, or monitoring visit made by the department, including refusal to permit authorized department representatives to interview residents or have access to their records;

(14) Failed or refused to comply with:

(a) A condition imposed on a license or a stop placement order; or

(b) The requirements of chapters 70.128, 70.129, 74.34 RCW, this chapter or other applicable laws and regulations.

(15) Misappropriated property of a resident, unless such action requires a license denial under WAC 388-76-10120;

(16) Exceeded licensed capacity in the operation of an adult family home;

(17) Operated a facility for the care of children or adults without a license or with a revoked license;

(18) In connection with the operation of any facility for the care of children or adults, relinquished or returned a license, or did not seek license renewal following written notification that the licensing agency intended to deny, suspend, or revoke the license, unless such action requires a license denial under WAC 388-76-10120;

(19) When providing care to children or vulnerable adults, has had resident trust funds or assets seized by the Internal Revenue Service or a state entity for failure to pay income or payroll taxes;

(20) Failed to meet financial obligations as the obligations fell due in the normal course of owning or operating a business involved in the provision of care and services to children or vulnerable adults;

(21) Has failed to meet personal financial obligations;

(22) Interfered with a long-term care ombudsman or department staff in the performance of his or her duties;

(23) Has not demonstrated financial solvency or management experience in its currently licensed homes, or has not demonstrated the ability to meet other relevant safety, health, and operating standards pertaining to the operation of multiple homes, including ways to mitigate the potential impact of vehicular traffic related to the operation of the homes; or

(24) The home is currently licensed:

(a) As a boarding home; or

(b) To provide care for children in the same home, unless:

(i) It is necessary in order to allow a resident's child(ren) to live in the same home as the resident or to allow a resident who turns eighteen to remain in the home;

(ii) The applicant provides satisfactory evidence to the department of the home's capacity to meet the needs of children and adults residing in the home; and

(iii) The total number of persons receiving care and services in the home does not exceed the number permitted by the licensed capacity of the home.

(25) Failed to give the department access to all parts of the home as authorized under RCW 70.128.090.

NEW SECTION

WAC 388-76-10129 Qualifications—Adult family home personnel. The adult family home must ensure that the following are qualified and meet all of the applicable requirements of this chapter and chapter 388-112 WAC:

(1) Any person employed or used by the adult family home, directly or by contract, by an adult family home; including but not limited to:

(a) The provider;

(b) Entity Representative;

(c) Resident manager;

(d) Staff; and

(f) Caregivers.

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

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10180 Employment—Certain criminal history—Prohibited. The adult family home must not employ any person, directly or by contract, or accept as a volunteer or student any person who may have unsupervised access to residents, or allow a household member over the age of eleven unsupervised access to any resident if the person or background inquiry discloses that the person has a history of:

(1) A stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, final order

issued by a disciplining authority or final decision by any federal or state agency or department, a court of law, or entered into a state registry or department or agency list with a finding of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW; or

(2) ~~((Convicted of a crime against persons as defined under RCW 43.43.830 or 43.43.842))~~ Any of the convictions, or findings described in WAC 388-76-10120(3).

NEW SECTION

WAC 388-76-10191 Liability insurance required—Ongoing. The adult family home must:

(1) Maintain liability insurance as required in WAC 388-76-10192 and 388-76-10193; and

(2) Have evidence of liability insurance coverage available if requested by the department.

NEW SECTION

WAC 388-76-10192 Liability insurance required—Commercial general liability insurance or business liability insurance coverage. The adult family home must have commercial general liability insurance or business liability insurance that includes:

(1) Coverage for the acts and omissions of any employee and volunteer;

(2) Coverage for bodily injury, property damage, and contractual liability;

(3) Coverage for premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract; and

(4) Minimum limits of:

(a) Each occurrence at five hundred thousand dollars;

and

(b) General aggregate at one million dollars.

NEW SECTION

WAC 388-76-10193 Liability insurance required—Professional liability insurance coverage. The adult family home must have professional liability insurance or errors and omissions insurance if the adult family home licensee has a professional license, or employs professionally licensed staff. The insurance must include:

(1) Coverage for losses caused by errors and omissions of the adult family home, its employees, and volunteers; and

(2) Minimum limits of:

(a) Each occurrence at five hundred thousand dollars;

and

(b) Aggregate at one million dollars.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10195 Adult family home—Staff—Generally. The adult family home must ensure:

(1) When one or more residents are in the home, enough staff ((is)) are available in the home to meet the needs of each

resident (~~(if residents are in the home or not, except as per WAC 388-76-10200)~~);

(2) Staff are readily available to meet resident needs if the home takes the resident out to another location and the resident negotiated care plan does not indicate it is safe for the resident to be left unattended for a specific time period; and

(3) All staff are skilled and able to do the tasks assigned to meet the needs of each resident.

NEW SECTION

WAC 388-76-10198 Adult family home—Personnel records. The adult family home must keep documents related to staff in a place readily accessible to authorized department staff. These documents must be available during the staff's employment, and for at least two years following employment. The documents must include but are not limited to:

(1) Staff information such as address and contact information.

(2) Staff orientation and training records pertinent to duties, including, but not limited to:

(a) Training required by chapter 388-112 WAC, including as appropriate for each staff person, orientation, basic training or modified basic training, specialty training, nurse delegation core training, and continuing education;

(b) Cardiopulmonary resuscitation;

(c) First aid; and

(d) HIV/AIDS training.

(3) Tuberculosis testing results.

(4) Criminal history disclosure and background check results as required.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10225 Reporting requirement. (1) The adult family home must ensure all staff:

(a) Report suspected abuse, neglect, exploitation or abandonment of a resident:

(i) ~~((According to))~~ As required by chapter 74.34 RCW;

(ii) To the department by calling the complaint toll-free hotline number; and

(iii) To the local law enforcement agency when required by RCW 74.34.035.

(b) Report the following to the department by calling the complaint toll-free hotline number:

(i) Any actual or potential event requiring any resident to be evacuated;

(ii) Conditions that threaten the provider's or entity representative's ability to continue to provide care or services to each resident; and

(iii) A missing resident.

(2) When there is a significant change in a resident's condition, or a serious injury, trauma, or death of a resident, the adult family home must immediately notify:

(a) The resident's family;

(b) The resident's representative, if one exists;

(c) The resident's ~~((physician))~~ health care provider;

(d) Other appropriate professionals working with the resident;

(e) Persons identified in the negotiated care plan; and
(f) The resident's case manager if the resident is a department client.

(3) Whenever an outbreak of suspected food poisoning or communicable disease occurs, the adult family home must notify:

(a) The local public health officer; and

(b) The department's complaint toll-free hotline number.

(4) The adult family home must notify the department's case management office within twenty-four hours whenever a resident, whose stay is paid for by the department is discharged for more than twenty-four hours on medical leave to a nursing home or hospital.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10270 Tuberculosis—Testing method—Required. The adult family home must ensure that all tuberculosis testing is done through ~~((a nationally recognized testing method such as by))~~ either:

(1) Intradermal (Mantoux) administration ~~((or a TB Gold Test and the test result is))~~ with test results read:

~~((+))~~ (a) Within forty-eight to seventy-two hours of the test; and

~~((2))~~ (b) By a trained professional; or

(2) A blood test for tuberculosis called interferon-gamma release assay (IGRA).

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10275 Tuberculosis—No ~~((skin))~~ testing. The adult family home is not required to have a person tested for tuberculosis if the person has:

(1) A documented history of a previous positive test, with ten or more millimeters induration; or

(2) A documented history of a previous positive blood test; or

(3) Documented evidence of:

(a) Adequate therapy for active disease; or

(b) Completion of treatment for latent tuberculosis infection preventive therapy ~~((of infection))~~.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10280 Tuberculosis—One step testing. The adult family home is only required to have a person take a one-step skin or blood test if the person has any of the following:

(1) ~~((positive))~~ documented history of a negative result from ~~((the person's first skin test — A person who has a positive result from an initial first step test should not have a second test))~~ previous two step testing done no more than one to three weeks apart; or

(2) A documented ~~((history of a))~~ negative result from ~~((previous two))~~ one step skin or blood testing ~~((or~~

~~((3))~~ A documented negative result from one step testing in the previous twelve months.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10285 Tuberculosis—Two step skin testing. Unless the person meets the requirement for having no skin testing or only a one step skin test, the adult family home must ensure that each person has the following two-step testing:

- (1) An initial skin test within three days of employment; and
- (2) A second test done one to three weeks after the first test; except
- (3) A two-step test is not required for the ~~((TB-Gold Test))~~ IGRA blood test which is only a one-step test.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10290 Tuberculosis—Positive ~~((skin reaction))~~ test result. ~~((The adult family home must ensure that a person with))~~ When there is a positive ~~((reaction))~~ result to tuberculosis skin or blood testing, the adult family home must:

- (1) Ensure that the individual has a chest X ray within seven days ~~((and))~~;
- (2) Evaluate each resident or employee with a positive test result for signs and symptoms of tuberculosis; and
- (3) Follow~~((s))~~ the recommendation of the person's health care ~~((officials))~~ provider.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10295 Tuberculosis—Negative ~~((skin reaction))~~ test result. The adult family home may be required by the public health official or licensing authority to ensure that persons with negative test results have follow-up ~~((skin))~~ testing in certain circumstances, such as:

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

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10300 Tuberculosis—Declining a skin test. The adult family home ~~((may accept a signed statement from))~~ must ensure that a person ~~((who has reason to decline skin testing; if:~~

- (1) ~~The signed statement includes the reason for declining; and~~
- (2) ~~Additional evidence is provided to support the reason))~~ take the blood test for tuberculosis if the person declines the skin test.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10305 Tuberculosis—Reporting ~~((positive skin reactions—))~~ required. The adult family home must:

- (1) Report any person or resident with tuberculosis symptoms or a positive chest X ray to the appropriate ~~((public))~~ health ~~((authority))~~ care provider or public health provider; ~~((and))~~
- (2) Follow the infection control and safety measures ordered by ~~((the public health authority,))~~ the person's ~~((personal physician))~~ health care provider, ~~((or other licensed health care professional))~~ including a public health provider; and
- (3) Institute appropriate infection control measures.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10310 Tuberculosis—~~((Skin))~~ Test records. The adult family home must:

- (1) Keep the records of ~~((tuberculosis))~~ tuberculin test results, reports of X-ray findings, and physician or public health orders ~~((and waivers))~~ in the adult family home;
- (2) Make ~~((them))~~ the records readily available to the appropriate health authority and licensing agency; ~~((and))~~
- (3) Provide the employee a copy of his/her testing results; and
- (4) ~~((Keep them))~~ Retain the records for eighteen months after the date an employee either quits or is terminated.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10420 Meals and snacks. The adult family home must:

- (1) Serve at least three meals:
 - (a) In each twenty-four hour period;
 - (b) At regular times comparable to normal meal times in the community; and
 - (c) That meet the nutritional needs of each resident.
- (2) Make nutritious snacks available to residents:
 - (a) Between meals; and
 - (b) In the evening.
- (3) Get input from residents in meal planning and scheduling;
- (4) Serve nutrient concentrates, supplements, and modified diets only with written approval of the resident's physician;
- (5) Only serve pasteurized milk; ~~((and))~~
- (6) Process any home-canned foods served in the home, according to the latest guidelines of the county cooperative extension service; and
- (7) Ensure food is:
 - (a) In sufficient supply; and
 - (b) Safe, sanitary, and uncontaminated.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10455 Medication—Administration.

For residents assessed with requiring the administration of medications, the adult family home must ensure medication administration is:

- (1) Performed by a ~~((person))~~ practitioner as defined in chapter 69.41 RCW; or
- (2) By nurse delegation per WAC 246-840-910 through 246-840-970; unless
- (3) Done by a family member or legally appointed resident representative.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10490 Medication disposal—Written policy—Required. The adult family home must have and implement a written policy addressing the ~~((disposition of))~~ disposal of unused or expired resident ~~((prescribed))~~ medications ~~((that are unused, leftover, or remaining after the resident leaves))~~. Unused and expired medication must be disposed of in a safe manner for:

- (1) Current residents living in the adult family home; and
- (2) Residents who have left the home.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10520 Resident rights—General notice. The adult family home must:

- (1) Inform each resident both orally and in writing in a language the resident understands of resident rights, including rights under chapter 70.129 RCW and all rules and regulations governing resident conduct and responsibilities during the stay in the home;
- (2) Ask the resident to sign and date they received the information; and
- (3) Provide a statement indicating whether the ~~((provider or entity representative))~~ adult family home will accept medicaid or other public funds as a source of payment for services.

NEW SECTION

WAC 388-76-10522 Resident rights—Notice—Policy on accepting medicaid as a payment source. The adult family home must fully disclose the home's policy on accepting medicaid payments. The policy must:

- (1) Clearly state the circumstances under which the adult family home provides care for medicaid eligible residents and for residents who become eligible for medicaid after admission;
- (2) Be provided both orally and in writing in a language that the resident understands;
- (3) Be provided to prospective residents, before they are admitted to the home;
- (4) Be provided to any current residents who were admitted before this requirement took effect or who did not receive copies prior to admission;

(5) Be written on a page that is separate from other documents and be written in a type font that is at least fourteen point; and

(6) Be signed and dated by the resident and be kept in the resident record after signature.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10540 Resident rights—Disclosure of fees and notice requirements—Deposits. (1) Before admission, if the adult family home requires payment of an admissions fee, deposit, or a minimum stay fee, by or on behalf of a person seeking admission, the home must give the resident full disclosure in writing in a language the resident understands.

- (2) The disclosure must include:
 - (a) A statement of the amount of any admissions fees, deposits, prepaid charges, or minimum stay fees;
 - (b) The home's advance notice or transfer requirements; and
 - (c) The amount of the deposits, admission fees, prepaid charges, or minimum stay fees that will be refunded to the resident if the resident leaves the home.

(3) The home must ensure that the receipt of the disclosures required under subsection (1) of this section is in writing and signed and dated by the resident and the home.

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

(5) If a resident dies, is hospitalized or is transferred to another facility for more appropriate care and does not return to the home, the adult family home:

- (a) Must refund any deposit or charges already paid less the home's per diem rate for the days the resident actually resided, reserved or retained a bed in the home in spite of any minimum stay policy or discharge notice requirements; except that
- (b) May keep an additional amount to cover its reasonable and actual expenses incurred as a result of a private-pay resident's move, not to exceed five days per diem charges; unless the resident has given advance notice in compliance with the admission agreement.

(6) All adult family homes covered under this section are required to refund any and all refunds due the resident within thirty days from the resident's date of discharge from the home.

(7) Nothing in this section applies to provisions in contracts negotiated between a home ~~((or))~~ and a certified health plan, health or disability insurer, health maintenance organization, managed care organization, or similar entities.

(8) If the home requires ~~((the implementation of))~~ an admission agreement by or on behalf of an individual seeking admission the home must ensure the terms of the agreement are consistent with the requirements of this section, chapters 70.128, 70.129 and 74.34 RCW, and other applicable state and federal laws.

AMENDATORY SECTION (Amending WSR 08-05-098, filed 2/15/08, effective 3/17/08)

WAC 388-76-10673 Abuse and neglect reporting—Mandated reporting to department—Required. (1) In accordance with chapter 74.34 RCW, all ~~((adult family home))~~ providers, entity representatives, resident managers, owners, caregivers, staff, and students that provide care and services to residents, are mandated reporters and must immediately report to the department when there is:

(a) A reasonable cause to believe that abandonment, abuse, exploitation, financial exploitation, or neglect of a vulnerable adult has ~~((been abandoned, abused, neglected, exploited or financially exploited))~~ occurred; or

(b) ~~((Suspected abandonment, abuse, neglect, exploitation, or financial exploitation))~~ A reason to suspect that sexual assault of a vulnerable adult has occurred.

(2) Reports must be made to:

(a) The centralized toll free telephone number provided by the department; and

(b) The appropriate law enforcement agencies, as required under chapter 74.34 RCW.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10685 Bedrooms. The adult family home must:

(1) Ensure each resident's bedroom is an outside room, which allows entrance of natural light;

(2) Ensure window and door screens:

(a) Do not hinder emergency escape; and

(b) Prevent entrance of flies and other insects.

(3) Ensure each ~~((resident's bedroom))~~ resident, including those using mobility aids such as wheelchairs and walkers has direct, unrestricted, and free access ~~((to))~~ from the bedroom through doors, hallways and corridors ~~((and unrestricted or free access))~~ to common use areas and other rooms used for care and services including bathrooms;

(4) Make separate bedrooms available for each sex;

(5) Make reasonable efforts to accommodate residents wanting to share the room;

(6) Provide each bedroom with a minimum usable floor space as required in WAC 388-76-10690.

(7) Ensure each bedroom has a closet or a wardrobe, armoire or reasonable facsimile thereof. Neither the closet nor wardrobe/armoire floor space will be considered a part of the room's usable square footage. The home must not remove a closet in order to provide additional floor space.

(8) Ensure no more than two residents to a bedroom;

~~((8))~~ (9) Unless the resident chooses to provide their own furniture and bedding, the home must provide each resident a bed thirty-six inches or more wide with:

(a) A clean, comfortable mattress;

(b) A waterproof cover for use when needed or requested by the resident;

(c) Clean sheets and pillow cases;

(d) Adequate clean blankets to meet the needs of each resident; and

(e) Clean pillows.

~~((9))~~ (10) Not use the upper bunk of double-deck beds for a resident's bed;

~~((10))~~ (11) Provide a call bell or intercom system if the provider, entity representative, resident manager or caregiver bedroom is not within hearing distance of each resident bedroom and the system is required by the department;

~~((11))~~ (12) Ensure that members of the household, other than residents, do not share bedrooms with residents; and

~~((12))~~ (13) Ensure a resident does not share a bedroom with a person under eighteen years of age, unless the person is the resident's own child.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10750 Safety and maintenance. The adult family home must:

(1) Keep the home both internally and externally in good repair and condition with a safe, comfortable, sanitary, home-like environment that is free of hazards;

(2) Ensure that there is existing outdoor space that is safe and usable for residents;

(3) Provide clean, functioning, safe, adequate household items and furnishings to meet the needs of each resident;

~~((3))~~ (4) Provide safe and functioning systems for:

(a) Heating;

(b) Cooling, which may include air circulating fans;

(c) Hot and cold water;

(d) Electricity;

(e) Plumbing;

(f) Garbage disposal;

(g) Sewage;

(h) Cooking;

(i) Laundry;

(j) Artificial and natural light;

(k) Ventilation; and

(l) Any other feature of the home.

~~((4))~~ (5) Ensure water temperature does not exceed one hundred twenty degrees Fahrenheit at all fixtures used by or accessible to residents, such as:

(a) Tubs;

(b) Showers; and

(c) Sinks.

~~((5))~~ (6) Provide storage for toxic substances, poisons, and other hazardous materials that is only accessible to residents under direct supervision, unless the resident is assessed for and the negotiated care plan indicates it is safe for the resident to use the materials unsupervised;

~~((6))~~ (7) Provide rapid access for all staff to any bedroom, toilet room, shower room, closet, other room occupied by each resident;

~~((7))~~ (8) Keep all firearms locked and accessible only to authorized persons; and

~~((8))~~ (9) Keep the home free from:

(a) Rodents;

(b) Flies;

(c) Cockroaches, and

(d) Other vermin.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10820 Resident evacuation capabilities and location of resident bedrooms. (1) The adult family home must ensure each resident who ~~((has an evacuation capability of Level 2 or Level 3, as defined in WAC 388-76-10870-))~~ requires assistance for evacuation has a bedroom located on ~~((grade))~~ ground level floor and ~~((exiting the building does not require the use of))~~ can exit the home without use of:

- (a) Stairs;
- (b) Elevator; ~~((or))~~
- (c) ~~((Lift))~~ Chairlift; or
- (d) Platform lift.

(2) The home must install alternative emergency evacuation protection equipment when serving hearing or visually impaired residents.

AMENDATORY SECTION (Amending WSR 09-03-029, filed 1/12/09, effective 2/12/09)

WAC 388-76-10840 Emergency food supply. The adult family home must have an on-site emergency food supply that can be stored with other food in the home and that:

- (1) Will last for a minimum of seventy-two hours for each resident and each household member; ~~((and))~~
- (2) Meets the dietary needs of each resident, including any specific dietary restrictions any resident may have; and
- (3) Is sufficient, safe, sanitary, and uncontaminated.

AMENDATORY SECTION (Amending WSR 09-03-029, filed 1/12/09, effective 2/12/09)

WAC 388-76-10845 Emergency drinking water supply. The adult family home must have an on-site emergency supply of drinking water that:

- (1) Will last for a minimum of seventy-two hours for each resident and each household member;
- (2) Is at least three gallons for each resident and each household member;
- (3) Is stored in well sealed food grade or glass containers;
- (4) Is ~~((chemically treated))~~ chlorinated or ~~((replaced every six months))~~ commercially bottled; ~~((and))~~
- (5) Is replaced every six months unless the commercial water bottle is labeled for a longer expiration date; and
- (6) Is stored ~~((appropriately))~~ in a cool, dry location away from direct sunlight.

AMENDATORY SECTION (Amending WSR 09-03-029, filed 1/12/09, effective 2/12/09)

WAC 388-76-10870 Resident evacuation capability levels—Identification required. The adult family home must ensure that each resident's assessment identifies, and each resident's preliminary care plan and negotiated care plan ~~((contains))~~ describes the resident's ability to evacuate the home according to the following ~~((levels))~~ descriptions:

(1) ~~((Level 1-))~~ Independent: resident is ~~((able to get out of the home safely and independently without mobility aids~~

~~or any assistance from another individual))~~ physically and mentally capable of safely getting out of the home without the assistance of another individual or the use of mobility aids. The department will consider a resident independent if capable of getting out of the home after one verbal cue;

(2) ~~((Level 2-))~~ Assistance required: resident is not physically ~~((and))~~ or mentally capable of ~~((traversing a normal pathway to safety with))~~ getting out of the house without assistance from another individual or mobility aids~~((, but unable to ascend or descend stairs without the physical assistance of another individual; and~~

~~((Level 3-))~~ resident is unable to walk or transverse ~~[[traverse]]~~ a normal pathway to safety without the physical assistance of another individual~~)).~~

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10880 Emergency evacuation adult family home ~~((floor plan))~~ bedrooms. The adult family home must ensure each resident with an evacuation capability of ~~((Level 2 or Level 3))~~ "assistance required" has a bedroom on a ground-level floor which:

- (1) Has at least ~~((two))~~ one means of exiting the bedroom; to the outdoors, without going through any room including the garage; and
- (2) Exiting from the bedroom does not require the use of:
 - (a) Stairs;
 - (b) Elevators; ~~((or))~~
 - (c) Chairlift; or
 - (d) A platform lift.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10920 Inspection and investigation reports—Provided by department. The department will mail or hand deliver the department's report to the ~~((provider or entity representative))~~ adult family home:

- (1) Within ten working days of completion of the inspection process; or
- (2) Within ten calendar days of completion of the inspection if the home does not have a deficiency.

AMENDATORY SECTION (Amending WSR 09-03-028, filed 1/12/09, effective 2/12/09)

WAC 388-76-10955 Remedies—Department must impose remedies. (1) The department must impose a remedy or remedies if the department substantiates a complaint involving harm to a resident and violation of an applicable law or rule.

(2) The department must impose a remedy or remedies if the department substantiates, after licensure, that it has been less than twenty years since the adult family home ~~((provider))~~ voluntarily surrendered or relinquished an adult family home license in lieu of department initiated denial, suspension, nonrenewal, or revocation of a license.

(3) The department must impose a remedy or remedies if the department finds any person listed in WAC 388-76-10950:

(a) Has a history of significant noncompliance with federal or state laws or regulations in the provision of care or services to children or vulnerable adults;

(b) Has been convicted of a "crime against children or other persons" as defined in RCW 43.43.830, unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years has passed since conviction;

(c) Has been convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in third degree and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years has passed since conviction;

(d) Has been convicted of:

(i) Violation of the imitation controlled substances act (VICSA);

(ii) Violation of the uniform controlled substances act (VUCSA);

(iii) Violation of the uniform legend drug act (VULDA);

(iv) Violation of the uniform precursor drug act (VUPDA); or

(v) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct.

(e) Has been found in any final decision issued by a disciplining authority to have abused, neglected, financially exploited, or abandoned a minor or vulnerable adult;

~~((e))~~ (f) Has been convicted of a crime in federal court or in the court of any other state, and the department determines that the conviction is equivalent to a conviction under subsection (3)(b) ~~((e))~~, (3)(c) or (3)(d) above;

~~((f))~~ (g) Is listed on a state registry with a finding of abuse, neglect, financial exploitation, or abandonment of a minor or vulnerable adult; or

~~((g))~~ (h) Has been the subject of a finding or conclusion by a court of law that the individual abused, neglected, financially exploited, or abandoned a minor or vulnerable adult. Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceedings under Title 26 RCW, and vulnerable adult protection proceedings under chapter 74.34 RCW.

AMENDATORY SECTION (Amending WSR 09-03-028, filed 1/12/09, effective 2/12/09)

WAC 388-76-10960 Remedies—Department may impose remedies. The department may impose a remedy or remedies if the department finds any person listed in WAC 388-76-10950:

(1) Has been convicted of:

(a) Any felony that the department determines is reasonably related to the competency of the person to be involved in the ownership or operation of an adult family home; or

(b) A crime involving a firearm used in the commission of a felony or in any act of violence against a person.

(2) Has engaged in the illegal use, sale or distribution of drugs or excessive use of alcohol or drugs without the evidence of rehabilitation;

(3) Has committed an act of domestic violence toward a family or household member;

(4) Has been found in any final decision of a federal or state agency to have abandoned, neglected, abused, or financially exploited a vulnerable adult, unless such decision requires imposition of a remedy under WAC 388-76-10955;

(5) Has had a license for the care of children or vulnerable adults denied, suspended, revoked, or not renewed;

(6) Has a history of violations of chapter 70.128 RCW, or any law regulating residential care facilities, that resulted in revocation, suspension, or nonrenewal of a license with the department;

(7) Has been enjoined from operating a facility for the care and services of children or adults;

(8) Has had a medicaid or medicare provider agreement or any other contract for the care and treatment of children or vulnerable adults, terminated, cancelled, suspended, or not renewed by any public agency, including a state medicaid agency;

(9) Has been the subject of a sanction, corrective, or remedial action taken by federal, state, county, or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;

(10) Has obtained or attempted to obtain a license by fraudulent means or misrepresentation;

(11) Knowingly, or with reason to know, made a false statement of material fact on his or her application for a license or any data attached to the application, or in any matter involving the department;

(12) Permitted, aided, or abetted the commission of any illegal act on the adult family home premises;

(13) Willfully prevented, interfered with, or failed to cooperate with any inspection, investigation, or monitoring visit made by the department, including refusal to permit authorized department representatives to interview residents or have access to their records;

(14) Failed or refused to comply with:

(a) A condition imposed on a license or a stop placement order; or

(b) The requirements of chapters 70.128, 70.129, 74.34 RCW, this chapter or any other applicable laws.

(15) Misappropriated property of a resident, unless such action requires a remedy under WAC 388-76-10955;

(16) Exceeded licensed capacity in the operation of an adult family home;

(17) Operated a facility for the care of children or adults without a license or with a revoked license;

(18) In connection with the operation of any facility for the care of children or adults, relinquished or returned a license, or did not seek license renewal following written notification that the licensing agency intends to deny, suspend, cancel or revoke the license, unless such action requires imposition of a remedy under WAC 388-76-10955;

(19) When providing care to children or vulnerable adults, has had resident trust funds or assets seized by the Internal Revenue Service or a state entity for failure to pay income or payroll taxes;

(20) Failed to meet financial obligations as the obligations fell due in the normal course of owning or operating a business involved in the provision of care and services to children or vulnerable adults;

(21) Has failed to meet personal financial obligations and that failure has resulted in a failure to provide necessary care and services to the residents; ~~((or))~~

(22) Interfered with a long-term care ombudsman or department staff in the performance of his or her duties;

(23) Failed to relinquish or surrender the license as required; or

(24) Failed to have evidence of residents in the home for the last two inspections.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10990 Informal dispute resolution (IDR). (1) When ~~((a provider or entity representative disagrees))~~ an adult family home disagrees with the department's finding of a violation under this chapter, the ~~((provider or entity representative shall have))~~ adult family home has the right to have the violation reviewed by the department under the department's dispute resolution process.

(2) The purpose of the review is to give the ~~((provider or entity representative))~~ adult family home an opportunity to present information ~~((which))~~ that might warrant modification or deletion of a finding of a violation.

(3) The ~~((provider or entity representative))~~ adult family home may submit a written statement for review.

(4) In addition to a written statement, the ~~((provider or entity representative))~~ adult family home may ask to present the information in person to a department designee.

(5) Requests for review must be made in writing to the department at the address provided in the department's certified letter within ten working days of receipt of the written finding of a violation.

~~((6))~~ ~~((When requested by the provider or entity representative, the department must expedite the dispute resolution process to review violations upon which a department order imposing license suspension, revocation, stop placement, or condition on a license is based.~~

~~((7))~~ Orders of the department imposing license suspension, stop placement, or conditions on a license are effective immediately upon notice and shall continue pending dispute resolution.

AMENDATORY SECTION (Amending WSR 09-03-029, filed 1/12/09, effective 2/12/09)

WAC 388-76-10995 Notice, hearing rights, and effective dates relating to imposition of remedies. (1) Chapter 34.05 RCW applies to department actions under this chapter and chapter 70.128 RCW, except that orders of the department imposing license suspension, stop placement, or conditions on license are effective immediately upon notice and must continue pending a final administrative decision.

(2) ~~((A provider))~~ An adult family home contesting ~~((any decision))~~ the imposition of any remedy by the department ~~((to impose a remedy))~~ must within twenty-eight days of receipt of the decision:

(a) File a written application for an adjudicative proceeding by a method showing proof of receipt to the agency at the mailing address contained in the department's notice imposing the remedy; and

(b) Include in or with the application:

(i) The reasons for contesting the department decision; and

(ii) A copy of the contested department decision.

(3) Administrative proceedings are governed by chapter 34.05 RCW, RCW 43.20A.215, where applicable, this section, and chapter 388-02 WAC. If any provision in this ~~((section))~~ chapter conflicts with chapter 388-02 WAC, the provision in this ~~((section governs))~~ chapter applies.

NEW SECTION

WAC 388-76-11004 Resident protection program—Individual defined. As used in WAC 388-76-11005 through 388-76-11040, the term "individual" means anyone used by the adult family home to provide services to residents who is alleged to have abandoned, abused, neglected, or financially exploited a resident. "Individual" includes, but is not limited to employees, contractors, and volunteers.

AMENDATORY SECTION (Amending WSR 08-05-098, filed 2/15/08, effective 3/17/08)

WAC 388-76-11005 Resident protection program—Notice to individual of preliminary finding. (1) ~~((The department will notify the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident in writing within ten working days of making a preliminary finding of abandonment, abuse, neglect, exploitation, or financial exploitation of a resident. The written notice:~~

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

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

~~((2))~~ ~~The department must make a reasonable, good faith effort to find the last known address of the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident.~~

~~((3))~~ ~~The department may extend the time frame for notification beyond ten working days for good cause.~~

~~((4))~~ ~~The department will serve notice of the preliminary finding as provided in ((chapter 388-02)) WAC 388-76-11080.~~

(2) The department may establish proof of service as provided in WAC 388-76-11085.

AMENDATORY SECTION (Amending WSR 08-05-098, filed 2/15/08, effective 3/17/08)

WAC 388-76-11010 Resident protection program—((Reporting)) Notice to others of preliminary finding. ~~((+))~~ ~~In a manner~~ Consistent with confidentiality requirements concerning the resident, witnesses, and reporter, the department may provide notification of a preliminary finding to:

~~((a))~~ (1) Other divisions within the department;

~~((b))~~ (2) The agency or program identified under RCW 74.34.068 with which the individual ~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited~~

~~a resident is))~~ was associated as an employee, volunteer or contractor;

~~((e))~~ (3) The employer or program that is currently associated with the individual ~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident))~~, if known;

~~((d))~~ (4) Law enforcement; ~~(and)~~

~~((e))~~ (5) Other entities as authorized by law and this chapter including investigative authorities consistent with chapter 74.34 RCW(;

~~(2) The notification will identify the finding as a preliminary finding); and~~

~~(6) The appropriate licensing agency.~~

AMENDATORY SECTION (Amending WSR 09-03-030, filed 1/12/09, effective 2/12/09)

WAC 388-76-11015 Resident protection program—Disputing a preliminary finding. (1) The individual ~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident))~~ may request an administrative hearing to challenge a preliminary finding made by the department.

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

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

(4) The written request for a hearing must include the individual's full legal name and current mailing address and should include:

(a) The individual's telephone number;

(b) A brief explanation of why the individual ~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident))~~ disagrees with the preliminary finding;

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

(d) The individual's signature.

AMENDATORY SECTION (Amending WSR 08-05-098, filed 2/15/08, effective 3/17/08)

WAC 388-76-11025 Resident protection program—Finalizing a preliminary finding. (1) A preliminary finding becomes a final finding when:

(a) The department notifies the individual ~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident))~~ there is a preliminary finding ~~((pursuant to))~~ under WAC 388-76-11005; and

(b) The individual ~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident))~~ does not ask for an administrative hearing; or

(c) The administrative law judge:

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

(ii) Dismisses the appeal for failure to comply with the time limits under WAC 388-76-11015; or

(iii) Issues an initial order upholding the finding and the individual ~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident))~~ fails to appeal the initial order to the department's board of appeals; or

(d) The board of appeals issues a final order upholding the finding.

(2) A final finding is permanent.

(3) A final finding will only be removed from the department or agency list of individuals found to have abandoned, abused, neglected, exploited, or financially exploited a vulnerable adult if it is rescinded following judicial review.

~~((4) The department may remove a single finding of neglect from its records based upon a written petition by the individual found to have neglected a resident provided that at least one calendar year must have passed between the date a request was made to remove the finding of neglect and the date the final finding was finalized and recorded.))~~

AMENDATORY SECTION (Amending WSR 08-05-098, filed 2/15/08, effective 3/17/08)

WAC 388-76-11030 Resident protection program—Appeal of ~~((administrative law judge's))~~ the initial order or finding. (1) If the individual ~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident))~~ or the department disagrees with the administrative law judge's decision, either party may challenge this decision by filing a petition for review with the department's board of appeals under chapter 34.05 RCW, Administrative Procedure Act, and chapter 388-02 WAC.

(2) If the department appeals the administrative law judge's decision, the department will not change the finding in the department's records until a final hearing decision is issued.

AMENDATORY SECTION (Amending WSR 08-05-098, filed 2/15/08, effective 3/17/08)

WAC 388-76-11035 Resident protection program—Reporting final findings. The department will report a final finding of abandonment, abuse, neglect, exploitation, ~~((and))~~ or financial exploitation within ten working days to the following:

(1) The individual ~~((found to have abandoned, abused, neglected, exploited, or financially exploited a resident and))~~ for whom there is a final finding;

(2) The ~~((provider or entity representative))~~ adult family home that was associated with the individual ~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident))~~ during the time of the incident;

(3) The adult family home or program that is currently associated with the individual, if known;

(4) The appropriate licensing, certification or registration authority;

(5) ~~((The))~~ Any federal or state ~~((department))~~ registry or ~~((agency))~~ list of individuals found to have abandoned, abused, neglected, exploited, or financially exploited a vulnerable adult; and

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

AMENDATORY SECTION (Amending WSR 08-05-098, filed 2/15/08, effective 3/17/08)

WAC 388-76-11040 Resident protection program—Disclosure of investigative and finding information. (1) Confidential information about residents and mandated reporters received from the department may only be used by the individual (~~(alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident)~~) to challenge findings through the appeals process. It may only be shared with persons who are involved in the appeal.

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

MANAGEMENT AGREEMENTS

NEW SECTION

WAC 388-76-11050 Management agreements—General. As used in WAC 388-76-11050 through 388-76-11070, the term "manager" means the individual or entity providing management services under a management agreement. It does not mean a resident manager.

(1) If the adult family home uses a manager, the adult family home must have a written management agreement approved by the department that is consistent with chapter 388-76 WAC requirements.

(2) The adult family home must notify the department of its use of a manager when:

- (a) Entering into a management agreement following initial application;
 - (b) Changing managers; or
 - (c) Modifying an existing management agreement.
- (3) An applicant must notify the department of its use of a manager when:

- (a) Applying for an adult family home license; or
- (b) Entering into a management agreement prior to licensure.

(4) The adult family home must submit the written management agreement, including an organizational chart which shows the relationship between the adult family home, management company, and all related entities, including management staff.

(5) The written management agreement must be submitted:

- (a) With the initial license, change of ownership, or change of location applications; and
- (b) Sixty days prior to the proposed change of ownership date or the effective date of the management agreement.

(6) The adult family home must submit any amendment to an existing management agreement to the department thirty days before the amendment takes effect.

(7) The adult family home must notify current residents and their representatives sixty days before entering into a management agreement.

NEW SECTION

WAC 388-76-11055 Management agreements—Adult family home. (1) The adult family home is responsible for:

- (a) The daily operations and provision of care and services to residents;
- (b) Compliance with all applicable laws and rules;
- (c) Ensuring the manager complies with the department approved management agreement; and
- (d) Ensuring the manager does not represent itself as, or give the appearance that it is the provider.

(2) The adult family home must not give the manager responsibilities that are so extensive the adult family home is relieved of responsibility for the daily operations and provision of care and services to residents. If the adult family home relinquishes responsibility for daily operation and provision of care and services to residents, the department will determine that a change of ownership has occurred.

(3) The adult family home and manager must act in accordance with the terms of the department approved management agreement. If the department determines they are not, then the department may take licensing action.

(4) The adult family home may enter into a management agreement only if the management agreement creates a principal/agent relationship between the adult family home and manager.

NEW SECTION

WAC 388-76-11060 Terms of the management agreement. Management agreements, at a minimum must:

- (1) Describe the responsibilities of the adult family home and manager, including items, services, and activities to be provided;
- (2) Maintain and retain all records in accordance with this chapter;
- (3) Allow the department unlimited access to documentation and records according to applicable laws or regulations;
- (4) Require the manager to immediately send copies of inspections and notices of noncompliance to the adult family home;
- (5) Require the adult family home's governing body, board of directors or similar authority to appoint the entity representative;
- (6) Require the adult family home to participate in monthly oversight meetings and at minimum, quarterly on-site visits to the home;
- (7) State that the adult family home is responsible for reviewing, acknowledging and signing all initial, change of ownership, and change of location license applications;
- (8) State that the adult family home and manager will review the management agreement annually and notify the department of change according to applicable regulations;
- (9) Acknowledge that the adult family home is the party ultimately responsible for complying with all applicable laws and rules;
- (10) Require the adult family home to oversee and maintain ultimate responsibility for:

- (a) All personnel issues relating to the operation of the home;
 - (b) The care, services, and safety of all residents; and
 - (c) Staffing plans, staff, volunteer and student orientation and training;
- (11) State the manager will not represent itself or give the appearance it is the provider;
- (12) State that a duly authorized manager may execute resident leases or agreements on behalf of the adult family home, however all such resident leases or agreements must be between the adult family home and the resident or the resident's representative.

NEW SECTION

WAC 388-76-11065 Management agreements—Department review. (1) Upon receipt of a proposed management agreement, the department may require:

- (a) The adult family home to provide additional information or clarification;
- (b) Changes necessary to:
 - (i) Bring the management agreement into compliance with this chapter; and
 - (ii) Ensure that the adult family home has continued to have ultimate responsibility for the daily operations of the home.

NEW SECTION

WAC 388-76-11070 Management agreements—Resident funds. (1) If the management agreement delegates day-to-day management of resident personal funds to the manager, the adult family home must:

- (a) Retain all fiduciary and custodial responsibility for funds that have been deposited with the adult family home by the resident;
- (b) Remain directly accountable to the residents and resident representatives for such funds; and
- (c) Ensure any party responsible for holding or managing resident's personal funds:
 - (i) Is bonded or obtains insurance in sufficient amounts to specifically cover losses of resident funds;
 - (ii) Provides proof of bond or insurance; and
 - (iii) Provides proof of payment of the bond or insurance premium.

(2) If responsibilities for the day-to-day management of the resident funds are delegated to the manager, the manager must:

- (a) Give the adult family home a monthly accounting of the residents' funds;
- (b) Meet all legal requirements related to holding, and accounting for, resident funds; and
- (c) Comply with all requirements under this chapter relating to residents rights and financial affairs.

NOTICENEW SECTION

WAC 388-76-11080 Notice—Service complete Service of the department's notice is complete when:

- (1) Personal service is made;
- (2) The notice is addressed to the home or the individual at his or her last known address, and deposited in the United States mail;
- (3) The notice is faxed and the department receives evidence of transmission;
- (4) Notice is delivered to a commercial delivery service with charges prepaid; or
- (5) Notice is delivered to a legal messenger service with charges prepaid.

NEW SECTION

WAC 388-76-11085 Notice—Proof of service. The department may establish proof of service by any of the following:

- (1) A declaration of personal service;
- (2) An affidavit or certificate of mailing to the adult family home or to the individual to whom the notice is directed;
- (3) A signed receipt from the person who accepted the certified mail, the commercial delivery service, or the legal messenger service package; or
- (4) Proof of fax transmission.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-76-10190	Adult family home—Compliance with regulations—Required.
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WSR 09-20-061**PROPOSED RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed October 2, 2009, 2:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-14-069.

Title of Rule and Other Identifying Information: The department is amending and creating new sections to chapter 388-78A WAC regarding boarding home rules. The department is proposing amendments to WAC 388-78A-2060 Preadmission assessment, 388-78A-2300 Food and nutrition services, 388-78A-2440 Resident register, 388-78A-2470 Criminal history disclosure and background checks, 388-78A-2480 Tuberculosis—Testing—Required, 388-78A-2520 Administrator qualifications—General, 388-78A-2540 Administrator requirements, 388-78A-2590 Management agreements—General, 388-78A-2910 Applicable building codes, 388-78A-3030 Toilet rooms and bathrooms, 388-78A-3190 Denial, suspension, revocation, or nonrenewal of license statutorily required, 388-78A-3410 Resident protection program—Notice to the individual of preliminary finding, 388-78A-3420 Resident protection program—Notice to

others of preliminary findings, 388-78A-3430 Resident protection program—Disputing a preliminary finding, 388-78A-3450 Resident protection program—Finalizing a preliminary finding, 388-78A-3460 Resident protection program—Appeal of initial order, 388-78A-3470 Resident protection program—Reporting final findings, and 388-78A-3480 Resident protection program—Disclosure of investigative and finding information.

The department is proposing new sections WAC 388-78A-2481 Tuberculosis—Testing method—Required, 388-78A-2482 Tuberculosis—No testing, 388-78A-2483 Tuberculosis—One step testing, 388-78A-2484 Tuberculosis—Two step skin testing, 388-78A-2485 Tuberculosis—Positive test result, 388-78A-2486 Tuberculosis—Negative test result, 388-78A-2487 Tuberculosis—Declining a skin test, 388-78A-2488 Tuberculosis—Reporting—Required, 388-78A-2489 Tuberculosis—Test records, 388-78A-2521 Certification of training, 388-78A-2522 Administrator qualifications—Prior to 2004, 388-78A-2523 Administrator qualification—NH administrator license, 388-78A-2524 Administrator qualifications—Certification of training and three years experience, 388-78A-2525 Administrator qualifications—Associate degree, certification of training, and two years experience, 388-78A-2526 Administrator qualifications—Bachelor's degree, certification of training and one year experience, 388-78A-2527 Administrator qualifications—Five years experience, 388-78A-2592 Management agreements—Licensee, 388-78A-2593 Management agreements—Terms of agreement, 388-78A-2594 Management agreements—Department review, 388-78A-2595 Management agreements—Resident funds, 388-78A-2665 Resident rights—Notice—Policy on accepting medicaid as a payment source, 388-78A-2731 Application—Liability insurance required, 388-78A-2732 Liability insurance required—Ongoing, 388-78A-2733 Liability insurance required—Commercial general liability insurance or business liability insurance coverage, 388-78A-2734 Liability insurance required—Professional liability insurance coverage, 388-78A-3390 Resident protection program—Individual defined, 388-78A-4000 Notice—Service complete, and 388-78A-4010 Notice—Proof of service.

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 December 8, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 9, 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 December 8, 2009.

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

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

amending these rules is to consider making editorial and clarifying changes and to make these rules consistent with current law and standards. The anticipated effects are to make the rule clearer, easier to read, understand and apply.

- Editorial and housekeeping changes in the following sections: Preadmission assessment, food and nutrition services, resident register, toilet rooms and bathrooms.
- Added disclosure requirement regarding the facility's policy on accepting medicaid payments to be consistent with RCW 18.20.440 and SSB 6009.
- Clarified tuberculosis requirements to be consistent with current standards.
- Clarified when notice is considered complete and proof of notice.
- Consolidated disqualifying crime lists.
- Added liability insurance requirement to rule.
- Clarified management agreement requirements.
- Clarified resident protection program requirements.
- Clarified that new construction must comply with rules in effect at the time of plan approval except in cases where resident health and safety may be jeopardized.
- Chunked large administrator qualifications section into smaller sections.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 18.20.090.

Statute Being Implemented: Chapter 18.20 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: Judy Johnson, P.O. Box 45600, Olympia, WA 98513, (360) 725-2591; Implementation and Enforcement: Lori Melchiori, P.O. Box 45600, Olympia, WA 98513, (360) 725-2404.

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

Small Business Economic Impact Statement

SUMMARY OF PROPOSED RULES: The department of social and health services, residential care services (RCS), is proposing amendments to chapter 388-78A WAC, Boarding homes.

The purpose of the proposed rule making is to make editorial and clarifying changes and to make the rules consistent with current laws and standards.

Highlights of proposed changes:

- Editorial and housekeeping changes in the following sections: Preadmission assessment, food and nutrition services, sections related to preliminary findings.
- Clarified medicaid issues to be consistent with RCW 18.20.440 and SSB 6009.
- Deleted construction tables to eliminate redundancy, and clarified that new construction must comply with rules in effect at the time of plan approval.
- Clarified management agreement requirements.

- Clarified tuberculosis requirements to be consistent with current standards.
- Clarified when notice is considered complete and proof of notice.
- Updated disqualifying crime requirements.
- Added liability insurance requirement to rule.

SMALL BUSINESS [ECONOMIC] IMPACT STATEMENT (SBEIS): Chapter 19.85 RCW, the Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses and outlines the information that must be included in an SBEIS. Preparation of an SBEIS is required when a proposed rule has the potential of placing more than a minor impact on a business.

RCW 19.85.020 defines a "small business" as "any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has fifty or fewer employees."

RCS has analyzed its proposed rules and concludes that the new requirement of liability insurance may impose a new cost to the boarding home that does not already have liability insurance. Approximately three hundred fifty-one (63.3%) boarding homes have contracts and are required to have liability insurance. Although 36.4% of the boarding homes do not have contracts, many of those facilities may already have liability insurance, including those who may have liability insurance coverage required by their banks or landlords.

The cost of liability insurance ranges in price depending on many variables such as level of care, number of residents, expertise of staff, outcome of inspections, loss history, and the length of time the administrator has been working. According to three insurance companies, the estimated average cost for a combination of liability insurance that also covers professionals for the boarding home is \$150 to \$200 per bed.

RCS understands that some of the cost of the liability insurance can be deducted as a legitimate business expense when taxes are filed with the Internal Revenue Service. RCS does not believe that the proposed rules will result in any job losses or gains for boarding homes. The proposed rule amendments do not disproportionately impact small businesses more than larger businesses.

EVALUATION OF PROBABLE COSTS AND BENEFITS: RCS has determined that some of the proposed rules are "significant legislative rules" as defined by legislature. As required by RCW 34.05.328 (1)(c), RCS has analyzed the probable costs and probable benefits of the proposed amendments, taking into account both the qualitative and quantitative benefits and costs.

COSTS:

- The liability insurance requirement for all boarding homes may impose additional costs to those boarding homes that currently do not have insurance coverage.
- DSHS has shared the draft language with interested parties who participate in a stakeholder meeting to discuss the proposed rule changes. At the meeting, liability insurance was brought up by a stakeholder as a potential cost.

- In addition, the draft language was posted on the aging and disability services administration internet web site for anyone in the public to review and comment.
- DSHS used the input from internal and external stakeholders to determine cost impacts for the drafting of the rule.
- To date, the department has received and considered written comments on the draft language and one comment on the cost impact of the proposed liability insurance requirement.

COST SAVINGS: Clarity of the proposed rule could save providers costs in time and dollars by:

- Clarifying rule language for the provider; and
- Clarification could reduce the need for clarifying technical support and dear provider letters due to confusing rules.

OTHER BENEFITS: The proposed rule amendments result in several benefits. Benefits may include:

- The liability insurance requirement will provide a consistent standard among those with contracts with DSHS and those without contracts.
- The liability insurance requirement will provide all residents with another level of consumer protection.
- The liability insurance requirement may help boarding homes defend themselves and pay awarded damages without threatening their financial stability.
- The amendments are clearer, and easier to read, understand and apply; and
- Residents will ultimately benefit from the rule revision because providers will be able to better understand and follow the requirements.

CONCLUSION: RCS concludes that the benefits of the proposed amendments exceed the possible cost. These rules continue to implement state laws and regulations related to boarding homes. RCS has complied with the appropriate sections of the Administrative Procedure Act and is prepared to proceed with the rule filing.

Please contact Judy Johnson by e-mail at johnsjm1@dshs.wa.gov or by phone at (360) 725-2591 if you have questions.

A copy of the statement may be obtained by contacting Judy Johnson, Boarding Home Program Manager, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2591, fax (360) 438-7903, e-mail johnsjm1@dshs.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Judy Johnson, Boarding Home Program Manager, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2591, fax (360) 438-7903, e-mail johnsjm1@dshs.wa.gov.

October 1, 2009
Stephanie E. Vaughn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2060 Preadmission assessment. The boarding home must conduct a preadmission assessment for each prospective resident that includes the following information, unless unavailable despite the best efforts of the boarding home:

- (1) Medical history;
- (2) Necessary and contraindicated medications;
- (3) A licensed medical or health professional's diagnosis, unless the ~~((individual))~~ prospective resident objects for religious reasons;
- (4) Significant known behaviors or symptoms that may cause concern or require special care;
- (5) Mental illness diagnosis, except where protected by confidentiality laws;
- (6) Level of personal care needs;
- (7) Activities and service preferences; and
- (8) Preferences regarding other issues important to the ~~((applicant))~~ prospective resident, such as food and daily routine.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2300 Food and nutrition services. (1) The boarding home must:

- (a) Provide a minimum of three meals a day:
 - (i) At regular intervals;
 - (ii) With no more than fourteen hours between the evening meal and breakfast, unless the boarding home provides a nutritious snack after the evening meal and before breakfast.
- (b) Provide sufficient time and staff support for residents to consume meals;
- (c) Ensure all menus:
 - (i) Are written at least one week in advance and delivered to residents' rooms or posted where residents can see them, except as specified in (f) of this subsection;
 - (ii) Indicate the date, day of week, month and year;
 - (iii) Include all food and snacks served that contribute to nutritional requirements;
 - (iv) Are kept at least six months;
 - (v) Provide a variety of foods; and
 - (vi) Are not repeated for at least three weeks, except that breakfast menus in boarding homes that provide a variety of daily choices of hot and cold foods are not required to have a minimum three-week cycle.
- (d) Prepare food on-site, or provide food through a contract with a food service establishment located in the vicinity ~~((and))~~ that meets the requirements of chapter 246-215 WAC ~~((palatable, attractively served meals and nourishments that meet the current recommended dietary allowances established by the Food and Nutrition Board, National Research Council,))~~ Food Service;
- (e) Serve nourishing, palatable and attractively served meals adjusted for:
 - (i) Age, gender and activities, unless medically contraindicated; and

(ii) Individual preferences to the extent reasonably possible.

~~((e))~~ (f) Substitute foods of equal nutrient value, when changes in the current day's menu are necessary, ~~((of equal nutrient value))~~ and record changes on the original menu;

~~((f))~~ (g) Make available and ~~((known to))~~ give residents alternate choices in entrees for midday and evening meals that are of comparable quality and nutritional value. The boarding home is not required to post alternate choices in entrees on the menu one week in advance, but must record on the menus the alternate choices in entrees that are served;

~~((g))~~ (h) Develop, make known to residents, and implement a process for residents to express their views and comment on the food services; and

~~((h))~~ (i) Maintain a dining area or areas approved by the department with a seating capacity for fifty percent or more of the residents per meal setting, or ten square feet times the licensed resident bed capacity, whichever is greater.

(2) The boarding home must plan in writing, prepare on-site or provide through a contract with a food service establishment located in the vicinity that meets the requirements of chapter 246-215 WAC, and serve to each resident as ordered:

(a) Prescribed general low sodium, general diabetic, and mechanical soft food diets according to a diet manual. The boarding home must ensure the diet manual is:

(i) Available to and used by staff persons responsible for food preparation;

(ii) Approved by a dietitian; and

(iii) Reviewed and updated as necessary or at least every five years.

(b) Prescribed nutrient concentrates and supplements when prescribed in writing by a health care practitioner.

(3) The boarding home may provide to a resident at his or her request and as agreed upon in the resident's negotiated service agreement, nonprescribed:

(a) Modified or therapeutic diets;

(b) Nutritional concentrates or supplements.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2440 Resident register. (1) The boarding home must maintain in the boarding home a single current ~~((roster))~~ register of all boarding home residents, their roommates and identification of the rooms in which such persons reside or sleep.

(2) ~~((The boarding home must make this roster immediately available to:~~

~~((a) Authorized department staff;~~

~~((b) Representatives of the long-term care ombudsman's office; and~~

~~((c) Representatives of the Washington state fire protection bureau when conducting fire safety inspections.~~

~~((3))~~ The boarding home must maintain a readily available permanent, current book, computer file, or register with entries in ink or typewritten, of all ~~((former))~~ individuals who resided in the boarding home ~~((residents))~~ within the past five years, including:

(a) ~~((Date of moving in))~~ Move-in date;

(b) Full name;

- (c) Date of birth;
- (d) Date of moving out;
- (e) Reason for moving out; and
- (f) ~~((New address if known))~~ Location and address to which the resident was discharged.

(3) The boarding home must make this register immediately available to:

- (a) Authorized department staff;
- (b) Representatives of the long-term care ombudsman's office; and
- (c) Representatives of the Washington state fire marshal when conducting fire safety inspections.

AMENDATORY SECTION (Amending WSR 09-01-052, filed 12/10/08, effective 1/10/09)

WAC 388-78A-2470 Criminal history disclosure and background checks. (1) This section applies to any individual associated with the licensee or boarding home who may have unsupervised access to residents, including but not limited to:

- (a) Employees;
- (b) Managers;
- (c) Volunteers who are not residents;
- (d) Contractors; and
- (e) Students.

(2) The boarding home must:

(a) Ensure any individual associated with the licensee or boarding home who may have unsupervised access to residents has had a background check ~~((of conviction records, pending charges and disciplinary board decisions))~~ completed within the past two years, ~~((and))~~ that the background check is repeated every two years ((thereafter)), and that individual has not been:

(i) Convicted of a crime against children or other persons as defined in RCW 43.43.830 ((or 43.43.842:)), unless the individual has been convicted of one of the two crimes listed below and the required number of years has passed between the most recent conviction and the date of the application for employment:

(A) Simple assault, assault in the fourth degree, or the same offense as it may hereafter be renamed, and three or more years have passed;

(B) Prostitution, or the same offense as it may hereafter be renamed, and three or more years have passed.

(ii) Convicted of crimes relating to financial exploitation as defined in RCW 43.43.830 ((or 43.43.842:)), unless the individual has been convicted of one of the three crimes listed below and the required number of years has passed between the most recent conviction and the date of the application for employment:

(A) Theft in the second degree, or the same offense as it may hereafter be renamed, and five or more years have passed;

(B) Theft in the third degree, or the same as it may hereafter be renamed, and three or more years have passed; or

(C) Forgery, or the same offense as forgery may hereafter be renamed, and five or more years have passed.

(iii) Convicted of:

(A) Violation of the imitation controlled substances act (VICSA);

(B) Violation of the uniform controlled substances act (VUCSA);

(C) Violation of the uniform legend drug act (VULDA);

(D) Violation of the uniform precursor drug act (VUPDA); or

(E) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct.

(iv) Found in any disciplinary board final decision to have abused a vulnerable adult as defined in RCW 43.43.830; ((iv)) (v) The subject in a protective proceeding under chapter 74.34 RCW;

((iv)) (vi) Convicted of criminal mistreatment; ((iv))

((iv)) (vii) Found by the department to have abandoned, abused, neglected or exploited a minor, or abandoned, abused, neglected, exploited, or financially exploited a vulnerable person, provided the individual was offered an administrative hearing to contest the finding, and the finding was upheld, or the individual failed to timely appeal the finding; or

(viii) Convicted in another state of a crime that is equivalent to a crime described in this subsection.

(b) Not hire or retain, directly or by contract, or accept as a volunteer, any individual prohibited from having unsupervised access to residents under (a) of this subsection, except as provided in subsection (6) ~~((of this section and RCW 43.43.842)).~~

(3) Prior to first starting his or her duties, the boarding home must:

(a) Require each prospective employee, manager, volunteer, contractor and student associated with the licensee or boarding home who may have unsupervised access to residents to disclose, consistent with RCW 43.43.834(2), whether he or she:

(i) Has been convicted of ((a)) any crime, including ((any of)) the following ((as defined in RCW 43.43.830)):

(A) ((A)) Crimes against children or ((their)) other persons as defined in RCW 43.43.830;

(B) ((A)) Crimes relating to financial exploitation as defined in RCW 43.43.830; ((and))

(C) ((A)) Crimes relating to drugs as defined in RCW 43.43.830; and

(D) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct.

(ii) Has had findings made against him or her in any civil adjudicative proceeding as defined in RCW 43.43.830. "Civil adjudicative proceeding" means judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44, or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative finding that become final due to the failure of the alleged perpetrator to

timely exercise a legal right to administratively challenge such findings; or

(iii) Has ~~((both))~~ one or more convictions for (i) and one or more findings ~~((made against him or her))~~ under (ii).

(b) Require each individual making the disclosures required in subsection (3)(a) of this section:

(i) To make the disclosures in writing;

(ii) To swear under penalty of perjury that the contents of the disclosure are accurate; and

(iii) To sign the disclosure statement.

(4) Prior to first starting his or her duties, the boarding home must take one or more of the following three actions for each prospective employee, manager, volunteer, contractor and student associated with the licensee or boarding home who may have unsupervised access to residents:

(a) Initiate a background check on the individual through the department, which includes taking the following actions:

(i) Informing the individual that a background check is required.

(ii) Requiring the individual to complete and sign a DSHS background authorization form prior to the individual having unsupervised access to residents;

(iii) Submitting all background check authorization forms to the department's:

(A) Aging and disability services administration with the initial application for licensure; and

(B) Background check central unit for currently licensed boarding homes.

(iv) Verbally informing the named individual of his/her individual background check results and offering to provide him or her a copy of the background check results within ten days of receipt.

(b) Obtain from the individual's prior employer a copy of the completed criminal background inquiry information for the individual, subject to the following conditions:

(i) The prior employer was a nursing home licensed under chapter 18.51 RCW, a boarding home licensed under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW;

(ii) The nursing home, boarding home or adult family home providing completed criminal background inquiry information for the individual is reasonably known to be the individual's most recent employer;

(iii) No more than twelve months has elapsed ~~((from))~~ between the date the individual was last employed by the nursing home, boarding home or adult family home and the date of the individual's current application;

(iv) The background inquiry for the individual is no more than two years old; and

(v) The boarding home has no reason to believe the individual has or may have a disqualifying conviction or finding as described in ~~((RCW 43.43.842))~~ subsection (2)(a) of this section.

(c) When using staff persons from a home health, hospice, or home care agency licensed under chapter 70.127 RCW, or a nursing pool registered under chapter 18.52C RCW, the boarding home must establish, maintain and follow a written agreement with the agency or pool to ensure the requirements of subsection (2) of this section are met for the agency or pool staff who may work in the boarding home.

(5) The boarding home must ensure that all disclosure statements, and background check results obtained by the boarding home, are:

(a) Maintained on-site in a confidential and secure manner;

(b) Used for employment purposes only;

(c) Not disclosed to any individual except:

(i) The individual named on the background check result;

(ii) Authorized state and federal employees;

(iii) The Washington state patrol auditor; and

(iv) As otherwise authorized in chapter 43.43 RCW.

(d) Retained and available for department review:

(i) During the individual's employment or association with a facility; and

(ii) At least two years following termination of employment or association with a facility.

(6) The boarding home may conditionally hire, directly or by contract, an individual having unsupervised access to residents pending a background inquiry, provided the boarding home:

(a) Obtains a criminal history background check authorization form from the individual prior to the individual beginning work;

(b) Submits the criminal history background check authorization form to the department no later than one business day after the individual started working; and

(c) Has received three positive references for the individual.

(7) The department may require the boarding home or any other individual associated with the boarding home who has unsupervised access to residents to complete additional disclosure statements or background inquiries if the department has reason to believe that offenses specified ~~((under RCW 43.43.830))~~ in subsection (2)(a) of this section have occurred since completion of the previous disclosure statement or background inquiry.

(8) In addition to chapter 18.20 RCW, these rules are authorized by RCW 43.20A.710, 43.43.830 through 43.43.-842 and 74.39A.050(8).

AMENDATORY SECTION (Amending WSR 06-24-073, filed 12/4/06, effective 1/4/07)

WAC 388-78A-2480 ((TB tests)) Tuberculosis—Testing—Required. (1) The boarding home must develop and implement a system to ensure each staff person ~~((, except for volunteers and contractors,))~~ is screened for tuberculosis ~~((, as follows:~~

(a) ~~Except when a staff person provided the boarding home with documentation of a previous positive Mantoux skin test, a staff person hired before September 1, 2004 must have had:~~

~~(i) A tuberculin skin test by the Mantoux method within six months preceding the date of employment in the boarding home; and~~

~~(ii) A second tuberculin skin test within one to three weeks after a negative Mantoux test if the staff person was thirty-five years of age or older at the time of hiring.~~

~~(b) A staff person hired on or after September 1, 2004 must have a baseline two-step skin test initiated within three days of being hired unless the staff person meets the requirements in (c) or (d) of this subsection. The skin tests must be:~~

~~(i) Given no less than one and no more than three weeks apart;~~

~~(ii) By intradermal (Mantoux) administration of purified protein derivative (PPD);~~

~~(iii) Read between forty-eight and seventy-two hours following administration, by trained personnel; and~~

~~(iv) Recorded in millimeters of induration.~~

~~(c) A staff person needs to have only a one-step skin test within three days of being hired if:~~

~~(i) There is documented history of a negative result from previous two-step testing; or~~

~~(ii) There was a documented negative result from one-step skin testing in the previous twelve months.~~

~~(d) A staff person does not need to be skin tested for tuberculosis if he/she has:~~

~~(i) Documented history of a previous positive skin test consisting of ten or more millimeters of induration; or~~

~~(ii) Documented evidence of adequate therapy for active disease; or~~

~~(iii) Documented evidence of adequate preventive therapy for infection.~~

~~(e) If a skin test results in a positive reaction, the boarding home must:~~

~~(i) Ensure that the staff person has a chest X-ray within seven days;~~

~~(ii) Report positive chest X-rays to the appropriate public health authority; and~~

~~(iii) Follow precautions ordered by a physician or public health authority)) within three days of employment.~~

~~(2) ((The boarding home must:~~

~~(a) Keep in the boarding home for the duration of the staff person's employment, and at least two years following termination of employment, records of:~~

~~(i) Tuberculin test results;~~

~~(ii) Reports of X-ray findings; and~~

~~(iii) Physician or public health official orders.~~

~~(b) Provide staff persons with a copy of the records specified in (a) of this subsection:~~

~~(i) During the time the staff person is employed in the boarding home, limited to one copy per report; and~~

~~(ii) When requested by the staff person.~~

~~(3) The boarding home must ensure that caregivers caring for a resident with suspected tuberculosis comply with the WISHA standard for respiratory protection)) For purposes of WAC 388-78A-2481 through 388-78A-2489, "staff person" means any boarding home employee or temporary employee of the boarding home, excluding volunteers and contractors.~~

NEW SECTION

WAC 388-78A-2481 Tuberculosis—Testing method—Required. The boarding home must ensure that all tuberculosis testing is done through either:

(1) Intradermal (mantoux) administration with test results read:

(a) Within forty-eight to seventy-two hours of the test; and

(b) By a trained professional; or

(2) A blood test for tuberculosis called interferon-gamma release assay (IGRA).

NEW SECTION

WAC 388-78A-2482 Tuberculosis—No testing. The boarding home is not required to have a staff person tested for tuberculosis if the staff person has:

(1) A documented history of a previous positive skin test, with ten or more millimeters induration;

(2) A documented history of a previous positive blood test; or

(3) Documented evidence of:

(a) Adequate therapy for active disease; or

(b) Completion of treatment for latent tuberculosis infection preventive therapy.

NEW SECTION

WAC 388-78A-2483 Tuberculosis—One step testing. The boarding home is only required to have a staff person take a one-step skin or blood test if the staff person has any of the following:

(1) A documented history of a negative result from previous two step testing done no more than one to three weeks apart; or

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

NEW SECTION

WAC 388-78A-2484 Tuberculosis—Two step skin testing. Unless the staff person meets the requirement for having no skin testing or only a one step skin test, the boarding home must ensure that each staff person has the following two-step testing:

(1) An initial skin test within three days of employment; and

(2) A second test done one to three weeks after the first test; except

(3) A two-step test is not required for the IGRA blood test, which is only a one-step test.

NEW SECTION

WAC 388-78A-2485 Tuberculosis—Positive test result. When there is a positive result to tuberculosis skin or blood testing the boarding home must:

(1) Ensure that the staff person has a chest X-ray within seven days;

(2) Evaluate each staff person with a positive test result for signs and symptoms of tuberculosis; and

(3) Follow the recommendation of the staff person's health care provider.

NEW SECTION

WAC 388-78A-2486 Tuberculosis—Negative test result. The boarding home may be required by the public health provider or licensing authority to ensure that staff persons with negative test results have follow-up testing in certain circumstances, such as:

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

NEW SECTION

WAC 388-78A-2487 Tuberculosis—Declining a skin test. The boarding home must ensure that a staff person take a blood test for tuberculosis if they decline the skin test.

NEW SECTION

WAC 388-78A-2488 Tuberculosis—Reporting—Required. The boarding home must:

- (1) Report any staff person or resident with tuberculosis symptoms or a positive chest X-ray to the appropriate staff person's health care provider, or public health provider;
- (2) Follow the infection control and safety measures ordered by the staff person's health care provider including a public health provider;
- (3) Institute appropriate infection control measures;
- (4) Apply living or work restrictions where residents or staff persons are, or may be, infectious and pose a risk to other residents and staff persons; and
- (5) Ensure that staff person's caring for a resident with suspected tuberculosis comply with the WISHA standard for respiratory protection found in chapter 296-842 WAC.

NEW SECTION

WAC 388-78A-2489 Tuberculosis—Test records. The boarding home must:

- (1) Keep the records of the tuberculin test results, reports of X-ray findings, and any physician or public health provider orders in the boarding home;
- (2) Make the records readily available to the appropriate health provider and licensing agency,
- (3) Retain the records for at least two years after the date the staff person either quits or is terminated; and
- (4) Provide the staff person a copy of his/her test results.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2520 Administrator qualifications—General. (1) The licensee must appoint an administrator who is:

- (a) ~~At least twenty-one years old ((and who is))~~;
 - (b) ~~Not a resident((, and is)) of the boarding home; and~~
 - (c) ~~Qualified to perform the administrator's duties specified in WAC 388-78A-2560.~~
- (2) The licensee must only appoint as a boarding home administrator an individual who meets the requirements

listed in at least one of the following ((qualifications listed in (a) through (f) of this subsection:

(a) ~~The individual was actively employed as a boarding home administrator and met existing qualifications on September 1, 2004;~~

(b) ~~The individual holds a current Washington state nursing home administrator license in good standing;~~

(c) ~~Prior to assuming duties as a boarding home administrator, the individual has met the qualifications listed in both (e)(i) and (ii) of this subsection:~~

(i) ~~Obtained certification of completing a recognized administrator training course consisting of a minimum of twenty-four hours of instruction or equivalent on-line training or certification of passing an administrator examination, from or endorsed by a department-recognized national accreditation health or personal care organization such as:~~

(A) ~~The American Association of Homes and Services for the Aging; or~~

(B) ~~The American College of Health Care Administrators; or~~

(C) ~~The American Health Care Association; or~~

(D) ~~The Assisted Living Federation of America; or~~

(E) ~~The National Association of Board of Examiners of Long Term Care Administrators.~~

(ii) ~~Three years paid experience:~~

(A) ~~Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or~~

(B) ~~Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.~~

(d) ~~The individual holds an associate degree in a related field of study such as health, social work, or business administration and meets the qualifications listed in either (d)(i), (ii) or (iii) of this subsection:~~

(i) ~~Obtains certification of completing a recognized administrator training course consisting of a minimum of twenty-four hours of instruction or equivalent on-line training, or certification of passing an administrator examination, within six months of beginning duties as the administrator, from or endorsed by a department-recognized national accreditation health or personal care organization such as:~~

(A) ~~The American Association of Homes and Services for the Aging; or~~

(B) ~~The American College of Health Care Administrators; or~~

(C) ~~The American Health Care Association; or~~

(D) ~~The Assisted Living Federation of America; or~~

(E) ~~The National Association of Board of Examiners of Long Term Care Administrators.~~

(ii) ~~Has two years paid experience:~~

(A) ~~Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family~~

home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(B) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.

(iii) Has completed a qualifying administrator training program supervised by a qualified administrator according to WAC 388-78A-2530.

(e) The individual holds a bachelor's degree in a related field of study such as health, social work, or business administration and meets the qualifications listed in either (e)(i), (ii) or (iii) of this subsection:

(i) Obtains certification of completing a recognized administrator training course consisting of a minimum of twenty-four hours of instruction or equivalent on-line training, or certification of passing an administrator examination, within six months of beginning duties as the administrator, from or endorsed by a department-recognized national accreditation health or personal care organization such as:

(A) The American Association of Homes and Services for the Aging; or

(B) The American College of Health Care Administrators; or

(C) The American Health Care Association; or

(D) The Assisted Living Federation of America; or

(E) The National Association of Board of Examiners of Long Term Care Administrators.

(ii) Has one year paid experience:

(A) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(B) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.

(iii) Has completed a qualifying administrator training program supervised by a qualified administrator according to WAC 388-78A-2530.

(f) Before assuming duties as an administrator, the individual has five years of paid experience:

(i) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(ii) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to

vulnerable adults, such as supported living)) sections in WAC 388-78A-2522 through 388-78A-2527.

NEW SECTION

WAC 388-78A-2521 Certification of training. As used in WAC 388-78A-2522 through 388-78A-2527, an individual may meet the certification of training as follows. The individual has certification of completing a recognized administrator training course that consists of a minimum of twenty-four hours of instruction or equivalent online training, or certification of passing an administrator examination from or endorsed by a department-recognized national accreditation health or personal care organization such as:

(1) The American association of homes and services for the aging;

(2) The American college of health care administrators;

(3) The American health care association;

(4) The assisted living federation of America; or

(5) The national association of board of examiners of long term care administrators.

NEW SECTION

WAC 388-78A-2522 Administrator qualifications—Prior to 2004. The individual was actively employed as a boarding home administrator and met existing qualifications on September 1, 2004.

NEW SECTION

WAC 388-78A-2523 Administrator qualifications—NH administrator license. The individual holds a current Washington state nursing home administrator license in good standing.

NEW SECTION

WAC 388-78A-2524 Administrator qualifications—Certification of training and three years experience. Prior to assuming duties as a boarding home administrator, the individual has met the following qualifications:

(1) Obtained certification of completing a recognized administrator training as referenced in WAC 388-78A-2521; and

(2) Has three years paid experience:

(a) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(b) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.

NEW SECTION

WAC 388-78A-2525 Administrator qualifications— Associate degree, certification of training, and two years experience. The individual holds an associate degree in a related field of study such as health, social work, or business administration and meets the qualifications listed in either subsection (1), (2) or (3) of this section:

(1) Obtains certification of completing a recognized administrator training course as referenced in WAC 388-78A-2521 within six months of beginning duties as the administrator; or

(2) Has two years paid experience:

(a) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(b) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; or

(3) Has completed a qualifying administrator training program supervised by a qualified administrator according to WAC 388-78A-2530.

NEW SECTION

WAC 388-78A-2526 Administrator qualifications— Bachelor's degree, certification of training, and one year experience. The individual holds a bachelor's degree in a related field of study such as health, social work, or business administration and meets the qualifications listed in either subsection (1), (2) or (3) of this section.

(1) Obtains certification of completing a recognized administrator training course and referenced in WAC 388-78A-2521 within six months of beginning duties as the administrator; or

(2) Has one year paid experience:

(a) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(b) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; or

(3) Has completed a qualifying administrator training program supervised by a qualified administrator according to WAC 388-78A-2530.

NEW SECTION

WAC 388-78A-2527 Administrator qualifications— Five years experience. Before assuming duties as an administrator, the individual has five years of paid experience:

(1) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(2) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2540 Administrator (~~training~~) requirements. The licensee must ensure the boarding home administrator:

(1) Meets the training requirements (~~(of)~~) under chapter 388-112 WAC; and

(2) (~~Completes department training on~~) Knows and understands how to apply Washington state statutes and administrative rules related to the operation of a boarding home(~~(-~~

~~(a) The training must include, but is not limited to, an overview of:~~

~~(i) Chapter 18.20 RCW, Boarding homes;~~

~~(ii) Chapter 43.43 RCW, Criminal history background checks;~~

~~(iii) Chapter 74.34 RCW, Abuse of vulnerable adults;~~

~~(iv) Chapter 70.129 RCW, Long term care resident rights;~~

~~(v) Chapter 388-78A WAC, Boarding home licensing rules; and~~

~~(vi) Chapter 388-112 WAC, Long term care services training.~~

~~(b) Individuals hired as boarding home administrators after September 1, 2004, must complete department required training within thirty days of assuming duties as a boarding home administrator.~~

~~(c) Individuals employed as boarding home administrators on September 1, 2004, must complete department required training by November 1, 2004); and~~

~~(3) Meets the administrator qualification requirements referenced in WAC 388-78A-2520 through 388-78A-2527.~~

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2590 Management agreements— General. (1) (~~If the licensee uses a manager, the licensee must have a written management agreement approved by the department that is consistent with this section.~~

~~(2) The licensee may enter into a management agreement only if the management agreement creates a principal/agent relationship between the licensee and the manager.~~

~~(3) The licensee must ensure the manager acts in conformance with a department-approved management agreement with the boarding home licensee.~~

~~(4) A licensee must not delegate the following to a manager:~~

~~(a) The licensee's responsibility to ensure that the boarding home is operated in a manner consistent with all laws and rules applicable to boarding homes;~~

~~(b) The licensee's responsibility to review, acknowledge and sign all boarding home initial and renewal license applications.~~

~~(5) The licensee must ensure that its manager does not represent itself as, or give the appearance that it is the licensee.~~

~~(6) A duly authorized manager may execute resident leases or agreements on behalf of the licensee, but all such resident leases or agreements must be between the licensee and the resident.~~

~~(7) The licensee must notify the department of its use of a manager and provide a copy of any written management agreement to the department upon the following:~~

~~(a) Initial application for a license;~~

~~(b) Retention of a manager following initial application;~~

~~(c) Change of managers; or~~

~~(d) Modification of existing management agreement))~~

If the proposed or current licensee uses a manager, the licensee must have a written management agreement approved by the department that is consistent with this chapter.

(2) The proposed or current licensee must notify the department of its use of a manager upon:

(a) Initial application for a license;

(b) Retention of a manager following initial application;

(c) Change of managers; and

(d) Modification of existing management agreement.

(3) The proposed or current licensee must provide a written management agreement, including an organizational chart showing the relationship between the proposed or current licensee, management company, and all related organizations.

(4) The written management agreement must be submitted:

(a) Sixty days before:

(i) The initial licensure date;

(ii) The proposed change of ownership date; or

(iii) The effective date of the management agreement; or

(b) Thirty days before the effective date of any amendment to an existing management agreement.

(5) The proposed licensee or the current licensee must notify the resident and their representatives sixty days before entering into a management agreement.

NEW SECTION

WAC 388-78A-2592 Management agreements—Licensee. (1) The licensee is responsible for:

(a) The daily operations and provisions of services in the boarding home (See 388-78A-2730 (1)(a));

(b) Ensuring the boarding home is operated in a manner consistent with all laws and rules applicable to boarding homes (See 388-78A-2730 (1)(b));

(c) Ensuring the manager acts in conformance with a department approved management agreement; and

(d) Ensuring the manager does not represent itself as, or give the appearance that it is the licensee.

(2) The licensee must not give the manager responsibilities that are so extensive that the licensee is relieved of daily responsibility for the daily operations and provision of services in the boarding home. If the licensee does so, then the department must determine that a change of ownership has occurred.

(3) The licensee and manager must act in accordance with the terms of the department-approved management agreements. If the department determines they are not, then the department may take licensing action.

(4) The licensee may enter into a management agreement only if the management agreement creates a principal/agent relationship between the licensee and manager.

NEW SECTION

WAC 388-78A-2593 Management agreements—Terms of agreement. Management agreements, at a minimum must:

(1) Describe the responsibilities of the licensee and manager, including items, services, and activities to be provided;

(2) Require the licensee's governing body, board of directors, or similar authority to appoint the facility administrator;

(3) Provide for the maintenance and retention of all records in accordance with this chapter and other applicable laws;

(4) Allow unlimited access by the department to documentation and records according to applicable laws or regulations;

(5) Require the manager to immediately send copies of inspections and notices of noncompliance to the licensee;

(6) State that the licensee is responsible for reviewing, acknowledging and signing all boarding home initial and renewal license applications;

(7) State that the manager and licensee will review the management agreement annually and notify the department of any change according to applicable regulations;

(8) Acknowledge that the licensee is the party responsible for complying with all laws and rules applicable to boarding homes;

(9) Require the licensee to maintain ultimate responsibility over personnel issues relating to the operation of the boarding home and care of the residents, including but not limited to, staffing plans, orientation and training;

(10) State the manager will not represent itself, or give the appearance it is the licensee; and

(11) State that a duly authorized manager may execute resident leases or agreements on behalf of the licensee, but all such resident leases or agreements must be between the licensee and the resident.

NEW SECTION

WAC 388-78A-2594 Management agreements—Department review. Upon receipt of a proposed management agreement, the department may require:

- (1) The proposed or current licensee or manager to provide additional information or clarification;
- (2) Any changes necessary to:
 - (a) Bring the management agreement into compliance with this chapter; and
 - (b) Ensure that the licensee has not been relieved of the responsibility for the daily operations of the facility.
- (3) The licensee to participate in monthly meetings and quarterly on-site visits to the boarding home.

NEW SECTION

WAC 388-78A-2595 Management agreements—Resident funds. (1) If the management agreement delegates day-to-day management of resident funds to the manager, the licensee:

- (a) Retains all fiduciary and custodial responsibility for funds that have been deposited with the boarding home by the resident;
 - (b) Is directly accountable to the residents for such funds; and
 - (c) Must ensure any party responsible for holding or managing residents' personal funds is bonded or obtains insurance in sufficient amounts to specifically cover losses of resident funds; and provides proof of bond or insurance.
- (2) If responsibilities for the day-to-day management of the resident funds are delegated to the manager, the manager must:
- (a) Provide the licensee with a monthly accounting of the resident funds; and
 - (b) Meet all legal requirements related to holding, and accounting for, resident funds.

NEW SECTION

WAC 388-78A-2665 Resident rights—Notice—Policy on accepting medicaid as a payment source. The boarding home must fully disclose the facility's policy on accepting medicaid payments. The policy must:

- (1) Clearly state the circumstances under which the boarding home provides care for medicaid eligible residents and for residents who become eligible for medicaid after admission;
- (2) Be provided both orally and in writing in a language that the resident understands;
- (3) Be provided to prospective residents, before they are admitted to the home;
- (4) Be provided to any current residents who were admitted before this requirement took effect or who did not receive copies prior to admission;
- (5) Be written on a page that is separate from other documents and be written in a type font that is at least fourteen point; and
- (6) Be signed and dated by the resident and be kept in the resident record after signature.

NEW SECTION

WAC 388-78A-2731 Liability insurance required—Application. (1) The applicant must submit insurer executed evidence of liability insurance coverage with the application.

- (2) The coverage and evidence of coverage must comply with the requirements of WAC 388-78A-2733 and 388-78A-2734.

NEW SECTION

WAC 388-78A-2732 Liability insurance required—Ongoing. The boarding home must:

- (1) Maintain liability insurance as required in WAC 388-78A-2733 and 388-78A-2734; and
- (2) Have evidence of liability insurance coverage available if requested by the department.

NEW SECTION

WAC 388-78A-2733 Liability insurance required—Commercial general liability insurance or business liability insurance coverage. The boarding home must have commercial general liability insurance or business liability insurance that includes:

- (1) Coverage for the acts and omissions of any employee and volunteer;
- (2) Coverage for bodily injury, property damage, and contractual liability;
- (3) Coverage for premises, operations, independent contractor, products-completed operations, person injury, advertising injury, and liability assumed under an insured contract; and
- (4) Minimum limits of:
 - (a) Each occurrence at one million dollars; and
 - (b) General aggregate at two million dollars.

NEW SECTION

WAC 388-78A-2734 Liability insurance required—Professional liability insurance coverage. The boarding home must have professional liability insurance or error and omissions insurance if the boarding home licensee has a professional license, or employs professionally licensed staff. The insurance must include:

- (1) Coverage for losses caused by errors and omissions of the boarding home, its employees, and volunteers; and
- (2) Minimum limits of:
 - (a) Each occurrence at one million dollars; and
 - (b) Aggregate at two million dollars.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2910 Applicable building codes. (1) Newly licensed boarding homes and new construction in existing boarding homes must meet the requirements of all the current state and local building and zoning codes and applicable sections of this chapter.

- (2) Existing licensed boarding homes must continue to meet the building codes in force at the time of their ~~(initial~~

licensing)) plan approval by construction review services, except that the boarding home may be required to meet current building code requirements if the construction poses a risk to the health and safety of residents.

(3) The boarding home must ensure that construction is completed in compliance with the final construction review services approved documents. Compliance with these standards and regulations does not relieve the boarding home of the need to comply with applicable state and local building and zoning codes.

AMENDATORY SECTION (Amending WSR 09-01-052, filed 12/10/08, effective 1/10/09)

WAC 388-78A-3030 Toilet rooms and bathrooms. (1)

The boarding home must provide private or common-use toilet rooms and bathrooms to meet the needs of each resident.

(2) The boarding home must provide each toilet room and bathroom with:

- (a) Water resistant, smooth, low gloss, nonslip and easily cleanable materials;
- (b) Washable walls to the height of splash or spray;
- (c) Grab bars installed and located to minimize accidental falls including one or more grab bars at each:
 - (i) Bathing fixture; and
 - (ii) Toilet.
- (d) Plumbing fixtures designed for easy use and cleaning and kept in good repair; and
- (e) Adequate ventilation to the outside of the boarding home.

For boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, must provide mechanical ventilation to the outside.

(3) The boarding home must provide each toilet room with a:

- (a) Toilet with a clean, nonabsorbent seat free of cracks;
- (b) Handwashing sink in or adjacent to the toilet room.

For boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the handwashing sink must be in the toilet room or in an adjacent private area that is not part of a common use area of the boarding home; and

(c) Suitable mirror with adequate lighting for general illumination.

(4) For boarding homes approved for construction or initially licensed after August 1, 1994, the boarding home must provide a toilet and handwashing sink in, or adjoining, each bathroom.

(5) When providing common-use toilet rooms and bathrooms, the boarding home must provide toilets and handwashing sinks for residents in the ratios of one toilet and one handwashing sink for every eight residents (~~or fraction as listed in the following table:~~).

(Number of Residents)	Number of Toilets*	Number of Handwashing Sinks
1-8	1	1
9-16	2	2
17-24	3	3

(Number of Residents)	Number of Toilets*	Number of Handwashing Sinks
25-32	4	4
33-40	5	5
41-48	6	6
49-56	7	7
57-64	8	8
65-72	9	9
73-80	10	10
81-88	11	11
89-96	12	12
97-104	13	13
105-112	14	14
113-120	15	15
121-128	16	16
129-136	17	17
137-144	18	18
145-152	19	19
153-160	20	20
161-168	21	21
169-176	22	22
177-184	23	23))

((*) When two or more toilets are contained in a single bathroom, they are counted as one toilet.

(6) When providing common-use toilet rooms and bathrooms, the boarding home must provide bathing fixtures for residents in the ratio of one bathing fixture for every twelve residents (~~or fraction thereof as listed in the following table:~~).

(Number of Residents)	Number of Bathing Fixtures
1-12	1
13-24	2
25-36	3
37-48	4
49-60	5
61-72	6
73-84	7
85-96	8
97-108	9
109-120	10
121-132	11
133-144	12
145-160	13
161-172	14
173-184	15
185-196	16))

(7) When providing common-use toilet rooms and bathrooms, the boarding home must:

(a) Designate toilet rooms containing more than one toilet for use by men or women;

(b) Designate bathrooms containing more than one bathing fixture for use by men or women;

(c) Equip each toilet room and bathroom designed for use by, or used by, more than one person at a time, in a manner to ensure visual privacy for each person using the room. The boarding home is not required to provide additional privacy features in private bathrooms with a single toilet and a single bathing fixture located within a private apartment;

(d) Provide a handwashing sink with soap and single use or disposable towels, blower or equivalent hand-drying device in each toilet room, except that single-use or disposable towels or blowers are not required in toilet rooms or bathrooms that are located within a private apartment;

(e) Provide reasonable access to bathrooms and toilet rooms for each resident by:

(i) Locating a toilet room on the same floor or level as the sleeping room of the resident served;

(ii) Locating a bathroom on the same floor or level, or adjacent floor or level, as the sleeping room of the resident served;

(iii) Providing access without passage through any kitchen, pantry, food preparation, food storage, or dishwashing area, or from one bedroom through another bedroom; and

(f) Provide and ensure toilet paper is available at each common-use toilet.

(8) In boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the boarding home must ensure twenty-five percent of all the bathing fixtures in the boarding home are roll-in type showers that have:

(a) One-half inch or less threshold that may be a collapsible rubber water barrier;

(b) A minimum size of thirty-six inches by forty-eight inches; and

(c) Single lever faucets located within thirty-six inches of the seat so the faucets are within reach of persons seated in the shower.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-3190 Denial, suspension, revocation, or nonrenewal of license statutorily required. (1) The department must deny, suspend, revoke or refuse to renew a boarding home license if any person described in subsection (2) of this section who has unsupervised access to residents(~~;~~ is:

~~(a) Convicted of a crime against children or other persons or crimes relating to financial exploitation as defined under RCW 43.43.830 or 43.43.842; or~~

~~(b) Found by a court in a protection proceeding or in a civil damages lawsuit under chapter 74.34 RCW to have abused, neglected, abandoned or exploited a vulnerable adult; or~~

~~(c) Found in any dependency action under chapter 13.34 RCW to have sexually assaulted, neglected, exploited, or physically abused any minor; or~~

~~(d) Found by a court in a domestic relations proceeding under Title 26 RCW to have sexually abused, exploited, or physically abused any minor; or~~

~~(e) Found in any final decision issued by a disciplinary board to have sexually or physically abused or neglected or exploited any minor or any vulnerable adult, or has a stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority, a court of law, or entered into a state registry finding him or her guilty of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW)) has a conviction or finding described in WAC 388-78A-2470(2).~~

(2) This section applies to any boarding home:

(a) Applicant;

(b) Partner, officer or director;

(c) Manager or managerial employee; or

(d) Owner of five percent or more of the applicant:

(i) Who is involved in the operation of the boarding home; or

(ii) Who may have direct access to the boarding home residents; or

(iii) Who controls or supervises the provision of care or services to the boarding home residents; or

(iv) Who exercises control over daily operations.

NEW SECTION

WAC 388-78A-3390 Resident protection program— Individual defined. As used in WAC 388-78A-3400 through 388-78A-3480, the term "individual" means anyone used by the boarding home to provide services to residents who is alleged to have abandoned, abused, neglected, or financially exploited a resident. "Individual" includes, but is not limited to employees, contractors, and volunteers.

AMENDATORY SECTION (Amending WSR 08-05-099, filed 2/15/08, effective 3/17/08)

WAC 388-78A-3410 Resident protection program — Notice to the individual of preliminary finding. (1) ~~((The department will notify the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident in writing within ten working days of making a preliminary finding of abandonment, abuse, neglect, exploitation, or financial exploitation of a resident. The written notice:~~

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

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

(2) The department must make a reasonable, good faith effort to find the last known address of the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident.

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

~~(4) The department will serve notice of the preliminary finding as provided in chapter 388-02 WAC)) The department will serve notice of preliminary finding as provided in WAC 388-78A-4000.~~

(2) The department may establish proof of services as provided in WAC 388-78A-4010.

AMENDATORY SECTION (Amending WSR 08-05-099, filed 2/15/08, effective 3/17/08)

WAC 388-78A-3420 ((Reporting)) Resident protection program—Notice to others of preliminary findings. ~~((1) In a manner))~~ Consistent with confidentiality requirements concerning the resident, witnesses, and reporter, the department may provide notification of a preliminary finding to:

~~((a)) (1) Other divisions within the department;~~

~~((b)) (2) The agency ~~((or))~~, program ~~((identified under RCW 74.34.068 with which the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident is associated as an employee)), or employer where the incident occurred;~~~~

~~((c)) (3) The employer or program that is currently associated with the individual ~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident, if known));~~~~

~~((d)) (4) Law enforcement; ~~((and))~~~~

~~((e)) (5) Other entities as authorized by law and this chapter including investigative authorities consistent with chapter 74.34 RCW((-~~

~~(2) The notification will identify the finding as a preliminary finding); and~~

~~(6) The appropriate licensing agency.~~

AMENDATORY SECTION (Amending WSR 08-05-099, filed 2/15/08, effective 3/17/08)

WAC 388-78A-3430 Resident protection program—Disputing a preliminary finding. (1) The individual ~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident))~~ may request an administrative hearing to challenge a preliminary finding made by the department.

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

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

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

(a) The individual's full legal name, current mailing address and the telephone number;

(b) A brief explanation of why the individual ~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident))~~ disagrees with the preliminary finding;

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

(d) The individual's signature.

AMENDATORY SECTION (Amending WSR 09-01-052, filed 12/10/08, effective 1/10/09)

WAC 388-78A-3450 Resident protection program—Finalizing a preliminary finding. (1) A preliminary finding becomes a final finding when:

(a) The department notifies the individual ~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident))~~ there is a preliminary finding ~~((pursuant to))~~ under WAC 388-78A-3410; and

(b) The individual ~~((alleged to have abandoned, abused, neglected, exploited or financially exploited a resident))~~ does not ask for an administrative hearing; or

(c) The administrative law judge:

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

(ii) Dismisses the appeal for failure to comply with time limits under WAC 388-78A-3430; or

(iii) Issues an initial order upholding the finding and the individual ~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident))~~ fails to appeal the initial order to the department's board of appeals.

(d) The board of appeals issues a final order upholding the finding.

(2) A final finding is permanent.

(3) A final finding will only be removed from the department or agency list of individuals found to have abandoned, abused, neglected, exploited, or financially exploited a vulnerable adult if it is rescinded following judicial review.

~~((4) The department may remove a single finding of neglect from its records based upon a written petition by the individual found to have neglected a resident provided that at least one calendar year must have passed between the date a request was made to remove the finding of neglect and the date the final finding was finalized and recorded. If the department denies the petition, its decision may not be appealed.))~~

AMENDATORY SECTION (Amending WSR 09-01-052, filed 12/10/08, effective 1/10/09)

WAC 388-78A-3460 Resident protection program—Appeal of ((administrative law judge's)) initial order. (1)

If the individual ~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident))~~ or the department disagrees with the administrative law judge's decision, either party may challenge this decision by filing a petition for review with the department's board of appeals under chapter 34.05 RCW, Administrative Procedure Act, and chapter 388-02 WAC.

(2) If the department appeals the administrative law judge's decision, the department will not change the finding in the department's records until a final hearing decision is issued.

AMENDATORY SECTION (Amending WSR 08-05-099, filed 2/15/08, effective 3/17/08)

WAC 388-78A-3470 Resident protection program—Reporting final findings. The department will report a final finding of abandonment, abuse, neglect, exploitation and

financial exploitation within ten working days to the following:

(1) The individual (~~(found to have abandoned, abused, neglected, exploited, or financially exploited a resident and for)~~ against whom ((there is a) the final finding was made;

(2) The boarding home licensee or entity representative that was associated with the individual (~~(alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident))~~ during the time of the incident;

(3) The employer or program that is currently associated with the individual against whom the final finding was made, if known;

(4) The appropriate licensing, certification or registration authority;

(5) ~~((The))~~ Any federal or state ((department)) registry or ((agency)) list of individuals found to have abandoned, abused, neglected, exploited, or financially exploited a vulnerable adult; and

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

AMENDATORY SECTION (Amending WSR 08-05-099, filed 2/15/08, effective 3/17/08)

WAC 388-78A-3480 Resident protection program—Disclosure of investigative and finding information. (1) Confidential information about residents and mandated reporters received from the department may only be used by the individual (~~(alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident))~~ to challenge findings through the appeal process. It may only be shared with persons who are involved in the appeal.

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

GENERAL NOTICE REQUIREMENT

NEW SECTION

WAC 388-78A-4000 Notice—Service complete. The department's notice is complete when:

- (1) Personal service is made;
- (2) The notice is properly stamped, addressed to the individual or facility, and deposited in the United States mail;
- (3) The notice is faxed and produces proof of transmission;
- (4) Notice is delivered to a commercial delivery service with charges prepaid; or
- (5) Notice is delivered to a legal messenger service with charges prepaid.

NEW SECTION

WAC 388-78A-4010 Notice—Proof of service. The department may establish proof of service by any of the following:

- (1) A declaration of personal service;

(2) An affidavit or certificate of mailing to the boarding home or to the individual to whom notice is directed;

(3) A signed receipt from the person or staff person who accepted the certified mail, the commercial delivery service, or the legal messenger service package; or

(4) Proof of fax transmission.

WSR 09-20-062

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed October 2, 2009, 2:33 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-14-070.

Title of Rule and Other Identifying Information: The department is amending WAC 388-97-0001 Definitions, 388-97-0100 Utilization review, 388-97-0280 Advance directives, 388-97-0580 Roommates/room, 388-97-0720 Notification of preliminary finding, 388-97-1400 Tuberculosis-testing method—Required, 388-97-1440 Tuberculosis—No skin testing, 388-97-1460 Tuberculosis—One step testing, 388-97-1480 Tuberculosis—Two step skin testing, 388-97-1500 Tuberculosis—Positive test result, 388-97-1520 Tuberculosis—Negative test result, 388-97-1540 Tuberculosis—Declining a skin test, 388-97-1560 Tuberculosis—Reporting required, 388-97-1580 Tuberculosis—Test records, 388-97-1600 Care of residents with active tuberculosis, 388-97-1800 Criminal history disclosure and background inquiries, 388-97-1820 Disqualification from nursing home employment, 388-97-1900 Dialysis services provided in nursing home, 388-97-2060 New construction compliance, 388-97-2280 Call systems on resident care units, 388-97-4200 Department review of initial nursing home license applications, 388-97-4220 Reasons for denial, suspension, modification, revocation of, or refusal to renew a nursing home license, 388-97-4320 Relocation of residents, 388-97-4340 License relinquishment, 388-97-4440 Notice and appeal rights, and other related rules as appropriate.

The department is proposing new sections WAC 388-97-0725 Notice to others of preliminary findings, 388-97-1910 Dialysis services provided outside of nursing home, 388-97-4165 Application—Liability insurance required, 388-97-4166 Liability insurance required—Ongoing, 388-97-4167 Liability insurance required—Commercial general liability insurance or businesses liability insurance coverage, 388-97-4168 Liability insurance required—Professional liability insurance coverage, 388-97-4425 Notice—Service complete, and 388-97-4430 Notice—Proof of service.

The department is proposing to repeal sections WAC 388-97-1420 Tuberculosis—Mantoux skin testing, 388-97-3820 Stairways, ramps, and corridors in new construction, and removing incorrect statutory authority reference 42 C.F.R. 489.52. in the footnote in all sections of chapter 388-97 WAC.

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 December 8, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 9, 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 December 8, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by November 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 amending these rules is to consider making editorial and clarifying changes, and to make it consistent with current laws and standards. Also to remove an incorrect statutory authority reference in the footnote. The anticipated effects are to make the rule clearer, easier to read, understand and apply.

Highlights of proposed changes:

- Editorial and housekeeping changes in the following sections: Definitions, utilization, call systems, new construction, notice and appeal rights, advance directives.
- To be consistent with chapter 521, Laws of 2009, E2SSB 5688 clarified that domestic partners could share a room.
- Clarified tuberculosis requirements to be consistent with current standards.
- Clarified when notice is considered complete and proof of notice.
- Consolidated disqualifying crime lists to make home and community services and RCS lists consistent.
- Clarified dialysis services provided in the nursing home and those provided outside the home.
- Added liability insurance requirement to rule.
- Clarified that nursing home may not need to relinquish license and cease operations if residents are relocated due to natural disasters.
- Clarified that new construction must comply with rules in effect at the time of plan approval except in cases where resident health and safety may be jeopardized.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: Chapters 18.51 and 74.42 RCW.

Statute Being Implemented: Chapters 18.51 and 74.42 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: Lisa N.H. Yanagida, P.O. Box 45600, Olympia, WA 98513,

(360) 725-2589; Implementation and Enforcement: Lori Melchiori, P.O. Box 45600, Olympia, WA 98513, (360) 725-2404.

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

Small Business Economic Impact Statement

SUMMARY OF PROPOSED RULES: The department of social and health services' residential care services (RCS) is proposing amendments to chapter 388-97 WAC, Nursing homes.

The purpose of this proposed rule making is to make editorial and clarifying changes and to make the rules consistent with current laws and standards.

Highlights of proposed changes:

- Editorial and housekeeping changes in the following sections: Definitions, utilization, call systems, new construction, notice and appeal rights, advance directives.
- To be consistent with chapter 521, Laws of 2009, E2SSB 5688 clarified that domestic partners could share a room.
- Clarified tuberculosis requirements to be consistent with current standards.
- Clarified when notice is considered complete and proof of notice.
- Consolidated disqualifying crime lists to make home and community services and RCS lists consistent.
- Clarified dialysis services provided in the nursing home and those provided outside the home.
- Added liability insurance requirement to rule.
- Clarified that nursing home may not need to relinquish license and cease operations if residents are relocated due to natural disasters.
- Clarified that new construction must comply with rules in effect at the time of plan approval except in cases where resident health and safety may be jeopardized.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT (SBEIS): Chapter 19.85 RCW, the Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. This statute outlines information that must be included in an SBEIS. Preparation of an SBEIS is required when a proposed rule has the potential of placing more than a minor impact on a business.

RCW 19.85.020 defines a "small business" as "any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has fifty or fewer employees."

RCS analyzed these proposed rules and concludes that the new requirements of liability insurance may impose a new cost to the nursing home that does not have an existing contract with DSHS and does not already have liability insurance (approximately three percent licensed nursing homes do not have contracts and may be without liability insurance). The cost of liability insurance ranges in price depending on many variables such as the number of claims the nursing

home has made in the past, the number of occurrences, and the length of time the administrator and director of nursing have been working. The estimated average cost for nursing home liability insurance is approximately \$300 a bed.

RCS understands that nursing homes can deduct the cost of liability insurance when taxes are filed with the Internal Revenue Service, which would mitigate the impact of the cost. RCS does not believe that the proposed rules will result in any job losses or gains for nursing homes. The proposed rule amendments do not disproportionately impact small businesses more than larger businesses.

EVALUATION OF PROBABLE COSTS AND PROBABLE BENEFITS: RCS has determined that some of the proposed rules are "significant legislative rules" as defined by legislature. As required by RCW 34.05.328 (1)(c), RCS has analyzed the probable costs and probable benefits of the proposed amendments, taking into account both the qualitative and quantitative benefits and costs.

COSTS:

- The liability insurance requirement for all nursing homes may impose additional costs to the small number of nursing homes who may not have liability insurance.
- DSHS has shared the draft language with interested parties who participated in a stakeholder meeting to discuss the proposed rule changes. At the meeting, liability insurance was brought up by a stakeholder as a potential cost.
- In addition, the draft language was posted on the aging and disability services administration internet web site for anyone in the public to review and comment.
- DSHS used the input from internal and external stakeholders to determine cost impacts for the drafting of the rule.
- To date, the department has received and considered all written comments on the draft language and one comment on the cost impact for the proposed liability insurance requirement.

COST SAVINGS: Clarity of the proposed rule will save providers costs in time and dollars by:

- Reducing unnecessary confusion, citations, hearings and appeals;
- Reducing time and legal costs of appealing unclear rules;
- Reducing amount of technical support requests and dear provider letters mailed to providers for clarification of rule issues which reduces the amount of time providers need to keep current with requirements.

OTHER BENEFITS: The rules result in several benefits which include:

- The liability insurance requirement will provide a consistent standard among those with contracts with DSHS and those without contracts.
- The liability insurance requirement will provide all residents with another level of consumer protection.

- The liability insurance requirement can help nursing homes defend themselves and pay awarded damages without threatening their financial stability.
- The amendments are clearer, and easier to read, understand and apply; and
- Residents will ultimately benefit from the rule revision because providers will be able to better understand and follow the requirements.

CONCLUSION: RCS concludes that the benefits of the proposed amendments exceed any possible cost. These rules continue to implement state laws and regulations related to nursing homes. RCS has complied with the appropriate sections of the Administrative Procedure Act and is prepared to proceed with the rule filing.

Please contact Lisa N.H. Yanagida by e-mail at yanagn2@dshs.wa.gov or by phone at (360) 725-2589 if you have questions.

A copy of the statement may be obtained by contacting Lisa N.H. Yanagida, Program Manager, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2589, fax (360) 438-7903, e-mail yanagn2@dshs.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Lisa N.H. Yanagida, Program Manager, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2589, fax (360) 438-7903, e-mail yanagn2@dshs.wa.gov.

September 30, 2009
Stephanie E. Vaughn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

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

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Civil adjudication proceeding" means judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44, or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

"Civil fine" is a civil monetary penalty assessed against a nursing home as authorized by chapters 18.51 and 74.42

RCW. There are two types of civil fines, "per day" and "per instance."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Drug" means a substance:

(1) Recognized as a drug in the official *United States Pharmacopoeia*, *Official Homeopathic Pharmacopoeia of the United States*, *Official National Formulary*, or any supplement to any of them; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Mandated reporter" as used in this chapter means any employee of a nursing home, any health care provider subject to chapter 18.130 RCW, the Uniform Disciplinary Act, and any licensee or operator of a nursing home. Under RCW 74.34.020, mandated reporters also include any employee of the department of social and health services, law enforcement

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

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

"NFPA" means National Fire Protection Association, Inc.

"Neglect":

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

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

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

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

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

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

"Nursing facility (NF)" or **"medicaid-certified nursing facility"** means a nursing home or a long-term care wing or unit of a hospital that has been certified to provide nursing services to medicaid recipients under Section 1919(a) of the federal Social Security Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Reasonable accommodations are not required if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Termination" means an action taken by:

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

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

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

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

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

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

"Vulnerable adult" includes a person:

(1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(2) Found incapacitated under chapter 11.88 RCW; or

(3) Who has a developmental disability as defined under RCW 71A.10.020; or

(4) Admitted to any facility, including any boarding home; or

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(6) Receiving services from an individual provider; or

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

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

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

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

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

(i) An accurate, comprehensive assessment process; and

(ii) Documentation by the resident's physician.

(b) The nursing facility (~~(must not make this determination for residents the department)~~) is not responsible to assess under WAC 388-97-1960, PASSR level II screening assessment.

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

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

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

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

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

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

(i) The nursing facility is making a good faith effort to relocate the resident; and

(ii) A location appropriate to the resident's medical and other needs is not available.

(4) Department designees may review any assessment or determination made by a nursing facility of a resident's need for nursing facility care.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

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

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

(3) The nursing home must:

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

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

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

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

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

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

(i) At the resident's request;

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

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

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

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

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

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

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

(a) Share a room with his or her spouse ~~((when married residents))~~ or state registered domestic partners when both residents live in the same facility and both ((spouses)) consent to the arrangement and the room complies with the requirements for two occupants; and

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

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

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

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

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-0720 ((Notification)) Notice to individual of preliminary findings. (1) ~~((Within ten working days of making a preliminary finding,))~~ The department will ((send)) serve notice of the preliminary finding((:

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

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

~~(c) To the appropriate licensing agency)) as provided in WAC 388-97-4425.~~

~~(2) ((The notice will include the following information:~~

~~(a) A description of the allegation;~~

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

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

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

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

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

~~(a) Other divisions within the department;~~

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

~~(c) Law enforcement; and~~

~~(d) Other entities as authorized by law and this chapter including investigative authorities consistent with chapter 74.34 RCW)) The department may establish proof of service as provided in WAC 388-97-4430.~~

NEW SECTION

WAC 388-97-0725 Notice to others of preliminary findings. Consistent with confidentiality requirements concerning the resident, witnesses, and the reporter, the department may provide notification of a preliminary finding to:

(1) Other divisions within the department;

(2) The agency, program or employer where the incident occurred;

(3) The employer or program that is currently associated with the individual;

(4) Law enforcement;

(5) Other entities as authorized by law including chapter 74.34 RCW and this chapter; and

(6) The appropriate licensing agency.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

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

(1) Intradermal (Mantoux) administration ~~((or))~~ with test results read:

(a) Within forty-eight to seventy-two hours of the test; and

(b) By a trained professional; or

(2) ~~((QuantiFERON TB Gold Blood Test))~~ A blood test for tuberculosis called interferon-gamma release assay (IGRA).

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

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

(1) A documented history of a previous positive skin test ~~((results)), with ten or more millimeters induration; ((or))~~

(2) A documented history of a previous positive blood test; or

(3) Documented evidence of:

(a) Adequate therapy for active disease; or

(b) ~~((Adequate))~~ Completion of treatment for latent tuberculosis infection preventive therapy ~~((for infection))~~.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

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

(1) A documented history of a negative result from previous two step testing done no more than one to three weeks apart; or

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

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

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

(1) An initial skin test within three days of employment; and

(2) A second test done one to three weeks after the first test; except

(3) A two-step is not required for the IGRA blood test which is only a one-step test.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1500 Tuberculosis—Positive ~~((reaction))~~ test result. When there is a positive ~~((reaction))~~ result to tuberculosis skin or blood testing the nursing home must:

(1) Ensure that the ~~((individual))~~ person has a chest X ray within seven days;

(2) Evaluate each resident or ~~((employee,))~~ person with a positive test result~~((s))~~ for signs and symptoms of tuberculosis; and

(3) Follow the ~~((direction))~~ recommendation of the ~~((local health department if it requires additional tuberculin testing of residents or personnel for contact investigation))~~ person's health care provider.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

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

(1) After exposure to active tuberculosis;

(2) When tuberculosis symptoms are present; or

(3) For periodic testing as determined by ~~((a))~~ the health ~~((official))~~ provider.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

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

(1) The signed statement includes the reason for declining; and

~~((2) Additional evidence is provided to support the reason))~~ must ensure that a person take the blood test for tuberculosis if they decline the skin test.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

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

(1) ~~((Notify the local public health officer so that appropriate contact investigation can be performed;~~

~~((2))~~ Report any person with tuberculosis symptoms or a positive chest Xray to the appropriate health care provider or public health provider;

(2) Follow the infection control and safety measures ordered by the person's health care provider including a public health provider;

(3) Institute appropriate measures for the control of the transmission of droplet nuclei;

~~((3))~~ (4) Apply living or work restrictions where residents or personnel are, or may be, infectious and pose a risk to other residents and personnel; and

~~((4))~~ (5) Ensure that personnel caring for a resident with suspected tuberculosis comply with the WISHA standard for respiratory protection found in chapter 296-842 WAC.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

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

(1) Keep ~~((any))~~ the records ~~((such as))~~ of tuberculin test results, reports of X-ray findings, and any physician or public health ~~((official))~~ orders ~~((and the person's statement declining the test))~~ in the nursing home;

(2) Make the records readily available to the appropriate health authority and licensing agency;

(3) Retain ~~((employee tuberculin testing results))~~ the records for ~~((the duration of employment))~~ eighteen months beyond the date of employment termination; and

~~((3))~~ (4) Provide the ~~((employee))~~ person a copy of his/her test~~((ing))~~ results.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

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

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

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

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

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

(a) Provide a private or semiprivate isolation room:

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

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

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

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

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

(d) Have measures in place for the decontamination of equipment and other items used by the resident.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1800 Criminal history disclosure and background inquiries. (1) As used in this section, the term "nursing home" includes a nursing facility and a skilled nursing facility.

(2) The nursing home must:

(a) Have a valid criminal history background check for any individual employed, directly or by contract, or any individual accepted as a volunteer or student who may have unsupervised access to any resident; and

(b) Repeat the check every two years.

(3) A nursing home licensed under chapter 18.51 RCW must make a background inquiry request to one of the following:

(a) The Washington state patrol;

(b) The department;

(c) The most recent employer licensed under chapters 18.51, 18.20, and 70.128 RCW provided termination of that employment was within twelve months of the current employment application and provided the inquiry was completed by the department or the Washington state patrol within the two years of the current date of application; or

(d) A nurse pool agency licensed under chapter 18.52C RCW, or hereafter renamed, provided the background inquiry was completed by the Washington state patrol within two years before the current date of employment in the nursing home~~((and))~~.

~~((e))~~ (4) A nursing home may not rely on a criminal background inquiry from a former employer, including a

nursing pool, if the nursing home knows or has reason to know that the individual applying for the job has, or may have, a disqualifying conviction or finding.

~~((2))~~ (5) Nursing homes must:

(a) Request a background inquiry of any individual employed, directly or by agreement or contract, or accepted as a volunteer or student; and

(b) Notify appropriate licensing or certification agency of any individual resigning or terminated as a result of ~~((having))~~ a criminal conviction ~~((record))~~ or a civil adjudication proceeding, as defined in RCW 43.43.830.

~~((3))~~ (6) Before a nursing home employs any individual, directly or by contract, or accepts any individual as a volunteer or student, a nursing home must:

(a) Inform the individual that the nursing home must make a background inquiry and require the individual to sign a disclosure statement, under penalty or perjury and in accordance with RCW 43.43.834;

(b) Inform the individual that he or she may ~~((make a))~~ request ~~((for))~~ a copy of ~~((a))~~ the results of the completed background inquiry ~~((of))~~ described in this section; and

(c) Require the individual to sign a statement authorizing the nursing home, the department, and the Washington state patrol to make a background inquiry; and

(d) Verbally inform the individual of the background inquiry results within seventy-two hours of receipt.

~~((4))~~ (7) The nursing home must establish procedures ensuring that:

(a) The individual is verbally informed of the background inquiry results within seventy-two hours of receipt;

(b) All disclosure statements and background inquiry responses and all copies are maintained in a confidential and secure manner;

(c) Disclosure statements and background inquiry responses are used for employment purposes only;

(d) Disclosure statements and background inquiry responses are not disclosed to any individual except:

(i) The individual about whom the nursing home made the disclosure or background inquiry;

(ii) Authorized state employees including the department's licensure and certification staff, resident protection program staff and background inquiry unit staff;

(iii) Authorized federal employees including those from the Department of Health and Human Services, Centers for Medicare and Medicaid Services;

(iv) The Washington state patrol auditor; and

(v) Potential employers licensed under chapters 18.51, 18.20, and 70.128 RCW who are making a request as provided for under subsection (1) of this section.

(e) A record of findings be retained by the nursing home for twelve months beyond the date of employment termination.

~~((5))~~ (8) The nursing home must not employ individuals who are disqualified under the requirements of WAC 388-97-1820.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1820 Disqualification from nursing home employment. (1) The nursing home must not employ directly or by contract, or accept as a volunteer or student, any individual:

(a) Who has been found to have abused, neglected, exploited or abandoned a minor or vulnerable adult by a court of law, by a disciplining authority, including the state department of health, or by the department's resident protection program;

(b) Against whom a finding of abuse, neglect, exploitation, misappropriation of property or abandonment has been entered on any department or state registry~~((including the nursing assistant registry))~~; or

(c) Who has been subject to an order of protection under chapter 74.34 RCW for abandonment, abuse, neglect, or financial exploitation of a vulnerable adult, or misappropriation of resident property.

(2) Except as provided in this section, the nursing home must not employ directly or by contract, or accept as a volunteer or student, any individual who may have unsupervised access to residents if the individual:

(a) Has been convicted of a "crime against children and other persons" as defined in RCW 43.43.830, unless the individual has been convicted of one of the ~~((five))~~ two crimes listed below and the required number of years has passed between the most recent conviction and the date of the application for employment:

(i) Simple assault, assault in the fourth degree, or the same offense as it may hereafter be renamed, and three or more years have passed; or

(ii) Prostitution, or the same offense as it may hereafter be renamed, and three or more years have passed~~((;))~~.

(b) Has been convicted of crimes relating to financial exploitation as defined in RCW 43.43.830, unless the individual has been convicted of one of the three crimes listed below and the required number of years has passed between the most recent conviction and the date of the application for employment:

~~((iii))~~ (i) Theft in the second degree, or the same offense as it may hereafter be renamed, and five or more years have passed;

~~((iv))~~ (ii) Theft in the third degree, or the same offense as it may hereafter be renamed, and three or more years have passed; or

~~((v))~~ (iii) Forgery, or the same offense as forgery may hereafter be renamed, and five or more years have passed.

~~((b))~~ (c) Has been convicted of ~~((crimes relating to financial exploitation as defined under RCW 43.43.830))~~;

(i) Violation of the imitation controlled substances act (VICSA);

(ii) Violation of the uniform controlled substances act (VUCSA);

(iii) Violation of the uniform legend drug act (VULDA);

(iv) Violation of the uniform precursor drug act (VUPDA); or

(v) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct.

(d) Has been convicted in another state of a crime that is equivalent to a crime listed in subsection (2)(a) through (c) of this section.

(3) The term "**vulnerable adult**" is defined in RCW 74.34.020; the term "**unsupervised access**" is defined in RCW 43.43.830.

(4) In addition to chapters 18.51 and 74.42 RCW, these rules are authorized by RCW 43.20A.710, 43.43.830 through 43.43.842 and 74.39A.050(8).

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1900 Dialysis services provided in nursing home. (1) The nursing home must ensure that appropriate care, treatment, and services are provided to each nursing home resident ~~((receiving))~~ who receives dialysis in the nursing home. "Dialysis" means the process of separating crystalloids and colloids in solution by means of the crystalloids and colloids unequal diffusion through a natural or artificial semipermeable membrane.

~~((2) ((Dialysis for acute renal failure must not be administered in a nursing home))~~ The nursing home must not administer dialysis for a resident with acute renal failure.

(3) A nursing home may only administer maintenance dialysis in the nursing home ~~((after the))~~:

~~((a) ((Analysis of other options and elimination of these options))~~ After other options have been analyzed and rejected, based on the resident's best interest; and

~~((b) Following a joint decision ((is)) made ((jointly)) by a team of individuals ((representing)) including representatives of the kidney center and the nursing home, the resident, and the resident's nephrologist((, and the nursing home)).~~ A "**kidney center**" means ~~((those facilities))~~ a facility as defined and certified by the federal government to provide end stage renal (ESRD) services.

~~((4) ((The nursing home must ensure that:~~

~~((a) A current written agreement is in effect with each kidney center responsible for the management and care of each nursing home resident undergoing dialysis; and~~

~~((b) Such agreement delineates the functions, responsibilities, and services of both the kidney center and the nursing home.~~

~~((5) The kidney center must assist the nursing home in ensuring appropriate care, treatment, and services related to dialysis. Responsibilities of the kidney center must include, but not be limited to:~~

~~((a) The provision of clinical and chemical laboratory services;~~

~~((b) The services of a qualified dietitian;~~

~~((c) Social services;~~

~~((d) Preventative maintenance and emergency servicing of dialysis and water purification equipment;~~

~~((e) The certification and continuing education of dialysis helpers and periodic review and updating of dialysis helpers' competencies. A "dialysis helper" means an individual who has completed an inservice class approved by the kidney center and has been hired by the resident to provide to the resident care related only to the dialysis treatment;~~

~~(f) An in-hospital dialysis program for the care and treatment of a dialysis resident with a complication or acute condition necessitating hospital care;~~

~~(g) A continuing in-service education program for nursing home staff working with a dialysis resident;~~

~~(h) A program for periodic, on-site review of the nursing home's dialysis rooms;~~

~~(i) Selection, procurement, and installation of dialysis equipment;~~

~~(j) Selection and procurement of dialysis supplies;~~

~~(k) Proper storage of dialysis supplies; and~~

~~(l) Specification, procurement, and installation of the purification process for treatment of water used as a diluent in the dialyzing fluid.~~

~~(6))~~ Only a registered nurse from the kidney center or a dialysis helper may administer dialysis in the nursing home.

(a) A dialysis helper may be a registered nurse; ~~((and))~~ or

(b) ~~((When))~~ If a dialysis helper is not a registered nurse, the nursing home must have a registered nurse who has completed an in-service class approved by the kidney center, on the premises during dialysis.

~~((7))~~ (5) A physician, designated or approved by ~~((the))~~ a kidney center, must be on call at all times dialysis is being administered in the nursing home.

~~((8))~~ (6) The resident's attending physician and the kidney center must provide, or direct and supervise, the continuing medical management and surveillance of the care of each nursing home resident receiving dialysis.

~~((9))~~ (7) The nursing home must:

(a) Ensure the kidney center develops a dialysis treatment plan; ~~((and))~~

(b) Coordinate and update changes to the dialysis treatment plan with the kidney center; and

(c) Incorporate this treatment plan into the resident's comprehensive plan of care and include specific medical orders for medications, treatment, and diet.

~~((10))~~ (8) The dialysis room in the nursing home must be in compliance with federal standards established for ESRD facilities. This includes:

(a) Storage space available for equipment and supplies;

(b) A telephone at the bedside of each dialysis resident; and

(c) A mechanical means of summoning additional staff to the dialysis area in the event of a dialysis emergency.

NEW SECTION

WAC 388-97-1910 Dialysis services provided outside of nursing home. (1) If dialysis services are provided outside the nursing home, the nursing home must coordinate with the kidney center to ensure the resident's comprehensive plan of care is monitored and changed as needed.

(2) The nursing home must ensure that a current written agreement is in effect with the kidney center responsible for the management and care of each nursing home resident undergoing dialysis.

(3) The nursing home must ensure that the agreement:

(a) Delineates the nursing home's functions, responsibilities and services and that the kidney center must assist the

nursing home in ensuring appropriate care, treatment, and services related to dialysis;

(b) Delineates the functions, responsibilities, and services of the kidney center including but not limited to:

(i) The provision of clinical and chemical laboratory services;

(ii) The services of a qualified dietitian;

(iii) Social services;

(iv) Preventative maintenance and emergency servicing of dialysis and water purification equipment;

(v) The certification and continuing education of dialysis helpers and periodic review and updating of dialysis helpers' competencies. A "dialysis helper" means an individual who has completed an inservice class approved by the kidney center and has been hired by the resident to provide to the resident care related only to the dialysis treatment;

(vi) An in-hospital dialysis program for the care and treatment of a dialysis resident with a complication or acute condition necessitating hospital care;

(vii) A continuing in-service education program for nursing home staff working with a dialysis resident;

(viii) A program for periodic, on-site review of the nursing home's dialysis rooms;

(ix) Selection, procurement, and installation of dialysis equipment;

(x) Selection and procurement of dialysis supplies;

(xi) Proper storage of dialysis supplies; and

(xii) Specification, procurement, and installation of the purification process for treatment of water used as a diluent in the dialyzing fluid.

(c) Provides that if a problem occurs, the kidney center must contact and inform the nursing home medical director.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-2060 New construction compliance.

The nursing home must ensure that:

(1) New construction, as defined in WAC 388-97-2160, complies with all the requirements of subchapter II of this chapter;

(2) New construction ~~((approved by the department of health, certificate of need and construction review, before the effective date of this chapter complies with the rules in effect at the time of the plan approval))~~ must maintain compliance with the regulations in effect at the time of initial submission to the department of health, certificate of need and construction review services; except if the previous construction jeopardizes resident health and safety, the department may require compliance with current construction rules;

(3) The department of health, certificate of need and construction review programs, ~~((is))~~ are contacted for review and ~~((issues an))~~ that the programs issue applicable determinations and approvals for all new construction; and

(4) Construction is completed in compliance with the final construction review services approved documents. Compliance with these standards and regulations does not relieve the nursing home of the need to comply with applicable state and local building and zoning codes.

(5) The department has done a pre-occupancy survey and has notified the nursing home that ~~((they))~~ it may begin admitting residents.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-2280 Call systems on resident care units. The nursing home must provide ~~((the following, or an equivalent))~~ a system that meets ~~((these))~~ the following standards:

(1) A wired or wireless communication system which registers a call by distinctive light at the room door and by distinctive light and audible tone at the staff work station. The system must be equipped to receive resident calls from:

- (a) The bedside of each resident;
- (b) Every common area, dining and activity areas, common use toilet rooms, and other areas used by residents; and
- (c) Resident toilet, bath and shower rooms.

(2) An emergency signal device ~~((activated by a nonconductive pull cord, or adapted to))~~ that meets the needs of the resident ~~((The nursing home must locate the signal device))~~ and adapted for easy reach by the resident. A signal device must be adapted to meet resident needs and, in the dementia unit, may be adapted for staff and family use, see WAC ~~((388-97-2990))~~ 388-97-2900.

NEW SECTION

WAC 388-97-4165 Application—Liability insurance required. (1) The applicant must submit insurer executed evidence of liability insurance coverage with the application.

(2) The coverage and evidence of coverage must comply with the requirements of WAC 388-97-4167 and 388-97-4168.

NEW SECTION

WAC 388-97-4166 Liability insurance required—Ongoing. The nursing home must:

- (1) Maintain liability insurance as required in WAC 388-97-4167 and 388-97-4168; and
- (2) Have evidence of liability insurance coverage available if requested by the department.

NEW SECTION

WAC 388-97-4167 Liability insurance required—Commercial general liability insurance or business liability insurance coverage. The nursing home must have commercial general liability insurance or business liability insurance that includes:

- (1) Coverage for the acts and omissions of any employee and volunteer;
- (2) Coverage for bodily injury, property damage, and contractual liability;
- (3) Coverage for premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract; and

(4) Minimum limits of:

- (a) Each occurrence at one million dollars; and
- (b) General aggregate at two million dollars.

NEW SECTION

WAC 388-97-4168 Liability insurance required—Professional liability insurance coverage. The nursing home must have professional liability insurance or errors and omissions insurance. The insurance must include:

- (1) Coverage for losses caused by errors and omissions of the nursing home, its employees, and volunteers; and
- (2) Minimum limits of:
 - (a) Each occurrence at one million dollars; and
 - (b) Aggregate at two million dollars.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-4200 Department review of initial nursing home license applications. (1) All initial nursing home license applications must be reviewed by the department under this chapter.

(2) The department will not begin review of an incomplete license application.

(3) The proposed licensee must respond to any department request for additional information within five working days.

(4) When the application is determined to be complete, the department will consider the proposed licensee or any partner, officer, director, managerial employee, or owner of five percent or more of the proposed licensee, separately and jointly, in its review. The department will review:

- (a) The information contained in the application;
- (b) Survey and complaint investigation ~~((findings))~~ citations in every facility each individual and entity named in the application has been affiliated with during the past ten years;
- (c) Compliance history;
- (d) Financial assessments;
- (e) Actions against the proposed licensee (i.e., revocation, suspension, refusal to renew, etc.);
- (f) All criminal convictions, and relevant civil or administrative actions or findings including, but not limited to, findings ~~((under 42 C.F.R. § 488.335, disciplinary findings, and))~~ , including professional disciplinary actions, and findings of abuse, neglect, exploitation, ~~((of))~~ abandonment, or domestic violence resulting from a civil adjudication proceeding, as defined in RCW 43.43.830; and
- (g) Other relevant information.

(5) The department will notify the proposed licensee of the results of the review.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-4220 Reasons for denial, suspension, modification, revocation of, or refusal to renew a nursing home license. (1) The department may deny, suspend, modify, revoke, or refuse to renew a nursing home license when the department finds the proposed or current licensee, or any partner, officer, director, managing employee, owner of five

percent or more of the proposed or current licensee of the nursing home, owner of five percent or more of the assets of the nursing home, proposed or current administrator, or employee or individual providing nursing home care or services has:

(a) Failed or refused to comply with the:

(i) Requirements established by chapters 18.51, 74.42, or 74.46 RCW and regulations adopted under these chapters; or

(ii) Medicaid requirements of Title XIX of the Social Security Act and medicaid regulations, including 42 CFR, Part 483.

(b) A history of significant noncompliance with federal or state regulations in providing nursing home care;

(c) No credit history or a poor credit history;

(d) Engaged in the illegal use of drugs or the excessive use of alcohol or been convicted of "crimes relating to drugs" as defined in RCW 43.43.830 which are not listed in subsection (3)(c);

(e) Unlawfully operated a nursing home, or long term care facility as defined in RCW 70.129.010, without a license or under a revoked or suspended license;

(f) Previously held a license to operate a hospital or any facility for the care of children or vulnerable adults, and that license has been revoked, or suspended, or the licensee did not seek renewal of the license following written notification of the licensing agency's initiation of revocation or suspension of the license;

(g) Obtained or attempted to obtain a license by fraudulent means or misrepresentation;

(h) Permitted, aided, or abetted the commission of any illegal act on the nursing home premises;

(i) Been convicted of a felony or other crime that would not be ((prohibited)) automatically disqualifying under RCW 74.39A.050(8) or this chapter, if ((#)) the conviction reasonably relates to the competency of the individual to own or operate a nursing home;

(j) Had a sanction, corrective, or remedial action taken by federal, state, county or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;

(k) Failed to:

(i) Provide any authorization, documentation, or information the department requires in order to verify information contained in the application;

(ii) Meet financial obligations as the obligations fall due in the normal course of business;

(iii) Verify additional information the department determines relevant to the application;

(iv) Report abandonment, abuse, neglect or financial exploitation in violation of chapter 74.34 RCW; or in the case of a skilled nursing facility or nursing facilities, failure to report as required by 42 C.F.R. 483.13; or

(v) Pay a civil fine the department assesses under this chapter within ten days after assessment becomes final.

~~((#))~~ (l) Been certified pursuant to RCW 74.20A.320 as a person who is not in compliance with a child support order (license suspension only);

~~((#))~~ (m) Knowingly or with reason to know makes a false statement of a material fact in the application for a

license or license renewal, in attached data, or in matters under department investigation;

~~((#))~~ (n) Refused to allow department representatives or agents to inspect required books, records, and files or portions of the nursing home premises;

~~((#))~~ (o) Willfully prevented, interfered with, or attempted to impede the work of authorized department representatives in the:

(i) Lawful enforcement of provisions under this chapter or chapters 18.51 or 74.42 RCW; or

(ii) Preservation of evidence of violations of provisions under this chapter or chapters 18.51 or 74.42 RCW.

~~((#))~~ (p) Retaliated against a resident or employee initiating or participating in proceedings specified under RCW 18.51.220; or

~~((#))~~ (q) Discriminated against medicaid recipients as prohibited under RCW 74.42.055.

(2) In determining whether there is a history of significant noncompliance with federal or state regulations under subsection (1)(b), the department may, at a minimum, consider:

(a) Whether the violation resulted in a significant harm or a serious and immediate threat to the health, safety, or welfare of any resident;

(b) Whether the proposed or current licensee promptly investigated the circumstances surrounding any violation and took steps to correct and prevent a recurrence of a violation;

(c) The history of surveys and complaint investigation findings and any resulting enforcement actions;

(d) Repeated failure to comply with regulations;

(e) Inability to attain compliance with cited deficiencies within a reasonable period of time; and

(f) The number of violations relative to the number of facilities the proposed or current licensee, or any partner, officer, director, managing employee, employee or individual providing nursing home care or services has been affiliated within the past ten years, or owner of five percent or more of the proposed or current licensee or of the assets of the nursing home.

(3) The department must deny, suspend, revoke, or refuse to renew a proposed or current licensee's nursing home license if the proposed or current licensee or any partner, officer, director, managing employee, owner of five percent or more of the proposed or current licensee of the nursing home or owner of five percent or more of the assets of the nursing home, proposed or current administrator, or employee or individual providing nursing home care or services has been:

(a) Convicted of a "crime against children or other persons" as defined under RCW 43.43.830~~((#))~~ unless the individual has been convicted of one of the two crimes listed below and the required number of years has passed between the most recent conviction and the date of the application for employment:

(i) Simple assault, assault in the fourth degree, or the same offense as it may hereafter be renamed, and three or more years have passed;

(ii) Prostitution, or the same offense as it may hereafter be renamed, and three or more years have passed.

(b) Convicted of a "crime relating to financial exploitation" as defined under RCW 43.43.830(~~(z)~~) unless the individual has been convicted of one of the three crimes listed below and the required number of years has passed between the most recent conviction and the date of the application for employment:

(i) Theft in the second degree, or the same offense as it may hereafter be renamed, and five or more years have passed;

(ii) Theft in the third degree, or the same offense as it may hereafter be renamed, and three or more years have passed; or

(iii) Forgery, or the same offense as it may hereafter be renamed, and five or more years have passed.

(c) Has been convicted of:

(i) Violation of the imitation controlled substances act (VICSA);

(ii) Violation of the uniform controlled substances act (VUCSA);

(iii) Violation of the uniform legend drug act (VULDA);

(iv) Violation of the uniform precursor drug act (VUPDA); or

(v) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct.

(d) Found by a court in a criminal proceeding or a protection proceeding under chapter 74.34 RCW, or any comparable state or federal law, to have abandoned, abused, neglected or financially exploited a vulnerable adult;

~~((e))~~ (e) Found in any final decision issued by a disciplinary board to have sexually or physically abused or exploited any minor or an individual with a developmental disability or to have abused, neglected, abandoned, or financially exploited any vulnerable adult;

~~((f))~~ (f) Found in any dependency action to have sexually assaulted or exploited any minor or to have physically abused any minor;

~~((g))~~ (g) Found by a court in a domestic relations proceeding under Title 26 RCW, or any comparable state or federal law, to have sexually abused or exploited any minor or to have physically abused any minor; or

~~((h))~~ (h) Found to have abused, neglected, abandoned or financially exploited or mistreated residents or misappropriated their property, and that finding has been entered on ~~(a nursing assistant)~~ any department's registry or list.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-4320 Relocation of residents. (1) In the event of license revocation or suspension, decertification, or other emergency closures the department ~~((must))~~ will:

(a) Notify residents and, when appropriate, resident representatives of the action;

(b) Assist with residents' relocation and identify possible alternative living choices and locations; and

(c) The nursing home will assist the residents to the extent it is directed to do so by the department.

(2) When a resident's relocation occurs due to an emergency closure from a natural disaster, the nursing home may

not be required to cease its business operations unless directed to do so by the department.

(3) When a resident's relocation occurs due to a nursing home's voluntary closure, or voluntary termination of its medicare or medicaid contract or both, the nursing home must:

(a) Notify the department and all residents and resident representatives in accordance with WAC 388-97-1640;

(b) Notify the Centers for Medicare and Medicaid Services and the public as required by 42 C.F.R. 489.52, or a successor regulation, if the closure or termination affects the provision of medicare services; and

(c) Provide appropriate discharge planning and coordination for all residents including a plan to the department for safe and orderly transfer or discharge of residents from the nursing home.

~~((3))~~ (4) The department may provide residents assistance with relocation.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-4340 License relinquishment. (1) A nursing home licensee must voluntarily relinquish its license when:

(a) The nursing home ceases to do business as a nursing home; and

(b) Within twenty-four hours after the last resident is discharged from the facility.

(2) The nursing home may not be required to relinquish its license when residents must be relocated due to emergency closures from natural disasters.

(3) The relinquished license must be returned to the department.

~~((3))~~ (4) If a nursing home licensee fails to voluntarily relinquish its license when required, the department will revoke the license.

NEW SECTION

WAC 388-97-4425 Notice—Service complete. Service of the department notices is complete when:

(1) Personal service is made;

(2) The notice is addressed to the facility or to the individual at his or her last known address, and deposited in the United States mail;

(3) The notice is faxed and the department receives evidence of transmission;

(4) Notice is delivered to a commercial delivery service with charges prepaid; or

(5) Notice is delivered to a legal messenger service with charges prepaid.

NEW SECTION

WAC 388-97-4430 Notice—Proof of service. The department may establish proof of service by any of the following:

(1) A declaration of personal service;

(2) An affidavit or certificate of mailing to the nursing home or to the individual to whom the notice is directed;

(3) A signed receipt from the person who accepted the certified mail, the commercial delivery service, or the legal messenger service package; or

(4) Proof of fax transmission.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-4440 ((Notice and)) Appeal rights. (1) The ~~((notification and hearing))~~ appeal rights in this section apply to any appealable action taken by the department under chapters 18.51, 74.42 and 74.39A RCW. ~~((Notification))~~ Notice and appeal((s)) requirements for resident protection program findings are described in WAC 388-97-0720 and 388-97-0740.

(2) The following actions may be appealed:

(a) Imposition of a penalty under RCW 18.51.060 or 74.42.580;

(b) ~~((An action by the department such as))~~ A denial of a license under RCW 18.51.054, a license suspension under RCW 18.51.067 or a condition on a license under RCW 74.39A.050; or

(c) Deficiencies cited on the state survey report.

(3) The appeal process will be governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 18.51.065 and 74.42.580, chapter 388-02 WAC and this chapter. If ~~((any provision in this chapter conflicts with))~~ there is a conflict between chapter 388-02 WAC and this chapter, ~~((the provision of))~~ this chapter will govern.

(4) The purpose of an administrative hearing will be to review actions taken by the department under chapters 18.51, 74.42 or 74.39A RCW, and under this chapter.

(5) The office of administrative hearings must receive an administrative hearing request from the applicant, licensee or nursing home ~~((must receive a request for an administrative hearing with the office of administrative hearings))~~ within twenty days of receipt of written notification of the department's action ~~((as defined))~~ listed in subsection (2) of this section. Further information about administrative hearings is available in chapter 388-02 WAC and at the office of administrative hearing (OAH) web site: www.oah.wa.gov.

(6) Orders of the department imposing a stop placement, license suspension, emergency closure emergency transfer of residents, temporary management or conditions on a license are effective immediately upon verbal or written notice and must remain in effect until they are rescinded by the department or through the state administrative appeals process.

(7) Deficiencies cited on the federal survey report may not be appealed through the state administrative appeals process. If a federal remedy is imposed, the Centers for Medicare and Medicaid Services will notify the nursing facility of appeal rights under the federal administrative appeals process.

~~((8) The department's decision to petition to remove a finding of neglect under WAC 388-97-0780 (3)(c) may not be appealed.))~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-97-1420 Tuberculosis—Mantoux skin testing.

WAC 388-97-3820 Stairways, ramps, and corridors in new construction.

WSR 09-21-094

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed October 20, 2009, 12:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-14-068.

Title of Rule and Other Identifying Information: The department is amending and creating new sections to chapter 388-101 WAC, Certified community residential services and supports.

The department is proposing amendments to WAC 388-101-3060 Change of ownership, 388-101-3080 The department may deny—Application, 388-101-3090 The department must deny—Application, 388-101-3250 Background checks, 388-101-3520 Client related funds, 388-101-4010 Community protection—Written individual plan, 388-101-4170 Mandating reporting policies and procedures, 388-101-4270 Notice of preliminary finding, 388-101-4280 Reporting preliminary findings, 388-101-4290 Disputing a preliminary finding, 388-101-4300 Disclosure of investigative and finding information, 388-101-4310 Hearing procedures to dispute a preliminary finding, 388-101-4320 Appeal of the administrative law judge's preliminary order on a finding, 388-101-4330 Finalizing a preliminary finding, and 388-101-4340 Reporting final findings.

The department is proposing new sections WAC 388-101-3055 Application for initial certification—Liability insurance required, 388-101-3165 Access to certification evaluation report and plan of correction, 388-101-3205 Liability insurance required—Ongoing, 388-101-3206 Liability insurance required—Commercial general liability insurance or business liability insurance coverage, 388-101-3207 Liability insurance required—Professional liability insurance coverage, 388-101-3372 Medical devices, 388-101-4269 Individual defined, 388-101-4350 Notice—Service complete, and 388-101-4360 Notice—Proof of service.

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 December 8, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 9, 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 December 8, 2009.

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of amending these rules is to make editorial and clarifying changes and to make the rules consistent with current law and standards. The anticipated effects are to make the rules clearer, easier to read, understand and apply.

Highlights of proposed changes:

- Editorial and housekeeping changes in the following sections: Title for mandated reporting policies and procedures; and notice and appeal rights.
- Clarifies when notice is considered complete and what constitutes proof of notice.
- Clarifies that the service provider is responsible to implement, not develop the treatment plan required for clients in the community protection program (CPP).
- Eliminates from this chapter CPP treatment plan rules that are not service provider requirements but that are CPP program requirements in chapter 388-831 WAC.
- Clarifies when the department may or must deny an application for certification.
- Clarifies that individuals who are on a state registry with a finding of abuse, neglect, financial exploitation, or abandonment cannot have unsupervised access to clients.
- Adds existing liability insurance contract requirements to rule.
- Clarifies requirements for ensuring that common household expenses are shared equitably among clients living in the same household.
- Clarifies that group home providers applying for a change of ownership must also meet applicable adult family home or boarding home licensing requirements for change of ownership.
- Adds a section to clarify that certification evaluation reports and plans of correction must be made available upon request.
- Adds a section regarding requirements for the safe use of medical devices.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 71A.12.080.

Statute Being Implemented: Chapter 71A.12 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: John Gaskell, P.O. Box 45600, Olympia, WA 98513, (360) 725-3210; Implementation and Enforcement: Joyce Stockwell, P.O. Box 45600, Olympia, WA 98513, (360) 725-2401.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCS analyzed the proposed amendments and concludes that costs to small businesses will be minor, if there are any costs at all. The primary purpose of the proposed amendments is to make editorial and clarifying changes and to make the rules consistent with current laws and standards. As a result, the preparation of 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 John Gaskell, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-3210, fax (360) 438-7903, e-mail gaskejw@dshs.wa.gov.

October 15, 2009
Stephanie E. Vaughn
Rules Coordinator

NEW SECTION

WAC 388-101-3055 Application for initial certification—Liability insurance required. (1) The applicant must submit insurer executed evidence of liability insurance coverage before certification.

(2) The coverage and evidence of coverage must comply with the requirements of WAC 388-101-3206 and 388-101-3207.

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

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

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

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

(3) For group homes, applicants must also meet the applicable change of ownership requirements found in:

- (a) WAC 388-76-10105 for licensed adult family homes;

or

(b) WAC 388-78A-2770 through 388-78A-2787 for licensed boarding homes.

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

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

WAC 388-101-3080 The department may deny—Application. (1) The department may deny an application for initial certification if the department has determined:

- (a) That funding is not available; or

(b) There is not a programmatic need for additional service providers in the area of the state the applicant intends to serve.

(2) The department may deny the application for initial certification or change of ownership if any person named in the application has:

~~((1) Has)~~ (a) Shown a lack of the understanding, ability, or emotional stability that is necessary to meet the identified needs of vulnerable adults;

~~((2))~~ (b) Had a ~~((department))~~ contract ~~((;))~~ terminated or a certification((;)) or license ((withdrawn)) revoked or denied by the department, or has been subjected to department enforcement actions;

~~((3))~~ (c) Had a contract terminated, or a certification((;)) or license ((withdrawn)) revoked or denied in another state, or ((was)) has been subjected to an enforcement action in another state;

~~((4))~~ (d) Obtained or attempted to obtain a license or certification by fraudulent means or misrepresentation;

~~((5) Has)~~ (e) Relinquished or been denied a license or license renewal to operate a home or facility that was licensed for the care of children or vulnerable adults;

~~((6))~~ (f) Refused to permit authorized department representatives to interview clients or to have access to client records;

~~((7) Has)~~ (g) Been convicted of a drug-related conviction within the past five years without evidence of rehabilitation, unless denial is required under WAC 388-06-0180(4); or

~~((8) Has)~~ (h) Been convicted of an alcohol-related conviction within the past five years without evidence of rehabilitation.

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

WAC 388-101-3090 The department must deny—Application. (1) The department must deny an application for initial certification or change of ownership if any person named in the application ~~((was))~~ has been:

~~((1))~~ (a) Convicted of a crime ~~((against children or other persons or crimes relating to financial exploitation as defined under RCW 43.43.830 or 43.43.842))~~ listed under WAC 388-06-0170(1);

(b) Convicted of a disqualifying crime under WAC 388-06-0180;

~~((2))~~ (c) Found by a court in a criminal proceeding, a protection proceeding, or in a civil damages lawsuit under chapter 74.34 RCW to have abused, neglected, abandoned, or financially exploited a vulnerable adult;

~~((3))~~ (d) Found in any dependency action ~~((under chapter 13.34 RCW))~~ to have sexually assaulted, neglected, exploited, or physically abused any minor;

~~((4))~~ (e) Found by a court in a domestic relations proceeding under Title 26 RCW, or any comparable state or federal law, to have sexually abused, exploited, or physically abused any minor;

~~((5))~~ (f) Found in any final decision issued by a disciplinary board to have sexually or physically abused or exploited any minor or to have abused, neglected, abandoned, or financially exploited any vulnerable adult, as defined under chapter 74.34 RCW; or

~~((6) The subject of a stipulated finding of fact, conclusion of law, an agreed order, finding of fact, final order issued by a disciplining authority or final decision by any federal or state agency or department, a court of law, or entered into a state registry or department or agency list with a finding of abuse, neglect, financial exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW))~~ (g) Found to have abused, neglected, financially exploited, abandoned, or mistreated a minor or vulnerable adult, as defined in chapter 74.34 RCW, and the finding has been entered on any department registry or on any state or federal agency list.

(2) The department must deny an application for initial certification or change of ownership if any person named in the application has a pending criminal charge as described in WAC 388-06-0200.

NEW SECTION

WAC 388-101-3165 Access to certification evaluation report and plan of correction. The service provider must make the certification evaluation report and related plan of correction available to anyone upon request.

NEW SECTION

WAC 388-101-3205 Liability insurance required—Ongoing. The service provider must:

(1) Maintain liability insurance as required in WAC 388-101-3206 and 388-101-3207; and

(2) Have evidence of liability insurance coverage available if requested by the department.

NEW SECTION

WAC 388-101-3206 Liability insurance required—Commercial general liability insurance or business liability insurance coverage. The service provider must have commercial general liability insurance or business liability insurance that includes:

(1) Coverage for the acts and omissions of any employee and volunteer;

(2) Coverage for bodily injury, property damage, and contractual liability;

(3) Coverage for premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract; and

(4) Minimum limits of:

(a) Each occurrence—one million dollars;

(b) General aggregate—two million dollars; and

(c) For community protection service providers—three million dollars general aggregate.

NEW SECTION

WAC 388-101-3207 Liability insurance required—Professional liability insurance coverage. If the service provider employs professional staff, the service provider must have professional liability insurance or errors and omissions insurance. The insurance must include:

- (1) Coverage for losses caused by errors and omissions of the service provider, its employees, and volunteers; and
- (2) Minimum limits of:
 - (a) Each occurrence—one million dollars; and
 - (b) General aggregate—two million dollars.

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

WAC 388-101-3250 Background checks. (1) Service providers must follow the background check requirements described in chapter 388-06 WAC and in this chapter. In the event of an inconsistency, this chapter applies.

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

~~((2))~~ (3) The service provider must not allow the following persons to have unsupervised access to clients until the service provider receives successful background check results from the department:

- (a) Administrators;
- (b) Employees;
- (c) Volunteers or students; and
- (d) Subcontractors.

~~((3) Service providers or applicants)~~ (4) Persons identified in subsection (2) of this section who have lived in Washington state less than three years or who are otherwise required to complete a fingerprint-based background check may be hired for a one hundred twenty-day provisional period ~~((as allowed under law))~~ when:

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

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

~~((4))~~ (5) The service provider must notify the person, within ten days of receiving the result, that he or she may request a copy of the background check.

~~((5))~~ (6) The service provider must renew the background check at least every thirty-six months and keep current department background checks for each administrator, employee, volunteer, student, or subcontractor of a service provider.

~~((6))~~ (7) Licensed boarding homes or adult family homes must adhere to the current regulations in this chapter and in the applicable licensing laws.

~~((7))~~ (8) Service providers must ((follow the requirements of RCW 43.43.830 through 43.43.842 and RCW 74.15.030)) prevent unsupervised access to clients by any administrator, employee, subcontractor, student, or volunteer who has a disqualifying conviction or finding described in WAC 388-101-3090.

NEW SECTION

WAC 388-101-3372 Medical devices. (1) For purposes of this section the term "medical device" means any piece of medical equipment used to treat a client's assessed need.

(2) Use of medical devices often poses a safety risk for clients. Examples of medical devices with known safety

risks are transfer poles, helmets, straps and belts on wheelchairs or beds, and bed side rails.

(3) Medical devices must not be used by the service provider:

- (a) As a restraint; or
- (b) For staff convenience.

(4) Before using medical devices for any client, the service provider must:

(a) Review the client's assessment to identify the client's need;

(b) Identify and implement interventions that might decrease the need for the use of a medical device;

(c) Document the use of less restrictive and less invasive options, successful or not;

(d) Provide the client and client's family or legal representative with information about the anticipated benefits and safety risks of using the device to enable them to make an informed decision about whether or not to use the device;

(e) Obtain a current physician's order that describes the medical necessity for use of the device and the anticipated duration of use; and

(f) Provide written instructions to staff regarding safe and proper use of the device.

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

WAC 388-101-3520 Shared expenses and client related funds. (1) For purposes of this section "common household expenses" means costs for rent, shared food and household supplies, and utilities, including but not limited to water, garbage, cable television/radio, telephone, and electricity.

(2) The service provider must ensure that common household expenses are shared equitably among all clients living in the household.

(3) If the service provider ~~((does not manage the client's funds and))~~ receives funds for the client from any source, the service provider must be able to show that all the funds received are:

~~((1))~~ (a) Given to the client or the client's legal representative;

~~((2))~~ (b) Deposited to the client's account; or

~~((3))~~ (c) Used only for the client.

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

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

~~((a))~~ A qualified professional's risk assessment of emotional and behavioral issues related to community protection risks; or

~~((b))~~ A written risk assessment and treatment recommendations by:

(i) ~~A sexual offender treatment provider or sexual offender treatment provider affiliate if the client has a sexual offense history; or~~

(ii) ~~A licensed psychologist or psychiatrist with specialized training in the treatment of or three or more years' experience treating violent or aggressive behavior when the person being assessed has demonstrated violent, dangerous, or aggressive behavior.~~

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

(a) ~~Intervention strategies and techniques related to community protection risks;~~

(b) ~~Restrictions and measures, including security precautions; and~~

(c) ~~A therapist's approval of the written individual plan.~~

(3) ~~For community protection clients with a history of sexual offending, the assessment by a certified sexual offender treatment provider or sexual offender treatment provider affiliate may serve as the functional assessment and treatment recommendations related to the sexual behaviors)) written by a qualified professional/therapist in accordance with any procedures published by the department.~~

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

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

(a) Immediately reporting mandated reporting incidents to:

(i) The department and law enforcement;

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

(iii) The alleged victim's legal representative.

(b) Protecting clients;

(c) Preserving evidence when necessary; and

(d) Initiating an outside review or investigation.

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

NEW SECTION

WAC 388-101-4269 Individual defined. As used in WAC 388-101-4270 through 388-101-4340, the term "individual" means anyone used by the service provider to provide services to clients who is alleged to have abandoned, abused, neglected, or financially exploited a client. "Individual" includes but is not limited to administrators, employees, contractors, subcontractors, volunteers, and students.

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

WAC 388-101-4270 Notice to individual of preliminary findings. (1) The department will ~~((notify the alleged perpetrator in writing within ten working days of making a~~

~~preliminary finding of abandonment, abuse, neglect or financial exploitation of a client. The written notice:~~

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

~~((b) Will include the necessary information for the alleged perpetrator to ask for an administrative hearing to challenge the preliminary finding)) serve notice of the preliminary finding as provided in WAC 388-101-4350.~~

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

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

~~((4)) The department may ((extend the time frame for written notification beyond ten working days for good cause)) establish proof of service as provided in WAC 388-101-4360.~~

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

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

~~((a)) (1) Other divisions within the department;~~

~~((b)) (2) The agency or program identified under RCW 74.34.068 with which the ((alleged perpetrator is)) individual was associated as an employee, volunteer or contractor;~~

~~((c)) (3) The employer or program that is currently associated with the individual ((alleged to have abandoned, abused, neglected, or financially exploited a client, if known));~~

~~((d)) (4) Law enforcement; ((and))~~

~~((e)) (5) Other entities as authorized by law and this chapter including investigative authorities consistent with chapter 74.34 RCW; and~~

~~(6) The appropriate licensing agency.~~

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

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

WAC 388-101-4290 Disputing a preliminary finding.

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

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

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

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

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

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

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

(d) The ~~((alleged perpetrator's))~~ individual's signature.

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

WAC 388-101-4300 Disclosure of investigative and finding information. (1) Confidential information about clients and mandated reporters received from the department may only be used by the ~~((alleged perpetrator))~~ individual to challenge ~~((preliminary))~~ findings through the appeal process. It may only be shared with persons who are involved in the appeal.

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

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

WAC 388-101-4310 Hearing procedures to dispute a preliminary finding. (1) Chapters 34.05 and 74.34 RCW, chapter 388-02 WAC, and the provisions of this chapter govern any appeal regarding a preliminary finding. In the event of a conflict between the provisions of this chapter and chapter 388-02 WAC, the provisions of this chapter shall prevail.

(2) The administrative law judge shall determine whether the preliminary finding is supported by a preponderance of the evidence ~~((supports the preliminary finding that the alleged perpetrator abandoned, abused, neglected, or financially exploited a vulnerable adult, and shall issue a preliminary order))~~.

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

WAC 388-101-4320 Appeal of the ~~((administrative law judge's preliminary))~~ initial order ~~((on a finding))~~. (1) If the ~~((alleged perpetrator))~~ individual or the department disagrees with the administrative law judge's decision, either party may challenge this decision by filing a petition for review with the department's board of appeals under chapters 34.05 RCW and 388-02 WAC.

(2) If the department appeals the administrative law judge's decision, the department will not modify the finding in the department's records until a final hearing decision is issued.

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

WAC 388-101-4330 Finalizing a preliminary finding. (1) A preliminary finding becomes a final finding when:

(a) The department gives the ~~((alleged perpetrator))~~ individual notice of the preliminary finding ~~((pursuant to))~~ under

WAC 388-101-4270 and the ~~((alleged perpetrator))~~ individual does not request an administrative hearing;

(b) The administrative law judge:

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

(ii) Issues ~~((a preliminary))~~ an initial order upholding the finding and the ~~((alleged perpetrator))~~ individual fails to appeal the ~~((preliminary))~~ initial order to the department's board of appeals; or

(c) The board of appeals issues a final order upholding the finding.

(2) The final finding is permanent and will only be removed from the department's records if ~~((=~~

~~((a)))~~ it is rescinded following judicial review ~~((= or~~

~~((b) The department may decide to remove the single finding of neglect from its records based upon a written petition by the alleged perpetrator provided that no further findings have occurred, and at least one calendar year has passed since the finding was finalized and recorded)).~~

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

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

(a) The ~~((perpetrator))~~ individual against whom the final finding was made;

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

(c) The service provider that is currently associated with the ~~((perpetrator))~~ individual against whom the final finding was made, if known;

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

(e) ~~((The))~~ Any federal or state ~~((department))~~ registry or ~~((agency))~~ list of individuals found to have abandoned, abused, neglected, or financially exploited a vulnerable adult.

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

NEW SECTION

WAC 388-101-4350 Notice—Service complete. Service of the department notices is complete when:

(1) Personal service is made;

(2) The notice is addressed to the service provider or to the individual at his or her last known address, and deposited in the United States mail;

(3) The notice is faxed and the department receives evidence of transmission;

(4) Notice is delivered to a commercial delivery service with charges prepaid; or

(5) Notice is delivered to a legal messenger service with charges prepaid.

NEW SECTION

WAC 388-101-4360 Notice—Proof of service. The department may establish proof of service by any of the following:

- (1) A declaration of personal service;
- (2) An affidavit or certificate of mailing to the service provider or to the individual to whom the notice is directed;
- (3) A signed receipt from the person who accepted the certified mail, the commercial delivery service, or the legal messenger service package; or
- (4) Proof of fax transmission.

WSR 09-22-067
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed November 2, 2009, 11:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-22-085.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-452-0005 Do I have to be interviewed in order to get benefits?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on December 8, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 9, 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 DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on December 8, 2009.

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The community services division, economic services administration is proposing to revise WAC 388-452-0005 Do I need to be interviewed in order to get benefits?, to establish when households must have an interview in order to be eligible for department programs, and to allow a telephone interview instead of having an interview at the local office.

Reasons Supporting Proposal: The department will amend rules for Basic Food consistent with approved waivers to interview requirements under 7 C.F.R. § 273.2(e) related to required interviews for the supplemental nutrition assistance program (SNAP). SNAP was previously known as the food stamp program.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.04.515, 74.08.090, 74.08A.120, and 74.08A.903.

Statute Being Implemented: RCW 74.04.050, 74.04.-055, 74.04.057, 74.04.500, 74.04.510, 74.04.515, 74.08.090, 74.08A.120, and 74.08A.903.

Rule is necessary because of federal law, 7 C.F.R. § 273.2.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Don Winslow, 712 Pear Street S.E., Olympia, WA 98504, (360) 725-4580.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses, it only affects DSHS clients by establishing when households must have an interview in order to be eligible for department programs and indicates when households may have a telephone interview instead of having an interview at the local office.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

October 30, 2009

Stephanie E. Vaughn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-10-102, filed 5/4/04, effective 7/1/04)

WAC 388-452-0005 Do I have to be interviewed in order to get benefits? (1) Unless you are applying for medical only, you or your authorized representative must have an interview with the department:

(a) At initial certification; and

(b) At least once every twelve months (~~(if your assistance unit (AU) is certified for twelve months or less)~~).

(2) (~~(You do not have to attend)~~) An interview is not required if you are applying for or recertifying medical benefits only. If we deny your application for cash or Basic Food because you did not have an interview, we continue to process your request for medical benefits.

(3) You will have just one interview even if you are applying for or are having a review for benefits from more than one program.

(4) We hold interviews either in person or over the phone.

(5) If we do not interview you on the same day that we (~~get~~) receive your application, we will schedule an interview appointment for you (~~(-We schedule your appointment the day we get your application or on the next business day if we get your application outside of our scheduled business hours, on a holiday or a weekend.~~

~~(5) We schedule an interview so your AU has at least ten days after the interview to provide needed verification:~~

~~(a) Before the end of the thirty-day processing period for applications; or~~

~~(b) Before your certification period ends for eligibility reviews or recertifications)) or have you contact us by phone during our business hours to complete your interview.~~

~~(6) If we schedule an interview, we will set your appointment to allow you at least ten days after the interview to provide needed verification:~~

~~(a) Before the end of the thirty-day processing period for applications; or~~

~~(b) Before your certification period ends for eligibility reviews or recertifications.~~

~~((6)) (7) If you miss your first interview and ask for another interview within thirty days of the date you applied for benefits, we schedule a second interview ((for you)) or have you call us and complete the interview over the phone.~~

~~((7)) (8) If you must have an interview for benefits, you or someone who can give us the information we need about your AU must participate in the interview. You may ((bring any person you choose to)) ask any person you choose to help with your interview.~~

~~((8) You may choose someone to take your place in your interview:~~

~~(a) For cash assistance if you cannot come to the local office for us to decide if you are eligible for benefits; or~~

~~(b)) (9) For Basic Food ((if the person is)) only, your authorized representative as described in WAC 388-460-0005 may take your place during your interview.~~

~~((9) We usually have interviews at the local office. You can have a scheduled telephone interview if there is any reason you cannot attend an interview at the local office. Examples of reasons you may be unable to attend an interview include:~~

~~(a) Your work or training schedule make it inconvenient for you to attend an in-office interview during regular business hours;~~

~~(b) You are unable to take time off of work to attend an in-office interview, because you would not get paid for this time or you fear you could lose your job;~~

~~(c) Someone in your AU is ill, or you have to stay home to care for an AU member;~~

~~(d) You are having transportation problems;~~

~~(e) You can't safely get to the office because of severe weather;~~

~~(f) You live in a remote area and can't easily get to the local office;~~

~~(g) All the people in your AU are elderly, mentally disabled, or physically disabled;~~

~~(h) Someone in your AU is affected by family violence such as physical or mental abuse, harassment, or stalking by the abuser; or~~

~~(i) You have any other situation that makes it difficult for you to come into the office for an interview.~~

~~(10) If you currently get benefits from the department and you are completing an eligibility review or recertification for ongoing benefits under chapter 388-434 WAC, you can have a scheduled phone interview even if you do not meet the requirements for a phone interview listed above.))~~

WSR 09-22-077

PROPOSED RULES

WASHINGTON STATE PATROL

[Filed November 3, 2009, 12:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-17-038.

Title of Rule and Other Identifying Information: WAC 204-36-040 Permit limitations.

Hearing Location(s): General Administration Building, Room G-3, 210 11th Avenue, Olympia, WA 98504, on December 9, 2009, at 9:00 a.m.

Date of Intended Adoption: December 10, 2009.

Submit Written Comments to: Melissa Van Gorkom, P.O. Box 42600, Olympia, WA 98504-2600, e-mail melissa.vangorkom@wsp.wa.gov, fax (360) 596-4015, by December 8, 2009.

Assistance for Persons with Disabilities: Contact Melissa Van Gorkom by December 8, 2009, (360) 596-4017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Adds new restrictions to WAC 204-36-040 that would prohibit signs, shield markings, accessories and insignia used on uniforms, clothing or equipment which may imply that the operator is a law enforcement officer.

Reasons Supporting Proposal: Provides additional standards that will increase public safety.

Statutory Authority for Adoption: RCW 46.37.005 and 46.37.194.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Melissa Van Gorkom, General Administration Building, P.O. Box 42600, Olympia, WA 98504-2600, (360) 596-4017; and Enforcement: Washington State Patrol, General Administration Building, P.O. Box 42600, Olympia, WA 98504-2600, (360) 596-4017.

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

Small Business Economic Impact Statement

SUMMARY OF PROPOSED RULES: The Washington state patrol equipment and standards review (ESR) unit is proposing amendments to WAC 204-36-040 Permit limitations.

The purpose of this section is to outline the limitations for the operations of an authorized emergency vehicle permitted under the process outlined in chapter 204-36 WAC.

The proposed amendments to this chapter include:

- Restricting a private company from applying if the name of the company portrays the company as a public law enforcement agency, or in association with a public law enforcement agency, or includes the word "police" or "patrol."
- Adding language which would restrict an operator of an approved emergency vehicle from displaying any of the following:

a) A name that includes the word "police," "patrol," or "law enforcement," or other word which portrays the individual or business as a law enforcement agency.

b) A sign, shield, marking, accessory or insignia on their uniform, clothing or equipment to imply that he or she is a law enforcement officer. (Unless such sign, shield, marking, accessory or insignia represents the law enforcement agency that is being represented and are approved by that agency for the purposes outlined under the authorized emergency vehicle permit):

SMALL BUSINESS ECONOMIC IMPACT STATEMENT—DETERMINATION OF NEED: Chapter 19.85 RCW, the Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. The statute defines small businesses as those business entities that employ fifty or fewer people and are independently owned and operated.

The ESR unit has analyzed the proposed rule amendments and has determined that small businesses may be impacted by these changes, with some costs that may be considered "more than minor" and disproportionate to some small businesses that may apply for an assistance van application.

EVALUATION OF PROBABLE COSTS AND PROBABLE BENEFITS: Since the proposed amendments "make significant amendments to a policy or regulatory program" under RCW 34.05.328 (5)(c)(iii), ESR has determined the proposed rules to be "significant" as defined by the legislature.

As required by RCW 34.05.328 (1)(d), ESR has analyzed the probable costs and probable benefits of the proposed amendments, taking into account both the qualitative and quantitative benefits and costs.

INDUSTRY ANALYSIS: ESR is responsible for certifying all applications for an authorized emergency vehicle permit in the state of Washington. As part of its monitoring, ESR keeps a current database that identifies all permit holders. Since internal industry information can be obtained at a more accurate level than is required by chapter 19.85 RCW, it is unnecessary to conduct an industry analysis using the four-digit standard industrial classification (SIC) codes.

ESR has determined that there are forty-six existing permit holders (public, private and for-profit) that meet the criteria for small businesses under RCW 19.85.020.

INVOLVEMENT OF SMALL BUSINESSES: All forty-six permit holders have been provided with the proposed language and a small business impact survey so that they have an opportunity to be involved in writing the proposed rules and in ascertaining the costs associated with proposed rule changes. Of the forty-six permit holders, nineteen responded to our inquiry (a forty-one percent response rate). It is also of note that the responses were inclusive of each type of permit currently on file. The responses to the survey are summarized below to showing the impact according to these businesses.

COST OF COMPLIANCE:

Cost of Outcomes Evaluations

The major cost anticipated by small businesses for proposed rule changes is the removal of wording and insignia used to depict the operator/company. This requirement has been added to increase public safety so that a holder of an authorized emergency vehicle permit does not depict themselves as being a law enforcement entity and having the same authority as a law enforcement entity.

According to the survey sent to all current permit holders, sixteen of the nineteen who responded indicate that they are not impacted by the proposed rule changes.

For the other three permit holders, the anticipated costs to comply with the new requirement are outlined in the chart below:

**Outcomes Evaluation Costs:
UNIFORM COSTS:**

Subject	Costs per Year*	First Year	Subsequent Years
Removal of current patches	\$16-\$20 per officer (2-3 shirts per officer) (This includes the removal of two patches per garment)	Yes	No
Set up cost	\$50-\$150 (one time fee)	Yes	No
New badges	\$59-\$68	Yes	No
Sewing new patches	\$40 per officer (2-3 shirts/jackets per officer) (This includes shirts, jackets, and cap and also estimates two patches per garment (shirt and jacket) and includes estimate for replacement embroidered name tags)	Yes	No
New emblems	\$20	Yes	No

*Because the different locations of businesses and choices in the suppliers, it is difficult to determine definitive costs for these items. ESR has given a range of costs to cover a range of choices as outlined in the responses provided in the survey. There is no anticipated costs to the permit holders after they are brought into compliance, therefore the costs outlined are only for one year.

First Year (fee per officer)	First Year Total per Average Number of operators for affected permit holders (16)	Other fees in first year	Subsequent Total per permit holder based on the average number of operators (16)
\$135-\$148	\$2,160-\$2,368 per permit holder	\$50-\$150	\$2,210-\$2,518 per permit holder

VEHICLE COSTS:

Subject	Costs per Year*	First Year	Subsequent Years
Removal of current decals	\$944 per vehicle (\$118 per hour - 8 hours per vehicle)	Yes	No
New decals	\$400 per vehicle (2 decals per vehicle)	Yes	No
Adding new decals	\$944 per vehicle (\$118 per hour - 8 hours per vehicle)	Yes	No
Total	2,288 per vehicle	Yes	No

OFFICE SUPPLY COSTS:

Subject	Costs per Year*	First Year	Subsequent Years
Business Cards	\$45 per operator (estimate total for company with 16 operators is \$720)	Yes	No
Time log sheets	\$370 per box	Yes	No
Building Checklist	\$310 per box	Yes	No
Letterhead	\$350 per box	Yes	No
Total	1,750 (for a permit holder with 16 operators)	Yes	No

First Year fees for uniforms (based on an average number of operators for affected permit holders (16))	First Year fees for vehicles (based on an average number of vehicles for affected permit holders (9))	First Year fees for office supplies (based on an average number of operators for affected permit holders (16))	First Year Total per Average Number of operators (16) and vehicles (12) for affected permit holders
\$2,210-\$2,518 per permit holder	\$20,592 per permit holder	\$1,750 per permit holder	\$24,552-\$24,860 per permit holder

*NOTE: Only one company surveyed indicated that they would have costs associated with vehicles and office supplies, but for the purpose of this estimate, we have calculated the estimates based on the average of the companies that indicated they would be impacted to ensure the figures were all inclusive. Therefore in most cases the estimated cost anticipated would only be those costs associated with the uniforms

(\$2,210-\$2,518 per permit holder) according to survey responses.

Disproportionate Economic Impact Analysis: When there are more than minor costs to small businesses as a result of proposed rule changes, the Regulatory Fairness Act requires an analysis to be done comparing these expenses between small businesses and ten percent of the largest businesses. The costs identified with outcomes evaluations for small businesses would be considered by ESR to be "more than minor."

ESR looked at the possible disproportionate impact of this requirement on small businesses, as compared to ten percent of the largest businesses. However, these largest businesses are not impacted by the proposed changes according to the survey. Consequently, it is not possible to accurately delineate and compare costs between small businesses and ten percent of the largest agencies. In its desire to be fair to small businesses and to meet the intent of the law, however, ESR has outlined ways to mitigate expenses for small businesses in meeting the new requirement.

Mitigating Expenses for Outcomes Evaluations: ESR has proposed a plan to mitigate some expenses for small businesses impacted by these proposed rules. ESR will use one or more of the following to help small businesses meet the requirement for outcomes evaluations:

- ESR will allow companies to use their existing office supplies until their current stock runs out or until January 1, 2012, whichever is sooner to help mitigate the costs for complying with this regulation.
- Current permit holders will be given until January 1, 2012, to bring their company into compliance. This will allow the company to phase in the changes over time and not accrue a one lump sum cost.

Summary of Benefits: The benefit for the proposed rule changes is to increase the scrutiny provided for the permit holders to ensure that they do not portray themselves as a law enforcement entity which will increase the safety of the citizens that these drivers/operators may come in contact with on the public roadways in the state of Washington.

JOBS CREATED OR LOST: This regulation is not a requirement for small businesses, it is an optional service that a small business can choose to provide if it chooses to apply and follow the guidelines outlined in chapter 204-36 WAC. Therefore, it is not anticipated that the requirements set forth in the current proposal will cause jobs to be lost as a result of small businesses complying with these rules.

CONCLUSION: ESR has given careful consideration to the impact on small businesses of proposed rules in WAC 204-36-040 Permit limitations. In accordance with the Regulatory Fairness Act, chapter 19.85 RCW, ESR has analyzed impacts on small businesses and outlined the reasons for the costs and ways that cost cannot be mitigated.

Please contact Melissa Van Gorkom if you have any questions at (360) 596-4017.

A copy of the statement may be obtained by contacting Melissa Van Gorkom, P.O. Box 42600, Olympia, WA 98504-2600, online at http://www.wsp.wa.gov/information/cr_status.htm, phone (360) 596-4017, fax (360) 596-4015, e-mail melissa.vangorkom@wsp.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Melissa Van Gorkom, P.O. Box 42600, Olympia, WA 98504-2600, online at http://www.wsp.wa.gov/information/cr_status.htm, phone (360) 596-4017, fax (360) 596-4015, e-mail melissa.vangorkom@wsp.wa.gov.

November 3, 2009

John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 09-09-091, filed 4/16/09, effective 5/17/09)

WAC 204-36-040 Permit limitations. (1) A vehicle authorized by the patrol must not be used as an authorized emergency vehicle except as follows:

(a) Only by the operators named in the original or amended application approved by the patrol. If the applicant wishes to add or remove operator(s) from the permit, such request must be made to the patrol in writing.

(b) Only with the equipment described in the original or amended application approved by the patrol.

(c) Only within the geographic area described in the original or amended application approved by the patrol.

(d) Only for the purposes set forth in the original or amended application approved by the patrol.

(e) If being used for escort services, may be used only for funeral escorts.

(2) If an authorized emergency vehicle is used for private purposes, or for purposes in an area or by an operator other than as set forth in the application, all emergency equipment which is exposed to public view must be removed or covered with an opaque hood, and must not be operated during such period of time.

(3) The issuance of an emergency vehicle permit does not relieve the driver from the duty to drive with regard for the safety of all persons, nor will such provisions protect the driver from the consequences of his disregard for the safety of others and does not grant police authority to the operators of said vehicle. Any inappropriate or misuse of authorized emergency vehicles may result in criminal or civil liability as well as cancellation of the emergency vehicle permit.

(4) No permit will be issued to an applicant if the name of the applicant portrays the applicant as a public law enforcement agency, or in association with a public law enforcement agency, or includes the word "police" or "patrol."

(5) An operator under an approved emergency vehicle permit will not be allowed to display or use any of the following:

(a) A name that includes the word "police," "patrol," or "law enforcement," or other word which portrays the individual or business as a public law enforcement agency.

(b) A sign, shield, marking, accessory or insignia on their uniform, clothing or equipment to imply that he or she is a law enforcement officer.

(6) Subsections (4) and (5) of this section do not apply:

(a) If the applicant is recognized under Washington state law as a municipal corporation and certifies to the patrol that the applicant is a municipal corporation; or

(b) If the sign, shield, marking, accessory or insignia on the operator's uniform or equipment is issued by a public law enforcement agency; the operator is employed by the public law enforcement agency that the operator is representing with the sign, shield, marking, accessory or insignia on the operator's uniform or equipment; and the operator is approved to operate the vehicle by that public law enforcement agency for the purposes outlined under the authorized emergency vehicle permit.

(7) All current permit holders as of December 31, 2010, will have until January 1, 2012, to make changes necessary to comply with the requirements outlined in subsections (4) and (5) of this section.

WSR 09-22-079

PROPOSED RULES

WASHINGTON STATE PATROL

[Filed November 3, 2009, 12:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-17-039.

Title of Rule and Other Identifying Information: Compliance review hearing process.

Hearing Location(s): General Administration Building, Room G-3, 210 11th Avenue, Olympia, WA 98504, on December 9, 2009, at 9:30 a.m.

Date of Intended Adoption: December 10, 2009.

Submit Written Comments to: CVEO 4 William Balcom, 210 11th Avenue S.W., Room G21, Olympia, WA 98504-2614, e-mail William.balcom@wsp.wa.gov, fax (360) 596-3829, by November 30, 2009.

Assistance for Persons with Disabilities: Contact CVEO 4 William Balcom by November 30, 2009, TTY (360) 596-3807.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington state patrol (WSP) commercial vehicle division regulates the compliance review program which conducts audits on interstate and intrastate carriers to ensure they are in compliance with state and federal safety management practices.

During the 2009 legislative process HB 1843 was passed reference intrastate carriers and high risk carriers being placed out of service for nonpayment and for failure to comply with regulations. Due process requires the WSP to allow a carrier the ability [ability] to request an administrative hearing through an administrative law judge.

The updated WAC would outline the process the carrier would need to do as far as penalty, submitting a written application for mitigation or requesting an administrative hearing. By providing his process, the WSP can mitigate a penalty as long as the carrier shows through a carrier safety action plan that they are now in compliance to state and federal guidelines. This process also allows for the WSP to deny mitigation and proceed to an administrative hearing to recover monies owed to the WSP for nonpayment or outstanding penalties

due. The new administrative hearing process puts the burden on requesting an administrative hearing on the carrier and provides them with a twenty day time frame to do so.

Statutory Authority for Adoption: RCW 46.32.020, 46.32.100.

Statute Being Implemented: Chapter 446-65 WAC.

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

Name of Agency Personnel Responsible for Drafting: CVEO 4 William Balcom, 210 11th Avenue S.W., Room G21, Olympia, WA 98504-2614, (360) 596-3807; Implementation and Enforcement: WSP Commercial Vehicle Division, 210 11th Avenue S.W., Room G21, Olympia, WA 98504-2614, (360) 596-3807.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting CVEO 4 William Balcom, 210 11th Avenue, Olympia, WA 98504, phone (360) 596-3807, fax (360) 596-3829, e-mail William.balcom@wsp.wa.gov.

November 3, 2009

John R. Batiste

Chief

NEW SECTION

WAC 446-65-040 Compliance review hearing process. (1) A carrier that receives a written notice of penalty from the state patrol has twenty business days from receipt of notice to:

- (a) Pay the penalty as stated in the notice; or
- (b) Submit a written application for mitigation of the penalty; or
- (c) Submit a written request for an administrative hearing.

(2) **Mitigation.** A carrier may submit a request for mitigation of a penalty.

(a) A carrier's request for mitigation must:

- (i) Be in writing;
- (ii) Contain a statement explaining what the steps the carrier has taken to come into compliance, or what steps the carrier proposes to take in the future to come into compliance;
- (iii) Contain a notarized signature of the requestor; and
- (iv) Be received by the state patrol within twenty business days of the receipt of notice.

(b) Upon timely receipt of a written request for mitigation of a penalty, the state patrol will:

- (i) Review the materials submitted by the requestor; and
- (ii) Notify the carrier in writing of the disposition of the request for mitigation.

(3) **Administrative hearing.** A carrier may request an administrative hearing to contest the violation or penalty, or both.

(a) A carrier's request for an administrative hearing must:

- (i) Be in writing; and

(ii) Be received by the state patrol within twenty business days of the later of receipt of the notice of penalty or receipt of the disposition of a request for mitigation.

(b) A carrier may request an administrative hearing without first requesting mitigation of the penalty.

(c) An administrative hearing will be conducted under chapter 34.05 RCW (Washington Administrative Procedure Act).

(d) The following process applies to administrative hearings under this chapter:

(i) The state patrol will notify the assistant attorney general of the carrier's request for an administrative hearing.

(ii) The assistant attorney general will draft an administrative complaint and send it to the carrier and to the office of administrative hearings.

(iii) The office of administrative hearings will schedule a hearing date, and will notify the carrier, assistant attorney general, and patrol in writing of the hearing date, time, and location.

(iv) The hearing will be conducted by an administrative law judge assigned by the office of administrative hearings.

(v) At the hearing, the assistant attorney general will present witnesses and other evidence on behalf of the WSP.

(vi) At the hearing, the carrier may be represented by an attorney or may choose to represent himself or herself. The carrier or his/her attorney will be allowed to present witnesses and other evidence.

(e) Nothing in this section will prevent the parties from resolving the administrative matter by settlement agreement prior to conclusion of the administrative hearing.

(4) **Initial and final order.** At the conclusion of the hearing, the administrative law judge will prepare an initial order and send it to the carrier and the assistant attorney general.

(a) Either the carrier or the assistant attorney general, or both, may file a petition for review of the initial order with the patrol within twenty days of the date of service of the initial order. A petition for review must:

(i) Specify the portions of the initial order to which exception is taken;

(ii) Refer to the evidence of record which is relied upon to support the petition; and

(iii) Be filed with the patrol within twenty days of the date of service of the initial order.

(b) A party on whom a petition for review has been served may, within ten days of the date of service, file a reply to the petition. Copies of the reply must be mailed to all other parties or their representatives at the time the reply is filed.

(c) The administrative record, the initial order, and any exceptions filed by the parties will be submitted to the chief or his/her designee for review. Following this review, the chief or his/her designee will enter a final order that is appealable under the provisions of chapter 34.05 RCW.

WSR 09-22-080
PROPOSED RULES
WASHINGTON STATE PATROL

[Filed November 3, 2009, 12:41 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-17-040.

Title of Rule and Other Identifying Information: Chapter 446-16 WAC, Washington identification section, and chapter 446-20 WAC, Conviction records, provide information regarding criminal records information and the processes established to request and obtain records based on the requester (i.e. public, criminal justice agency). The proposed changes in these rules update the language to increase clarity and ensure consistency with language under Revised Code of Washington.

Hearing Location(s): General Administration Building, Room G-3, 210 11th Avenue, Olympia, WA 98504, on December 9, 2009, at 8:30 a.m.

Date of Intended Adoption: December 10, 2009.

Submit Written Comments to: Heather A. Anderson, P.O. Box 42619, Olympia, WA 98504-2619, e-mail heather.anderson@wsp.wa.gov, fax (360) 534-2070, by December 2, 2009.

Assistance for Persons with Disabilities: Contact Heather Anderson by December 8, 2009, (360) 534-2103.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 446-16 WAC provides definitions and a scope of rules for Washington criminal history. It includes expungement of records, inspection of personal records, disposition reports, content, limitations, and reporting responsibilities by law enforcement, prosecutorial agencies, and the courts and auditing of the reporting compliance. Chapter 446-20 WAC applies to state and local criminal justice agencies in the state of Washington that collect and maintain or disseminate criminal history record information. The regulations also apply to criminal justice or other agencies outside the jurisdiction of the state of Washington for the purpose of the dissemination of criminal history record information to other agencies by state of Washington criminal justice agencies.

The rules affect criminal justice agencies and federal agencies with criminal justice subunits.

The proposed changes in language for both of these WACs will not affect the stakeholders. The language changes clarify and create consistency within the WACs.

Statutory Authority for Adoption: Chapters 10.97 and 43.43 RCW.

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

Name of Agency Personnel Responsible for Drafting: Deborah Collinsworth, 3000 Pacific Avenue, Olympia, WA 98504, (360) 534-2102; Implementation: Heather A. Anderson, 3000 Pacific Avenue, Olympia, WA 98504, (360) 534-2103; and Enforcement: Jim Anderson, 3000 Pacific Avenue, Olympia, WA 98504, (360) 534-2101.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no fiscal impact to small businesses (including nonprofits).

A cost-benefit analysis is not required under RCW 34.05.328. The rules do not meet the definition of a "significant legislative rule" under RCW 34.05.328.

November 3, 2009

John R. Batiste

Chief

AMENDATORY SECTION (Amending WSR 97-05-048, filed 2/18/97, effective 3/21/97)

WAC 446-16-010 Definitions. For the purposes of these rules, the following words and phrases ((~~shall~~)) will have the following meanings:

(1) "Criminal history record information" includes, and ((~~shall~~)) will be restricted to identifying data and public record information recorded as the result of an arrest or other initiation of criminal proceedings and the consequent proceedings related thereto. "Criminal history record information" ((~~shall~~)) will not include intelligence, analytical or investigative reports and files.

(2) "Criminal justice agencies" are those public agencies within or outside the state which perform, as a principal function, activities directly relating to the apprehension, prosecution, adjudication or rehabilitation of criminal offenders.

(3) "Disposition" ((~~shall~~)) means that result which is reached at a determination of criminal proceedings against an individual at any stage in the criminal justice system and resulting in the culmination or final disposal of the criminal charge.

(4) "Section" ((~~shall~~)) means the ((~~section on~~)) identification and criminal history section of the Washington state patrol ((~~established in RCW 43.43.700, et seq.~~)).

AMENDATORY SECTION (Amending Order 1, filed 2/11/74)

WAC 446-16-020 Scope of the rules. Criminal offender record information ((~~shall~~)) will not be released or inspected except in accordance with RCW 43.43.700 et seq. and these rules.

AMENDATORY SECTION (Amending WSR 97-05-048, filed 2/18/97, effective 3/21/97)

WAC 446-16-025 ((~~Expungement~~)) Deletion of arrest records. (1) A person desiring the destruction of his or her fingerprints and/or other identifying data, pursuant to RCW 43.43.730, ((~~shall~~)) must make his or her request ((~~therefor~~)) on a form furnished by the ((~~Washington state patrol identification and criminal history~~)) section.

(2) The request ((~~shall~~)) must be completed, signed by the person whose record is sought to be ((~~expunged~~)) deleted and his or her signature witnessed. It ((~~shall~~)) must include the address of the applicant, the printed name and the address of the witness to the applicant's signature and such other information requested on the application as identifies the applicant and the offense for which the request of ((~~expungement~~)) deletion is made.

(3) The request ((~~shall~~)) must include reasonable proof that the person making the request for ((~~expungement~~)) dele-

tion is the same person whose fingerprints or other identifying data are sought to be ~~((expunged))~~ deleted. Such proof ~~((shall))~~ must include fingerprints of the applicant if requested by the section.

(4) The request ~~((shall))~~ must include ~~((reasonable proof that the person making the request has no prior criminal record and that he has been found not guilty of the offense for which the fingerprints and/or other identifying data were taken or was finally released without a conviction for such offense having been obtained or has other lawful grounds for expungement. Such proof shall include the furnishing of))~~ the information necessary for the section to determine whether the request is consistent with RCW 10.97.060 including all details pertaining to the ~~((finding of not guilty or release without conviction of such criminal charges. Where the finding or release is based on an order of a court, the applicant shall furnish a certified or xeroxed copy of the court order))~~ decision not to prosecute, dismissal, or acquittal of the offense for which the fingerprints or other identifying data were taken.

AMENDATORY SECTION (Amending WSR 01-20-039, filed 9/26/01, effective 10/27/01)

WAC 446-16-030 Inspection by the subject of their record. (1) Any person desiring to inspect his or her criminal history record information ~~((which refers to themselves))~~ may do so at the central office of the ~~((Washington state patrol identification and criminal history))~~ section, ~~((between the hours of 8 a.m. and 5 p.m.))~~ during normal business hours, Monday through Friday, ((excepting)) except legal holidays.

(2) Any person desiring to inspect his or her criminal history record information ~~((pertaining to themselves shall))~~ must first permit their fingerprints to be taken by the section for identification purposes if requested ~~((to do so))~~. The section, in ~~((their))~~ its discretion, may accept other identification in lieu of fingerprints.

(3) A reasonable period of time, not to exceed thirty minutes, ~~((shall))~~ will be allowed to each individual to examine his or her criminal history record information ~~((pertaining to themselves))~~.

(4) No person ~~((shall))~~ will be allowed to retain or reproduce any criminal history record information ~~((pertaining to themselves))~~ except for the purpose of ~~((challenge))~~ challenging or ~~((correction of))~~ correcting entries of arrests by submitting law enforcement agencies of the state of Washington. Visual examination only ~~((shall))~~ will be permitted of such information unless the individual asserts ~~((their))~~ the belief that their criminal history record information from a submitting law enforcement agency of the state of Washington ~~((concerning them))~~ is inaccurate, incomplete or maintained in violation of the law; and unless they request correction or completion of the information on a form furnished by the section, or requests ~~((expungement))~~ deletion pursuant to WAC 446-16-025.

(5) If any person who desires to examine his or her own criminal history record information ~~((pertaining to himself))~~ is unable to read or is otherwise unable to examine same because of a physical disability, they may designate another person of their own choice to assist them. The person about

whom the information pertains ~~((shall))~~ must execute, with their mark, a form provided by the section consenting to the inspection of their criminal history record information ~~((pertaining to themselves))~~ by another person for the purpose of it being read or otherwise described to them. Such designated person ~~((shall))~~ must then be permitted to read or otherwise describe or translate the criminal history record information to the person about whom it pertains.

AMENDATORY SECTION (Amending Order 1, filed 2/11/74)

WAC 446-16-060 Disposition reports—When required. In every case where a fingerprint record or other report of the arrest of an individual on criminal charges has been submitted to the section, the agency which makes the final determination of such criminal charges or in whose jurisdiction the final determination is made ~~((shall))~~ must report the disposition of such charges to the section.

AMENDATORY SECTION (Amending WSR 99-07-051, filed 3/15/99, effective 4/15/99)

WAC 446-16-070 Report contents—General. The report of disposition ~~((shall))~~ must be made on forms provided by the section or shall be transferred electronically on forms approved by the section. The disposition report ~~((shall))~~ must include all arrest details as they appeared on the fingerprint card or arrest record previously forwarded to the section. The state identification number and process control number (PCN) should be indicated on the disposition report if known.

AMENDATORY SECTION (Amending WSR 99-07-051, filed 3/15/99, effective 4/15/99)

WAC 446-16-080 Report time limitations. All of the information requested on the disposition report ~~((shall))~~ must be completed and the report mailed or electronically transferred to the ~~((Washington state patrol identification and criminal history))~~ section, within ten days of the date that a disposition becomes effective.

AMENDATORY SECTION (Amending WSR 92-15-014, filed 7/6/92, effective 8/6/92)

WAC 446-16-090 Law enforcement agencies—Reporting responsibilities. (1) If the disposition of criminal charges is made by the arresting agency, as where the individual is released without charge, the arresting agency shall fill in and complete the disposition report and ~~((mail))~~ submit same to the section. If the disposition is known at the time ~~((and))~~ the arrest record or fingerprint card is submitted to the section, this information should be noted thereon. In this case, it ~~((shall))~~ will be unnecessary to forward a disposition report.

(2) In all cases where the arresting agency does not make the final disposition, it shall initiate the preparation of a disposition report by recording the name of the individual arrested, the charges on which he was arrested, the name of the contributor of the arrest or fingerprint record, the process

control number, the arrest number and any other information that may identify the individual. At this stage the disposition of charges ~~((shall))~~ will be left blank, but the agency ~~((shall))~~ will note the action that it has taken, e.g., referred to the prosecutor~~((, etc))~~. The partially completed disposition report ~~((shall))~~ must then be included as part of the individual's case file and ~~((shall))~~ must be forwarded with other information concerning the charges against the individual to the prosecutor or other agency to which the arresting agency forwards the case.

AMENDATORY SECTION (Amending WSR 99-07-051, filed 3/15/99, effective 4/15/99)

WAC 446-16-100 Prosecutorial agencies—Reporting responsibilities. ~~((4))~~ The prosecutor or county clerk ~~((shall))~~ must promptly transmit the completed disposition information to the section if the prosecutor determines not to file charges or the case is not otherwise acted upon by a judicial body. In such cases, the prosecutor or county clerk ~~((shall))~~ must mail or transfer the completed disposition report to the section within ~~((40))~~ ten days from the date that it is determined no further judicial action will be taken on the charges.

AMENDATORY SECTION (Amending WSR 99-07-051, filed 3/15/99, effective 4/15/99)

WAC 446-16-110 Courts—Reporting responsibilities. Where the disposition of criminal charges occurs as a result of action taken by or within the jurisdiction of any court in the state of Washington, the disposition of such charges ~~((shall))~~ must be reported to the ~~((identification and criminal history))~~ section pursuant to rules of the supreme court of the state of Washington on forms approved by the supreme court and supplied by the section. However, in a county where the judicial information system or other secure method of electronic transfer of information has been implemented between the court and the section, the court may electronically provide the disposition information to the section.

AMENDATORY SECTION (Amending WSR 97-05-048, filed 2/18/97, effective 3/21/97)

WAC 446-16-120 Audit of reporting compliance. The ~~((identification and criminal history))~~ section ~~((shall))~~ will administer a compliance audit procedure at least once annually to insure that all disposition reports have been received and added to the criminal history record information. The identification and criminal history section ~~((shall prepare listings of all))~~ identify criminal history record information for which no disposition report has been received and has been outstanding for ~~((more than nine months))~~ one year or longer since the date of arrest. Each ~~((criminal justice))~~ open arrest will be researched for a final disposition by section staff or the criminal justice agency ~~((shall))~~ will be furnished with a list of outstanding disposition reports for criminal history record information of persons who were arrested or against whom charges were filed by that agency. ~~((Within thirty days of receipt of such list,))~~ Each criminal justice agency ~~((shall))~~ will provide the ~~((identification and criminal history))~~ section

with a current disposition report or status ~~((report for each person for whom a disposition report is overdue))~~ within sixty days of receipt of notification of open arrest.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-010 General applicability. The regulations in this chapter ~~((shall))~~ will apply to state and local criminal justice agencies in the state of Washington that collect and maintain or disseminate criminal history record information. The regulations ~~((shall))~~ will also apply to criminal justice or other agencies outside the jurisdiction of the state of Washington for the purpose of the dissemination of criminal history record information to other agencies by state of Washington criminal justice agencies. The provisions of chapter 10.97 RCW do not generally apply to the courts and court ~~((record keeping))~~ recordkeeping agencies. The courts and court ~~((record keeping))~~ recordkeeping agencies have the right to request and receive criminal history record information from criminal justice agencies. The regulations are intended to cover all criminal justice records systems that contain criminal history record information, whether the systems are manual or automated. Chapter 10.97 RCW defines the rights and privileges relating to criminal history record information and should not be interpreted to redefine or amend rights or privileges relevant to any other kinds of records or information.

AMENDATORY SECTION (Amending Order 91-004, filed 12/4/91, effective 1/4/92)

WAC 446-20-020 Definitions. For the purpose of this section the following apply:

(1) The definitions in RCW 10.97.030 ~~((shall))~~ will apply to these regulations.

(2) The definitions as enumerated in RCW 43.43.830 through 43.43.845, and as amended by chapter 9A.44 RCW, "An act relating to child and adult abuse information," will apply whenever applicable in these regulations.

(3) "Nonconviction data" has the meaning set forth in RCW 10.97.030(2), but ~~((shall))~~ will not include dismissals following a period of probation, or suspension, or deferral of sentence.

~~((3))~~ (4) Section means the identification and criminal history section of the Washington state patrol.

(5) "The administration of criminal justice" has the meaning set forth in RCW 10.97.030(6), but does not include crime prevention activities (if that is the sole function of the program or agency) or criminal defense activities.

~~((4))~~ The definitions as enumerated in RCW 43.43.830 through 43.43.845, and as amended by chapter 9A.44 RCW, "An act relating to child and adult abuse information," shall apply whenever applicable in these regulations.)

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-030 Convictions under appeal or review. A conviction followed by an appeal or other court review may be treated as conviction information or as infor-

mation pertaining to an incident for which a subject is currently being processed by the criminal justice system until such time as the conviction is reversed, vacated, or otherwise overturned by a court; but, notations of pending appeals or other court review ~~((shall))~~ will be included as a part of a person's criminal record if the agency disseminating the record has received written confirmation of such proceedings from the court.

AMENDATORY SECTION (Amending WSR 97-05-048, filed 2/18/97, effective 3/21/97)

WAC 446-20-050 Criminal justice agencies. (1) The following agencies ~~((shall))~~ will be considered criminal justice agencies for the purpose of chapter 10.97 RCW and these regulations.

(a) The Washington state patrol ~~((, including the state identification section));~~

(b) Foreign, federal, state, and local governmental law enforcement agencies;

(c) ~~((The adult corrections division of the department of social and health services or the department of corrections as specified in chapter 72.02 RCW, including institutions as specified in chapter 72.01 RCW and probation and parole services as specified in chapter 72.04A RCW;))~~ State, county, or municipal agencies that have responsibility for the detention, pretrial release, posttrial release, correctional supervision, or rehabilitation of accused persons or criminal offenders;

(d) ~~((The board of prison terms and paroles;))~~ Indeterminate sentence review board;

(e) Courts at any level ~~((, if they exercise criminal jurisdiction;))~~ for the administration of criminal justice.

(2) ~~((Only that subunit of the following agencies which detects, prosecutes, or that work under the direction of the courts shall be considered criminal justice agencies for the purpose of chapter 10.97 RCW and these regulations:~~

(a) Federal, state and local prosecutorial, correctional programs, agencies or departments;

(b) The liquor control board as specified in RCW 66.44.010 (enforcement division);

(c) The department of labor and industries as specified in chapter 7.68 RCW (victims of crime compensation);

(d) The state fire marshal as specified in RCW 48.48.060(2);

(e)) An agency or portion thereof that has been certified as a criminal justice agency pursuant to WAC 446-20-060.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-060 Certification of agencies. (1) An agency or portion of an agency that asserts a right to receive criminal history record information based on its status as a criminal justice agency ~~((shall))~~ must show satisfactory evidence of its certification as a criminal justice agency prior to receiving such information. The ~~((Washington state patrol shall))~~ section will certify such an agency or portion of an agency, based on a showing that the agency ~~((devotes a substantial portion of its annual budget to, and has as a primary function, the administration of criminal justice))~~ or portion of

an agency, meets the definition of a criminal justice agency in RCW 10.97.030. Agencies or portions of agencies which assert ~~((their))~~ the right to be certified as a criminal justice agency ~~((shall))~~ must submit a written request for certification to the ~~((Washington state patrol))~~ section on the form provided under WAC 446-20-430.

(2) ~~((A noncriminal justice))~~ An agency or portion of an agency that asserts a right to receive nonconviction criminal history record information ~~((shall))~~ must show satisfactory evidence of certification to receive such information. Certification by the ~~((Washington state patrol))~~ section will be granted based upon statute, ordinance, executive order, or a court rule, decision, or order which expressly refers to non-conviction criminal history record information, and which authorizes or directs that it be available or accessible for a specific purpose.

(3) The application ~~((shall))~~ must include documentary evidence which establishes eligibility for access to criminal history record information.

(4) The ~~((Washington state patrol shall))~~ section will make a ~~((finding))~~ determination in writing on the eligibility or noneligibility of the applicant. The written ~~((finding))~~ determination, together with reasons for the decisions, ~~((shall))~~ will be sent to the applicant.

(5) The ~~((Washington state patrol shall))~~ section must keep a current list of all agencies that have been certified to receive criminal history record information.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-070 Inspection—Individual's right to review record. Every criminal justice agency ~~((shall))~~ must permit an individual who is, or believes he may be, the subject of a criminal record maintained by that agency to come to the central records keeping office of that agency during its normal business hours and request to inspect said criminal history record.

To the extent that criminal history record information (CHRI) exists (which includes and ~~((shall))~~ will be limited to identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any dispositions arising therefrom, including sentences, correctional supervision and release) is interfiled with other records of the department the agency may extract the CHRI for review.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-080 Inspection—Forms to be made available. The criminal justice agency ~~((shall))~~ must make available a request form to be completed by the person who is, or believes he or she may be, the subject of a criminal record maintained by that agency. The form ~~((shall))~~ must be substantially equivalent to that set forth in WAC 446-20-400.

AMENDATORY SECTION (Amending WSR 97-05-048, filed 2/18/97, effective 3/21/97)

WAC 446-20-090 Inspection of record by the subject of record. (1) Any person desiring to inspect his or her criminal history record information (~~((which pertains to himself))~~) may do so at the central records keeping office of any criminal justice agency or at the Washington state patrol identification and criminal history section, during normal business hours, Monday through Friday, excepting legal holidays.

(2) Any person desiring to inspect his or her criminal history record information (~~((pertaining to himself shall))~~) must first permit his or her fingerprints to be taken by the criminal justice agency for identification purposes, if requested to do so. The criminal justice agency in its discretion may accept other identification in lieu of fingerprints.

(3) A reasonable period of time, not to exceed thirty minutes, (~~((shall))~~) will be allowed each individual to examine criminal history record information pertaining to himself or herself.

(4) Visual examination only (~~((shall))~~) will be permitted of such information unless the individual asserts (~~((his))~~) the belief that their criminal history record information (~~((concerning him))~~) is inaccurate, or incomplete; and unless (~~((he))~~) the person requests correction or completion of the information on a form furnished by the criminal justice agency, or requests (~~((expungement))~~) deletion pursuant to RCW 10.97.-060. Retention or reproduction of nonconviction data is authorized only when it is the subject of challenge.

(5) If any person who desires to examine his or her criminal history record information (~~((pertaining to himself))~~) is unable to read or is otherwise unable to examine same because of a physical disability, he or she may designate another person of (~~((his))~~) their own choice to assist him or her. The person about whom the information pertains (~~((shall))~~) must execute, with his or her mark, a form provided by the criminal justice agency consenting to the inspection of criminal history information pertaining to himself or herself by another person for the purpose of it being read or otherwise described to him or her. Such designated person (~~((shall))~~) will then be permitted to read or otherwise describe or translate the criminal history record information to the person about whom it pertains.

(6) Each criminal justice agency (~~((shall))~~) will develop procedures to ensure that no individual improperly retains or mechanically reproduces nonconviction data during the process of inspection.

AMENDATORY SECTION (Amending WSR 97-05-048, filed 2/18/97, effective 3/21/97)

WAC 446-20-100 Inspection—Timeliness and manner of agency response. (1) A criminal justice agency not maintaining criminal history record information of the individual requesting inspection (~~((shall))~~) will not be obligated to further processing of inspection request.

(2) A criminal justice agency maintaining criminal history record information of the individual requesting inspection (~~((shall))~~) must respond in the manner following and as soon as administratively convenient, but in no event later

than ten business days from the date of the receipt of the request.

(a) If the criminal history record information concerns offenses for which fingerprints were not submitted to the (~~((Washington state patrol identification and criminal history))~~) section, the agency (~~((shall))~~) must respond by disclosing the identifiable descriptions and notations of arrests, charges, and dispositions that are contained in the files of the agency.

(b) If the criminal history record information concerns offenses for which fingerprints were submitted to the (~~((identification))~~) section, the agency upon request of the subject of the record, (~~((shall))~~) must forward the request to the (~~((Washington state patrol identification and criminal history))~~) section for processing.

(c) (~~((At the Washington state patrol identification and criminal history))~~) The section (~~((the request shall cause a))~~) will copy (~~((of))~~) all Washington state criminal history record information in the files of the (~~((Washington state patrol identification and criminal history))~~) section relating to the individual requester (~~((to be forwarded))~~) and forward to the criminal justice agency submitting the request.

(d) Upon receipt by the criminal justice agency of the requester's criminal history record information (~~((from the Washington state patrol identification and criminal history section))~~), the agency (~~((shall))~~) will notify the requester at his or her designated address or telephone number that the requested information is available for inspection. The subject of the criminal history record information must appear at the agency during its normal business hours for purpose of inspecting the record.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-120 Challenge—Individual's right to challenge. A subject seeking to challenge the accuracy or completeness of any part of (~~((the))~~) his or her criminal history record information (~~((pertaining to himself shall))~~) must do so in writing, clearly identifying that information which he or she asserts to be inaccurate or incomplete. This includes only records generated by Washington state criminal justice agencies.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-130 Challenge—Forms to be made available. Every criminal justice agency which authorizes individuals to use its facilities for the purpose of inspecting their criminal history record information (~~((shall))~~) must provide an appropriate challenge form and the address of the agency whose record entry is being challenged. Such forms (~~((shall))~~) must be substantially equivalent to that set forth in WAC 446-20-450.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-140 Challenge—Agency to make determination. The agency which initiated the criminal history record information being challenged ~~((shall))~~ must:

(1) Not later than ten business days after receiving the written challenge, acknowledge receipt of the challenge in writing; and

(2) Promptly, but in no event later than ten business days after acknowledging receipt of the challenge, either:

(a) Make any correction of any portion of the criminal history record information which the person challenging such information has designated as being inaccurate or incomplete.

(b) Inform the person challenging the criminal history record information, in writing, of the refusal to amend the criminal history record information, the reason for the refusal, and the procedures for review of that refusal.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-150 Correction of erroneous information. (1) The originating agency must send information correcting the previously incorrect information to all agencies and persons to which the previously incorrect information was disseminated by the originating agency. This obligation ~~((shall))~~ will be limited to disseminations made within one year of the date on which the challenge was initiated.

(2) Any criminal justice agency maintaining criminal history record information within the state ~~((shall))~~ must adopt a procedure which, when significant information in a criminal history record maintained on an individual is determined to be inaccurate, leads to the dissemination of corrected information to every agency and person(s) to which the prior erroneous information was disseminated within the preceding one year.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-160 Review of refusal to alter record. A person who is the subject of a criminal record and who disagrees with the refusal of the agency maintaining or submitting the record to correct, complete, or delete the record, may request a review of the refusal within twenty business days of the date of receipt of such refusal. The request for review ~~((shall))~~ must be in writing, and ~~((shall))~~ must be made by the completion of a form substantially equivalent to that set forth in WAC 446-20-410. If review is requested in the time allowed, the head of the agency whose record or submission has been challenged ~~((shall))~~ must complete the review within thirty days and make a final determination of the challenge. The head of the agency may extend the thirty-day period for an additional period not to exceed thirty business days. If the head of the agency determines that the challenge should not be allowed, he ~~((shall))~~ or she must state his or her reasons in a written decision, a copy of which ~~((shall))~~ must be provided to the subject of the record. Denial by the agency

head ~~((shall))~~ will constitute a final decision under RCW 34.04.130.

AMENDATORY SECTION (Amending WSR 97-05-048, filed 2/18/97, effective 3/21/97)

WAC 446-20-170 Secondary dissemination. (1) Criminal justice agencies that receive state criminal history record information from the ~~((identification))~~ section ~~((of the Washington state patrol))~~ may disseminate them further, "but only to the same extent to which the ~~((identification))~~ section itself would be authorized to make ~~((a))~~ dissemination in the first instance." Nonconviction data based on an incident that arose in the jurisdiction of that agency about to make the dissemination is not subject to this restriction, if the agency is otherwise authorized to disseminate such information.

(2) Noncriminal justice agencies ~~((certified))~~ authorized to receive criminal history record information from whatever source may use it only for the specific purpose for which the agency is certified and shall not disseminate it further.

(3) Use of criminal history record information contrary to chapter 10.97 RCW or chapter 446-20 WAC may result in suspension or cancellation of ~~((certification))~~ authorization.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-180 Dissemination pursuant to contract for services. (1) Criminal history record information which includes nonconviction data may be disseminated pursuant to a contract to provide services, as set forth in RCW 10.97.050(5). The contract must contain provisions giving notice to the individual or agency to which the information is to be disseminated that the use of such information is subject to the provisions of chapter 10.97 RCW and these regulations, and federal statutes and regulations, which ~~((shall))~~ must be cited with express reference to the penalties provided for a violation thereof.

(2) When a criminal justice agency uses an information system containing criminal history record information that is controlled and managed by a noncriminal justice agency, the noncriminal justice agency may disseminate criminal history record information only as authorized by the criminal justice agency. Authorization ~~((shall))~~ must be established in a contract between the criminal justice agency and the noncriminal justice agency providing the management service or support. Any criminal justice agency entering a contract with a noncriminal justice agency ~~((shall))~~ must require that the noncriminal justice agency and personnel, who utilize criminal history record information, meet the same physical security and personnel standards as set forth by the Washington state patrol under RCW 10.97.090.

All programs, tapes, source documents, listings, and other developmental or related data processing information containing or permitting any person to gain access to criminal history record information, and all personnel involved in the development, maintenance, or operation of an automated information system containing criminal history record information, are subject to the requirements of RCW 10.97.050(5) and these regulations. A statement to this effect ~~((shall))~~ must be included in the contract.

The contract for support services ((shall)) must be substantially similar to that set forth in WAC 446-20-440.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-190 Dissemination—Research purposes. Criminal history record information which includes nonconviction data may be disseminated for research purposes according to the provisions of RCW 10.97.050(6). The transfer agreement provided for by that section ((shall)) must be substantially similar to that set forth in WAC 446-20-420 (model transfer provisions).

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-200 Disclosure to assist victim. A criminal justice agency may, but need not, disclose investigative information to "persons who have suffered physical loss, property damage, or injury compensable through civil action" as contemplated by RCW 10.97.070. Disclosure may be made to the apparent victim; an attorney, parent or guardian acting for the victim or an executor or administrator of an estate of a decedent victim; an authorized agent of the victim; another law enforcement or criminal justice agency making inquiry on behalf of the victim; and/or, upon an appropriate showing, an indemnitor, assignee, insurer, or subrogee of the victim. Written capacity to act on behalf of the victim may be required by the agency. Investigative information which ". . . may be of assistance to the victim in obtaining civil redress" may include but is not limited to:

- (1) The name, address, and other location information about a suspect, witness, and in the event of a juvenile, the suspect's parent or guardian;
- (2) Copies of the incident report; and in person review of documents, photographs, statements, and other materials collected in the course of an investigation;
- (3) The location of, and identity of receivers and custodians of stolen property and of property recovered as lost and found property;
- (4) The progress of proceedings arising from the incident and the disposition of any prosecution or other action.

An agency making a disclosure is not expected to evaluate the merits of a victim's claim for civil relief. Disclosure merely indicates the information has been received and the agency reasonably believes the information may be useful to the recipient in seeking civil redress. Disclosure does not constitute an opinion or comment upon the existence or merits of a claim and it does *not* vouch for the accuracy or completeness of the information.

Disclosures made to victims under the authority of RCW 10.97.070 ((shall)) must be considered in conjunction with chapter 42.56 RCW ((42.17.310, The Public Disclosure Act (exemptions))), chapter 46.52 RCW (Confidentiality of accident reports and statements), civil and criminal court rules governing discovery and other state and federal laws.

~~((Criminal justice agencies are advised to consult with their own legal counsel in implementing the dissemination authorization of RCW 10.97.070.))~~

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-210 Protection from accidental loss or injury. Criminal justice agencies (hereinafter, agency(s)) and noncriminal justice contractors, (hereinafter, contractor(s)) which collect, retrieve, and/or store and disseminate criminal history record information in manual and automated systems, ((shall)) must institute procedures for the protection of criminal history record information from environmental hazards, including fire, flood, power failure, or other natural or man-made disasters, or in accordance with local fire, safety, and building codes.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-220 Protection against unauthorized access. Criminal history record systems, whether dedicated to criminal justice purposes, or shared, will be designed and operated in accordance with procedures which will assure that:

(1) Access to criminal history record information facilities and system operating areas (whether for computerized or manual systems) and the content of data files and systems documentation, will be restricted to authorized personnel. These procedures may include use of guards, keys, badges, passwords, sign-in logs, or similar safeguards.

(2) All facilities which house criminal history record information ((shall)) must be designed and constructed so as to reduce the possibility of physical damage to the information resulting from unauthorized access.

(3) Criminal history record information is stored in such a manner that will prevent modification, destruction, access, change, purging, or overlay of criminal history record information by unauthorized personnel.

(4) Operational programs are used in computerized systems that will prohibit inquiry, record updates, or destruction of records from any terminal other than those authorized to perform criminal history record information functions.

(5) The purging or destruction of records is limited to personnel authorized by the criminal justice agency or through contract with the noncriminal justice agency as required under WAC 446-20-180, and consistent with WAC 446-20-230.

(6) Refuse from the criminal history record information system installations is transferred and destroyed under such reasonably secure conditions as will effectively guard against unauthorized availability.

(7) Operational procedures are used in computerized systems to detect and store unauthorized attempts to penetrate any criminal history record information system, program or file, and that such information is made available only to criminal justice agency employees with responsibility for system security, or as authorized by WAC 446-20-180.

(8) The procedures developed to meet standards of subsections (4) and (7) of this section, are known only to authorized employees responsible for criminal history records information system control.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-230 Personnel security. (1) Agencies and contractors which collect and retrieve, or are authorized to maintain or modify, criminal history record information ((shall)) must: Identify those positions which are of such a sensitive nature that fingerprints of employees will be required and used to conduct a criminal record background investigation. Such background investigations will be the responsibility of the criminal justice agency and may consider the date, the disposition, number, and seriousness of any previous arrests or convictions. Decisions concerning employment will be the responsibility of the employing agency or contractor.

(2) When agency or contractor personnel violate the provisions of chapter 10.97 RCW or other security requirements established through administrative code for the collection, storage and dissemination of such information, agencies or contractors, as defined by subsection (1) of this section, ((shall)) must initiate, or cause to be initiated, action that will ensure the integrity of records containing criminal history record information.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-240 Personnel training. (1) Criminal justice agencies ((shall)) will be required directly, or in cooperation with the criminal justice training commission to familiarize their employees and those of the contractors, with all federal, state, and local legislation, executive orders, rules, and regulations, applicable to such a system.

(2) Training to be provided ((shall)) must include not only initial training, but continuing training, designed to maintain among criminal history record information system personnel current knowledge and operational proficiency with respect to security and privacy law and regulations.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-250 Contractor personnel clearances. (1) No personnel of a noncriminal justice agency ((shall)) will be granted access to criminal history record information without appropriate security clearance by the contracting agency or agencies.

(2) To provide evidence of the person's security clearance, the grantor of such clearance may provide an authenticated card or certificate. Responsibility for control of the issuance, or revocation of such clearances ((shall)) must rest with the grantor.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-260 Auditing of criminal history record information systems. (1) Every criminal justice agency, including contractors authorized to collect, retrieve, maintain, and disseminate criminal history record information pursuant to WAC 446-20-180, ((shall)) must make its

records available under RCW 10.97.090(3) to determine the extent of compliance with the following:

(a) Dissemination records as required under RCW 10.97.050(7);

(b) Security procedures as required by RCW 10.97.090 (1); and

(c) Personnel standards as required by RCW 10.97.090 (2).

(2) Personnel engaged in the auditing function ((shall)) will be subject to the same personnel security requirement as required under WAC 446-20-230, 446-20-240, and 446-20-250, as employees who are responsible for the management and operation of criminal history record information systems.

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-270 Establishment of procedures. Every criminal justice agency which collects, retrieves, maintains, and/or disseminates criminal history record information ((shall)) must establish written rules and regulations setting forth security and personnel procedures for authorized access to criminal history record information files or adopt administrative regulations promulgated by the Washington state patrol.

AMENDATORY SECTION (Amending WSR 97-05-048, filed 2/18/97, effective 3/21/97)

WAC 446-20-280 Employment—Conviction records. (1) A conviction record will be furnished consistent with the provisions of RCW 43.43.815, upon the submission of a written or electronic request of any employer, accompanied by fingerprints and other identifying data of the employee or prospective employee.

(2) Fingerprints ((shall)) must be submitted on cards of the type specified by the ((Washington state patrol identification and criminal history)) section, and ((shall)) must contain a certification by the employer that the information is being disseminated to and will be available only to persons involved in the hiring, background investigation, or job assignment of the person whose record is disseminated, that the record will be used only as necessary for the purposes enumerated in this section, and that the request for conviction data is for one of the following purposes:

(a) Securing a bond required for any employment;

(b) Conducting preemployment and postemployment evaluations of employees and prospective employees who, in the course of employment, may have access to information affecting national security, trade secrets, confidential or proprietary business information, money, or items of value; or

(c) Assisting an investigation of suspected employee misconduct where such misconduct may also constitute a penal offense under the laws of the United States or any state.

AMENDATORY SECTION (Amending WSR 03-05-007, filed 2/7/03, effective 3/10/03)

WAC 446-20-285 Employment—Conviction records—Child and adult abuse information. After January 1, 1988, certain child and adult abuse conviction informa-

tion will be furnished by the state patrol upon written or electronic request of any applicant, business or organization, the state board of education, or the department of social and health services. This information will consist of the following:

(1) Convictions of crimes against children or other persons as defined in RCW 43.43.830(6), and as amended by chapter 9A.44 RCW;

(2) Department of health disciplinary authority final decisions of specific findings of physical or sexual abuse or exploitation of a child and any subsequent criminal charges associated with the conduct that is the subject of the disciplinary authority final decision; for the businesses and professions defined in chapter 9A.44 RCW; and

(3) ~~(Civil adjudications of child abuse, as amended by chapter 9A.44 RCW.)~~ Criminal history information will be furnished from the ~~(Washington state patrol)~~ section, consistent with the provisions of RCW 43.43.830 through 43.43.840, upon receipt of a written or electronic request.

School districts, the superintendent of public instruction, educational service districts and their contractors will also receive conviction information under RCW 10.97.030 and 10.97.050 pursuant to chapter 159, Laws of 1992.

The ~~(state patrol shall)~~ section will also furnish any similar records maintained by the Federal Bureau of Investigation or records in custody of the National Crime Information Center, if available, subject to their policies and procedures regarding such dissemination.

(a) The business or organization making such request ~~(shall)~~ will not make an inquiry to the Washington state patrol or an equivalent inquiry to a federal law enforcement agency unless the business or organization has notified the applicant who has been offered a position as an employee or volunteer that an inquiry may be made.

(b) For positive identification, the request for criminal history information form may be accompanied by fingerprint cards of a type specified by the ~~(Washington state patrol identification and criminal history)~~ section, and ~~(shall)~~ must contain a certification by the business or organization; the state board of education; or the department of social and health services, that the information is being requested and will be used only for the purposes as enumerated in RCW 43.43.830 through 43.43.845.

(c) In the absence of fingerprint cards, the applicant may provide a right thumb fingerprint impression in the area provided on the request for criminal history information form. In the event of a possible match to the applicant's name and date of birth, the right thumb fingerprint impression will be used for identification verification purposes only.

(d) After processing a properly completed request for criminal history information form, if the conviction record, disciplinary authority final decision, ~~(adjudication record,)~~ or equivalent response from a federal law enforcement agency shows no evidence of crimes against persons, an identification declaring the showing of no evidence ~~(shall)~~ will be issued to the business or organization by the ~~(Washington state patrol identification and criminal history)~~ section within fourteen working days of receipt of the request. Possession of such identification ~~(shall)~~ will satisfy future

record check requirements for the applicant for a two-year period.

(e) The business or organization ~~(shall)~~ must notify the applicant of the state patrol's response within ten calendar days after receipt by the business or organization. The employer ~~(shall)~~ must provide a copy of the response to the applicant and ~~(shall)~~ must notify the applicant of such availability.

(f) The business or organization ~~(shall)~~ will be immune from civil liability for failure to request background information on a prospective employee or volunteer unless the failure to do so constitutes gross negligence.

AMENDATORY SECTION (Amending WSR 92-15-015, filed 7/6/92, effective 8/6/92)

WAC 446-20-300 Privacy—Security. (1) All employers or prospective employers receiving conviction records pursuant to RCW 43.43.815, ~~(shall)~~ must comply with the provisions of WAC 446-20-210 through 446-20-250 relating to privacy and security of the records.

(2) Businesses or organizations, the state board of education, and the department of social and health services receiving conviction records of crimes against persons ~~(-)~~ or disciplinary board final decision information ~~(- or a civil adjudication record pursuant to RCW 43.43.815 and 43.43.830 through 43.43.845, shall)~~ must comply with the provisions of WAC 446-20-220 (1) and (3) relating to privacy and security of the records.

(a) The business or organization ~~(shall)~~ must use this record only in making the initial employment or engagement decision. Further dissemination or use of the record is prohibited. A business or organization violating this prohibition is subject to a civil action for damages.

(b) No employee of the state, employee of a business or organization, or the organization is liable for defamation, invasion of privacy, negligence, or any other claim in connection with any lawful dissemination of information under RCW 43.43.830 through 43.43.840 or 43.43.760.

AMENDATORY SECTION (Amending Order 91-004, filed 12/4/91, effective 1/4/92)

WAC 446-20-310 Audits. (1) All employers or prospective employers receiving conviction records pursuant to RCW 43.43.815 ~~(- shall)~~ must comply with the provisions of WAC 446-20-260 through 446-20-270 relating to audit of the ~~(record keeping)~~ recordkeeping system.

(2) Businesses or organizations, the state board of education and the department of social and health services receiving conviction records of crimes against persons ~~(-)~~ or disciplinary board final decision information ~~(- or civil adjudication records pursuant to RCW 43.43.830 through 43.43-845,))~~ may be subject to periodic audits by Washington state patrol personnel to determine compliance with the provisions of WAC 446-20-300(2).

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-400 Form of request to inspect record.

INSPECTION OF RECORD REQUEST (RCW 10.97.080/WAC 446-20-070)

Agency Agency No Date Time

I, request to inspect ((such)) my criminal history record information ((pertaining to myself)) and maintained in the files of the above named agency.

I was born (Date of Birth) in (Place of Birth) and to ensure positive identification as the person in question, I am willing to submit my fingerprints in the space provided below, if required or requested.

(Fill in and check applicable box)

Because I am unable to read ; I do not understand English ; otherwise need assistance in reviewing my record ; I designate and consent that (Print Name), whose address is , assist me in examining the criminal history record information concerning myself.

Prints of right four fingers taken simultaneously (Signature or mark of Applicant)

(Address)

(Signature of Designee)

AMENDATORY SECTION (Amending Order 80-2, filed 7/1/80)

WAC 446-20-410 Form of request to review refusal to modify record.

REQUEST FOR REVIEW OF REFUSAL TO MODIFY RECORD (RCW 10.97.080/WAC 446-20-160)

Date

I, (Print Name), request the head of (Agency Name) to review and make a final determination of my challenge to the accuracy or completeness of my criminal history record information ((pertaining to myself and)) maintained by (Agency Name).

My challenge, a copy of which is attached, was made on (Date of Challenge) and was refused on (Date of Refusal). I request that my challenge be allowed and my record be modified in accordance with such challenge.

(Signature of Applicant)

(Address of Applicant)

AMENDATORY SECTION (Amending WSR 92-15-015, filed 7/6/92, effective 8/6/92)

WAC 446-20-420 Model agreement for research, evaluative or statistical purposes.

AGREEMENT made this day of , ((199-)) 20. . . . between , (hereinafter referred to as "RESEARCHER") and , (hereinafter referred to as "CRIMINAL JUSTICE AGENCY")*

WHEREAS the RESEARCHER had made a written request to the CRIMINAL JUSTICE AGENCY dated. . . . , a copy of which is annexed hereto and made a part hereof, and

WHEREAS the CRIMINAL JUSTICE AGENCY has reviewed said written request and determined that it clearly specifies (1) the criminal history record information sought, and (2) the research, evaluative or statistical purpose for which the said information is sought,** and

WHEREAS the RESEARCHER represents that (he) (she) (it) is in receipt of, and is familiar with, the provisions of chapter 10.97 RCW, 28 CFR Part 22, including provisions for sanctions at Parts 22.24(c) and 22.29 thereof,

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

- 1. The CRIMINAL JUSTICE AGENCY will supply the following items of information to the RESEARCHER:

(Describe in detail)***

- 2. The RESEARCHER will:

- (a) Use the said information only for the research, evaluative, or statistical purposes described in the above mentioned written request dated. . . . , and for no other purpose;
(b) Limit access to said information to the RESEARCHER and those of the RESEARCHER'S employees whose responsibilities cannot be accomplished without such access, and who have been advised of, and agreed to comply with, the provisions of this agreement, and of 28 CFR Part 22;****
(c) Store all said information received pursuant to this agreement in secure, locked containers;
(d) So far as possible, replace the name and address of any record subject with an alpha-numeric or other appropriate code;
(e) Immediately notify the CRIMINAL JUSTICE AGENCY in writing of any proposed material changes in the purposes or objectives of its

research, or in the manner in which said information will be used.

- 3. The RESEARCHER will not:
 - (a) Disclose any of the said information in a form which is identifiable to an individual, in any project report or in any manner whatsoever, except pursuant to 28 CFR Part 22.24 (b)(1)(2).
 - (b) Make copies of any of the said information, except as clearly necessary for use by employees or contractors to accomplish the purposes of the research. (To the extent reasonably possible, copies ~~((shall))~~ will not be made of criminal history record information, but information derived therefrom which is not identifiable to specific individuals ~~((shall))~~ must be used for research tasks. Where this is not possible, every reasonable effort ~~((shall))~~ must be made to utilize coded identification data as an alternative to names when producing copies of criminal history record information for working purposes.)
 - (c) Utilize any of the said information for purposes or objectives or in a manner subject to the requirement for notice set forth in 2.(e) until specific written authorization therefor is received from the CRIMINAL JUSTICE AGENCY.
- 4. In the event the RESEARCHER deems it necessary, for the purposes of the research, to disclose said information to any subcontractor, (he) (she) (it) ~~((shall))~~ must secure the written agreement of said subcontractor to comply with all the terms of this agreement as if (he) (she) (it) were the RESEARCHER named herein.***
- 5. The RESEARCHER further agrees that:
 - (a) The CRIMINAL JUSTICE AGENCY shall have the right, at any time, to monitor, audit, and review the activities and policies of the RESEARCHER or its subcontractors in implementing this agreement in order to assure compliance therewith; and
 - (b) Upon completion, termination or suspension of the researcher, it will return all said information, and any copies thereof made by the RESEARCHER, to the CRIMINAL JUSTICE AGENCY, unless the CRIMINAL JUSTICE AGENCY gives its written consent to destruction, obliteration or other alternative disposition.
- 6. In the event the RESEARCHER fails to comply with any term of this Agreement the CRIMINAL JUSTICE AGENCY ~~((shall))~~ will have the right to take such action as it deems appropriate, including termination of this Agreement. If the CRIMINAL JUSTICE AGENCY so terminates this Agreement, the RESEARCHER and any subcontractors ~~((shall))~~ must forthwith return all the said information, and all copies made thereof, to the CRIMINAL JUSTICE AGENCY or make such alternative disposition thereof, as is

directed by the CRIMINAL JUSTICE AGENCY. The exercise of remedies pursuant to this paragraph ~~((shall))~~ will be in addition to all sanctions provided by law, and to legal remedies available to parties injured by disclosures.

- 7. INDEMNIFICATION. The RESEARCHER agrees to indemnify and hold harmless (CRIMINAL JUSTICE AGENCY) and its officers, agents and employees from and against any and all loss, damages, injury, liability suits and proceedings however caused, arising directly or indirectly out of any action or conduct of the (RESEARCHER) in the exercise or enjoyment of this agreement. Such indemnification ~~((shall))~~ will include all costs of defending any such suit, including attorney fees.

IN WITNESS WHEREOF the parties have signed their names hereto this day of , ~~((199.))~~ 20. . . .

..... (CRIMINAL JUSTICE AGENCY)

by.....
(Name)

Title:
..... (RESEARCHERS)

by.....
(Name)

Title:

COMPLIANCE AGREEMENT of employee, consultant or subcontractor.

(I) (We), employee(s) of, consultant to, (and) (or) subcontractor of the RESEARCHER, acknowledge familiarity with the terms and conditions of the foregoing agreement between the CRIMINAL JUSTICE AGENCY and RESEARCHER, and agree to comply with the terms and conditions thereof in (my) (our) use and protection of the criminal history record information obtained pursuant to the foregoing agreement.

.....
(date) (signature)

.....
(date) (signature)

AMENDATORY SECTION (Amending WSR 92-15-015, filed 7/6/92, effective 8/6/92)

WAC 446-20-440 Contract for support services model agreement under WAC 446-20-180. (Some provisions may not be applicable in all cases and are noted accordingly.)

I. General Provisions

A. Parties: This agreement is made and entered into this. . . . day of , ~~((199.))~~ 20. . . . , by and between (head of agency), Administrator of (criminal justice agency) and (head of agency) of (Support Services Agency of "User").

B. Purpose of Agreement: This agreement authorizes (user) to collect, retrieve, maintain and/or disseminate criminal history record information (hereinafter, CHRI) pursuant to RCW 10.97.050(5), WAC 446-20-180, and the terms of this contract. In addition, it provides for the security and privacy of information in that dissemination to criminal justice agencies ((shall)) must be limited for the purposes of the administration of justice and criminal justice agency employment. Dissemination to other individuals and agencies ((shall)) must be limited to those individuals and agencies authorized by either the Washington state patrol, under chapter 10.97 RCW or local ordinance, as specified by the terms of this contract, and ((shall)) must be limited to the purposes for which it was given and may not be disseminated further.

II. Duties of Criminal Justice Agency

- A. In accordance with federal and state regulations, (criminal justice agency) agrees to furnish complete and accurate criminal history information to user, pursuant to RCW 10.97.040.
- B. (Criminal justice agency) ((shall)) must specify and approve those individuals or agencies authorized to obtain CHRI, which includes nonconviction data, pursuant to RCW 10.97.050(4) or by local ordinance.

III. Duties of User

- A. (User) will collect, retrieve, maintain and/or disseminate all information covered by the terms of this agreement in strict compliance with all present and future federal and state laws and regulations. In addition, all programs, tapes, source documents, listings, and other developmental or related data processing information containing or permitting any person to gain access to CHRI and all personnel involved in the development, maintenance, or operation of an automated information system containing CHRI are subject to the requirements of RCW 10.97.050(5) and WAC 446-20-180.
- B. (User) will obtain the assistance of the (criminal justice agency) to familiarize its personnel with and fully adhere to section 524(b) of the Crime Control Act 1973 (42 USC 3771(b)), 28 CFR Part 20, chapter 10.97 RCW and chapter 446-20 WAC, promulgated by the Washington state patrol.
- C. (User) will disseminate CHRI only as authorized by chapter 10.97 RCW and as specified by (criminal justice agency) in this agreement.
- D. (User) agrees to fully comply with all rules and regulations promulgated by the Washington state patrol, pursuant to RCW 10.97.090(2), regarding standards for the physical security, protection against unauthorized access and personnel procedures and safeguards.
- E. (User) agrees to permit access to its records system for the purposes of an audit, as specified under RCW 10.97.090(3).

IV. Suspension of Service

(Criminal justice agency) reserves the right to immediately suspend furnishing information covered by the terms of this agreement to (User), when any terms of this agreement are violated. (Criminal justice agency) ((shall)) will resume furnishing information upon receipt of satisfactory assurances that such violations have been fully corrected or eliminated.

V. Cancellation

Either (criminal justice agency) or (user) may cancel this agreement upon thirty days notice to the other party.

VI. Indemnification

User hereby agrees to indemnify and hold harmless (criminal justice agency) and its officers, agents and employees from and against any and all loss, damages, injury, liability suits and proceedings however caused, arising directly or indirectly out of any action or conduct of the (user) in the exercise or enjoyment of this agreement. Such indemnification ((shall)) will include all costs of defending any suit, including attorney fees.

VII. Construction

This agreement ((shall)) will be liberally construed to apply to both manual and automated information systems wherever and whenever possible.

(CRIMINAL JUSTICE AGENCY) (USER)

By: By:
 Title: Title:
 Date: Date:

AMENDATORY SECTION (Amending WSR 98-01-021, filed 12/8/97, effective 1/8/98)

WAC 446-20-500 Sex offender and kidnapping offender registration. RCW 9A.44.130 requires any adult or juvenile residing in this state who has been found to have committed or has been convicted of any sex offense or kidnapping offense to register with the county sheriff for the county of that person's residence. The sheriff is required to forward the registration information to the ((Washington state patrol identification and criminal history)) section within five working days. The Washington state patrol is mandated to maintain a central registry of sex offenders and kidnapping offenders consistent with chapters 10.97, 10.98, and 43.43 RCW.

AMENDATORY SECTION (Amending WSR 98-01-021, filed 12/8/97, effective 1/8/98)

WAC 446-20-510 History retention. Sex and kidnapping offender registration information will be maintained in the offender's criminal history file according to retention periods outlined in RCW 9A.44.140. Once an offender is registered, a notation of "registered sex offender" or "registered kidnapping offender" ((shall)) will be printed on the transcript of record for that individual.

AMENDATORY SECTION (Amending Order 91-005, filed 9/24/91, effective 10/25/91)

WAC 446-20-515 Photograph/fingerprint requirement. Registration requires the offender be fingerprinted and photographed and also provide the sheriff with the following information which must be forwarded to the Washington state patrol identification and criminal history section within five working days:

Name;
Address;
Date of birth;
Place of birth;
Social Security number;
Institution of higher education enrolled, attending;
Place of employment;
Crime for which convicted;
Date/place of conviction; and
Aliases used.

AMENDATORY SECTION (Amending WSR 97-05-048, filed 2/18/97, effective 3/21/97)

WAC 446-20-520 Photographs. Photographs (~~should be of the polaroid type and~~) must be in color. These are not to be filed (~~photos~~) photographs. A new (~~photo~~) photograph is required.

~~((On the reverse side of the photo))~~ For paper submissions, write full name, date of birth, and ((SID)) state identification number (SID). Paperclip (no staples please) the (~~photo~~) photograph to the fingerprint card with the registration information completed and forward to Washington state patrol, identification and criminal history section. For electronic submissions, color photographs may be electronically mailed to a designated e-mail address at the section. Identifying information (full name, date of birth, and SID) must accompany the photograph.

AMENDATORY SECTION (Amending WSR 98-01-021, filed 12/8/97, effective 1/8/98)

WAC 446-20-525 Change of address form. Registered sex and kidnapping offenders who change residence within the same county are required to (~~send a~~) submit change of address (~~" form WSP-CRD-502")~~ information to the county sheriff at least fourteen days before moving.

Registered sex and kidnapping offenders who change residence from one county to another are required to send written notice fourteen days before moving to the county sheriff in the new county residence and must register with that county sheriff within twenty-four hours of moving. The offender must send ((a)) "change of address" (~~form~~) information within ten days of moving in the new county to the county sheriff with whom the offender last registered.

Registered sex and kidnapping offenders who move to another state or county must (~~send a~~) submit "change of address" (~~form~~) information ten days before moving to the new state or county to the county sheriff with whom the offender last registered in Washington state.

County sheriffs must forward "change of address" (~~forms~~) information to the Washington state patrol identifi-

cation and criminal history section within five working days upon receipt.

AMENDATORY SECTION (Amending WSR 97-05-048, filed 2/18/97, effective 3/21/97)

WAC 446-20-530 Refundable fee. (~~Agencies are to bill the Washington state patrol identification and criminal history))~~

The section will reimburse sheriffs' offices for the actual registration cost not to exceed thirty-two dollars for each registration which ((shall)) must include photographs and fingerprints submitted pursuant to RCW 9A.44.130. This fee will further ensure that direct and indirect costs at the county level associated with the provisions of this chapter are refunded by the ((Washington state patrol identification and criminal history)) section on a monthly basis based upon ((receipt of an invoice from the county sheriff indicating)) the number of registrations submitted.

AMENDATORY SECTION (Amending WSR 05-03-034, filed 1/10/05, effective 2/10/05)

WAC 446-20-600 Fees. (1) A nonrefundable fee (~~of thirty-five dollars shall~~) must accompany each request for conviction records submitted for a name and date of birth background check or a (~~ten-dollar fee for a name and date of birth electronic request, thirty dollar fee if the request is submitted~~) background check requested by fingerprint ((and)) search at the state level pursuant to RCW 43.43.830 through 43.43.845, and chapter 10.97 RCW unless through prior arrangement, an account is authorized and established.

(2) A nonrefundable FBI fee (~~of twenty-four dollars shall~~) will be charged for fingerprint cards submitted for federal searches. It (~~shall~~) will be the responsibility of the (~~Washington state patrol~~) section to collect all fees due and forward fingerprint cards and fees to the FBI.

(3) A nonrefundable fee (~~of thirteen dollars shall~~) will be charged for taking fingerprint impressions by the (~~Washington state patrol~~) section. Fees are to be deposited in the Washington state patrol fingerprint identification account.

(4) All fees are to be made payable to the Washington state patrol and are to be remitted by cash, cashier's check, money order or check written on a business account. Credit cards may be used only for payment of electronic requests and for any other fingerprint or conviction record services the state patrol has implemented credit card payment procedures. The (~~Washington state patrol identification and criminal history~~) section (~~shall~~) must adjust the fee schedule as may be practicable to ensure that direct and indirect costs associated with the provisions of these chapters are recovered.

(5) Pursuant to the provisions of RCW 43.43.838 and chapter 28A.410 RCW, no fees will be charged to a nonprofit organization, or volunteers in school districts and educational service districts for background checks.

AMENDATORY SECTION (Amending WSR 05-07-141, filed 3/23/05, effective 4/23/05)

WAC 446-20-610 Superintendent of public instruction—Prospective educational employees—Fees. (1) In

addition to the state search, an FBI search is required for requests submitted under chapter 28A.410 RCW. One fingerprint card is required to be submitted to the Washington state patrol identification and criminal history section.

(2) Appropriate nonrefundable fees are to be charged and made payable to the Washington state patrol for searches conducted under chapter 28A.410 RCW ((as follows:

(a) ~~The fee for the state search is twenty dollars for school district employees.~~

(b) ~~The fee for the state search is thirty dollars for persons applying for their certification or for contractual employees.~~

(c) ~~The fee for the FBI search is twenty-four dollars.~~

(d) ~~In addition, an eleven-dollar processing fee will be charged for each fingerprint background check processed under chapter 28A.410 RCW. The Washington state patrol will reimburse the superintendent of public instruction eleven dollars for each fingerprint background check processed under this chapter for applicants who are certificated, contractual or classified).~~

(3) Prospective employees hired by the superintendent of public instruction, educational service districts, school districts and/or their contractors ((shall)) must pay the appropriate fees for state and federal fingerprint checks conducted under chapter 28A.410 RCW.

(4) Fees are to be deposited in the Washington state patrol fingerprint identification account.

AMENDATORY SECTION (Amending WSR 05-07-157, filed 3/23/05, effective 4/23/05)

WAC 446-20-630 Department of social and health services—Child care licensing—Fees. (1) In addition to the state search, an FBI search is required for requests submitted under chapter 74.15 RCW. One fingerprint card is required to be submitted to the Washington state patrol identification and criminal history section.

(2) Department of social and health services (DSHS) ((shall)) will process fingerprint background checks under chapter 74.15 RCW, RCW 43.43.837 and 43.20A.710. ((Under "reason fingerprinted," cards will be marked "DSHS Child Care Licensing RCW 74.15.030" or "DSHS Child Care Licensing RCW 74.15.030 DDD."))

(3) ~~Department of social and health services, division of children and family services (DCFS) shall pay the expense and submit a waiver of fee form on licensees if the background check expense would work a hardship on the licensee. The six-dollar processing fee will not be applicable when a waiver of fee form is submitted to the Washington state patrol or the fingerprint card is marked "volunteer."~~

(4) ~~A monthly billing account will be established for the DSHS division of developmental disabilities (DDD). The six-dollar processing fee will not be applicable on any fingerprint cards indicated as "DDD."~~

(5) ~~Each month the Washington state patrol shall prepare a billing statement and detail report for waiver of fee forms from DCFS and for all DDD fingerprint cards submitted.~~

(6) ~~All fees collected under chapter 74.15 RCW, will be deposited into the Washington state patrol fingerprint identification account.~~

(7) ~~Nonrefundable fees are to be charged to:~~

(a) ~~"DSHS child care licensing RCW 74.15.030" (division of children and family services (DCFS)) as follows:~~

(i) ~~The fee for the state search is thirty dollars.~~

(ii) ~~The fee for the FBI search is twenty-four dollars.~~

(iii) ~~A six-dollar processing fee.~~

(b) ~~"DSHS division of children and family services (DCFS) for fee waivers" as follows:~~

(i) ~~The fee for the state search is thirty dollars.~~

(ii) ~~The fee for the FBI search is twenty-four dollars.~~

(c) ~~"DSHS child care licensing RCW 74.15.030 division of developmental disabilities (DDD)" as follows:~~

(i) ~~The fee for the state search is thirty dollars.~~

(ii) ~~The fee for the FBI search is twenty-four dollars.~~

(d) ~~"DSHS child care licensing RCW 74.15.030" division of developmental disabilities "volunteers" as follows:~~

(i) ~~The fee for the state search is thirty dollars.~~

(ii) ~~The FBI fee shall be eighteen dollars on those fingerprint cards clearly designated as "volunteer" pursuant to provisions under Section 3e of the National Child Care Protection Act of 1993 as amended by the Crime Control Act of 1994.~~

(iii) ~~"Chapter 74.15 RCW" and "volunteer" must be entered in the "reason fingerprinted" box on both the state and FBI fingerprint cards submitted. Failure to indicate "volunteer" and the RCW citation on fingerprint cards will result in full fees being charged.)~~

(3) All nonrefundable fees collected will be deposited into the Washington state patrol fingerprint identification account.

(4) A nonrefundable state and FBI fee will be charged on fingerprint cards clearly designated as "volunteer" pursuant to the provisions under Section 3e of the National Child Care Protection Act of 1993 as amended by the Crime Control Act of 1994.

"RCW 43.43.837" and "volunteer" must be entered in the "reason fingerprinted" box on both the state and FBI fingerprint cards submitted. Failure to indicate "volunteer" and the RCW citation on fingerprint cards will result in full fees being charged.

WSR 09-22-081

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed November 3, 2009, 2:06 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-14-062.

Title of Rule and Other Identifying Information: WAC 458-16-260 Nonprofit day care centers, libraries, orphanages, homes for sick or infirm, hospitals, outpatient dialysis facilities, explains the property tax exemption for nonprofit hospitals and other nonprofit facilities, authorized in RCW 84.36.040.

Hearing Location(s): Capital Plaza Building, 4th Floor, L&P Large Conference Room, 1025 Union Avenue S.E., Olympia, WA, on December 8, 2009, at 10:00 a.m.

Date of Intended Adoption: December 15, 2009.

Submit Written Comments to: James A. Winterstein, P.O. Box 47471, Olympia, WA 98504-7471, e-mail JimWi@dor.wa.gov, fax (360) 570-5880, by December 8, 2009.

Assistance for Persons with Disabilities: Contact Martha Thomas no later than ten days before the hearing date, TTY 1-800-451-7985 or (360) 725-7497.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing a revision to this rule to clarify what property owned or used by a nonprofit hospital qualifies for property tax exemption. The proposed amendments provide a clear basis for determining when nonprofit hospital property is exempt. Rather than focusing solely on whether the property is used for in-patient care, the proposed rule focuses on whether the property is fully integrated into a licensed hospital unit.

Reasons Supporting Proposal: The proposed amendments are needed to address technological changes in the operation of nonprofit hospitals.

Statutory Authority for Adoption: RCW 84.36.865, 84.36.040.

Statute Being Implemented: RCW 84.36.040.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: James A. Winterstein, 1025 Union Avenue S.E., Suite # 544, Olympia, WA, (360) 570-5880; Implementation and Enforcement: Brad Flaherty, 1025 Union Avenue S.E., Suite # 200, Olympia, WA, (360) 570-5860.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required for the reason that the rule does not impose any new performance requirement or administrative burden on any small business.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is not a significant legislative rule as defined by RCW 34.05.328.

November 3, 2009

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-24-037, filed 11/28/01, effective 12/29/01)

WAC 458-16-260 Nonprofit day care centers, libraries, orphanages, homes for sick or infirm, hospitals, outpatient dialysis facilities. (1) **Introduction.** This ~~((rule))~~ section explains the property tax exemption available under the provisions of RCW 84.36.040 to property used by nonprofit day care centers, libraries, orphanages, homes for the sick or infirm, hospitals, outpatient dialysis facilities~~((, and))~~. This section also explains the property tax exemption available to property leased to and used by a hospital that is owned and operated by a public hospital district for hospital purposes.

(2) **Definitions.** For purposes of this ~~((rule))~~ section, the following definitions apply:

(a) "Convalescent" ~~((and))~~ or "chronic care" means any or all procedures commonly employed in caring for the sick including, but not limited to, administering medicines, preparing special diets, providing bedside nursing care, applying dressings and bandages, and carrying out any treatment prescribed by a duly licensed practitioner of the healing arts.

(b) "Day care center" means a facility that regularly provides care for a group of children for periods of less than twenty-four consecutive hours.

(c) "Home for the sick or infirm" means any home, place, or institution that operates or maintains facilities to provide convalescent or chronic care, or both, for three or more persons not related by blood or marriage to the operator, who by reason of illness or infirmity, are unable to properly care for themselves.

(i) The services must be provided to persons over a continuous period of twenty-four hours or more.

(ii) A boarding home, guest home, hotel, or similar institution that is held forth to the public as providing and supplying only room, board, or laundry services to persons who do not need medical or nursing treatment or supervision is not considered a "home for the sick or infirm" for purposes of this ~~((rule))~~ section.

(d) "Hospital" means a nonprofit organization, association, or corporation ~~((or public hospital established in accordance with chapter 70.44 RCW))~~ engaged in providing medical, surgical, nursing, or related health care services for the prevention, diagnosis, or treatment of human ~~((disease))~~ illness, pain, injury, disability, deformity, or abnormality, including mental illness, ((or retardation, as well as the equipment and facilities used by a nonprofit organization, association, or corporation or hospital established in accordance with chapter 70.44 RCW to deliver such services to inpatients. These services must be provided over a continuous period of twenty-four hours or more.

(i) "Hospital" also means any portion of a hospital building, or other buildings used in connection therewith, and the equipment therein operated as a part of a hospital unit or used as a residence for persons engaged or employed in the operation of a hospital including, but not limited to, a nurse's home or a residence for hospital employees.

(ii) "Hospital" does not mean:

(A) Hotels or similar places that furnish only food and lodging or simple domiciliary care;

(B) Clinics or physician's offices where patients are not regularly kept as bed patients for twenty-four hours or more;

(C) Nursing homes as defined in chapter 18.51 RCW; and

(D) Maternity homes as defined in chapter 18.46 RCW.

(e) "Hospital unit" means all buildings or properties that are part of an integrated, interrelated, homogeneous unit exclusively used for exempt hospital purposes. The term includes residential units exclusively used to temporarily house families of inpatients in an integrated program of hospital therapy.

(f) "Property" means real or personal property used by a nonprofit organization, association, or corporation or leased to and used by a hospital that is owned and operated by a public hospital district established under chapter 70.44 RCW-)) treatment of mentally incompetent persons, or treatment of

chemically dependent persons. The term also means all buildings or portions of buildings that are currently licensed as part of a hospital pursuant to chapters 70.41 or 71.12 RCW, and are part of an integrated, interrelated, homogeneous unit exclusively used for hospital purposes. The licensed hospital must be able to provide health care services to inpatients over a continuous period of twenty-four hours or more. The term also includes:

(i) Administrative and support facilities integral and necessary to the functioning of the licensed hospital;

(ii) Buildings used as a residence for persons engaged or employed on a regular basis in the operation of a licensed hospital. Such buildings include, but are not limited to, a nurse's home or a residence for hospital employees; and

(iii) Residential units administered by a licensed hospital that are exclusively used to temporarily house families of inpatients in an integrated program of therapy.

"Hospital" does not mean:

(A) Hotels or similar places that furnish only food and lodging or simple domiciliary care;

(B) Clinics or physician's offices not licensed as part of a hospital, where patients are not regularly kept as bed patients for twenty-four hours or more;

(C) Nursing homes as defined in chapter 18.51 RCW; and

(D) Maternity homes as defined in chapter 18.46 RCW.

(3) Exemption for exclusively used property. All real and personal property exclusively used by a nonprofit organization, association, or corporation for the following institutions is exempt from taxation:

(a) Day care centers;

~~(b) ((Pre)schools;~~

~~(e))~~ Free public libraries;

~~((d))~~ (c) Orphanages ~~((and orphan asylums));~~

~~((e))~~ (d) Homes for the sick or infirm;

~~((f))~~ (e) Hospitals for the sick; and

~~((g))~~ (f) Outpatient dialysis facilities.

(4) Exemption for loaned, leased, or rented property. Property loaned, leased, or rented to an institution listed in subsections (3)(a) through ~~((g))~~ (f) of this ~~((rule))~~ section is also exempt from taxation if:

(a) The property is exclusively used by the nonprofit organization, association, or corporation;

(b) The benefit of the exemption inures to the user; and

(c) The property was specifically identified as loaned, leased, or rented when the application for exemption was made.

(5) Property leased or rented to and used by a hospital that is owned and operated by a public hospital district. All real and personal property leased or rented to and used by a hospital owned and operated by a public hospital district established under chapter 70.44 RCW for hospital purposes is exempt from taxation. The benefit of the exemption must inure to the entity using the exempt property.

(6) Exclusive use required. Any portion of property exempt under subsections (3) through (5) of this ~~((rule))~~ section that is not exclusively used in a manner furthering the exempt purposes of the nonprofit organization, association, or corporation ~~((or the hospital purposes of public hospital district))~~ must be segregated and taxed. For example, hospital

property used by, and under the administrative control of, a physician to conduct his private practice must be segregated and taxed.

~~(7) ((Actual use and irrevocable dedication required. To be exempt from taxation under this rule, all property owned by a nonprofit organization, association, or corporation or owned and operated by a public hospital district established under chapter 70.44 RCW must be:~~

~~(a) In use; and~~

~~(b) Irrevocably dedicated to the exempt purpose of the nonprofit organization, association, or corporation.~~

~~(8))~~ **Additional requirements.** Any organization or association that applies for a property tax exemption under this ~~((rule))~~ section must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 sets forth additional conditions and requirements that must be complied with to obtain a property tax exemption under RCW 84.36.040.

WSR 09-22-082

PROPOSED RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2009-14—Filed November 3, 2009, 2:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-16-133.

Title of Rule and Other Identifying Information: Licensing of life settlement providers and brokers, financial responsibility requirements of life settlement providers, annual reporting of life settlement providers and brokers, standards for evaluating reasonableness of payments, disclosure forms, and verification of coverage form.

Hearing Location(s): Insurance Commissioner's Office, TR 120, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, on December 10, 2009, at 10:00 a.m.

Date of Intended Adoption: December 14, 2009.

Submit Written Comments to: Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, e-mail jimt@oic.wa.gov, fax (360) 586-3109, by November 23, 2009.

Assistance for Persons with Disabilities: Contact Lorie Villaflora by November 23, 2009, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Existing Viatical Settlement Act, chapter 48.102 RCW, was repealed and replaced with the New Life Settlement Act, chapter 104, Laws of 2009. One of the purposes of the proposed rules is to amend the existing rules to reflect this change. The proposed rules also: (1) Change the information required for the licensing of what are now life settlement providers and brokers, (2) establish the financial responsibility required of life settlement providers in order to be licensed, (3) set out the annual statement filing requirement for life settlement provider, (4) set forth the requirement for the filing of life settlement contracts and disclosure forms by life settlement providers and brokers, (5) establish the minimum level of com-

compensation to be paid to terminally or chronically ill owners of life insurance policies when selling their policies to life settlement providers, and (6) provide the disclosure form and verification of coverage form to be used by life insurers and life settlement providers and brokers.

Reasons Supporting Proposal: The proposed rules: (1) Will inform potential life settlement providers and brokers where to find the information to be licensed and what information is required, (2) provides information to life settlement providers about the filing of the required annual statement, (3) establish the amount and manner of financial responsibility for life settlement providers to be licenses [licensed], (4) provides the information as to how life settlement providers and brokers are required to file the contracts and disclosure forms that must be submitted to the commissioner for approval, (5) establishes the minimum compensation to be paid to terminally and chronically ill owners of life insurance policy owners when selling their policies, (6) specifically sets forth the disclosure form that life insurers are required to provide to owners of life insurance policies before lapse, and (7) provides the verification of coverage form that are to be used in life settlement transactions.

Statutory Authority for Adoption: RCW 48.02.060, 48.102.011, 48.102.046, 48.102.100, and 48.102.170.

Statute Being Implemented: RCW 48.102.011, 48.102.-021, 48.102.041, 48.102.080, 48.102.100, and 48.102.170.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7036; Implementation: Beth Berendt, Contract and Form Filing, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7117, John Hamje, Broker Licensing, P.O. Box 40257, Olympia, WA 98504-0257, (360) 725-7262, Jim Odiorne, Provider Licensing, P.O. Box 40259, Olympia, WA 98504-0259, (360) 725-7214; and Enforcement: Carol Sureau, Providers, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050, John Hamje, Brokers, P.O. Box 40257, Olympia, WA 98504-0257, (360) 725-7262.

No small business economic impact statement has been prepared under chapter 19.85 RCW. None of the current domestic companies offering life settlements meets the definition of small business under the law and none of the life settlement providers listed as active in the office of insurance commissioner databases are domestic. Therefore, no small business economic impact statement is required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7036, fax (360) 586-3109, e-mail jimt@oic.wa.gov.

November 4 [3], 2009
Mike Kreidler
Insurance Commissioner

Chapter 284-97 WAC

~~((VIATICAL))~~ LIFE SETTLEMENT REGULATION

AMENDATORY SECTION (Amending Order R 95-2, filed 10/20/95, effective 11/20/95)

WAC 284-97-010 Purpose(~~(s)~~) and scope(~~(-and effective date)~~). (1) The purpose of this chapter is to effectuate chapter 48.102 RCW, by establishing minimum standards and disclosure requirements to be met by ~~((viatical))~~ life settlement providers and ~~((viatical))~~ life settlement brokers with respect to ~~((viatical))~~ life settlement contracts advertised, solicited, or issued for delivery in this state, and licensing requirements for ~~((viatical))~~ life settlement providers and ~~((viatical))~~ life settlement brokers.

(2) ~~((Except as otherwise specifically provided, this chapter applies to every viatical settlement provider or viatical settlement broker as defined in RCW 48.102.005, that transacts viatical settlement business in this state on or after July 23, 1995. This chapter also applies to every viatical settlement contract executed between a viator and a viatical settlement provider in this state on or after July 23, 1995.~~

~~(3))~~ This regulation is not exclusive, and acts or omissions, whether or not specific in this chapter, may also be violations of other sections of the insurance code or other regulations promulgated thereunder.

AMENDATORY SECTION (Amending Order R 95-2, filed 10/20/95, effective 11/20/95)

WAC 284-97-015 Definitions. For purposes of this chapter:

(1) "Domestic life settlement provider" means a provider as defined in section 2(19), chapter 104, Laws of 2009 who if:

(a) A natural person either resides or has their principal place of business in this state, or both; or

(b) A legal entity that either has their principal place of business in this state, or is incorporated in or otherwise formed under the laws of the state of Washington, or both.

(2) "NAIC" means the National Association of Insurance Commissioners.

(3) "Nonresident or foreign life settlement provider" means a provider as defined in section 2(19), chapter 104, Laws of 2009 who if:

(a) A natural person does not either reside or have their principal place of business in this state, or both; or

(b) A legal entity who does not either have their principal place of business in this state, or is not incorporated in or otherwise formed under the laws of the state of Washington, or both.

(4) "SERFF" means the System for Electronic Rate and Form Filing. SERFF is a proprietary NAIC computer-based application that allows filers to create and submit rate, rule, and form filings electronically to the commissioner.

(5) "Solicitation" means, for example; proposing, negotiating, signing, or doing any act in furtherance of making or proposing to make a ~~((viatical))~~ life settlement contract. Solicitation specifically includes advertising by mail, use of the print or electronic media, telephone, or any other method

of presenting, distributing, issuing, circulating, or permitting to be issued or circulated any information or material in connection with a ~~((viatical))~~ life settlement contract.

~~((2)) "Viatical settlement contract" has the meaning set forth at RCW 48.102.005(3). The commissioner finds that the purchase of a life insurance policy or certificate is outside the scope of this chapter if the viatical settlement contract is entered into between the viator and a close friend or relative.))~~

AMENDATORY SECTION (Amending Order R 95-2, filed 10/20/95, effective 11/20/95)

WAC 284-97-020 Licensing requirements for ~~((viatical))~~ life settlement providers. (1) ~~((Beginning July 23, 1995, no individual, partnership, corporation, or other entity may act as a viatical settlement provider, or enter into or solicit a viatical settlement contract in this state unless it has first obtained a license from the commissioner.~~

~~(2) An initial application for licensing as a viatical settlement provider, or a subsequent application for reinstatement of a viatical settlement provider's license if the license has lapsed for more than three months, shall be accompanied by a licensing fee in the amount of two hundred fifty dollars. The annual renewal fee shall be twenty five dollars, due and payable on or before July 1 of each year.~~

~~(3)) The application form and instructions for obtaining a license as a life settlement provider are on the commissioner's web site at www.insurance.wa.gov.~~

~~(2) The application for a license as a ~~((viatical))~~ life settlement provider shall furnish all of the applicable following information ~~((, on a form prescribed by the commissioner))~~:~~

~~(a) The name of the applicant, its address, and organizational structure.~~

~~(b) Copies of its organizational documents, including but not limited to its: Articles of incorporation and any amendments thereto, certificate of incorporation and any amendments thereto, bylaws and any amendments thereto, partnership agreement and any amendments thereto, ~~((and))~~ articles of association and any amendments thereto, certificate of formation of a limited liability company and any amendments thereto, and limited liability company agreement and any amendments thereto.~~

~~(c) The identity of all: Stockholders holding ten percent or more of the voting securities; investors holding a ten percent or greater interest; partners; corporate officers; trustees; if an association, all of the members; all of the members of a limited liability company; and parent and affiliate entities, together with a chart showing the relationship of the applicant to any parent, affiliated or subsidiary entities.~~

~~(d) A list of all stockholders holding ten percent or more of the voting securities, investors holding a ten percent or greater interest, partners, and officers of any parent or affiliate entities.~~

~~(e) Biographical affidavits of all its officers, directors, investors holding a ten percent or greater interest, partners, members of a limited liability company, and members (if an association).~~

~~(f) For domestic ~~((viatical))~~ life settlement providers, fingerprint cards of all its officers, directors, trustees, inves-~~

tors holding a ten percent or greater interest, partners, members of a limited liability company, and members (if an association).

~~(g) A list of states in which the ~~((viatical))~~ life settlement provider is licensed on the date of application, a copy of each effective license, and a list of the states in which it is or was doing business.~~

~~(h) A list of all business licenses from any level of government, for which the applicant, its officers, partners, trustees, members of a limited liability company, and members (if an association), have applied, together with a certificate of incorporation from the Washington secretary of state, and a statement showing the current status of any such licenses, such as whether it has been revoked or suspended.~~

~~(i) A report stating whether any formal or informal regulatory action, by any level of state or federal government, is pending or has been taken against the applicant or its officers, directors, trustees, investors holding a ten percent or greater interest, partners, members of a limited liability company, or members (if an association).~~

~~(j) A report stating whether any criminal action or civil action has been taken, or is pending, against the applicant or its officers, directors, trustees, investors holding a ten percent or greater interest, partners, members of a limited liability company, or members (if an association).~~

~~(k) A copy of its most recent financial and operating reports, audited and unaudited.~~

~~(l) Copies of documents filed with the federal Securities and Exchange Commission and any applicable state securities regulator.~~

~~(m) A detailed plan of operations for the applicant's business, including but not limited to information regarding or identification of the following items:~~

~~(i) Escrow accounts and banks;~~

~~(ii) Advertising, brokerage, or distribution system to be used;~~

~~(iii) Marketing techniques to be used;~~

~~(iv) Marketing training program; and~~

~~(v) Contract offering and servicing facilities.~~

~~(n) For a nonresident provider, an appointment of the commissioner to receive service of process and a designation of the person to whom the commissioner shall forward legal process.~~

~~(o) A copy of the applicant's antifraud plan that meets the requirements of section 17, chapter 104, Laws of 2009.~~

~~(p) Such other information as the commissioner may reasonably require.~~

~~((4)) (3) To qualify for authority to transact business as a ~~((viatical))~~ life settlement provider ~~((,))~~ the applicant must:~~

~~(a) Possess unimpaired capital, and thereafter maintain unimpaired capital, in the amount of not less than one hundred fifty thousand dollars ~~((,~~~~

~~(5) Each viatical settlement provider holding a license in this state shall annually, on or before March 1 of each year, file with the commissioner an annual statement for the preceding calendar year. The annual statement shall be on a form prescribed by the commissioner.~~

~~(6) The commissioner may issue a temporary viatical settlement provider's license, that will expire no later than December 31, 1995, upon receipt and review of the applica-~~

tion required in subsection (3) of this section. After reviewing the application, the commissioner may issue the viatical settlement provider's license, refuse to issue such license, or revoke the temporary viatical settlement provider's license.)) and

(b) Comply with WAC 284-07-100 through 284-07-230, except WAC 284-07-100 (5), (6), and (7) and the applicant shall not be required to file any report, letter, or other document required by WAC 284-07-100 through 284-07-230 with the National Association of Insurance Commissioners (NAIC).

NEW SECTION

WAC 284-97-025 Annual reporting requirements for life settlement providers. (1) Every licensed life settlement provider must file with the commissioner an annual statement on or before March 1st for the immediately preceding calendar year ending December 31st. For good cause shown, the commissioner may grant an extension of time to file if the request for extension is received by the commissioner more than five business days prior to March 1st.

(2) The annual statement forms and instructions are on the commissioner's web site at www.insurance.wa.gov.

(3) In addition to any other requirements, for any policy settled within five years of policy issuance, the annual statement shall specify the total number, aggregate face amount, and life settlement proceeds of policies settled during the immediately preceding calendar year, together with a breakdown of the information by policy issue year.

(4) Annual statements filed by a life settlement provider with the commissioner must be filed in electronic form. Electronic form shall mean in pdf format and according to the instructions on the commissioner's web site.

AMENDATORY SECTION (Amending Order R 95-2, filed 10/20/95, effective 11/20/95)

WAC 284-97-030 Licensing ((requirements for viatical)) life settlement brokers. ((On and after July 23, 1995, no person may act as a viatical settlement broker, or solicit, negotiate, or enter into viatical settlement contracts in this state, unless licensed as a viatical settlement broker by the commissioner. A viatical settlement broker shall be qualified as a life insurance agent and appointed as a viatical settlement broker by each viatical settlement provider represented.

(1) Each applicant for a viatical settlement broker's license shall:

(a) Complete an application form furnished by the commissioner. The form shall be accompanied by a license fee in the amount of one hundred dollars. Applicants shall answer inquiries concerning their identity, provide fingerprint cards, and supply information about personal and business history and experience.

(b) A viatical settlement broker shall be appointed by each viatical settlement provider he or she represents. An appointment request form and the appointment fee in the amount of twenty dollars shall be submitted with the application for licensing.

(c) Applicants for a firm or corporate license shall provide copies of articles of incorporation, partnership agreements, or other indicia of current legal status, as appropriate.

(d) Every individual who acts as a viatical settlement broker on behalf of a firm or corporation shall be licensed and affiliated with the entity represented prior to solicitation or negotiation of a viatical settlement contract. Each request by a firm or corporation for an affiliation certificate shall be accompanied by a twenty-dollar filing fee.

(e) Applicants for a viatical settlement broker's license shall provide satisfactory evidence that no disciplinary action has resulted in the suspension or revocation of any federal or state license.

(f) Prior to application for a resident viatical settlement broker's license, an applicant shall pass the life insurance agent's examination in this state, but need not be licensed as a life insurance agent.

(g) Nonresident applicants may be licensed as viatical settlement brokers. Each nonresident applicant shall provide satisfactory proof that he or she has successfully passed a life insurance agent's examination in a state within the two-year period immediately preceding the date of the application, or that he or she holds a valid license as a life insurance agent or viatical settlement broker in his or her state of residence. In addition, the nonresident applicant shall certify that no disciplinary action has resulted in suspension or revocation of any federal or state license. Applicants for a nonresident viatical settlement broker's license shall designate and authorize the commissioner as his or her agent for service of process and shall specify the person to whom the commissioner shall forward legal process.

(2) A person applying for a viatical settlement broker's license who is transacting viatical settlement business on the effective date of this chapter, may apply to the commissioner for a temporary resident or nonresident viatical settlement broker's license. A temporary license may be issued by the commissioner if the person is otherwise eligible for such license but has not taken and passed a life insurance agent's examination in a state. The temporary license issued by the commissioner shall expire no later than December 31, 1995. After review of the application, the commissioner may issue the viatical settlement broker's license, refuse to issue such license, or revoke the temporary viatical settlement broker's license.

(3) A viatical settlement broker's license is renewable every two years, upon payment of a renewal fee in the amount of one hundred dollars. A viatical settlement broker's license expires on the licensee's month and day of birth plus one year from the date the license is first issued, if an individual, or two years from the issue date in the case of a firm or corporation. Failure to pay the renewal fee by the renewal date will automatically terminate the authority conferred by the license.

(4) Appointments of a viatical settlement broker expire on July 1 following their issue dates and every two years thereafter, unless previously cancelled or revoked.

(5) Affiliations expire on the renewal date for the licensed firm or corporation to which they apply, and expire every two years thereafter, unless previously cancelled or revoked.)) The application form and instructions for obtain-

ing a license as a life settlement broker are on the commissioner's web site at www.insurance.wa.gov.

NEW SECTION

WAC 284-97-035 Prompt reply to the commissioner required. Every licensed life settlement provider and broker licensed under chapter 48.102 RCW, must promptly reply in writing to an inquiry of the commissioner relative to the business of life settlements. A timely response is one that is received by the commissioner within fifteen business days from receipt of the inquiry. Failure to make a complete and timely response constitutes a violation of this section.

AMENDATORY SECTION (Amending Order R 95-2, filed 10/20/95, effective 11/20/95)

WAC 284-97-040 Contract and ~~(rate)~~ form filing requirements for ~~(viatical)~~ life settlement providers and ~~(viatical)~~ life settlement brokers. ~~((Beginning September 1, 1995,)) All ~~(viatical)~~ life settlement contracts ~~((shall))~~ as defined in section 2(12), chapter 104, Laws of 2009 and disclosure forms required by section 11, chapter 104, Laws of 2009 must be filed with and be approved by the commissioner prior to use in this state. No other forms shall be filed with the commissioner.~~

~~(1)(a) Life settlement providers must file with the commissioner:~~

~~(i) Their life settlement contract form completed in John Doe fashion; and~~

~~(ii) The disclosure form required by section 11(1), chapter 104, Laws of 2009.~~

~~(b) The life settlement contract form and disclosure form must be submitted as separate documents.~~

~~(c) Life settlement providers shall not file any other forms with the commissioner.~~

~~(d) Life settlement providers must submit the life settlement contract and disclosure forms filing through SERFF.~~

~~The SERFF filing instructions are in the SERFF Industry Manual on the SERFF web site at www.serff.com and the Washington state SERFF Life and Disability Rate and Form Filing General Instructions on the commissioner's web site at: www.insurance.wa.gov.~~

~~(2)(a) Life settlement brokers must file with the commissioner:~~

~~(i) The disclosure form required by section 11(1), chapter 104, Laws of 2009; and~~

~~(ii) The disclosure form required by section 11(3), chapter 104, Laws of 2009.~~

~~(b) These two disclosure forms must be submitted as separate documents.~~

~~(c) Life settlement brokers shall not file any other forms with the commissioner.~~

~~(d) Life settlement brokers must submit their disclosure form filings only in paper format.~~

~~(3)(a) Every ~~(viatical)~~ life settlement contract shall be in writing, in a type size of no less than ten points, shall be identified by a form number in the lower left-hand corner of the first page, and include the terms under which the ~~(viatical)~~ life settlement provider will pay compensation (called by whatever name) to the ~~(viator)~~ owner in exchange for the~~

assignment, transfer, sole devise, or bequest of the death benefit or assignment of ownership of the life insurance policy or certificate to the ~~(viatical)~~ life settlement provider ~~((or viatical settlement broker)).~~

~~(b) Every ~~(viatical)~~ life settlement contract shall provide for payment to the ~~(viator)~~ owner in a lump sum and shall be voidable at the option of the ~~(viator)~~ owner if the agreed value is not paid in full within ~~((thirty))~~ fifteen days of the date the ~~(viatical)~~ life settlement contract is executed by ~~((both the viator and the viatical settlement provider))~~ all parties thereto.~~

~~(c) Every ~~(viatical)~~ life settlement contract shall provide for transfer of the entire life insurance policy: Provided, however, That if agreed to in writing by both the insurer and the ~~(viator)~~ owner, a stated dollar value which is less than the full face amount of the life insurance policy (less any outstanding loans) may be transferred if:~~

~~(i) The ~~(viatical)~~ life settlement provider obtains a bond in favor of all beneficiaries of the policy other than the ~~(viatical)~~ life settlement provider in an amount sufficient to guarantee the payment of all premium for the balance of the premium-paying period as calculated on the effective date of the life insurance policy; or~~

~~(ii) Another arrangement acceptable to the commissioner is made which guarantees that the insurance policy will remain in full force and effect for the protection of beneficiaries designated by the ~~(viator)~~ owner (other than the ~~(viatical)~~ life settlement provider) until the death of the insured.~~

~~((2)) (4) The ~~(viatical)~~ life settlement contract shall provide for rescission no less favorable to the ~~(viator)~~ owner than as set forth in ~~((RCW 48.102.040 (3) and (4)))~~ section 14(9), chapter 104, Laws of 2009. The rescission provision shall appear on the first page of the contract. It shall provide that if the insured dies during the period of time allowed for rescission, the contract ~~((will be terminated effective the date of application and the parties are returned to their original positions))~~ is considered rescinded subject to repayment by the owner or the owner's estate of all proceeds and any premiums, loans, and loan interest to the life settlement provider. The contract shall provide a method for giving notice of rescission. If notice of rescission is given by mail, it shall be deemed given when deposited in the United States mail, first class postage prepaid.~~

~~((3)(a) Each form of viatical settlement contract filed with the commissioner shall include all of the following:~~

~~(i) A viatical settlement contract, completed in John Doe fashion;~~

~~(ii) A copy of a viator's application, completed in John Doe fashion;~~

~~(iii) A copy of an "Insurance Commissioner's Worksheet" as described in WAC 284-97-050(3), completed in John Doe fashion;~~

~~(iv) A copy of any written disclosure material that will be provided to a viator as required by RCW 48.102.035; this written disclosure shall set forth the name, address, and telephone number of the viatical settlement provider; and~~

~~(v) A copy of the pricing memorandum.~~

~~(b) That portion of the disclosure notice warning of possible tax consequences and possible effects on eligibility for public funds shall be prominently displayed.~~

~~(c) The disclosure notice shall state that before entering into a viatical settlement contract, the viator should consult with his or her life insurance agent or life insurer to determine whether accelerated benefits are available.~~

~~(d) The disclosure notice shall contain the definition of accelerated benefits set forth in WAC 284-23-620(1) in its entirety.~~

~~(4)) (5) The ((viatical)) life settlement contract shall specify any effect entering into the contract will have upon the continued availability of supplemental benefits or riders that are or may be attached to the life insurance policy that is the subject of the ((viatical)) life settlement contract, including assigning the responsibility for the continued payment of premiums. The benefits and riders considered shall include, but need not be limited to, the following:~~

~~(a) Guaranteed insurability options;~~

~~(b) Accidental death benefits, or accidental death and dismemberment benefits;~~

~~(c) Disability income or loss of income protection;~~

~~(d) Waiver of premium or monthly deduction waiver; and~~

~~(e) Family, spousal, or children's riders or benefits.~~

~~((5)) (6) No ((viatical)) life settlement contract may contain any limitation or restriction on the use of the proceeds by the ((viator)) owner.~~

AMENDATORY SECTION (Amending Order R 95-2, filed 10/20/95, effective 11/20/95)

WAC 284-97-050 Standards for evaluating reasonability of compensation. In order to assure that benefits offered to ~~((a viator))~~ an owner who is terminally or chronically ill are reasonable in relation to the rate, fee, or other compensation that is charged, any payout shall be no less than the greater of the amounts defined in subsections (1) and (2) of this section.

(1) Payouts shall be no less than the following percentage of the expected death benefit under the insurance policy, net of loans. The following are minimum standards and shall not be presumed to be proof of fairness as to any specific transaction.

(a) If the insured's life expectancy is less than ~~((twelve))~~ six months, then the percentage of the expected death benefit under the insurance policy, net of loans, to be received by the ~~((viator))~~ owner shall be no less than ~~((seventy-five))~~ eighty percent.

(b) If the insured's life expectancy is at least ~~((twelve))~~ six months, but less than ~~((twenty-four))~~ twelve months, then the percentage of the expected death benefit under the insurance policy, net of loans, to be received by the ~~((viator))~~ owner shall be no less than ~~((sixty-five))~~ seventy percent.

(c) If the insured's life expectancy is at least ~~((twenty-four))~~ twelve months, but less than ~~((thirty-six))~~ eighteen months, then the percentage of the expected death benefit under the insurance policy, net of loans, to be received by the ~~((viator))~~ owner shall be no less than ~~((fifty))~~ sixty-five percent.

(d) If the insured's life expectancy is at least ~~((thirty-six))~~ eighteen months, but less than twenty-five months, then the percentage of the expected death benefit under the insurance

policy, net of loans, to be received by the ~~((viator))~~ owner, shall be no less than ~~((thirty))~~ sixty percent.

(2) Payouts shall be no less than the ~~((expected death benefit))~~ greater of the cash surrender value or accelerated death benefit under the insurance policy ~~((, net of loans, reduced by the sum of the amounts described in (a), (b), and (c) of this subsection)).~~

~~((a) The viatical settlement provider may retain the amounts it would be required to pay to the insurer to keep the policy in force during the period of time ending concurrently with the insured's life expectancy.~~

~~(b) The viatical settlement provider may retain an allowance of fifteen percent of the expected death benefit, net of loans, to provide for a risk charge and for its expenses and profit.~~

~~(c) The viatical settlement provider may retain an allowance for the time value of money. The interest rate to be used is fifteen percent per annum, compounded monthly. The calculation shall be performed on the basis that the viatical settlement provider pays the present value of the expected death benefit under the insurance policy, net of loans, reduced by the amounts defined in (a) and (b) of this subsection. The payment to the viator shall reflect an interest adjustment for the period of time beginning when the viator is paid and ending concurrently with the insured's life expectancy.~~

~~(3) The viatical settlement provider shall maintain for each viator, a document bearing the title, "Insurance Commissioner's Worksheet" for ten years after the death of the insured, or rescission of the contract. The viatical settlement contract shall provide that the viator may at any time obtain upon request, without charge, a copy of the "Insurance Commissioner's Worksheet," the purpose of which is to assure that benefits comply with this section. This provision shall appear on the same page or page following the first occurrence of the statement of the amount to be paid to the viator. In addition to identifying the insured, the "Insurance Commissioner's Worksheet" shall be dated and shall include the text shown in items (a) through (j) of this subsection.~~

~~(a) Line one shall state, "(1) Life expectancy (measured from the date the viator is paid) is n = _____ months."~~

~~(b) Line two shall state, "(2) Death benefit proceeds expected from insurer is \$_____."~~

~~(c) Line three shall state, "(3) Amount expected to be paid by company to insurer is \$_____." The viatical settlement provider may substitute its name for the word "company."~~

~~(d) Line four shall state, "(4) Allowance for risk, expenses and profit, 15% of (2), is \$_____."~~

~~(e) Line five shall state, "(5) Interest rate is 15%."~~

~~(f) Line six shall state, "(6) Line (2), net of allowance for interest, is (2)/1.0125ⁿ = \$_____."~~

~~(g) Line seven shall state, "(7) Line (6), less (3) and less (4), is \$_____."~~

~~(h) Line eight shall state, "(8) Minimum percentage, 75%, 65%, 50%, or 30%, of (2) is \$_____."~~

~~(i) Line nine shall state, "(9) Minimum amount required by the commissioner, the greater of (7) or (8), is \$_____."~~

~~(j) Line ten shall state, "(10) Amount to be paid by company, no less than (9), is \$_____." The viatical settlement provider may substitute its name for the word "company."~~

(4) ~~The viatical settlement provider shall enclose with the submission of a viatical settlement contract form, and with the submission of a rate revision, for approval prior to use in this state, a pricing memorandum providing a description of the method and assumptions used in determining the value to be paid viators. At the time of submission of a pricing memorandum or at the time of submission of any subsequent supporting documentation, the viatical settlement provider may request the commissioner to withhold that material from public inspection in order to preserve trade secrets or prevent unfair competition, in accordance with RCW 48.02.120(3). Each page covered by such request shall be clearly marked "confidentiality requested." The memorandum shall include a description, which may use reasonable ranges, of the following:~~

~~(a) The procedure used to determine the insured's life expectancy including medical evaluation and use of health care professionals in such evaluation;~~

~~(b) The portion of the discount (difference between the death benefit of the life insurance policy or certificate and viatical settlement provider payment) due to market value interest rate (current worth of money) and how this interest rate is determined;~~

~~(c) The portion of the discount due to agent or broker compensation paid by the viatical settlement provider;~~

~~(d) The portion of the discount that is the viatical settlement provider's operation costs in connection with viatical~~

~~settlements, including acquisition and maintenance cost and risk charge;~~

~~(e) The portion of the discount due to other overhead costs and profit margin;~~

~~(f) The effect, if any, that policy loans, surrender charges, and the net cash surrender value in the insurance plan have on the pricing determination;~~

~~(g) How provision is made in the settlement determination for future insurance plan premiums, dividends or excess amounts, if any; and~~

~~(h) What provision, if any, is made in the settlement determination for supplemental insurance benefits or riders.))~~

NEW SECTION

WAC 284-97-900 Savings clause. Amendments to WAC 284-97-010 through 284-97-050 effective on or after July 26, 2009, do not affect any rights acquired or liabilities or obligations incurred under WAC 284-97-010 through 284-97-050 that existed prior to July 26, 2009, nor affects any proceedings instituted under those sections.

NEW SECTION

WAC 284-97-910 Lapse disclosure form. Section 13, chapter 104, Laws of 2009 requires that insurers provide a notice to owners of individual life insurance policies at certain times. The following is the only document approved by the commissioner to give this notice.

Important information about your life insurance policy
from the State of Washington Office of the Insurance Commissioner

Life insurance is a critical part of a broader financial plan. There are many options available, and you have the right to shop around and seek advice from different financial advisers in order to find the options best suited to your needs.

You are encouraged to consider the following possible alternatives to letting your life policy lapse. These alternatives include, but are not limited to:

- **Accelerated Death Benefit:** Your policy may provide an early or accelerated discounted benefit payment if you have a terminal or chronic illness.
- **Cash Surrender:** Your policy may have a cash surrender value your life insurer would pay you if you cancel it.
- **Gift:** You may be able to gift your policy to your beneficiary, who would then assume responsibility for paying premiums.
- **Life Settlement:** You may be able to sell your life insurance policy to a third party. You pay no further premium. The third party becomes the policyholder and receives the benefit upon the insured's death.
- **Maintain Your Policy:** You may be able to maintain your life insurance policy in force by paying the premiums directly or using your current policy values to pay the premiums.
- **Policy Changes:** You may be able to reduce or eliminate future premium payments by obtaining a paid-up policy, by reducing optional coverages, or through other options available from your life insurer.
- **Policy Loan:** You may be able to take out a loan from your life insurance company using the cash value of your policy as collateral. Loan proceeds can be used to pay the premiums or for other purposes.
- **Third-Party Loan:** You may be able to get a loan from another party to pay your policy's premiums. In return, the lender may require an assignment of a portion or all of the policy's death benefits.

These options may or may not be available depending on your circumstances and the terms of your life insurance policy. Please see your policy or contact your life insurance company, financial advisor, agent or broker to determine your particular options.

If you're a Washington state resident and have questions about life insurance and your rights, contact the Office of the Insurance Commissioner at 1-800-562-6900, or go to www.insurance.wa.gov. Ask questions if you don't understand your policy. Here's a list of commonly used terms:

Important information about your life insurance policy
from the State of Washington Office of the Insurance Commissioner

Accelerated death benefit: A benefit allowing terminally ill or chronically ill life insurance policyholders to receive cash advances of all or part of the expected death benefit. The accelerated death benefit can be used for health care treatments or any other purpose.

Cash surrender value: This term is also called "cash value," "surrender value," and "policyholder's equity." The amount of cash due to a policyholder who requests the insurance company cancel their life insurance policy before it matures or death occurs.

Expected death benefit: The face amount of the policy, less any policy loan amounts, that the insurance company is expected to pay the beneficiaries named in the life insurance policy upon the death of the insured.

Lapse: Refers to a life insurance policy ending or expiring when a policyholder stops making premium payments.

Life settlement: Refers to a contract in which the policyholder sells his or her life insurance policy to a third party for a one-time cash payment which is greater than the cash surrender value, but less than the death benefit of the policy. A life settlement includes a viatical settlement, defined below.

Policy loan: A loan issued by an insurance company using the cash value of a person's life insurance policy as collateral.

Viatical settlement: An arrangement in which someone with a terminal illness sells his or her life insurance policy at an amount less than the death benefit. The ill person receives cash, and the buyer receives the full amount of the death benefit. This death benefit is payable once the former policyholder dies.

This brochure is for informational purposes only and does not constitute an endorsement of any of the options described above.

NEW SECTION

WAC 284-97-920 Verification of coverage for life insurance policies form. Section 14(2), chapter 104, Laws of 2009 provides that the request for verification of coverage must be made on a form approved by the commissioner. The following is the only verification of coverage form approved by the commissioner.

VERIFICATION OF COVERAGE FOR LIFE INSURANCE POLICIES

SUBMITTED TO: _____ **NAIC#** _____
Name of Insurance Company

POLICY NUMBER: _____

SUBMITTED FROM: _____
Name of Life Settlement Broker/Provider

ADDRESS: _____

TELEPHONE NUMBER: _____

CONTACT: _____ **TITLE:** _____

IF INFORMATION IS CORRECT, INSURER REPRESENTATIVE MAY PLACE A CHECKMARK IN THE BOX. OTHERWISE PROVIDE CORRECTED INFORMATION THROUGHOUT THIS FORM. AN ASTERISK INDICATES INFORMATION THE LIFE SETTLEMENT PROVIDER/BROKER MUST PROVIDE.

POLICY OWNER'S AND INSURED'S INFORMATION

	This column to be completed by Life Settlement Broker/Provider	This column to be used by Insurance Company
Owner's Name	*	
Address	*	
City, state, ZIP code	*	
Tax ID or Social Security number	*	
Insured's name	*	
Insured's date of birth	*	
Second insured's name (if applicable)	*	
Second insured's date of birth (if applicable)	*	

POLICY OWNER'S AND INSURED'S INFORMATION

	This column to be completed by Life Settlement Broker/Provider	This column to be used by Insurance Company
I hereby consent by my signature below to release information requested by this form by the insurance company to the life settlement broker/provider.		
Signature of owner		Date signed

Page 1 of 4

IS THE POLICY IN FORCE?

YES

NO

IF NO, SIGN, AND DATE ON PAGE 4 AND RETURN TO THE LIFE SETTLEMENT BROKER OR PROVIDER THAT SUBMITTED THE VERIFICATION OF COVERAGE.

POLICY TYPE, RIDERS AND OPTIONS:

***TERM**

WHOLE LIFE

UNIVERSAL LIFE

VARIABLE LIFE

If a question is not applicable to the type of policy, write N/A in the column.

	This column to be completed by Life Settlement Broker/Provider	This column to be used by Insurance Company
Original issue date	*	
Maturity date of policy		
State of issue	*	
Does the policy have an irrevocable beneficiary?	*	
Is the policy currently assigned?	*	
Was the policy ever converted or reinstated?		
Is the policy in the contestability period?	*	
Is the policy in the suicide period?	*	
Please list all riders and indicate if any are in the contestable or suicide period.	*	

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POLICY VALUES

	This column to be completed by Life Settlement Broker/Provider	This column to be used by Insurance Company
Policy values as of (insert date)		
Current face amount of policy	*	
Amount of accumulated dividends		
Current face amount of riders		
Amount of any outstanding loans	*	
Amount of outstanding interest on policy loans		
Current net death benefit	*	
Current account value	*	
Current cash surrender value	*	
Is policy participating?	*	
If yes, what is the current dividend option?		

PREMIUM INFORMATION

	This column to be completed by Life Settlement Broker/Provider	This column to be used by Insurance Company
Current payment mode	*	
Current modal premium	*	
Date last premium paid	*	
Date next premium due	*	
Current monthly cost of insurance as of (insert date)		
Date of last cost of insurance deduction		
TO BE COMPLETED BY LIFE SETTLEMENT BROKER/PROVIDER		
The information submitted for verification by the life settlement broker/provider is correct and accurate to the best of my knowledge and has been obtained through the policy owner and/or insured.		
Signature	Printed name	

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TO BE COMPLETED BY INSURANCE COMPANY

The information provided by verification by the insurance company is correct and accurate to the best of my knowledge as of _____ (date).

Insurance company: _____ NAIC # _____

Printed name: _____ Title: _____

Telephone number: _____ Fax number: _____

Signature: _____

Please provide information about where the forms listed below should be submitted for processing.

Name: _____ Title: _____

Company Name: _____

Mailing Address: _____

City, State, ZIP: _____

Overnight Address: _____

City, State, ZIP: _____

Telephone number: _____ Fax number: _____

FORMS REQUEST

Please provide the forms checked below:

- Absolute Assignment/Change of Ownership/Life Assignment
- Change of Beneficiary
- Release of Irrevocable Beneficiary (if applicable)
- Waiver of Premium Claim Form
- Disability Waiver of Premium Approval Letter
- Release of Assignment
- Change of Death Benefit Option Form (if UL)
- Allocation Change Form (if Variable)
- Annual Report
- Current In Force Illustration

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WSR 09-22-083
PROPOSED RULES
DEPARTMENT OF HEALTH
 (Board of Pharmacy)
 [Filed November 3, 2009, 3:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-15-061.

Title of Rule and Other Identifying Information: WAC 246-883-020 Identification of legend drugs for purposes of chapter 69.41 RCW.

Hearing Location(s): Green River Community College, 12401 S.E. 320th Street, Lindbloom Student Center, 1st Floor, Glacier Room, Auburn, WA 98092-3622, on December 10, 2009, at 9:00 a.m.

Date of Intended Adoption: December 10, 2009.

Submit Written Comments to: Doreen E. Beebe, Washington State Board of Pharmacy, P.O. Box 47863, Olympia, WA 98504-7863, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by December 4, 2009.

Assistance for Persons with Disabilities: Contact Doreen E. Beebe by December 7, 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 provide an up-to-date reference in rule to the 2009 edition of the commercial pharmaceutical publication, *Drug Topics Red Book* (Red Book) per RCW 69.41-075. The Red Book is the reference used by the state board of pharmacy (board) to identify federally-classified drugs. The proposal also corrects the address for the board of pharmacy administrative office, and provides a more efficient way to obtain the Red Book through the board.

Reasons Supporting Proposal: The board is charged with classifying drugs as legend or prescription only. It is necessary that the board use current references when classifying drugs in rule. The Red Book is an industry-recognized resource for healthcare professionals with the latest information on prescription and over-the-counter products. The reference includes drug package information: Dosage forms, route of administration, etc. The proposal also amends language to provide a more efficient way to obtain the book. Access to a current and trusted drug information resource will help ensure safe and optimal use of drugs.

Statutory Authority for Adoption: RCW 18.64.005 and 69.41.075.

Statute Being Implemented: RCW 69.41.075.

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

Name of Proponent: Washington state board of pharmacy, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Doreen E. Beebe, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4834; and Enforcement: Grant Chester, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4817.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared. The proposed rule

would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is not required under RCW 34.05.328. The board has determined this rule does not qualify as a significant rule under RCW 34.05.328 (5)(c)(iii).

November 3, 2009

Susan Teil Boyer

Executive Director

State Board of Pharmacy

AMENDATORY SECTION (Amending WSR 02-14-049, filed 6/27/02, effective 7/28/02)

WAC 246-883-020 Identification of legend drugs for purposes of chapter 69.41 RCW. (1) In accordance with chapter 69.41 RCW, the board of pharmacy finds that those drugs which have been determined by the Food and Drug Administration, under the Federal Food, Drug and Cosmetic Act, to require a prescription under federal law should also be classified as legend drugs under state law because of their toxicity or potential for harmful effect, the methods of their use and the collateral safeguards necessary to their use, indicate that they are only safe for use under the supervision of a practitioner.

(2) For the purposes of chapter 69.41 RCW, legend drugs are drugs which have been designated as legend drugs under federal law and are listed as such in the ~~((2002))~~ 2009 edition of the *Drug Topics Red Book*. Copies of the list of legend drugs as contained in the *Drug Topics Red Book* are available for public inspection at the headquarters office of the State Board of Pharmacy, ~~((1300 Quince Street))~~ 310 Israel Road S.E., P.O. BOX 47863, Olympia, Washington 98504-7863. To obtain copies of this list from the department, interested persons must submit a written request, indicating which format they wish to receive, and payment of ~~((seventy six dollars for each copy to the board))~~ the actual cost of the text or CD, including shipping and handling charges from the publisher. Requestors may also contact the publisher directly to obtain copies. The department takes no responsibility for periodic updates or on-line access. Arrangements for periodic updates or on-line access must be made directly with the publisher.

(3) There may be changes in the marketing status of drugs after the publication of the above reference. Upon application of a manufacturer or distributor, the board may grant authority for the over the counter distribution of certain drugs which had been designated as legend drugs in this reference. These determinations will be made after public hearing and will be published as an amendment to this chapter.

WSR 09-22-086
PROPOSED RULES
OFFICE OF
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2009-04—Filed November 3, 2009,
 3:40 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-11-047.

Title of Rule and Other Identifying Information: System for electronic rate and form filing (SERFF).

Hearing Location(s): Insurance Commissioner's Office, Room TR 120, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, on December 10, 2009, at 1:30 p.m.

Date of Intended Adoption: December 17, 2009.

Submit Written Comments to: Donna Dorris, P.O. Box 40258, Olympia, WA 98504-0258, e-mail donnad@oic.wa.gov, fax (360) 586-3109, by December 9, 2009.

Assistance for Persons with Disabilities: Contact Lori Villaflores by December 9, 2009, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal requires health care service contractors (HCSCs) and health maintenance organizations (HMOs) to file rates and form filings through the SERFF. This is consistent with the National Association of Insurance Commissioners (NAIC) speed to market initiative and the agencies business plan.

Anticipated effects, including any changes in existing rules: This rule will provide clarity and consistency of SERFF filing requirements, by identifying new process and procedures, resulting in streamlined rate and form filings.

Reasons Supporting Proposal: The SERFF system is designed to improve the efficiency of the rate and form filing process. In February 2009, implementation began for other lines of insurance, including property, casualty, disability, life and annuity. All but two HCSCs and HMOs are already voluntarily filing through SERFF. This process will reduce the time and cost involved for carriers in making regulatory filings.

Statutory Authority for Adoption: RCW 48.02.060, 48.44.050, and 48.46.200.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Donna Dorris, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7040; Implementation: Beth Berendt, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7117; and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. None of the current domestic HCSCs or HMOs meets the definition of small business under the law. Therefore, no small business economic impact statement is required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Donna Dorris, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7040, fax (360) 586-3109, e-mail donnad@oic.wa.gov.

November 3, 2009

Mike Kreidler
Insurance Commissioner

Chapter 284-44A WAC

HEALTHCARE SERVICE CONTRACTOR GENERAL RULES FOR ELECTRONIC FILING OF FORMS AND RATES IN SERFF

NEW SECTION

WAC 284-44A-010 Definitions that apply to this chapter. The definitions in this section apply throughout this chapter.

(1) "Complete filing" means a package of information containing forms, supporting information, documents and exhibits submitted to the commissioner electronically using the system for electronic rate and form filing (SERFF).

(2) "Date filed" means the date a complete filing has been received and accepted by the commissioner.

(3) "Filer" means:

(a) A person, organization or other entity that files forms or rates with the commissioner for an HCSC; or

(b) A person employed by the HCSC to file under this chapter.

(4) "Form" means a:

(a) "Contract" as defined in WAC 284-43-910; and includes:

(i) Applications;

(ii) Certificates of coverage;

(iii) Disclosure forms;

(iv) Enrollment forms;

(v) Policy forms, including riders;

(vi) Termination notice forms;

(vii) Short form filing summary, as outlined in the SERFF filing instructions; and

(viii) All other forms that are part of the contract.

(b) "Contract form" as defined in WAC 284-43-910;

(c) Network enrollment forms described in WAC 284-43-220(2);

(d) Participating provider agreements as required by RCW 48.44.070; and

(e) Medicare supplement forms required to be filed under chapter 48.66 RCW.

(5) "Health care service contractor" or "HCSC" means the same as in RCW 48.44.010.

(6) "NAIC" means the National Association of Insurance Commissioners.

(7) "Objection letter" means correspondence created in SERFF and sent by the commissioner to the filer that:

(a) Requests clarification, documentation or other information;

(b) Explains errors or omissions in the filing; or

(c) Disapproves a form under RCW 48.44.020 or 48.44.070.

(8) "Rate" or "rates" means all classification manuals, rate manuals, rating schedules, class rates, and rating rules that must be filed under RCW 48.44.040 or 48.66.035.

(9) "Rate schedule" means the same as in WAC 284-43-910.

(10) "SERFF" means the system for electronic rate and form filing. SERFF is a proprietary NAIC computer-based application that allows insurers and other entities to create

and submit rate, rule and form filings electronically to the commissioner.

(11) "Type of insurance" or "TOI" means a specific type of health care coverage listed in the *Uniform Life, Accident and Health, Annuity and Credit Coding Matrix* published by the NAIC and available at www.naic.org.

NEW SECTION

WAC 284-44A-020 Purpose of this chapter. The purpose of this chapter is to:

(1) Adopt processes and procedures for filers and HCSCs to use when submitting electronic forms and rates to the commissioner by way of SERFF.

(2) Effective July 1, 2010, designate SERFF as the method by which filers and HCSCs must submit all forms and rates to the commissioner.

NEW SECTION

WAC 284-44A-030 Scope of this chapter. This chapter applies to all HCSCs that must file forms and rates under RCW 48.44.040, 48.44.070, and 48.66.035.

NEW SECTION

WAC 284-44A-040 Filing instructions that are incorporated into this chapter. SERFF is a dynamic application that the NAIC will revise and enhance over time. To be consistent with NAIC filing standards and provide timely instructions to filers, the commissioner will incorporate documents posted on the SERFF web site into this chapter. By reference, the commissioner incorporates these documents into this chapter:

(1) The *SERFF Industry Manual* posted on the SERFF web site (www.serff.com); and

(2) The *Washington State SERFF Health and Disability Rate and Form Filing General Instructions* posted on the commissioner's web site (www.insurance.wa.gov).

NEW SECTION

WAC 284-44A-050 General form and rate filing rules. (1) Each form or rate filing must be submitted to the commissioner electronically using SERFF.

(a) Every form filed in SERFF must:

(i) Be attached to the form schedule; and

(ii) Have a unique identifying number and a way to distinguish it from other versions of the same form.

(b) Filers must send all written correspondence related to a form or rate filing in SERFF.

(2) All filed forms must be legible for both the commissioner's review and retention as a public record. Filers must submit new or revised forms to the commissioner for review in final form displayed in ten-point or larger type.

(3) Filers must submit complete filings that comply with the *SERFF Industry Manual* posted on the SERFF web site (www.serff.com) and the *Washington State Health and Disability Form Filing General Instructions* posted on the commissioner's web site (www.insurance.wa.gov).

(4) Filers must submit separate filings for each type of insurance.

NEW SECTION

WAC 284-44A-060 Specific rate filing rules. (1) If a rate filing is required under RCW 48.44.040 or 48.66.035, the filer must submit it:

(a) Separate from any corresponding form filing; and

(b) Concurrently with the corresponding form filing if new forms are being introduced.

(2) Each rate filing must include, if appropriate:

(a) Rates schedules;

(b) Actuarial data that supports the:

(i) Proposed rate schedules; and

(ii) Anticipated loss ratio; and

(c) Any additional data or information requested by the commissioner.

NEW SECTION

WAC 284-44A-070 The commissioner may reject filings. (1) The commissioner may reject and close any filing that does not comply with WAC 284-44A-040, 284-44A-050, or 284-44A-060. If the commissioner rejects a filing, the filer has not filed forms or rates with the commissioner.

(2) If the commissioner rejects a filing and the filer resubmits it as a new filing, the date filed will be the date the commissioner receives and accepts the new filing.

NEW SECTION

WAC 284-44A-080 Filing authorization rules. A HCSC may authorize a third-party filer to file forms or rates on its behalf. For the purposes of this section, a "third-party filer" means a person or entity in the business of providing regulatory compliance services.

(1) If an HCSC delegates filing authority to a third-party filer, each filing must include a letter as supporting documentation signed by an officer of the HCSC authorizing the third-party filer to make filings on behalf of the HCSC.

(2) The HCSC may not delegate responsibility for the content of a filing to a third-party filer. The commissioner considers errors and omissions made by the third-party filer to be errors and omissions of the HCSC.

(3) If a third-party filer has a pattern of making filings that do not comply with this chapter, the commissioner may reject a delegation of filing authority from the HCSC.

NEW SECTION

WAC 284-44A-090 Rules for responding to an objection letter. An objection letter may ask the filer to revise a noncompliant form or rate filing or provide clarification or additional information. The objection letter will state the reason(s) for disapproval, including relevant case law, statutes and rules. Filers must:

(1) Provide a complete response to an objection letter. A complete response must include:

(a) A separate response to each objection, and if appropriate;

- (b) A description of changes proposed to noncompliant forms, and a replacement form attached to the form schedule; or
- (c) Revised exhibits and supporting documentation.
- (2) Respond to the commissioner in a timely manner.

NEW SECTION

WAC 284-44A-100 Rules for revised or replaced forms. If an HCSC files a revised or replaced form, the filer must provide the supporting documentation described below:

- (1) If a form is revised due to an objection(s) from the commissioner, the filer must provide a detailed explanation of all material changes to the disapproved form.
- (2) If a form which received final action is replaced with a new version, the filer must submit an exhibit that marks and identifies each change or revision to the replaced form using one of these methods:
 - (a) A draft form that strikes through deletions and underlines additions or changes in the form;
 - (b) A draft form that includes comments in the margins explaining the changes in the form; or
 - (c) A side-by-side comparison of current and proposed language.

NEW SECTION

WAC 284-44A-110 Effective date rules. (1) Filers must include a common implementation date for all forms or rates submitted in a filing.

- (2) Filers may submit a request to change the implementation date of a filing as a note to reviewer.

NEW SECTION

WAC 284-44A-120 Rules that apply to forms translated from English to another language. HCSCs may issue forms written in languages other than English.

- (1) If the HCSC translates the form from English to another language, the HCSC must:
 - (a) File the translated version of the form.
 - (b) Include written disclosure statements on the translated contract indicating that it is issuing the translated form on an informational basis and the English version is controlling for the purposes of application and interpretation. The disclosure statements must be in English and the language of the translated form and printed in bold face type of at least twelve-point font.
 - (c) Submit a certification with the filing by an officer employed by the HCSC that they will issue the English version of the form with the translated form.
- (2) When filing a translated form, the filer must:
 - (a) Identify the approved English version of the form by providing, as applicable, the:
 - (i) SERFF filing number;
 - (ii) Form number, edition date or edition identifier; and
 - (iii) Effective date of the filing.
 - (b) Submit certification by a professional translator certified by the American Translators Association or a comparable organization that the:

- (i) Translator has translated the English version of the form; and
- (ii) Translation is accurate.
- (3) The commissioner will file but not review or approve translated form.

Chapter 284-46A WAC**HEALTH MAINTENANCE ORGANIZATION GENERAL RULES FOR ELECTRONIC FILING OF FORMS AND RATES IN SERFF**NEW SECTION

WAC 284-46A-010 Definitions that apply to this chapter. The definitions in this section apply throughout this chapter.

- (1) "Complete filing" means a package of information containing forms, supporting information, documents and exhibits submitted to the commissioner electronically using the system for electronic rate and form filing (SERFF).
- (2) "Date filed" means the date a complete filing has been received and accepted by the commissioner.
- (3) "Filer" means:
 - (a) A person, organization or other entity that files forms or rates with the commissioner for an HMO; or
 - (b) A person employed by the HMO to file under this chapter.
- (4) "Form" means a:
 - (a) "Contract" as defined in WAC 284-43-910; and includes:
 - (i) Applications;
 - (ii) Certificates of coverage;
 - (iii) Disclosure forms;
 - (iv) Enrollment forms;
 - (v) Policy forms, including riders;
 - (vi) Termination notice forms;
 - (vii) Short form filing summary, as outlined in the SERFF filing instructions; and
 - (viii) All other forms that are part of the contract.
 - (b) "Contract form" as defined in WAC 284-43-910;
 - (c) Network enrollment forms described in WAC 284-43-220(2);
 - (d) Prepayment agreements described in RCW 48.46-060;
 - (e) Participating provider agreements as required by RCW 48.46.243; and
 - (f) Medicare supplement forms required to be filed under chapter 48.66 RCW.
- (5) "Health maintenance organization" or "HMO" means the same as in RCW 48.46.020.
- (6) "NAIC" means the National Association of Insurance Commissioners.
- (7) "Objection letter" means correspondence created in SERFF and sent by the commissioner to the filer that:
 - (a) Requests clarification, documentation or other information;
 - (b) Explains errors or omissions in the filing; or
 - (c) Disapproves a form under RCW 48.46.060 or 48.46-243.

(8) "Rate" or "rates" means all classification manuals, rate manuals, rating schedules, class rates, and rating rules that must be filed under RCW 48.46.060 or 48.66.035.

(9) "Rate schedule" means the same as in WAC 284-43-910.

(10) "SERFF" means the system for electronic rate and form filing. SERFF is a proprietary NAIC computer-based application that allows insurers and other entities to create and submit rate, rule and form filings electronically to the commissioner.

(11) "Type of insurance" or "TOI" means a specific type of health care coverage listed in the *Uniform Life, Accident and Health, Annuity and Credit Coding Matrix* published by the NAIC and available at www.naic.org.

NEW SECTION

WAC 284-46A-020 Purpose of this chapter. The purpose of this chapter is to:

(1) Adopt processes and procedures for filers and HMOs to use when submitting electronic forms and rates to the commissioner by way of SERFF.

(2) Effective July 1, 2010, designate SERFF as the method by which filers and HMOs must submit all forms and rates to the commissioner.

NEW SECTION

WAC 284-46A-030 Scope of this chapter. This chapter applies to all HMOs that must file forms and rates under RCW 48.46.060, 48.46.243, and 48.66.035.

NEW SECTION

WAC 284-46A-040 Filing instructions that are incorporated into this chapter. SERFF is a dynamic application that the NAIC will revise and enhance over time. To be consistent with NAIC filing standards and provide timely instructions to filers, the commissioner will incorporate documents posted on the SERFF web site into this chapter. By reference, the commissioner incorporates these documents into this chapter:

(1) The *SERFF Industry Manual* posted on the SERFF web site (www.serff.com); and

(2) The *Washington State SERFF Health and Disability Rate and Form Filing General Instructions* posted on the commissioner's web site (www.insurance.wa.gov).

NEW SECTION

WAC 284-46A-050 General form and rate filing rules. (1) Each form or rate filing must be submitted to the commissioner electronically using SERFF.

(a) Every form filed in SERFF must:

(i) Be attached to the form schedule; and

(ii) Have a unique identifying number and a way to distinguish it from other versions of the same form.

(b) Filers must send all written correspondence related to a form or rate filing in SERFF.

(2) All filed forms must be legible for both the commissioner's review and retention as a public record. Filers must

submit new or revised forms to the commissioner for review in final form displayed in ten-point or larger type.

(3) Filers must submit complete filings that comply with the *SERFF Industry Manual* posted on the SERFF web site (www.serff.com) and the *Washington State Health and Disability Form Filing General Instructions* posted on the commissioner's web site (www.insurance.wa.gov).

(4) Filers must submit separate filings for each type of insurance.

NEW SECTION

WAC 284-46A-060 Specific rate filing rules. (1) If a rate filing is required under RCW 48.46.060, or 48.66.035, the filer must submit it:

(a) Separate from any corresponding form filing; and

(b) Concurrently with the corresponding form filing if new forms are being introduced.

(2) Each rate filing must include, if appropriate:

(a) Rates schedules;

(b) Actuarial data that supports the:

(i) Proposed rate schedules; and

(ii) Anticipated loss ratio; and

(c) Any additional data or information requested by the commissioner.

NEW SECTION

WAC 284-46A-070 The commissioner may reject filings. (1) The commissioner may reject and close any filing that does not comply with WAC 284-46A-040, 284-46A-050, or 284-46A-060. If the commissioner rejects a filing, the filer has not filed forms or rates with the commissioner.

(2) If the commissioner rejects a filing and the filer resubmits it as a new filing, the date filed will be the date the commissioner receives and accepts the new filing.

NEW SECTION

WAC 284-46A-080 Filing authorization rules. An HMO may authorize a third-party filer to file forms or rates on its behalf. For the purposes of this section, a "third-party filer" means a person or entity in the business of providing regulatory compliance services.

(1) If an HMO delegates filing authority to a third-party filer, each filing must include a letter as supporting documentation signed by an officer of the HMO authorizing the third-party filer to make filings on behalf of the HMO.

(2) The HMO may not delegate responsibility for the content of a filing to a third-party filer. The commissioner considers errors and omissions made by the third-party filer to be errors and omissions of the HMO.

(3) If a third-party filer has a pattern of making filings that do not comply with this chapter, the commissioner may reject a delegation of filing authority from the HMO.

NEW SECTION

WAC 284-46A-090 Rules for responding to an objection letter. An objection letter may ask the filer to revise a noncompliant form or rate filing or provide clarification or

additional information. The objection letter will state the reason(s) for disapproval, including relevant case law, statutes and rules. Filers must:

(1) Provide a complete response to an objection letter. A complete response must include:

(a) A separate response to each objection, and if appropriate;

(b) A description of changes proposed to noncompliant forms, and a replacement form attached to the form schedule; or

(c) Revised exhibits and supporting documentation.

(2) Respond to the commissioner in a timely manner.

NEW SECTION

WAC 284-46A-100 Rules for revised or replaced forms. If an HMO files a revised or replaced form, the filer must provide the supporting documentation described below:

(1) If a form is revised due to an objection(s) from the commissioner, the filer must provide a detailed explanation of all material changes to the disapproved form.

(2) If a form which received final action is replaced with a new version, the filer must submit an exhibit that marks and identifies each change or revision to the replaced form using one of these methods:

(a) A draft form that strikes through deletions and underlines additions or changes in the form;

(b) A draft form that includes comments in the margins explaining the changes in the form; or

(c) A side-by-side comparison of current and proposed language.

NEW SECTION

WAC 284-46A-110 Effective date rules. (1) Filers must include a common implementation date for all forms or rates submitted in a filing.

(2) Filers may submit a request to change the implementation date of a filing as a note to reviewer.

NEW SECTION

WAC 284-46A-120 Rules that apply to forms translated from English to another language. HMOs may issue forms written in languages other than English.

(1) If the HMO translates the form from English to another language, the HMO must:

(a) File the translated version of the form.

(b) Include written disclosure statements on the translated contract indicating that it is issuing the translated form on an informational basis and the English version is controlling for the purposes of application and interpretation. The disclosure statements must be in English and the language of the translated form and printed in bold face type of at least twelve-point font.

(c) Submit a certification with the filing by an officer employed by the HMO that they will issue the English version of the form with the translated form.

(2) When filing a translated form, the filer must:

(a) Identify the approved English version of the form by providing, as applicable, the:

(i) SERFF filing number;

(ii) Form number, edition date or edition identifier; and

(iii) Effective date of the filing.

(b) Submit certification by a professional translator certified by the American Translators Association or a comparable organization that the:

(i) Translator has translated the English version of the form; and

(ii) Translation is accurate.

(3) The commissioner will file but not review or approve translated form.

WSR 09-22-098

PROPOSED RULES

DEPARTMENT OF PERSONNEL

[Filed November 4, 2009, 10:37 a.m.]

Continuance of WSR 09-21-060.

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

Title of Rule and Other Identifying Information: WAC 357-04-045 Which part-time or temporary employees of higher education employers are exempt from civil service rules?

Hearing Location(s): Department of Personnel, 521 Capitol Way South, Olympia, WA 98504, on December 7, 2009, at 10:30 a.m.

Date of Intended Adoption: December 7, 2009.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by December 1, 2009. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by December 1, 2009, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: NOTE: Change of hearing location.

Statutory Authority for Adoption: RCW 41.06.150.

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

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, Olympia, WA, (360) 664-6408; Implementation and Enforcement: Department of personnel.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required.

A cost-benefit analysis is not required under RCW 34.05.328.

November 4, 2009

Eva N. Santos, Secretary
Personnel Resources Board

WSR 09-22-099
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed November 4, 2009, 11:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-13-078.

Title of Rule and Other Identifying Information: Chapter 296-126 WAC, Standards of labor for the protection of the safety, health, and welfare of employees for all occupations subject to chapter 49.12 RCW.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Room S119, Tumwater, WA, on December 14, 2009, at 9:00 a.m.

Date of Intended Adoption: January 19, 2010.

Submit Written Comments to: Sally Elliott, P.O. Box 44400, Olympia, WA 98504-4400, e-mail yous235@lni.wa.gov, fax (360) 902-5292, by December 14, 2009.

Assistance for Persons with Disabilities: Contact Sally Elliott by November 30, 2009, at yous235@lni.wa.gov or (360) 902-6411.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is proposed in response to the need of updating the current industrial welfare rules, which were adopted in 1974 and have not been reviewed by the department. The proposed rule will repeal and delete outdated requirements; remove duplicative provisions; establish rules consistent with current statutory requirements; specify the information for certain requirements; create cross references and update definitions and terms for consistency and clarity.

The following are changes that are being made with this rule making:

- WAC 296-126-001 is being updated to clarify the language, deleting reference to the industrial welfare committee and adding notes referring public employers to RCW 49.12.005(3) and referring employers to the variance rule in WAC 296-126-130.
- WAC 296-126-002 is updating definitions for:
 - o Employer to reflect the amended definition in chapter 49.12 RCW;
 - o Employee for clarity by restating the exemptions from the definition;
 - o Adult by deleting "of either sex";
 - o Minor by deleting "of either sex";
 - o Delete the definition of committee since the industrial welfare committee no longer exists; and
 - o Add the definition for department and director to be consistent with chapter 49.12 RCW.
- WAC 296-126-010 is deleting old language that refers to the adult minimum wage as \$1.80 an hour. Language is being added for employers who pay a wage rate under a special certificate issued by the department that is less than the minimum wage.
- WAC 296-126-015 is a new section that explains how to calculate the wage rate under special certificates.
- WAC 296-126-030(8) replacing the term "deductions" with "adjustments" to be consistent with other rules.

- WAC 296-126-040 is being updated to clarify the information required on the pay statement, that the pay statement is to be issued separately from the paycheck, that pay statements may be transmitted electronically provided that employees have access to receive it by such transmittal on the payday.
- WAC 296-126-050 is being updated to add clarity to the requirement for the employer to furnish a written reason for discharge within ten days of a former employee's request and to add a note that additional record-keeping requirements are stated in WAC 296-128-010 through 296-128-030.
- WAC 296-126-060 is being repealed to eliminate duplicate language requiring an employer employing minors to obtain a work permit that also is stated in chapter 296-125 WAC.
- WAC 296-126-080 is adding the title of the poster employers are required to keep.
- WAC 296-126-090 replacing the term "industrial welfare committee" with "department" to be consistent with RCW 43.22.280 and [43.22].282 and chapter 49.12 RCW.
- WAC 296-126-096 is being repealed because it contains requirements that the employer must inform employees that manual lifting will be part of the job and educating employees on techniques for lifting more than twenty pounds. The L&I division of safety and health has educational materials on lifting techniques.
- WAC 296-126-130 is being updated to provide clarity on the process for the issuance of variances.

Reasons Supporting Proposal: See purpose statement.

Statutory Authority for Adoption: Chapter 49.12 RCW.

Statute Being Implemented: Chapter 49.12 RCW.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Rich Ervin, Tumwater, Washington, (360) 902-5310; Implementation and Enforcement: Steve McClain, Tumwater, Washington, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule is specifically exempt from the small business economic impact statement requirement because its intent is to clarify rule language without changing its effect (see RCW 19.85.025 referencing RCW 34.05.310 (4)(d)).

A cost-benefit analysis is not required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Sally Elliott, P.O. Box 44400, Olympia, WA 98504-4400, phone (360) 902-6411, fax (360) 902-5292, e-mail yous235@lni.wa.gov.

November 4, 2009

Judy Schurke

Director

AMENDATORY SECTION (Amending Order 74-9, filed 3/13/74, effective 4/15/74)

WAC 296-126-001 Applicability. ~~((These standards, adopted pursuant to the authority of chapter 49.12 RCW as amended by chapter 16, Laws of 1973 2nd ex. sess., shall apply to any person employed in any industry or occupation within the state of Washington, unless:~~

~~(1) Exempted by the provisions of chapter 49.12 RCW (newspaper vendors or carriers, domestic or casual labor in or about private residences, agricultural labor as defined in RCW 50.04.150, as now or hereafter amended, and sheltered workshops, are all exempt from these provisions);~~

~~(2) Otherwise exempted in rules and regulations adopted by the industrial welfare committee of the state of Washington;~~

~~(3) Exempted by a variance issued under the provisions in WAC 296-126-130;~~

~~(4) Such person is an employee of the state or any political subdivision, or municipal corporation to the extent that these rules conflict with any statute, rule or regulation adopted under the authority of the appropriate legislative body-))~~ (1) These rules apply to employers and employees in the state as defined in RCW 49.12.005 (3) and (4).

(2) These rules do not apply to:

(a) Newspaper vendors or carriers;

(b) Domestic or casual labor in or about private residences;

(c) Agricultural labor as defined in RCW 50.04.150; or

(d) Sheltered workshops.

Note 1: Public employers and employees should review RCW 49.12.005 (3)(a) and (b) and WAC 296-126-002(2) to determine applicability.

Note 2: For a variance from the rules under this chapter, see WAC 296-126-130.

AMENDATORY SECTION (Amending Order 76-15, filed 5/17/76)

WAC 296-126-002 Definitions. (1) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees, unless exempted by chapter 49.12 RCW or these rules. For purposes of these rules, the state or its political subdivisions, municipal corporations, quasi-municipal corporations (collectively called "public employers") are considered to be "employers" and subject to these rules in the following manner:

(a) Before May 2003, public employers are not subject to these rules unless the rules address:

(i) Sick leave and care of family members under RCW 49.12.265 through 49.12.295.

(ii) Parental leave under RCW 49.12.350 through 49.12.-370.

(iii) Compensation for required employee uniforms under RCW 49.12.450.

(iv) Employers' duties towards volunteer firefighters and reserve officers under RCW 49.12.460.

(b) After May 2003, public employers are subject to these rules only if these rules do not conflict with the following:

(i) Any state statute or rule.

(ii) Any local resolution, ordinance, or rule adopted before April 1, 2003.

(2) "Employee" means an employee who is employed in the business of his employer whether by way of manual labor or otherwise. ~~((This definition is not intended, for purposes of these regulations, to))~~ "Employee" does not include:

(a) Any individual registered as a volunteer with a state or federal volunteer program or any person who performs any assigned or authorized duties for an educational, religious, governmental or nonprofit charitable corporation by choice and receives no payment other than reimbursement for actual expenses necessarily incurred in order to perform such volunteer services;

(b) Any individual employed in a bona fide executive, administrative or professional capacity or in the capacity of commissioned outside salesperson; ((not is it intended to include))

(c) Independent contractors where said individuals control the manner of doing the work and the means by which the result is to be accomplished.

(3) "Employ" means to engage, suffer or permit to work.

(4) "Adult" means any person ~~((of either sex,))~~ eighteen years of age or older.

(5) "Minor" means any person ~~((of either sex,))~~ under eighteen years of age.

(6) "Student learner" means a person enrolled in a bona fide vocational training program accredited by a national or regional accrediting agency recognized by the United States Office of Education, or authorized and approved by the Washington state commission for vocational education, who may be employed part time in a definitely organized plan of instruction.

(7) "Learner" means a worker whose total experience in an authorized learner occupation is less than the period of time allowed as a learning period for that occupation in a learner certificate issued by the director pursuant to regulations of the department of labor and industries.

(8) "Hours worked" shall be considered to mean all hours during which the employee is authorized or required by the employer to be on duty on the employer's premises or at a prescribed work place.

(9) "Conditions of labor" shall mean and include the conditions of rest and meal periods for employees including provisions for personal privacy, practices, methods and means by or through which labor or services are performed by employees and includes bona fide physical qualifications in employment, but shall not include conditions of labor otherwise governed by statutes and rules and regulations relating to industrial safety and health administered by the department.

(10) ~~((("Committee" shall mean the industrial welfare committee as provided by law. The committee's secretary is the supervisor of employment standards in care of the Department of Labor and Industries, General Administration Building, Olympia, Washington 98504.))~~ "Department" means the department of labor and industries.

(11) "Director" means the director of the department of labor and industries or the designated representative.

AMENDATORY SECTION (Amending Order 74-9, filed 3/13/74, effective 4/15/74)

WAC 296-126-010 ((Minimum wages—Adults:))
Exceptions to minimum wage rate—Special certificates.
 ((Except where a higher minimum wage is required by Washington state or federal law;

(1) Every employer shall pay to each of his or her adult employees wages at a rate of not less than one dollar and eighty cents per hour, and effective January 1, 1975, not less than two dollars per hour, whether computed on an hourly commission, piecework or other basis, except as may be otherwise provided by law or regulation.

(2) These provisions shall not apply to outside commissioned salespersons; or to trainees, learners, student learners, apprentices or handicapped persons for whom special certificates or special permits have been issued as set forth in RCW 49.12.110. These special rates shall be computed as follows: Learners—85% of the applicable minimum wage; student learner—75% of the applicable minimum rate; handicapped—at a rate designed to reflect adequately the individual's earning capacity.) (1) The director may issue a special certificate to an employer authorizing the employer to pay at a wage rate that is less than the applicable minimum wage rate to the following employees:

(a) An employee who is physically or mentally handicapped to such a degree that he or she is unable to obtain employment in the competitive labor market;

(b) A trainee or learner not subject to the jurisdiction of the Washington state apprenticeship and training council under chapter 49.04 RCW; or

(c) A student learner.

(2) The director shall fix the minimum wage and issue a special certificate only where the director determines that an employer has applied for it in good faith.

(3) The director shall fix the duration of the validity of the certificate.

NEW SECTION

WAC 296-126-015 Wage rates under special certificates. Employers shall compute the wage rates under special certificates as follows:

(1) Physically and mentally handicapped employees: At a rate designed to adequately reflect the employees' earning capacity.

(2) Learners: At eighty-five percent of the applicable minimum wage rate.

(3) Student-learner: At seventy-five percent of the applicable minimum wage rate.

Note: See chapter 49.46 RCW and chapter 296-128 WAC for minimum wage laws.

AMENDATORY SECTION (Amending WSR 05-24-019, filed 11/29/05, effective 1/1/06)

WAC 296-126-030 Adjustments for overpayments.

(1) An overpayment occurs when an employer pays an employee for:

- (a) More than the agreed-upon wage rate; or
- (b) More than the hours actually worked.

(2) Recouping the overpayment may reduce the employee's gross wages below the state minimum wage.

(3) An employer cannot recover an overpayment when the disputed amount concerns the quality of work.

(4) An employer can recover an overpayment from an employee's paycheck provided the overpayment was infrequent and inadvertent. Infrequent means rarely, not occurring regularly, or not showing a pattern. Inadvertent means an error that was accidental, unintentional, or not deliberately done. The burden of proving the inadvertent error rests with the employer who made the error. The employer has ninety days from the initial overpayment to detect and implement a plan with the employee to collect the overpayment. If the overpayment is not detected within the ninety-day period, the employer cannot adjust an employee's current or future wages to recoup the overpayment. Recouping of overpayments is limited to the ninety-day detection period.

(5) In the case of employees covered by an unexpired collective bargaining agreement that expires on or after January 1, 2006, in which overpayments are included in the terms of the collective bargaining agreement, the effective date of this rule shall be the later of:

(a) The first day following expiration of the collective bargaining agreement; or

(b) The effective date of the revised collective bargaining agreement.

Helpful information:

The following are examples of when overpayments may or may not be allowed:

Example 1. Allowed. Overpayment of agreed wage rate: An employee was paid an agreed rate of ten dollars per hour but received a paycheck at the rate of eleven dollars per hour. The employer provided documentation of the overpayment to the affected employee and adjusted the employee's next paycheck for the amount overpaid in the previous pay period.

Example 2. Allowed. Overpayment for hours worked: An employee worked seventy-two hours in the pay period, but the employee was paid for eighty hours for that period. The employer provided documentation of the overpayment to the affected employee and adjusted the employee's next paycheck for the eight hours overpaid in the previous pay period.

Example 3. Not allowed. Overpayment not detected within ninety days of first occurrence: An employer agreed to pay an employee ten dollars per hour, but when the first check was received, the amount paid was paid at eleven dollars per hour. The employee may or may not have brought it to the attention of the employer. Six months later the employer detected the overpayments and adjusted the employee's wages in the next paycheck for the entire amount of the overpayment. This is not an allowable adjustment because it was not detected within ninety days from the first occurrence.

(6) The employer must provide advance written notice to the employee before any adjustment is made. The notice must include the terms under which the overpayment will be recouped. For example: One adjustment or a series of adjustments.

(7) The employer must provide documentation of the overpayment to the affected employee or employees.

(8) The employer must identify and record all wage ~~((deductions))~~ adjustments openly and clearly in employee payroll records.

(9) Regardless of the provisions of this section, if appropriate, employers retain the right of private legal action to recover an overpayment from an employee.

(10) This regulation does not apply to public employers. See chapter 49.48 RCW, Wages—Payment—Collection.

AMENDATORY SECTION (Amending Order 74-9, filed 3/13/74, effective 4/15/74)

WAC 296-126-040 Statements furnished. (1) Every employer shall furnish to each employee at the time of payment of wages an itemized statement showing the pay basis (i.e., hours or days worked), rate or rates of pay, gross wages and all deductions ~~((therefrom))~~ for that pay period.

(2) An itemized pay statement means a separate written statement from the paycheck issued to employees on each payday. Pay periods shall be identified on the pay statement by month, day, year, and payment date. The statement shall include the total of all actual hours worked, with regular and overtime hours shown separately, and all rate or rates of pay whether paid on hourly, salary, commission, piece rate or combination thereof or other basis during the pay period.

(3) The pay statement may be transmitted electronically provided each employee has access to receive and copy it on the payday. If an employee cannot receive an electronic pay statement at work or at home on the established payday, the employer must provide a written pay statement to the employee on the payday.

AMENDATORY SECTION (Amending Order 89-16, filed 10/24/89, effective 11/24/89)

WAC 296-126-050 Employment records. (1) Every employer shall keep for at least three years a record of the name, address, and occupation of each employee, dates of employment, rate or rates of pay, amount paid each pay period to each such employee and the hours worked.

(2) Every employer shall make the record described in subsection (1) available to the employee, upon request, at any reasonable time.

(3) ((Every employer shall, upon written request by the employee, furnish within ten working days of the request to each employee who is discharged a signed written statement, setting forth the reasons for such discharge and the effective date thereof.)) Every employer shall, within ten business days of receiving a written request by a former employee, furnish a signed written statement stating the reasons and effective date of discharge.

Note: Additional recordkeeping requirements for employers are stated in WAC 296-128-010 through 296-128-030 (rules regarding recordkeeping for employers subject to the Mini-

imum Wage Act, chapter 49.46 RCW) and WAC 296-131-017 (rule regarding recordkeeping for agricultural employers).

AMENDATORY SECTION (Amending Order 74-9, filed 3/13/74, effective 4/15/74)

WAC 296-126-080 Posting of order. The employer shall keep posted a current copy of these regulations in a form provided by the department, titled "Your Rights as a Worker in Washington State." The poster shall be positioned in a readily accessible location and within plain view in each work site where an employee or employees are employed.

AMENDATORY SECTION (Amending Order 76-15, filed 5/17/76)

WAC 296-126-090 Hours. Any employee who feels the number of hours or other matters relating to overtime employment are detrimental to the health, safety or welfare of the employee may request the department of labor and industries to make an investigation following which the department will issue findings and conclusions. Whenever the circumstances are found to be detrimental to the health, safety or welfare of the employee, the ~~((industrial welfare committee))~~ department may adopt additional or revised employment standards.

AMENDATORY SECTION (Amending Order 74-9, filed 3/13/74, effective 4/15/74)

WAC 296-126-130 Variance. (1) ~~((Upon written application from an employer, a variance from any standard herein may be granted by the industrial welfare committee for good cause shown as authorized by section 8, chapter 16, Laws of 1973 2nd ex. sess. The employer shall give notice to the employees or their representative so that they may submit their written views to the committee on any variance request.)) An employer may seek a variance from the rules under this chapter by submitting a written application to the director. The application must contain the following:~~

- (a) Reason(s) for the variance request; and
- (b) Evidence that the employer provided to the employees or to their representatives the following:
 - (i) The intent to submit a variance.
 - (ii) A copy of the requested variance.
 - (iii) The director's address or phone number or other contact information.

(2) The ~~((committee))~~ director may ~~((afford))~~ allow the ~~((applicant))~~ employer and any involved employee, or their representatives, the opportunity for oral presentation whenever circumstances of the particular application warrant such additional procedure.

(3) ((Temporary variance valid for not more than thirty calendar days may be issued by the committee for good cause where immediate action is necessary and warranted pending further review by the committee.)) After reviewing the application, the director shall grant the variance if the director determines that there is good cause for the variance from the rules under this chapter.

(4) "Good cause" (~~shall~~) means, but is not (~~be~~) limited to, those situations (~~in which the employer finds that his circumstance warrants an alternative procedure and where he is able to demonstrate to the committee that such alternative would~~) where the employer can justify the variance and can prove that the variance does not have a harmful effect on the health, safety, and welfare of the employees involved.

(5) The variance order shall state the following:

(a) The conditions the employer must maintain; and

(b) The practices, means, methods, operations, standards and processes which the employer must adopt under the variance.

(6) The director may revoke or terminate the variance order at any time after giving the employer at least thirty days' notice before revoking or terminating the order.

(7) The director may issue a temporary variance valid for no more than thirty calendar days when the employer demonstrates good cause and where immediate action is necessary pending further review by the director. An employer need not meet the requirement in subsection (1)(b) of this section in order to be granted a temporary variance.

(8) Employers do not require a variance in the following cases:

(a) Employers in construction trades with collective bargaining agreements negotiated under the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq. These employers may vary from the meal and rest period rules, WAC 296-126-092, provided the agreement specifically requires meal and rest periods and prescribes requirements concerning those meal and rest periods; and

(b) Public employers that have entered into collective bargaining agreements, labor/management agreements, or other mutually agreed to employment agreements that specifically vary from or supersede, in part or in total, the rules regarding meal and rest periods.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-126-060 Minor work permits.

WAC 296-126-096 Lifting.

Hearing Location(s): Washington State Liquor Control Board, 3000 Pacific Avenue S.E., Olympia, WA 98504, on December 9, 2009, at 10:00 a.m.

Date of Intended Adoption: December 16, 2009.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504-3080, e-mail rules@liq.wa.gov, fax (360) 664-9689, by December 9, 2009.

Assistance for Persons with Disabilities: Contact Karen McCall by December 9, 2009, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: During the 2009 legislative session, SHB 1435 was passed into law granting the liquor control board administrative authority to approve, deny, suspend, or revoke retail, wholesale, or distributor cigarette and tobacco products licenses. New laws are required to implement this legislation.

Reasons Supporting Proposal: The new rules will provide guidance and clarity to applicants wanting to apply for these types of licenses and current licensees wanting to make changes to their license.

Statutory Authority for Adoption: RCW 82.24.510, 82.24.550, 82.26.150, 82.26.220.

Statute Being Implemented: RCW 82.24.510, 82.24.550, 82.26.150, 82.26.220.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Tim Thompson, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1722.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No small business economic impact statement was prepared. This proposal does not change the impact on liquor licensees or stakeholders.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required.

November 4, 2009

Sharon Foster

Chairman

Chapter 314-33 WAC

CIGARETTE AND TOBACCO PRODUCTS LICENSE PROCESS

NEW SECTION

WAC 314-33-001 Cigarette and tobacco products license qualifications and application process. (1) Each cigarette and tobacco products license application is unique and investigated individually. The board may inquire and request documents regarding matters in connection with the cigarette and tobacco products license application. Following is a general outline of the cigarette and tobacco products license application process:

(a) The board may require proof concerning the applicant's identity.

WSR 09-22-100

PROPOSED RULES

LIQUOR CONTROL BOARD

[Filed November 4, 2009, 11:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-12-125.

Title of Rule and Other Identifying Information: Creating two new chapters in Title 314 WAC. Chapter 314-33 WAC, Cigarette and tobacco products license process and chapter 314-34 WAC, Cigarette and tobacco products violations.

(b) The board may conduct an investigation of the applicants' criminal history and administrative violation history, per RCW 82.24.510 and 82.26.150.

(2) Failure to respond to the board's requests for information within the timeline provided may cause the application to be denied.

NEW SECTION

WAC 314-33-005 Reasons the board may deny a cigarette or tobacco products license application. The following is a list of reasons the board may deny a cigarette or tobacco products license application:

- (1) Failure to meet qualifications or requirements for the specific cigarette or tobacco products license, as outlined in this chapter and chapters 82.24 and 82.26 RCW.
- (2) Failure to submit information or documentation requested by the board.
- (3) Misrepresentation of fact by any applicant.
- (4) Willfully withholding information.
- (5) Submitting false or misleading information.
- (6) The applicant has failed to submit payments of the taxes imposed under chapter 82.24 or 82.26 RCW along with reports and returns to the department of revenue as required.
- (7) If the applicant is a corporation and the corporation is not currently registered with the secretary of state.
- (8) The applicant is currently the subject of an outstanding felony arrest warrant.
- (9) The existence of disqualifying criminal history standards outlined in WAC 314-33-020.
- (10) The existence of disqualifying liquor and cigarette and tobacco products law or rule violation history standards outlined in WAC 314-33-025.

NEW SECTION

WAC 314-33-020 What criminal history might prevent an applicant from receiving or keeping a cigarette or tobacco products license? (1) For the purpose of reviewing an application for a license and for considering the denial, suspension, or revocation of any such license, the board may consider any prior criminal conduct of the applicant and criminal history record within the previous five years.

(2) When the board processes a criminal history check on an applicant, it uses a point system to determine a person's qualification for a license. The board will not normally issue a cigarette and tobacco products license to an applicant who has accumulated eight or more points as indicated below:

Description	Time period during which points will be assigned from date of conviction	Points assigned
Felony conviction	Five years	12 points

Description	Time period during which points will be assigned from date of conviction	Points assigned
Gross misdemeanor conviction for violation of chapters 82.24 and 82.26 RCW	Five years	12 points
Other gross misdemeanor conviction	Three years	5 points
Misdemeanor conviction	Three years	4 points
Nondisclosure of any of the above	n/a	4 points each

(3) If a case is pending for an alleged offense that would earn eight or more points, the board will hold the application for the disposition of the case. If the disposition is not settled within ninety days, the board may administratively close the application.

NEW SECTION

WAC 314-33-025 What liquor and cigarette and tobacco products law or rule violation history might prevent an applicant from receiving a cigarette or tobacco products license? The board will conduct an investigation of all applicants' liquor and cigarette and tobacco products law and/or rule administrative violation history. The board will not normally issue a cigarette and tobacco products license to a person, or to an entity that has the following violation history or to any person that has demonstrated a pattern of disregard for laws or rules: Four or more violations within the last two years of the date the application is received by the board.

NEW SECTION

WAC 314-33-030 What is the process if the board denies a cigarette or tobacco products license application? If the board denies a cigarette or tobacco products license application, the applicant may:

- (1) Request an administrative hearing per chapter 34.05 RCW; or
- (2) Reapply for the license no sooner than one year from the original denial date.

Chapter 314-34 WAC

CIGARETTE AND TOBACCO PRODUCTS VIOLATIONS

NEW SECTION

WAC 314-34-001 Purpose of chapter. The purpose of this chapter is to outline what a cigarette and/or tobacco prod-

ucts licensee can expect if a licensee receives an administrative violation notice alleging a violation of a statute under chapters 82.24 and 82.26 RCW, or under chapter 314-33 WAC.

NEW SECTION

WAC 314-34-003 Authority—Suspension or revocation of wholesale and retail cigarette and tobacco products licenses. (1) The board has full power and authority to suspend or revoke the license of any cigarette wholesale or retail licensee and tobacco products distributor or retail licensee upon sufficient showing that the license holder has violated the provisions of chapters 82.24 and 82.26 RCW or chapter 314-33 WAC.

(2) Any person possessing both a cigarette license and a tobacco products license is subject to suspension and revocation of both licenses for violation of either chapter 82.24 or 82.26 RCW or this chapter. For example, if a person has both a cigarette license and a tobacco products license, revocation of the tobacco products license will also result in revocation of the cigarette license.

(3) A person whose license has been suspended or revoked must not sell or permit the sale of tobacco products or cigarettes during the period of the suspension or revocation.

(4) For the purposes of this rule, "cigarettes" has the same meaning as in RCW 82.24.010 and "tobacco products" has the same meaning as in RCW 82.26.010.

(5) Any person whose license has been revoked must wait one year following the date of revocation before requesting a hearing for reinstatement. Reinstatement hearings are held pursuant to chapter 34.05 RCW.

NEW SECTION

WAC 314-34-005 What are the procedures for notifying a licensee of an alleged violation of a cigarette or tobacco products statute or regulation? When an enforcement officer believes that a cigarette and/or tobacco products licensee has violated a board statute or regulation, the officer may prepare an administrative violation notice (AVN) and mail or deliver the notice to the licensee or the licensee's agent. The AVN will include:

- (1) A brief narrative description of the violation(s) the officer is charging;
- (2) The date(s) of the violation(s);
- (3) A copy of the law(s) and/or regulation(s) allegedly violated;
- (4) An outline of the licensee's options as outlined in WAC 314-34-010; and
- (5) The penalty.

NEW SECTION

WAC 314-34-010 What options does a licensee have once they receive a notice of administrative violation? (1) A licensee has twenty days from receipt of the notice to:

- (a) Accept the recommended penalty; or
- (b) Request a settlement conference in writing; or

(c) Request an administrative hearing in writing. A response must be submitted on a form provided by the board.

(2) **What happens if a licensee does not respond to the administrative violation notice within twenty days?** If a licensee does not respond to the administrative violation notice within twenty days, the recommended penalty will go into effect.

(3) **What are the procedures when a licensee requests a settlement conference?**

(a) If the licensee requests a settlement conference, the hearing examiner or captain will contact the licensee or permit holder to discuss the violation.

(b) Both the licensee and the hearing examiner or captain will discuss the circumstances surrounding the charge, the recommended penalty, and any aggravating or mitigating factors.

(c) If a compromise is reached, the hearing examiner or captain will prepare a compromise settlement agreement. The hearing examiner or captain will forward the compromise settlement agreement, authorized by both parties, to the board for approval.

(i) If the board approves the compromise, a copy of the signed settlement agreement will be sent to the licensee and will become part of the licensing history.

(ii) If the board does not approve the compromise, the licensee will be notified of the decision. The licensee will be given the option to renegotiate with the hearing examiner or captain, of accepting the originally recommended penalty, or of requesting an administrative hearing on the charges.

(d) If the licensee and the hearing examiner or captain cannot reach agreement on a settlement proposal, the licensee may accept the originally recommended penalty, or the hearing examiner or captain will forward a request for an administrative hearing to the board's hearings coordinator.

NEW SECTION

WAC 314-34-015 What are the penalties if a cigarette and/or tobacco products license holder violates a cigarette or tobacco products law or rule? For the purposes of chapter 314-33 WAC, a two-year window for violations is measured from the date one violation occurred to the date a subsequent violation occurred.

- (1) 1st offense - License suspension for not less than thirty consecutive business days.
- (2) 2nd offense - License suspension for not less than ninety days - or more than twelve months.
- (3) 3rd and consecutive offenses - Subject to revocation.

NEW SECTION

WAC 314-34-020 Information about cigarette and/or tobacco products license suspensions. (1) On the date a cigarette and/or tobacco products license suspension goes into effect, a liquor enforcement officer will post a suspension notice in a conspicuous place on or about the licensed premises. This notice will state that the license has been suspended by order of the liquor control board due to a violation of a cigarette or tobacco products law or rule.

(2) During the period of cigarette and/or tobacco products license suspension, the licensee and employees:

(a) Are required to maintain compliance with all applicable cigarette and tobacco products laws and rules;

(b) May not remove, alter, or cover the posted suspension notice, and may not permit another person to do so;

(c) May not place or permit the placement of any statement on the licensed premises indicating that the premises have been closed for any reason other than as stated in the suspension notice;

(d) May not advertise by any means that the licensed premises is closed for any reason other than as stated in the liquor control board's suspension notice.

(3) During the period of cigarette and tobacco products license suspension:

(a) A retail cigarette and/or tobacco products licensee may operate his/her business provided there is no sale, delivery, removal, or receipt of cigarette and tobacco products.

(b) A cigarette wholesaler and tobacco products distributor licensee may operate his/her business provided there is no sale, delivery, removal, or receipt of cigarette and tobacco products.

NEW SECTION

WAC 314-34-030 Cigarette and other tobacco products violations. (1) The following is a list of cigarette violations:

(a) Taxes - failure to pay taxes as required;

(b) Stamps - tax stamp violations to include:

(i) Failure to affix stamps;

(ii) Forgery/counterfeit; or

(iii) Possession of unstamped cigarettes.

(c) Retailer obtaining cigarettes from an unauthorized source;

(d) Records - improper recordkeeping or failure to submit reports as required;

(e) Failure to allow inspections of any of the following:

(i) Premises;

(ii) Stamps;

(iii) Vehicles;

(iv) Cigarettes;

(v) Books; or

(vi) Records.

(f) Transporting violations to include failure to notify and improper records;

(g) Operating outside the capacity of the license and failure to secure the proper license; and

(h) License suspension violations.

(2) The following is a list of other tobacco product violations:

(a) Taxes - failure to pay taxes as required;

(b) Records - improper recordkeeping or failure to submit reports as required;

(c) Failure to allow inspections of any of the following:

(i) Premises;

(ii) Vehicles;

(iii) Tobacco products;

(iv) Books; or

(v) Records.

(d) Transporting violations to include failure to notify and improper records;

(e) Operating outside of the capacity of the license or failure to secure the proper license;

(f) Retailer not licensed as a distributor and obtaining tobacco products from an unlicensed distributor;

(g) Manufacturer representative's violation; and

(h) License suspension violations.

WSR 09-22-101

PROPOSED RULES

LIQUOR CONTROL BOARD

[Filed November 4, 2009, 11:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-12-123.

Title of Rule and Other Identifying Information: Created four new sections and amended fourteen sections in chapter 314-02 WAC, Requirements for retail liquor licenses; amended three sections in chapter 314-16 WAC, Retail licenses.

Hearing Location(s): Washington State Liquor Control Board, Headquarters Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on December 9, 2009, at 10:00 a.m.

Date of Intended Adoption: December 16, 2009.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504-3080, e-mail rules@liq.wa.gov, fax (360) 664-9689, by December 9, 2009.

Assistance for Persons with Disabilities: Contact Karen McCall by December 9, 2009, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Regulations relating to retail liquor licenses were impacted by 2009 legislative action. Certain rules were amended and new rules were created as part of implementing SSB 5367, creating a nightclub liquor license, ESH [ESHB] 2358, increases to most retail liquor licenses, and part of SSB 5834, allowing beer/wine specialty shops to sell kegs, and allowing private clubs to sell bottled wine for off-premises consumption.

Reasons Supporting Proposal: Implementation of legislation passed in 2009 required changes in current rule and creation of new rules to clarify and provide further guidance to licensees who are impacted by the new regulations.

Statutory Authority for Adoption: RCW 66.08.030, 66.24.600.

Statute Being Implemented: RCW 66.24.371, 66.24-600.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Alan Rathbun, Director, Licensing, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Pat Parmer, Chief Enforcement, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No small business economic impact statement was prepared. This proposal does not change the impact on liquor licensees or stakeholders.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required.

November 4, 2009
Sharon Foster
Chairman

- ~~((4))~~ (5) Snack bars;
- ~~((5))~~ (6) Taverns;
- ~~((6))~~ (7) Motels;
- ~~((7))~~ (8) Bed and breakfasts;
- ~~((8))~~ (9) Nonprofit arts organizations;
- ~~((9))~~ (10) Public houses;
- ~~((10))~~ (11) Grocery stores;
- ~~((11))~~ (12) Beer/wine specialty shops; and
- ~~((12))~~ (13) Beer/wine gift delivery business.

AMENDATORY SECTION (Amending WSR 08-17-067, filed 8/19/08, effective 9/19/08)

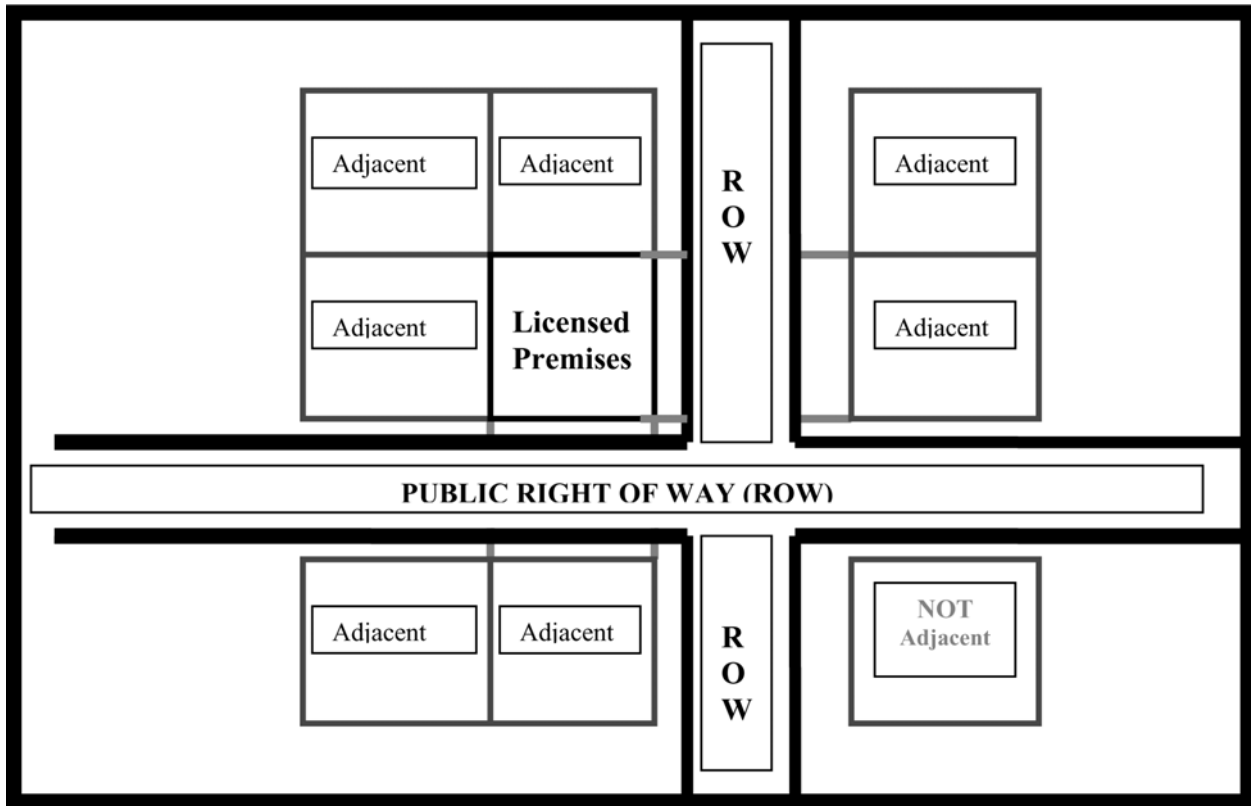
WAC 314-02-005 What is the purpose of chapter 314-02 WAC? Chapter 314-02 WAC outlines the qualifications for the following liquor licenses and permits:

- (1) Spirits, beer, and wine restaurants;
- (2) Nightclubs;
- (3) Hotels;
- ~~((3))~~ (4) Beer and/or wine restaurants;

AMENDATORY SECTION (Amending WSR 08-17-067, filed 8/19/08, effective 9/19/08)

WAC 314-02-010 Definitions. The following definitions are to clarify the purpose and intent of the rules and laws governing liquor licenses and permits. Additional definitions can be found in RCW 66.04.010.

(1) "Adjacent" means having a common endpoint or border where the extension of the property lines of the licensed premises contacts that common border.



(2) "Banquet room" means any room used primarily for the sale and service of food and liquor to private groups.

(3) "Customer service area" means areas where food and/or liquor are normally sold and served to the public, i.e., lounges and dining areas. A banquet room is not considered a customer service area.

(4) "Dedicated dining area." In order for an area to qualify as a dedicated dining area, it must be a distinct portion of a restaurant that is used primarily for the sale, service, and consumption of food, and have accommodations for eating,

e.g., tables, chairs, booths, etc. See WAC 314-02-025 for more information.

(5) "Designated area" means a space where alcohol may be sold, served, or consumed.

(6) "Entertainer" means someone who performs for an audience such as a disc jockey, singer, or comedian, or anyone providing entertainment services for the licensee. An entertainer is considered an employee of the liquor licensee per WAC 314-01-005. Patrons participating in entertainment are not considered employees.

(7) "Entertainment" means dancing, karaoke, singing, comedy shows, concerts, TV broadcasts, contests with patron participation and/or performing for an audience.

(8) "Food counter" means a table or counter set up for the primary purpose of food service to customers who sit or stand at the counter. Any alcohol served is incidental to food service.

((7)) (9) "Game room" means an area of a business set up for the primary purpose of patrons using games or gaming devices.

((8)) (10) "Liquor bar" means a table or counter where alcohol is stored or prepared and served to customers who sit or stand at the bar. Liquor bars can only be in lounges or in premises where minors are not allowed at any time.

((9)) (11) "Lounge" means the portion of a restaurant used primarily for the preparation, sale, and service of beer, wine, or spirits. Minors are not allowed in a lounge (see RCW 66.44.316 for information on employees and professional musicians under twenty-one years of age).

((10)) (12) "Minimum food service" means items such as sandwiches, salad, soup, hamburgers, and fry orders.

(13) "Minor" means a person under twenty-one years of age.

((11)) (14) "Service bar" means a fixed or portable table, counter, cart, or similar work station primarily used to prepare, mix, serve, and sell alcohol that is picked up by employees or customers. Customers may not be seated or allowed to consume food or alcohol at a service bar.

(15) "Snack food" means items such as peanuts, popcorn, and chips.

AMENDATORY SECTION (Amending WSR 05-22-022, filed 10/24/05, effective 11/24/05)

WAC 314-02-020 What are the fee categories for a spirits, beer, and wine restaurant license? (1) Per RCW 66.24.420, the annual fee for a spirits, beer, and wine restaurant license is graduated, as follows:

Amount of customer service area dedicated to dining	Annual fee
100%	\$(1,000) <u>1,105</u>
50 - 99%	\$(1,600) <u>1,768</u>
Less than 50%	\$(2,000) <u>2,210</u>

(2) In order for an area to qualify as a dedicated dining area it must be a separate and distinct portion of a restaurant that is used primarily for the sale, service, and consumption of food, and have accommodations for eating, e.g., tables, chairs, booths, etc. Areas dedicated to live music or entertainment, such as dance floors or stages are not considered dedicated dining areas. Dedicated dining areas may not contain:

(a) Liquor bars (see definition under WAC 314-02-010(2)); or

(b) Areas dedicated to games or gaming devices.

(3) The fee for a spirits, beer, and wine restaurant license outside of an incorporated city or town will be prorated according to the calendar quarters the licensee is open for business. This proration does not apply in the case of a suspension or revocation of the license.

(4) A duplicate license is required in order to sell liquor from more than one site on your property. These sites must be located on the same property and owned by the same licensee. The following types of businesses may apply for a duplicate license:

Type of Business	Annual fee per duplicate license
Airport terminal	25% of annual license fee
Civic center (such as a convention center)	\$(40) <u>11</u>
Privately owned facility open to the public	\$20

AMENDATORY SECTION (Amending WSR 05-22-022, filed 10/24/05, effective 11/24/05)

WAC 314-02-035 What are the food service requirements for a spirits, beer, and wine restaurant license? (1)

A spirits, beer, and wine restaurant licensee must serve at least four complete meals. Per RCW 66.24.410(2), a complete meal does not include hamburgers, sandwiches, salads, or fry orders. For purposes of this title:

(a) "Complete meal" means an entree and at least one additional course.

(b) "Entree" means the main course of a meal. To qualify as one of the four required complete meals, the entree must require the use of a dining implement to eat, and cannot consist of a hamburger, sandwich, salad, or fry order.

(2) The restaurant must maintain the kitchen equipment necessary to prepare the complete meals required under this section and RCW 66.24.410(2).

(3) The complete meals must be prepared on the restaurant premises.

(4) A chef or cook must be on duty while complete meals are offered.

(5) A menu must be available to customers that lists, at a minimum, the required complete meals.

(6) The food items required to maintain the menu must be on the restaurant premises. These items must be edible.

(7) Restaurants that have one hundred percent dedicated dining area must maintain complete meal service any time liquor is available for sale, service, or consumption.

(8) Restaurants with less than one hundred percent dedicated dining area (restaurants in the one thousand ~~((six*))~~ seven hundred sixty-eight dollar or two thousand two hundred ten dollar fee category) must maintain complete meal service for a minimum of five hours a day during the hours of 11:00 a.m. and 11:00 p.m. on any day liquor is served. The board may consider written requests for exceptions to this requirement due to demonstrated hardship, under such terms and conditions as the board determines are in the best interests of the public.

(a) Minimum food service, such as sandwiches, hamburgers, or fry orders, must be available outside of these hours.

(b) Snacks such as peanuts, popcorn, and chips do not qualify as minimum food service.

(9) The hours of complete meal service must be conspicuously posted on the premises or listed on the menu. If appli-

cable, a statement that minimum food service is available outside of those hours must also be posted or listed on the menu.

NEW SECTION

WAC 314-02-036 What is a spirits, beer, and wine nightclub license? (1) This license allows a nightclub as defined in RCW 66.04.010(28) to:

- (a) Sell and serve spirituous liquor by the individual drink for on-premises consumption;
 - (b) Sell and serve beer by the open bottle, can, or by tap for on-premises consumption; and
 - (c) Sell and serve wine for on-premises consumption.
- (2) To obtain and maintain a spirits, beer, and wine nightclub license the nightclub must have primary business hours between 9:00 p.m. and 2:00 a.m.
- (3) There are no food requirements for a spirits, beer, and wine nightclub license. Food sales and service are incidental to the sale and service of alcohol.
- (4) The annual fee for a spirits, beer, and wine nightclub license is two thousand dollars.

NEW SECTION

WAC 314-02-037 What are the floor space requirements for a spirits, beer, and wine nightclub license? (1) The liquor control board has the responsibility to classify what licensed premises or what portions of a licensed premises are off limits to minors.

- (a) Any areas in the licensed premises where alcohol is sold, served, or consumed is classified as off-limits to minors (RCW 66.44.310(2)).
- (b) Minors may be allowed on the licensed premises but only in areas where alcohol is not served or consumed.
- (2) **Barriers** - Licensees must place barriers separating restricted areas from areas where minors will be allowed.
 - (a) The barriers must clearly separate restricted areas and must be at least forty-two inches high.
 - (b) The barriers may be moveable.
 - (c) Liquor bars cannot be used as barriers (see definition of liquor bar in WAC 314-02-010(10)).
 - (d) Entrances to restricted areas may not be wider than ten feet. If a licensee has more than one entrance along one wall, the total entrance areas may not exceed ten feet.
 - (e) "Minor prohibited" signs, as required under WAC 314-11-060(1), must be posted at each entrance to a restricted area.
- (3) If the business allows minors, the primary entrance must open directly into a nonrestricted area. Minors must be able to access restrooms without passing through a restricted area.
- (4) **Floor plans** - When applying for a spirits, beer, and wine nightclub license, the applicant must provide to the board's licensing and regulation division two copies of a detailed drawing of the entire premises. If there will be different floor plans for different types of events that change the location and/or dimensions of the restricted area(s), the applicant must provide two copies of a detailed drawing for each floor plan. All restricted areas must be designated on the

floor plan(s) and be approved by the board. The drawing must be labeled with the type of event. The drawing must:

- (a) Have all rooms labeled according to their use; e.g., lounge, dance floor, stage area, foyer, restrooms, etc.; and
- (b) Have all barriers labeled in a descriptive way; e.g., "full wall," "half wall," etc.

NEW SECTION

WAC 314-02-038 Can a spirits, beer, and wine nightclub license exclude persons under twenty-one years of age from the premises? A spirits, beer, and wine nightclub licensee may exclude minors from the premises at all times.

- (1) To exclude minors from the entire licensed premises at all times, the applicant must:
 - (a) Indicate during the liquor license application process that he/she does not wish to have minors on the entire premises at all times; or
 - (b) If already licensed as a spirits, beer, and wine nightclub license that allows minors, the licensee may request permission from the board's licensing and regulation division to exclude minors at all times. See WAC 314-02-130 for instructions on requesting this approval.
- (2) Spirits, beer, and wine nightclub licensees who exclude minors from the premises may not employ minors. (See WAC 314-11-040 for more information on employing minors.)

NEW SECTION

WAC 314-02-039 What type of restrictions may be placed on a spirits, beer, and wine nightclub license? (1) Local government may petition the board to request further restrictions be imposed on a spirits, beer, and wine nightclub license in the interest of public safety. Public safety does not include items such as noise ordinances and trash pickup.

- (a) The local authority must request any additional restrictions within twenty days from the date of the local authority notice sent by the board.
- A request for additional restrictions must be accompanied by a written explanation for the restriction and how the restriction relates to public safety.
- (b) If the local authority requests further restrictions on the license, the board will notify the applicant of the local authorities' request.

- (c) Any restrictions requested by the local authority and approved by the board may be enforced by the board.
- (d) The board may impose the restriction of a "good neighbor agreement" requested by the local authority, but will not enforce agreements between a local authority and liquor licensee or applicant.

- (2) The local authority, the applicant, or the licensee may request an administrative hearing per chapter 34.05 RCW if they disagree with the decision the board makes on additional restrictions to the license, based on the interest of public safety.

AMENDATORY SECTION (Amending WSR 05-22-022, filed 10/24/05, effective 11/24/05)

WAC 314-02-045 What is a beer and/or wine restaurant license? (1) Per RCW 66.24.320 and 66.24.354, this license allows a restaurant to:

Privilege	Annual fee
(a) Serve beer by the bottle or can or by tap for on-premises consumption.	\$(200) <u>221</u>
(b) Serve wine for on-premises consumption (see RCW 66.24.320 regarding patrons removing recorked wine from the premises).	\$(200) <u>221</u>
(c) Sell beer and/or wine in the original, unopened containers for off-premises consumption.	\$(120) <u>133</u>
(d) Sell tap beer for off-premises consumption in a sanitary container holding less than four gallons of beer, and brought to the premises by the purchaser.	In conjunction with off-premises privilege outlined in subsection (c).
(e) Sell beer in kegs or other containers holding at least four gallons of beer (see WAC 314-02-115 regarding the requirements for registering kegs).	In conjunction with off-premises privilege outlined in subsection (c).

(2) All applicants for a beer and/or wine restaurant license must establish, to the satisfaction of the board, that the premises will operate as a bona fide restaurant, as defined in RCW 66.04.010(30). Minimum food service is required, as defined in WAC 314-02-010(12).

(3) If a beer and/or wine restaurant's dedicated dining area comprises less than fifteen percent of the total customer service area, the premises must maintain a tavern license (see WAC 314-02-070 regarding the tavern license).

AMENDATORY SECTION (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

WAC 314-02-060 What is a caterer's endorsement?

(1) A spirits, beer, and wine restaurant and a beer and/or wine restaurant applicant or licensee may apply for a caterer's endorsement, in order to extend the on-premises license privilege to allow the sale and service of liquor at approved locations other than the licensed premises. See RCW 66.24.420 (6) and RCW 66.24.320(2) for more information about this endorsement.

(2) The annual fee for this endorsement is three hundred ~~(fifty)~~ eighty-seven dollars.

AMENDATORY SECTION (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

WAC 314-02-065 What is a snack bar license?

(1) Per RCW 66.24.350, a snack bar license allows a licensee to serve beer by the opened bottle or can for on-premises consumption only.

(2) Snack bar licensees must have snack food, as defined in WAC 314-02-010(15), available whenever beer is sold or served.

(3) Snack bars must have designated seating for on-premises consumption of beer.

(4) The annual fee for this license is one hundred ~~(twenty-five)~~ thirty-eight dollars.

AMENDATORY SECTION (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

WAC 314-02-070 What is a tavern license? (1) Per RCW 66.24.330 and 66.24.354, this license allows a tavern to:

Privilege	Annual fee
(a) Serve beer by the bottle or can or by tap for on-premises consumption.	\$(200) <u>221</u>
(b) Serve wine for on-premises consumption.	\$(200) <u>221</u>
(c) Sell beer and/or wine in the original, unopened containers for off-premises consumption.	\$(120) <u>133</u>
(d) Sell tap beer for off-premises consumption in a sanitary container holding less than four gallons of beer, and brought to the premises by the purchaser.	In conjunction with off-premises privilege outlined in subsection (c).
(e) Sell beer in kegs or other containers holding at least four gallons of beer (see WAC 314-02-110 regarding the requirements for registering kegs).	In conjunction with off-premises privilege outlined in subsection (c).

(2) A tavern licensee may not allow persons under twenty-one years of age on the premises at any time (see RCW 66.44.316 for information regarding employees and professional musicians under twenty-one years of age).

AMENDATORY SECTION (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

WAC 314-02-090 What is a nonprofit arts organization license?

(1) Per RCW 66.24.495, this license allows a bona fide nonprofit organization to sell beer, wine, and spirits by the individual serving in conjunction with artistic or cultural exhibitions or performances.

(2) The nonprofit organization must be organized and operated for the purpose of providing artistic or cultural exhibitions, presentations, or performances or cultural or art education programs for viewing by the general public. See RCW 66.24.495(2) for specific organizational requirements.

(3) Alcohol sales and consumption may only be conducted in the lobby area and/or restricted bar area of the premises prior to the commencement of an exhibition or performance and during intermission.

Alcohol is not allowed in the seating areas of the facility.

(4) The annual fee for this license is two hundred fifty dollars.

AMENDATORY SECTION (Amending WSR 05-22-022, filed 10/24/05, effective 11/24/05)

WAC 314-02-095 What is a public house license? (1) Per RCW 66.24.580, a public house licensee is allowed to:

(a) Manufacture between two hundred fifty gallons and two thousand four hundred barrels of beer on the premises per year;

(b) Serve beer by the bottle or can or by tap for on-premises consumption; and

(c) Serve wine for on-premises consumption (see RCW 66.24.320 regarding patrons removing recorked wine from the premises).

(2) The annual fee for this license is one thousand one hundred five dollars.

(3) If a public house licensee wishes to allow persons under twenty-one years of age on the premises, the licensee must meet the requirements of a beer and/or wine restaurant license, per WAC 314-02-045 and 314-02-025.

(4) Public house licensees may apply for a spirits, beer, and wine restaurant license, in order to sell spirits by the individual serving for on-premises consumption (see WAC 314-02-015).

AMENDATORY SECTION (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

WAC 314-02-100 What is a grocery store license? (1) Per RCW 66.24.360, a grocery store license allows a licensee to sell beer and/or wine for off-premises consumption.

(2) The annual fee for this license is one hundred (~~(fifty))~~ sixty-six dollars.

(3) In order to obtain and maintain a grocery store license, the premises must be stocked with an inventory of at least three thousand dollars wholesale value of food for human consumption, not including soft drinks, beer, or wine. This minimum inventory must be:

(a) Stocked within the confines of the licensed premises; and

(b) Maintained at the premises at all times the business is licensed, with the exception of:

(i) The beginning and closing inventory for seasonal operations; or

(ii) When the inventory is being sold out immediately prior to discontinuing or selling the business.

(4) A grocery store licensee may sell beer in kegs or other containers holding at least four gallons and less than five and one-half gallons of beer. See WAC 314-02-115 regarding keg registration requirements.

(5) A grocery store applicant or licensee may apply for an international exporter endorsement for five hundred dollars a year, which allows the sale of beer and wine for export to locations outside the United States.

AMENDATORY SECTION (Amending WSR 04-19-156, filed 9/22/04, effective 10/23/04)

WAC 314-02-105 What is a beer and/or wine specialty store license? (1) Per RCW 66.24.371, a beer and/or wine specialty store license allows a licensee to sell beer and/or wine for off-premises consumption.

(2) The annual fee for this license is one hundred eleven dollars.

(3) Qualifications for license—To obtain and maintain a beer and/or wine specialty store license, the premises must be stocked with an inventory of beer and/or wine in excess of three thousand dollars wholesale value. This inventory must be:

(a) Stocked within the confines of the licensed premises; and

(b) Maintained on the premises at all times the premises is licensed, with the exception of beginning and closing inventory for seasonal operations or when the inventory is being sold out immediately prior to discontinuing or selling the business.

(4) Qualifications to sample—A beer and/or wine specialty store licensee may allow customers to sample beer and wine for the purpose of sales promotion, if the primary business is the sale of beer and/or wine at retail, and the licensee meets the requirements outlined in either subsection (a) or subsection (b) of this rule:

(a) A licensee's gross retail sales of beer and/or wine exceeds fifty percent of all gross sales for the entire business; or

(b) The licensed premises is a beer and/or wine specialty store that conducts bona fide cooking classes for the purpose of pairing beer and/or wine with food, under the following conditions:

(i) The licensee must establish to the satisfaction of the board that the classes are bona fide cooking courses. The licensee must charge participants a fee for the course(s).

(ii) The sampling must be limited to a clearly defined area of the premises.

(iii) The licensee must receive prior approval from the board's licensing and regulation division before conducting sampling with cooking classes.

(iv) Once approved for sampling, the licensee must provide the board's enforcement and education division a list of all scheduled cooking classes during which beer and/or wine samples will be served. The licensee must notify the board at least forty-eight hours in advance if classes are added.

(5) Licensees who qualify for sampling under subsection (4) of this rule may sample under the following conditions:

(a) No more than a total of eight ounces of alcohol may be provided to a customer during any one visit to the premises;

(b) Each sample must be two ounces or less; and

(c) No more than one sample of any single brand and type of beer or wine may be provided to a customer during any one visit to the premises.

(6) A beer and/or wine specialty store licensee may sell beer in kegs or other containers holding at least four gallons (~~(and less than five and one-half gallons))~~) of beer. See WAC 314-02-115 regarding keg registration requirements.

AMENDATORY SECTION (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

WAC 314-02-125 What types of activities on a licensed premises require notice to the board? Liquor licensees must notify their local enforcement office in writing at

least forty-eight hours before conducting the following activities:

- (1) Male/female dance reviews, subject to the provisions of WAC ((314-16-125)) 314-11-050;
- (2) Live boxing or wrestling;
- (3) Contests or games where patrons are part of the entertainment; and
- (4) Hours of operation in between 2:00 a.m. and 6:00 a.m. for licensees that sell liquor for on-premises consumption.

AMENDATORY SECTION (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

WAC 314-02-130 What types of changes to a licensed premises require board approval? The following changes to a licensed premises require prior board approval, by submitting a form provided by the board's licensing and regulation division:

Type of alteration	Approval process and timeline
<p>(1)</p> <ul style="list-style-type: none"> • excluding persons under twenty-one years of age from a spirits, beer, and wine restaurant <u>or a spirits, beer, and wine nightclub</u>; • excluding persons under twenty-one years of age from the dining area of a beer and/or wine restaurant; • reclassifying a lounge as open to persons under twenty-one years of age; • extending the location of alcohol service, such as a beer garden or patio/deck service (areas must be enclosed with a barrier a minimum of forty-two inches in height); • storing liquor off of the licensed premises; • initiating room service in a hotel or motel when the restaurant is not connected to the hotel or motel; • installing a pass-through window for walk-up customers; and • using a licensed premises as an access to another business. 	<p>(a) The board's licensing and regulation division will respond to the request for alteration within five business days.</p> <p>(b) The licensee may begin liquor service in conjunction with the alteration as soon as approval is received.</p> <p>(c) Board approval will be based on the alteration meeting the requirements outlined in this title.</p>

Type of alteration	Approval process and timeline
<p>(2)</p> <ul style="list-style-type: none"> • any alteration that affects the size of a premises' customer service area. 	<p>(a) The board's licensing and regulation division will respond to the licensee's request for alteration within five business days.</p> <p>(b) The licensee must contact their local liquor control agent when the alteration is completed.</p> <p>(c) The licensee may begin liquor service in conjunction with the alteration after the completed alteration is inspected by the liquor control agent.</p> <p>(d) Board approval will be based on the alteration meeting the requirements outlined in this title.</p>

AMENDATORY SECTION (Amending WSR 01-06-014, filed 2/26/01, effective 3/29/01)

WAC 314-16-040 ((Price list.)) Drink menu. No holder of a beer and/or wine restaurant license shall advertise for sale, nor sell, any mixed drink under the name of "Old Fashioned," "Whiskey Sour," "Singapore Sling," "Martini," "Manhattan," nor any other name which, by long and general usage, has become associated in the public mind as being the name of a mixed drink made from spirituous liquor, unless the name of such drink is prefaced by the word "wine," such as Wine Old Fashioned. The holder of a beer and/or wine restaurant license may advertise for sale, mix, compound or sell upon order, mixed drinks made from one or more wines under a name which does not conflict with this section.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-16-110 Liquor purchases by spirits, beer, and wine ((restaurant, club and sports/entertainment facility)) licensees. (1) Any employee authorized by the board may sell spirituous liquor at a discount of fifteen percent from the retail price fixed by the board, together with all taxes, to any spirits, beer and wine restaurant, spirits, beer, and wine nightclub, spirits, beer, and wine club or sports/entertainment facility licensee upon presentation to such employee at the time of purchase of a special permit issued by the board to such licensee or through such other means of insuring identification of the authorized purchaser as are approved by the board(~~(- Provided, however, That)~~). Prior to license delivery, a new licensee (~~(or transferee)~~) may, with board authorization, be sold discount liquor and beer and wine purchased under Title 66 RCW for the purpose of stocking the premises. The employee shall at the time of selling

any spirituous liquor to a spirits, beer and wine restaurant, ~~spirits, beer, and wine nightclub, spirits, beer, and wine~~ club or sports/entertainment facility licensee make a record of the liquor so sold, together with the name of the spirits, beer and wine restaurant, ~~spirits, beer, and wine nightclub, spirits, beer, and wine~~ club or sports/entertainment facility licensee making the purchase. No sale of beer, wine, or spirituous liquor shall take place until the premises of the new licensee (~~or transferee~~) have been inspected by the board and the spirits, beer and wine restaurant, ~~spirits, beer, and wine nightclub, spirits, beer, and wine~~ club or sports/entertainment facility license is delivered.

(2) Every spirits, beer and wine restaurant, ~~spirits, beer, and wine nightclub, spirits, beer, and wine~~ club or sports/entertainment facility licensee, upon purchasing any spirituous liquor from the board, shall immediately cause such liquor to be delivered to his ~~or her~~ licensed premises, and he ~~or she~~ shall not (~~thereafter~~) remove or permit to be removed from said premises any bottle or other container containing such liquor, except pursuant to chapter 314-70 WAC or to return it to a state liquor store or agency, nor shall he ~~or she~~ dispose or allow to be disposed the liquor contained therein in any manner except as authorized by his ~~or her~~ license(~~—Provided, however, That~~). A delivery service business may pick up more than one liquor order on the same day so long as each of said orders are delivered in the normal course of business on the same day without detour or diversion, except for those stops and deliveries as may be necessary to make deliveries to the other licensees whose order is also on the particular delivery vehicle. The possession of any bottle or other container purchased from the board at a discount by any person other than the licensee or said licensee's agents or employees who purchased the same, or the possession thereof at any place which is not the licensed premises of the licensee who purchased such liquor, shall be prima facie evidence that the licensee unlawfully permitted the removal thereof from his ~~or her~~ licensed premises(~~—Provided~~). The licensee who permanently discontinues business, other than as a result of a legal distraint action, may remove open bottles of liquor from the premises for personal use upon payment to the board of an amount to be determined by the board in lieu of the discount and tax exemption in effect at that time.

(3) No licensee shall keep in or on the licensed premises any spirituous liquor which was not purchased from the board at a discount(~~—Provided, That~~). Spirituous liquor not purchased at a discount from the board may be kept in or on the licensed premises under authority of a banquet permit issued pursuant to RCW 66.20.010(3) and chapter 314-18 WAC, but only during the specific date and time for which the banquet permit was issued(~~—Provided, further, That~~). Notwithstanding any other provision of Title 314 WAC, a spirits, beer and wine licensee may display antique, unusual, or unique liquor bottles with or without liquor on the licensed premises if such bottles are used as part of the decor, and any such bottles containing liquor are locked securely in display cases, and are not for sale.

(4) No person, including anyone acting as the agent for another other than a spirits, beer and wine licensee shall keep or possess any bottle or other container containing spirituous

liquor which was purchased from the board at a discount except as provided in subsection (2) of this section.

(5) All spirituous liquor in and on the licensed premises shall be made available at all times by every licensee for inspection by the board, and such licensee shall permit any authorized inspector of the board to make such tests or analyses, by spirit hydrometer or otherwise, as the inspector deems proper. Such inspectors are authorized to seize as evidence any bottles or other containers and the contents thereof which they have determined have been reused, refilled, tampered with, adulterated, diluted, fortified or substituted.

AMENDATORY SECTION (Amending WSR 07-02-076, filed 12/29/06, effective 1/29/07)

WAC 314-16-160 Purchases—Reports. (1) Failure by (~~licensees~~) industry members and retailers to keep accurate accounting records which result in the extension of or receipt of credit from (~~a manufacturer, importer, or distributor~~) an industry member through the use of a prior cash deposit which is overextended may result in administrative action being taken against the liquor license.

(2) Prior to license delivery, a new beer and/or wine (~~licensee or transferee~~) retailer may, with board authorization, be sold beer and/or wine for the purpose of stocking the premises. No retail sale of beer and/or wine shall take place until the applicant premises have been inspected by the board and the liquor license is delivered.

WSR 09-22-102

PROPOSED RULES

LIQUOR CONTROL BOARD

[Filed November 4, 2009, 11:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-12-124.

Title of Rule and Other Identifying Information: Created one new section and amended two sections in chapter 314-11 WAC, General requirements for licensees; created one new section, amended two sections and repealed one section in chapter 314-12 WAC, General—Applicable to all Licensees; amended three sections of chapter 314-13 WAC, Retail licensees purchasing beer, wine, and spirits; amended two sections of chapter 314-19 WAC, Beer and wine tax reporting and payment requirements; amended three sections of chapter 314-20 WAC, Beer-brewers, holders, importers, etc.; created one new section and amended five sections of chapter 314-24 WAC, Domestic wineries and domestic wine distributors; amended two sections in chapter 314-44 WAC, Licensed agents; and amended one section in chapter 314-52 WAC, Advertising.

Hearing Location(s): Washington State Liquor Control Board, Headquarters Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on December 9, 2009, at 10:00 a.m.

Date of Intended Adoption: December 16, 2009.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504-3080, e-mail rules@liq.wa.gov, fax (360) 664-9689, by December 9, 2009.

Assistance for Persons with Disabilities: Contact Karen McCall by December 9, 2009, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Regulations relating to manufacturers, distributors, importers and retailers were impacted by the 2009 legislative action. Rules needed amending or repealing and new rules needed to be created as part of implementing EHB 2040, changing beer and wine regulation (tied house), and parts of SSB 5834, changes to authorized reps, created a winery warehouse, allowed exceptions to tied house restrictions, and created changes to Electronic Fund Transfer payment transactions.

Reasons Supporting Proposal: Implementation of legislation passed in 2009 requires changes in current rules and creation of new rules to clarify and provide further guidance to licensees who are impacted by the new regulations.

Statutory Authority for Adoption: RCW 66.08.030, 66.28.320.

Statute Being Implemented: RCW 66.24.170, 66.28.-010, 66.28.290, 66.28.300, 66.29.305 [66.28.305], 66.28.-310, 66.28.315.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Alan Rathbun, Director, Licensing, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Pat Parmer, Chief Enforcement, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No small business economic impact statement was prepared. This proposal does not change the impact on liquor licensees or stakeholders.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required.

November 4, 2009

Sharon Foster
Chairman

AMENDATORY SECTION (Amending WSR 04-15-162, filed 7/21/04, effective 8/21/04)

WAC 314-11-015 What are my responsibilities as a liquor licensee? (1)(a) Liquor licensees are responsible for the operation of their licensed premises in compliance with the liquor laws and rules of the board (Title 66 RCW and Title 314 WAC). Any violations committed or permitted by employees will be treated by the board as violations committed or permitted by the licensee.

(b) The penalties for violations of liquor laws or rules are in: WAC ((314-12-300)) 314-29-015 through ((314-12-340)) 314-29-035, as now or hereafter amended, for licensees; and WAC 314-17-105 and 314-17-110, as now or hereafter amended, for employees who hold mandatory alcohol

server training permits. These rules also outline aggravating and mitigating circumstances that may affect what penalty is applied if a licensee or employee violates a liquor law or rule.

(2) Licensees and their employees also have the responsibility to conduct the licensed premises in compliance with the following laws, as they now exist or may later be amended:

- Titles 9 and 9A RCW, the criminal code laws;
- Title 69 RCW, which outlines the laws regarding controlled substances; and
- Titles 70.155, 82.24 RCW, and RCW 26.28.080 which outline laws regarding tobacco.

(3) Licensees have the responsibility to control their conduct and the conduct of employees and patrons on the premises at all times. Except as otherwise provided by law, licensees or employees may not:

(a) Be disorderly or apparently intoxicated on the licensed premises;

(b) Permit any disorderly person to remain on the licensed premises;

(c) Engage in or allow behavior that provokes conduct which presents a threat to public safety;

(d) Consume liquor of any kind while working on the licensed premises; except that:

(i) Licensed beer manufacturers and their employees may sample beer of their own manufacture for manufacturing, evaluating or pricing product in areas where the public is not served, so long as the licensee or employee does not become apparently intoxicated;

(ii) Licensed wine manufacturers and their employees may:

(A) Sample wine for manufacturing, evaluating, or pricing product, so long as the licensee or employee does not become apparently intoxicated; and the licensee or employee who is sampling for these purposes is not also engaged in serving alcohol to the public; and

(B) Sample wine of their own manufacture for quality control or consumer education purposes, so long as the licensee or employee does not become apparently intoxicated.

(e) Engage in, or permit any employee or other person to engage in, conduct on the licensed premises which is prohibited by any portion of Titles 9, 9A, or 69 RCW; or

(f) Sell or serve liquor by means of "drive-in" or by "curb service."

(4) Licensees have the responsibility to control the interaction between the licensee or employee and their patrons. At a minimum, licensees or employees may not:

(a) Solicit any patron to purchase any beverage for the licensee or employee, or allow a person to remain on the premises for such purpose;

(b) Spend time or dance with, or permit any person to spend time or dance with, any patron for direct or indirect compensation by a patron.

(c) See WAC 314-11-050 for further guidelines on prohibited conduct.

AMENDATORY SECTION (Amending WSR 02-11-054, filed 5/9/02, effective 6/9/02)

WAC 314-11-095 What records am I required to keep regarding my licensed premises? Licensees are responsible to keep records that clearly reflect all financial transactions and the financial condition of the business.

(1) All industry members and retailers shall keep and maintain the following records on their premises for a three-year period and the records must be made available for inspection if requested by an employee of the liquor control board, or by a person appointed in writing by the board for the purposes of administering or enforcing any provisions of Title 66 RCW or Title 314 WAC:

(a) Purchase invoices and supporting documents, to include the items and/or services purchased, from whom the items were purchased, and the date of purchase;

(b) Bank statements and ~~((cancelled))~~ cancelled checks for any accounts relating to the licensed business;

(c) Accounting and tax records related to the licensed business and each true party of interest in the liquor license; ~~((and))~~

(d) Records of all financial transactions related to the licensed business, including contracts and/or agreements for services performed or received that relate to the licensed business;

(e) Records of all items, services, and moneys' worth furnished to and received by a retailer and of all items, services, and moneys' worth provided to a retailer and purchased by a retailer at fair market value;

(f) Records of all industry member financial ownership or interests in a retailer and of all retailer financial ownership interests in an industry member; and

(g) Business entertainment records of industry members or their employees who provide either food, beverages, transportation, tickets or admission fees for or at athletic events or for other forms of entertainment to retail licensees and/or their employees.

(2) See ~~((the following))~~ additional rules for ~~((record keeping))~~ recordkeeping requirements specific to breweries and wineries: WAC 314-20-015(2), 314-20-050, 314-24-100, and 314-24-150 (as now or hereafter amended).

NEW SECTION

WAC 314-11-097 Credit on nonliquor food items—Conditions—Recordkeeping. (1) Notwithstanding the provisions of WAC 314-12-140, persons licensed under RCW 66.24.200 as wine distributors and persons licensed under RCW 66.24.250 as beer distributors may sell at wholesale nonliquor food products on thirty days' credit terms to retailers. Complete and separate accounting records shall be maintained for a period of three years on all sales of nonliquor food products to ensure that such persons are in compliance with RCW 66.28.010.

(2) Nonliquor food products include all food products for human consumption as defined in RCW 82.08.0293 as it exists on July 1, 1987, except that for the purposes of this section bottled water and carbonated beverages, whether liquid or frozen, shall be considered food products.

(3) For the purpose of this section, the period of credit is calculated as the time elapsing between the date of delivery of the product and the date of full legal discharge of the retailer, through the payment of cash or its equivalent, from all indebtedness arising from the transaction.

(4) If the board finds in any instance that any licensee has violated this section by extending or receiving credit in excess of the thirty days as provided for by this section, then all licensees involved shall be held equally responsible for such violation.

NEW SECTION

WAC 314-12-027 Financial interest and ownership. Pursuant to the exceptions in chapter 66.28 RCW:

(1) An industry member or affiliate may have a financial interest in another industry member or a retailer, and a retailer or affiliate may have financial interest in an industry member unless such interest has resulted or is more likely than not to result in:

(a) Undue influence over the retailer or the industry member; or

(b) An adverse impact on public health and safety.

(2) The structure of any such financial interest must be consistent with the following:

(a) An industry member in whose name a license or COA has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed pursuant to RCW 66.24.320 through 66.24.570, but the industry member must form a separate legal entity to apply for the retail liquor license.

Example: ABC Inc. is the liquor licensee for ABC Winery. ABC Inc. has two officers and stockholders; John Doe, President and 50% stockholder, and Mary Smith, Secretary and 50% stockholder. ABC Inc. wants to purchase stock in a retail restaurant. ABC Inc. is not required to form a separate legal entity if the amount of stock purchased is 10% or less. If the amount of stock purchased is more than 10%, ABC Inc. must form a separate legal entity to purchase the stock. John Doe and/or Mary Smith as a sole proprietor, could purchase any amount of stock in a retail restaurant;

(b) A retailer in whose name a license has been issued pursuant to this title may wholly own or hold a financial interest in manufacturer, importer, or distributor licensed under RCW 66.24.170, 66.24.206, 66.24.240, 66.24.244, 66.24.270(2), 66.24.200, or 66.24.250, but the retailer must form a separate legal entity to apply for the nonretail liquor license.

Example: Joe and Jane Smith own a grocery store and hold a grocery store liquor license under a sole proprietor legal entity. They want to purchase stock in a local winery. Joe and Jane Smith are not required to form a separate legal entity if the amount of stock purchased is 10% or less. If the amount of stock purchased is more than 10%, Joe and Jane Smith must form a separate legal entity (such as a corporation or limited liability company) to purchase the stock in the winery;

(c) A supplier in whose name a license or certificate of approval has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity

licensed as a distributor or importer under this title, but such supplier may not have a license as a distributor or importer issued in its own name.

Example: ABC Inc. is the liquor licensee for ABC Winery. ABC Inc. has two officers and stockholders; John Doe, President and 50% stockholder, and Mary Smith, Secretary and 50% stockholder. ABC Inc. wants to purchase stock in a distributor. ABC Inc. is not required to form a separate legal entity if the amount of stock purchased is 10% or less. If the amount of stock purchased is more than 10%, ABC Inc. must form a separate legal entity to purchase the stock. John Doe and/or Mary Smith as a sole-proprietor, could purchase any amount of stock in a distributor;

(d) A distributor or importer in whose name a license has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed or holding a certificate of approval as a supplier under this title, but such distributor or importer may not have a license or certificate of approval as a supplier issued in its own name.

Example: B&W Distributing, LLC is the liquor licensee for BW Distributing. B&W Distributing, LLC wants to purchase stock in ABC Winery. B&W Distributing, LLC is not required to form a separate legal entity if the amount of stock purchased is 10% or less. If the amount of stock purchased is more than 10%, B&W Distributing, LLC must form a separate legal entity to purchase the stock in the winery.

(3) Any person may request a determination by the board as to whether a proposed or existing financial interest has resulted or is more likely than not to result in undue influence or has resulted or is more likely than not to result in an adverse impact on public health and safety by filing a complaint or request for determination with the board.

(a) The board may conduct an investigation as it deems appropriate in the circumstances.

(b) If the investigation reveals the financial interest has resulted or is more likely than not to result in undue influence or an adverse impact on public health or safety, the board may issue an administrative violation notice or a notice of intent to deny the license to the industry member, the retailer, or both.

The recipient of the administrative violation notice or notice of intent to deny the license may request an administrative hearing under chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 01-06-015, filed 2/26/01, effective 3/29/01)

WAC 314-12-140 Prohibited practices—Contracts—Gifts—Rebates, etc. (1) No ~~((contract shall be made or entered into whereby any retail licensee agrees to handle any particular brand or brands of liquor to the exclusion of any other brand or brands of liquor.~~

~~(2) No contract shall be made or entered into for the future delivery of liquor to any retail licensee. Provided, That))~~ industry member or retailer shall enter into any agreement which causes undue influence over another retailer or industry member. This regulation shall not be construed as prohibiting the placing and accepting of orders for the purchase and delivery of liquor which are made in accordance

with the usual and common business practice and which are otherwise in compliance with the regulations.

~~((3)) (2) No ((manufacturer, distributor, or importer, or his employee,)) industry member shall ((directly or indirectly solicit, give or offer to, or receive from any retail licensee, any employee thereof, or an applicant for a license, any)) advance and no retailer, any employee thereof, or applicant for a retail liquor license shall receive money or money's worth under any written or unwritten agreement or any other business practice or arrangement such as:~~

~~(a) Gifts((;));~~

~~(b) Discounts((;));~~

~~(c) Loans of money((;));~~

~~(d) Premiums((;));~~

~~(e) Rebates((;));~~

~~(f) Free liquor of any kind((;)); or~~

~~(g) Treats or services of any nature whatsoever((; nor shall any retail licensee, employee thereof, or an applicant for a license, directly or indirectly, solicit, receive from, or give or offer to any manufacturer, distributor or importer, or his employee, any gifts, discounts, loans of money, premiums, rebates, free liquor of any kind, treats or services of any nature whatsoever,)) except such services as are authorized in this regulation.~~

~~((4)) (3) Pursuant to RCW 66.28.010 ((a manufacturer, distributor, importer,)) an industry member or ((his)) licensed agent may perform the following services for a retailer:~~

~~(a) Build, rotate, and restock displays, utilizing filled cases, filled bottles or filled cans of ((his)) its own brands only, from stock or inventory owned by the retailer.~~

~~(b) Rotate, rearrange or replenish bottles or cans of ((his)) its own brands on shelves or in the refrigerators but is prohibited from rearranging or moving displays of ((his)) its products in such a manner as to cover up, hide or reduce the space of display of the products of any other ((manufacturer, distributor or importer, Provided, however, manufacturers, distributors, importers)) industry member.~~

~~(c) Industry members or any employees thereof may move or handle in any manner any products of any other manufacturer, importer or distributor on the premises of any retail licensee when ((reasonable)) a two-day notice is given to other interested ((manufacturers, distributors)) industry members or their agents and such activity occurs during normal business hours or upon hours that are mutually agreed.~~

~~((b)) (d) Provide price cards and may also price goods of ((his)) its own brands in accordance with the usual and common business practice and which are otherwise in compliance with the regulations.~~

~~((e)) (e) Provide point of sale advertising material and brand signs.~~

~~((d)) (f) Provide sales analysis of beer and wine products based on statistical sales data voluntarily provided by the retailer involved for the purpose of proposing a schematic display for beer and wine products. Any statistical sales data provided by retailers for this purpose shall be at no charge.~~

~~((e)) (g) Such services may be rendered only upon the specific approval of the retail licensee. Displays and advertising material installed or supplied for use on a retailer's premises must be in conformity with the board's advertising rules as set forth in chapter 314-52 WAC.~~

~~((5))~~ (4) No ~~((manufacturer, distributor, importer))~~ industry member or employee thereof shall, directly or indirectly, give, furnish, rent or lend to, or receive from, any ~~((retail licensee))~~ retailer, any equipment, fixtures, supplies or property of any kind, nor shall any retail licensee, directly or indirectly, receive, lease or borrow from, or give or offer to, any ~~((manufacturer, distributor or importer))~~ industry member any equipment, fixtures, supplies or property of any kind. Sales authorized in this regulation shall be made on a cash on delivery basis only.

~~((6))~~ (5) No ~~((manufacturer or distributor))~~ industry member or employee thereof shall sell to any retail licensee or solicit from any such licensee any order for any liquor tied in with, or contingent upon, the retailer's purchase of some other beverage, alcoholic or otherwise, or any other merchandise, property or service.

~~((7))~~ (6) In selling equipment, fixtures, supplies or commodities other than liquor, no ~~((manufacturer, distributor or importer))~~ industry member shall grant to ~~((retail licensee))~~ any retailer, nor shall such ~~((licensee))~~ retailer accept, more favorable prices than those extended to nonlicensed retailers. The price thereof shall be not less than the ~~((manufacturer's, importer's, or distributor's))~~ industry member's cost of acquisition. In no event shall credit be extended to any ~~((retail licensee))~~ retailer.

~~((8))~~ (7) Any ~~((manufacturer, distributor or importer))~~ industry member who sells what is commonly referred to as heavy equipment and fixtures, such as counters, back bars, stools, chairs, tables, sinks, refrigerators or cooling boxes and similar articles, shall immediately after making any such sales have on file and available for inspection ~~((in accordance with WAC 314-20-050))~~, records including a copy of the invoice covering each such sale, which invoice shall contain the following information:

(a) A complete description of the articles sold((-);

(b) The purchase price of each unit sold together with the total amount of the sale((-);

(c) Transportation costs and services rendered in connection with the installation of such articles((-); and

~~((Such invoice shall list))~~ (d) The date of such sale and affirm that full cash payment for such articles was received from the retailer as provided in subsection ~~((5))~~ (4) of this section.

~~((9))~~ (8) If the board finds in any instance that any licensee has violated this regulation, then all licenses involved shall be held equally responsible for such violation.

Note: WAC 314-12-140 is not intended to be a relaxation in any respect of section 90 of the Liquor Act (RCW 66.28.010). As a word of caution to persons desiring to avail themselves of the opportunity to sell to retail licensees fixtures, equipment and supplies subject to the conditions and restrictions provided in section 90 of the act and the foregoing regulation, notice is hereby given that, if at any time such privilege is abused or experience proves that as a matter of policy it should be further curtailed or eliminated completely, the board will be free to impose added restrictions or to limit all manufacturers and distributors solely to the sale of liquor when dealing with retail licensees. WAC 314-12-140 shall not be considered as granting any vested right to any person, and persons who engage in the business of selling to retail licensees property or merchandise of any nature voluntarily assume the risk of being divested of that privilege and they will undertake such business subject to this understanding. The board also cautions that certain trade practices are prohibited by rulings issued under

the Federal Alcohol Administration Act by the United States Bureau of Alcohol, Tobacco and Firearms, and WAC 314-12-140 is not intended to conflict with such rulings or other requirements of federal law or regulations.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-12-141 Courses of instruction. ~~((Breweries, wineries and distributors))~~ Industry members conducting courses of instruction as authorized by RCW 66.28.150 may provide alcohol at no charge to licensees of the board, their employees, and invited guests who have a legitimate business interest in the manufacturing, importing, distributing and retailing of liquor.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 314-12-135	Business entertainment—Records.
WAC 314-12-145	Credit on nonliquor food items—Conditions—Recordkeeping.

AMENDATORY SECTION (Amending WSR 01-06-015, filed 2/26/01, effective 3/29/01)

WAC 314-13-015 What method of payment can a retailer use to purchase beer or wine from ~~((a manufacturer or distributor))~~ an industry member? Per RCW 66.28.010(1), a retail licensee must pay cash for beer and wine prior to or at the time of delivery by ~~((a distributor, brewery, or winery))~~ an industry member. The board will recognize the following forms of payment as cash payment for the purposes of this title, under the conditions outlined in this rule and in WAC 314-13-020.

(1) **Checks**, under the provisions of WAC 314-13-020.

(2) **Credit/debit cards**, under the following provisions:

(a) The credit or debit card transaction agreement must be voluntary on the part of both the retailer and the ~~((manufacturer, importer, or distributor))~~ industry member, and there must be no discrimination for nonparticipation in credit or debit card transactions.

(b) A sale must be initiated by an irrevocable invoice or sale order before or at the time of delivery.

(c) Both parties must bear their respective banking costs or other costs associated with the credit or debit card service.

(d) Both parties must maintain records of transactions and have the records readily available for board review.

(e) The credit or debit card charge must be initiated by the ~~((manufacturer, importer, or distributor))~~ industry member no later than the first business day following delivery.

(3) **Electronic funds transfer (EFT)**, under the following provisions:

(a) The EFT agreement must be voluntary on the part of both the retailer and the ~~((manufacturer, importer, or distributor))~~ industry member, and there must be no discrimination for nonparticipation in EFT.

(b) Prior to any EFT transaction, the retail licensee must enter into a written agreement with the ~~((manufacturer, importer, or distributor))~~ industry member specifying the terms and conditions for EFT as payment for alcohol or non-alcohol beverages.

(c) A sale must be initiated by an irrevocable invoice or sale order before or at the time of delivery.

(d) Both parties must bear their respective banking costs or other costs associated with EFT service.

(e) Both parties must maintain records of transactions and have the records readily available for board review.

(f) The electronic funds transfer must be initiated by the ~~((manufacturer, importer, or distributor))~~ retailer or industry member no later than the first business day following delivery and must be paid as promptly as is reasonably practical, and in no event later than five business days following delivery. Any attempt by a retailer to delay payment on EFT transactions for any period of time beyond the minimum as is reasonably practical will be considered an unlawful attempt to purchase products on credit.

(4) **Prepaid accounts.** Both parties must keep accurate accounting records of prepaid accounts to ensure a cash deposit is not overextended, which is considered an extension of credit.

AMENDATORY SECTION (Amending WSR 01-06-015, filed 2/26/01, effective 3/29/01)

WAC 314-13-020 What if a check, EFT transaction, or credit/debit card transaction is reported as having nonsufficient funds (NSF)? Any transaction reported as having nonsufficient funds (NSF) will be considered an extension of credit, in violation of RCW 66.28.010(1). If a transaction is reported as NSF:

(1) The retailer must pay the full amount of the transaction to the ~~((manufacturer, importer, or distributor))~~ industry member by 3 p.m. on the first business day following receipt of the NSF report.

(2) If the retailer does not make payment by this time, the ~~((manufacturer, importer, or distributor))~~ industry member must report the NSF transaction to the their local board enforcement office by 5 p.m. the next business day following receipt of the NSF report.

(3) The local board enforcement office will contact the retailer, who will have until 3 p.m. the next business day to pay the NSF transaction. If the retailer does not pay the ~~((manufacturer, importer, or distributor))~~ industry member by this time, the board will issue an administrative violation notice to the retailer.

(4) Until the NSF transaction is paid:

(a) The ~~((manufacturer, importer, or distributor))~~ industry member who received the NSF transaction will not deliver any beer or wine to the retailer; and

(b) It is the responsibility of the retailer to not receive any beer or wine from any ~~((manufacturer, importer, or distributor))~~ industry member.

AMENDATORY SECTION (Amending WSR 01-06-015, filed 2/26/01, effective 3/29/01)

WAC 314-13-025 How do retail licensees purchase spirituous liquor at a discount from the board? (1) In order to acquire spirituous liquor for resale, the following licensees must purchase spirituous liquor from the board at a fifteen percent discount:

- (a) Spirits, beer, and wine restaurants;
- (b) Spirits, beer, and wine private clubs; ~~((and))~~
- (c) Spirits, beer, and wine nightclubs; and
- (d) Sports/entertainment facilities.

(2) When purchasing spirituous liquor, the licensee must present the tear-off portion of the business' master license that shows its liquor endorsement.

(3) This discounted spirituous liquor may only be used for resale on the licensed premises (see WAC 314-70-010 for instructions on when a business discontinues).

(a) Possession of discounted liquor off of the licensed premises will be *prima facie* evidence of a violation of this rule, unless:

(i) The liquor is en route from the point of purchase to the licensed premises~~((;))~~; or

(ii) The liquor is en route from the licensed premises of a beer and/or wine restaurant or a spirits, beer, and wine restaurant with a caterer's endorsement to an approved event being catered by the licensee.

(b) Any spirituous liquor on the licensed premises must be liquor purchased at a discount from the board, except:

(i) Under the authority of a banquet permit, see chapter 314-18 WAC; or

(ii) Liquor bottles if they are used as part of the decor, and any bottles containing liquor are locked in a display case and are not for sale.

AMENDATORY SECTION (Amending WSR 07-02-076, filed 12/29/06, effective 1/29/07)

WAC 314-19-015 What are the monthly reporting and tax payment requirements? (1) The required monthly beer and/or wine tax reports must be:

(a) On a form furnished by the board or in a format approved by the board;

(b) Filed every month, including months with no activity or taxes due;

(c) Submitted, with the tax due, to the board on or before the twentieth day of each month, for the previous month (for example, a report listing transactions for the month of January is due by February 20). When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day; and

(d) Filed separately for each type of liquor license or permit held.

Type of Licensee	Tax Payment Requirements
(2) Washington beer and/or wine distributor	<p>(a) Distributors must pay taxes on all beer and/or wine received during the preceding calendar month, including samples received at no charge (see WAC 314-64-080 and 314-64-090 for more information). The total tax due (per barrel for beer and per liter for wine) is to be paid by the first distributor to receive the product and must be included with the monthly report.</p> <p>(b) Distributors do not pay taxes on beer and/or wine received from another in-state licensed distributor who has already paid the Washington state tax on the product.</p> <p>(c) Distributors may claim a tax refund or credit, provided that they have paid the taxes prior to claiming the credit, for the following (see WAC 314-19-030 for information on claiming a tax refund or credit):</p> <p>(i) Shipments exported directly to a point outside the state of Washington, including sales to interstate common carriers;</p> <p>(ii) Sales to any military reservation in Washington state;</p> <p>(iii) Product that is deemed unsalable due to freight damage, product quality, or other causes that occurred prior to receipt by the distributor, subject to the following conditions:</p> <p>(A) The unsalable product must be destroyed within the state of Washington (per RCW 66.24.305);</p> <p>(B) The licensee must notify their local liquor enforcement officer in advance for destruction of more than fifty cases of wine or two hundred cases of beer;</p> <p>(C) The licensee must report the destroyed product on the next required monthly report;</p> <p>(D) The licensee must keep records showing the reason for the destruction and an inventory of products destroyed. These records must be kept on the licensed premises and available for inspection by board employees for a period of two years; and</p> <p>(E) The licensee must provide documentation from the freight company with the report if they are claiming a credit due to freight damage.</p>
(3) Washington beer and/or wine importers	<p>Importers must pay taxes on samples received during the preceding calendar month, as follows:</p> <p>(a) If the samples are used by the importer within the state of Washington, the importer must pay the tax.</p> <p>(b) If samples are provided to a distributor, the distributor must pay the tax.</p>
(4) Domestic breweries, microbreweries, and domestic wineries	<p>(a) Domestic breweries, microbreweries, and domestic wineries must list production for the current month only. The brewery that the domestic brewery/brand owner contracts with is required to include any products they produce for the brand owner in their production count.</p>

Type of Licensee	Tax Payment Requirements
	<p>(b) Domestic breweries, microbreweries, and domestic wineries must pay taxes on beer and/or wine that is:</p> <p>(i) Sold at retail on the licensed premises (or shipped to additional winery locations as authorized by RCW 66.24.170(4)), including retail sales to out-of-state residents;</p> <p>(ii) Sold to retail licensees;</p> <p>(iii) Furnished as samples to retail licensees as authorized by RCW 66.28.040, WAC 314-64-080, and 314-64-090 (does not include samples provided to distributors);</p> <p>(iv) Provided as donations to qualifying 501 (c)(3) <u>or</u> (6) nonprofit organizations per RCW 66.28.040 or to the Washington wine commission per RCW 66.12.180 and 66.24.210;</p> <p>(v) Received via an interplant transfer if used as outlined in above subsections (i), (ii), (iii), or (iv); ((v))</p> <p>(vi) Sold at farmers markets as authorized by RCW 66.24.170(5), 66.24.240(4) and/or 66.24.244(5); <u>or</u></p> <p>(vii) <u>Wine that has been shipped out-of-state as nontax paid export and returned to Washington state if used as outlined in (b)(i), (ii), (iii), (iv), or (vi) of this subsection.</u></p> <p>(c) Domestic breweries, microbreweries, and domestic wineries do not pay tax on beer and/or wine that is:</p> <p>(i) Sold to distributors;</p> <p>(ii) Shipped out of a particular location for an interplant transfer;</p> <p>(iii) Exported directly to a point outside the state of Washington, including sales to interstate common carriers;</p> <p>(iv) Sold to the Washington state liquor control board;</p> <p>(v) Sold to any military reservation in Washington state; or</p> <p>(vi) Provided as a tasting on the brewery or winery premises or at additional winery locations at no charge, as authorized by RCW 66.24.170(4). See WAC 314-19-010(3) for the definition of " Tastings."</p>
(5) Domestic brewery—Brand owners	<p>(a) Domestic brewery-brand owners must file a report showing the quantity of all beer sold or delivered to each licensed beer distributor, or beer exported directly to a point outside the state of Washington, during the preceding month.</p> <p>(b) Domestic brewery-brand owners are not responsible for the tax on beer that is contract produced.</p>
(6) Out-of-state beer and/or wine certificate of approval holders	<p>(a) Certificate of approval holders must file a report showing the quantity of all beer and/or wine sold or delivered to each licensed beer or wine distributor or importer, including samples, during the preceding month.</p> <p>(b) Tax is due from the certificate of approval holder:</p> <p>(i) On samples shipped to licensed agents, and</p>

Type of Licensee	Tax Payment Requirements
	(ii) On donations to the Washington wine commission per RCW 66.12.180 and 66.24.-210 or to 501 (c)(3) nonprofit charitable associations within Washington state per RCW 66.28.040.
(7) Out-of-state United States beer and/or wine certificate of approval holders with a direct shipping to Washington retailer endorsement	(a) Certificate of approval holders with this endorsement must file an addendum report showing the quantity of beer and/or wine sold or delivered to each licensed retailer, including samples, during the preceding month. (b) Tax is due from the certificate of approval holder on beer and/or wine sold or delivered to retail licensees and on sales to non-profit charitable associations.
(8) Out-of-state United States wine certificate of approval holders with a direct shipping to consumers endorsement	(a) A certificate of approval holder with this endorsement must report the total quantity of wine sold to consumers in Washington state during the preceding month. (b) Tax is due from the certificate of approval holder on wine sold or delivered to Washington state residents.
(9) Authorized representative certificate of approval holders-U.S. and/or foreign produced beer or wine	(a) Authorized representative certificate of approval holders must file a report showing the quantity of all beer and/or wine sold or delivered to each licensed beer or wine distributor or importer, including samples. They must list the brewery and/or winery that they represent and that had shipments into Washington state during the preceding month. (b) Tax is due from the authorized representative beer and/or wine certificate of approval holders only on samples shipped to licensed agents, directly to retailers per WAC 314-64-080 and 314-64-090, donations to the Washington wine commission per RCW 66.12.180 and 66.24.210, or to 501 (c)(3) nonprofit charitable associations within Washington state per RCW 66.28.040.
(10) Public house licensees	Public house licensees must pay taxes on all sales of their own product during the preceding calendar month.
(11) Retailer with an endorsement allowing receipt of direct shipment of beer or wine from a United States brewery, microbrewery, or winery	A Washington retailer who receives shipments directly from a United States brewery, microbrewery, or winery, ((either inside or)) outside Washington, must file a report showing the quantity of beer and wine received by direct shipment from each licensed beer or wine producer, including samples, during the preceding month.
(12) Wine shipper permit holder	(a) An out-of-state winery must file a report showing the total quantity of wine sold or delivered to consumers during the preceding month. (b) Pay the tax due for sales of wine to Washington state residents.

AMENDATORY SECTION (Amending WSR 04-24-007, filed 11/19/04, effective 12/20/04)

WAC 314-19-035 Reduced tax rate for beer. (1) The additional beer taxes imposed under RCW 66.24.290 (3)(a) do not apply to the first sixty thousand barrels of beer sold by a brewery in Washington each fiscal year, if:

- (a) The beer is produced in the United States; and

(b) The producing brewery or domestic brewery-brand owner meets the qualifications of 26 U.S.C. Sec. 5051 (a)(2).

(2) In order to qualify for this exemption, the Washington brewer or the out-of-state beer certificate of approval holder must provide the board a copy of an Alcohol and Tobacco Tax and Trade Bureau (TTB) acknowledged copy of their filing "Notice of Brewer to Pay Reduced Rate of Tax" for the calendar year as required under 27 C.F.R. Sec. 25.167; a variance for any year that waives annual submission to the TTB; or the Brewer's Notice which waives annual submission to the TTB.

(3) The tax exemption will not apply until the first day of the second month following the month the notice is received (for example, if the notice is received by the Board on January 10, the tax exemption will start on March 1).

(4) How will the distributor know what tax rate to pay for each brewery's products?

(a) The board will provide distributors a list of breweries that qualify for the reduced tax rate; and

(b) The qualifying brewery is responsible to inform the distributors when product sold to distributors exceeds the first sixty thousand barrels exempted from the additional tax.

(c) Once a qualifying brewery's sales to distributors exceeds sixty thousand barrels, the distributors must begin paying the full tax rate on their next monthly tax report.

(5) Per RCW 66.24.290, authorized representative certificate of approval holders do not qualify for the reduced rate in Washington state.

(6) The tax exemption will not apply to strong beer. Strong beer must be paid at the higher rate even when the brewery meets the qualifications for the reduced rate. Strong beer is any malt beverage that contains more than eight percent alcohol by weight.

AMENDATORY SECTION (Amending WSR 04-24-097, filed 12/1/04, effective 1/1/05)

WAC 314-20-001 Definitions. ~~((+))~~ **Per RCW 66.04.010(2), an "authorized representative" means a person who:**

~~((+))~~ **(1)** Is required to have a federal basic permit issued by the alcohol and tobacco tax and trade bureau;

~~((+))~~ **(2)** Has its business located in the United States outside of the state of Washington;

~~((+))~~ **(3)** Acquires ownership of beer that is produced anywhere outside Washington by a brewery ~~((which does not hold a certificate of approval issued by the board,))~~ **who does not distribute those brands** for transportation into and resale in the state of Washington~~(-)~~;

~~((+))~~ **(4)** Is appointed by the brewery referenced in ~~((+))~~ **subsection (3)** of this ~~((subsection))~~ **section** as its ~~((exclusive))~~ authorized representative for marketing and selling its products within the United States or within Washington state, in accordance with a written agreement between the authorized representative and the brewery. ~~((The board may waive the requirement for the written agreement of exclusivity in situations consistent with the normal marketing practices of certain products.))~~

AMENDATORY SECTION (Amending WSR 07-02-076, filed 12/29/06, effective 1/29/07)

WAC 314-20-050 Beer distributors—Importers—Brewers—Records—Preservation. (1) Breweries, microbreweries, beer certificate of approval holders, and beer distributors must keep beer accounts separate and independent from other accounts and maintain proper records in a form approved by the board, showing all transactions in beer.

(2) Breweries, microbreweries, beer distributors, and beer importers must in case of beer exported or beer sold, transferred or shipped to another distributor, preserve all bills of lading or other evidence of shipment for a period of ~~((two))~~ three years after such exportation, and must in the case of sales to retailers preserve all sales slips and keep the same on file in the office of the wholesaler for at least ~~((two))~~ three years after each sale.

(3) Each brewery, beer distributor, and beer importer may maintain microfilm records containing reproductions (including microfiche) of any record, document, or report if first approved by the board. Request for approval shall be directed to the financial division of the Washington state liquor control board and must include the following information:

- (a) Records proposed to be reproduced.
- (b) Reproduction process.
- (c) Manner of preserving the reproduction.
- (d) Facilities provided for examining or viewing such reproduction.

If the request is approved, the licensee shall provide for the examining, viewing, and reproduction of such records the same as if they were the original records.

(4) If the brewery, beer distributor, or beer importer keeps records within an automated data processing (ADP) system, the system must include a method for producing legible records that will provide the same information required of that type of record within this section. The ADP system is acceptable if it complies with the following guidelines:

- (a) Provides an audit trail so that details (invoices and vouchers) underlying the summary accounting data may be identified and made available upon request.
- (b) Provides the opportunity to trace any transaction back to the original source or forward to a final total. If printouts of transactions are not made when they are processed, the system must have the ability to reconstruct these transactions.
- (c) Has available a full description of the ADP portion of the accounting system. This should show the applications being performed, the procedures employed in each application, and the controls used to ensure accurate and reliable processing.

(5) The provisions contained in subsections (3) and (4) of this section do not eliminate the requirement to maintain source documents, but they do allow the source documents to be maintained in some other location.

AMENDATORY SECTION (Amending WSR 07-02-076, filed 12/29/06, effective 1/29/07)

WAC 314-20-100 Beer suppliers and distributors ~~((price postings))~~. RCW 66.28.180 requires beer distributors

and suppliers to ~~((file price postings with the board))~~ maintain all current and prior price lists at its liquor licensed location.

(1) **Definitions**—For the purposes of this chapter:

(a) A ~~((“beer price posting” or “price posting”))~~ “price list” means a declaration of the prices ~~((of beer sold from a supplier to a distributor or from a distributor to a retailer, in effect as filed with the liquor control board either electronically or hard copy, under the provisions of RCW 66.28.180 and Title 314 WAC))~~ at which any and all brands of beer and any and all packages within a brand are to be sold by the person maintaining the list. Distributors must maintain a price list showing all such prices for sales to retailers. Each manufacturer functioning as a distributor must maintain a price list showing all such prices for sales to retailers as well as showing such prices for sales to distributors. The price list will contain the wholesale prices at which any and all brands of beer sold by the supplier or distributor shall be available to retailers within the state.

(b) A “beer supplier” means a microbrewery, domestic brewery, certificate of approval holder, beer importer, beer distributor acting as the first United States importer, or a distributor selling beer to another distributor.

(c) A “beer distributor” means a distributor selling to a retailer, a domestic brewery acting as a distributor, a microbrewery acting as a distributor, or a certificate of approval holder with a direct shipping to Washington retailer endorsement selling beer of its own production to a retailer.

(2) ~~((Filing deadlines:~~

((a) Beer supplier filing deadlines	((b) Beer distributor filing deadlines
((All price postings, distributor appointments, written contracts, and memoranda of oral agreements must be received by the board not later than the twenty-fifth day of the month, and if approved will become effective on the first day of the second calendar month following the date of filing.	((All price postings must be received by the board not later than the tenth day of the month, and if approved will become effective on the first day of the calendar month following the date of filing.

~~((e) The board will allow up to an additional five days for revisions of filings to correct errors and omissions filed during the current price posting period. The board may in individual cases, for good cause shown, extend the filing date.~~

~~((d) When a price posting has been deposited in the United States mail addressed to the board, it will be considered filed or received on the date shown by the United States post office cancellation mark on the envelope, or on the date it was mailed if it is established to the satisfaction of the board that the actual mailing occurred on an earlier date.~~

~~((3) Filing date exceptions~~—Whenever a filing deadline falls on Saturday, Sunday, or a legal holiday, a price posting may be filed not later than midnight the next business day.

~~((4) No changes from previous month~~—If a beer supplier or distributor makes no changes in any items or prices listed in the last filed and approved price posting, the prices

will remain in effect for each succeeding posting period until a revised price posting is filed and approved.

~~((5))~~ **Temporary Products and price (reductions) lists**—If a beer supplier or distributor ~~((files price postings that))~~ lists selected items on which prices are temporarily reduced ~~((for one posting period only))~~, these prices ~~((postings))~~ must clearly reflect all items ~~((;))~~ and the selling price ~~((, and the posting period for which the price reductions will be in effect. At the expiration of the posting period during which the reductions were in effect, the special price posting will become void and the last regularly filed and effective price posting will again become effective))~~. All products must be made available to all retail licensees to the extent it is reasonably practical to do so and all retail licensees must be given reasonable notice of all prices and price changes.

~~((6))~~ **(3) Distributor changes—**

(a) The following guidelines apply when a beer supplier makes a distributor change outside of the regular distributor appointment timelines ~~((outlined in subsection (2) of this rule:~~

~~((i))~~. The supplier must notify the board in writing that he/she wishes to change his/her current distributor and appoint a new distributor to be effective immediately.

~~((ii))~~ The new distributor must agree to take the currently posted prices of the old distributor until the new distributor is able to post his/her own prices during the next regular posting period.

~~((iii))~~ If a beer supplier has a territory or brand agreement with a distributor and wants to change a distributor appointed to a certain brand(s) or territory(ies), the board may allow the new distributor to assume the prior distributor's price postings for the brand and/or territory in order to avoid disruption of the market.)

(b) A beer supplier must notify the board if any of the contracts or agreements listed in this rule are revised or terminated by either party. ~~((The board may immediately authorize a price posting if a beer distributor assumes the wholesale price postings from the previously appointed distributor.~~

~~((c))~~ Prices and other conditions of price postings in effect at the time of the distributor change may not be changed until subsequent filings are submitted to the board and become effective.

~~((7))~~ **(4) Price (postings) lists for new distributors—**When the board issues a new beer distributor license, the licensee ~~((may file an initial price posting and request that the price posting be placed into effect immediately. The board may grant this immediate approval if the price posting is in compliance with this rule and with all other applicable laws and rules))~~ must have a price list available.

~~((8))~~ **(5) Accommodation sales—**The provisions of this rule do not apply ~~((, and filings are not required,))~~ when a beer distributor makes an accommodation sale to another beer distributor and this sale is made at a selling price that does not exceed the laid-in cost of the beer being sold. Accommodation sales may only be made when the distributor purchasing the beer is an appointed distributor of the supplier, when the distributor is an authorized purchaser of the brand and product being sold, and when the supplying distributor is appointed by the supplier.

AMENDATORY SECTION (Amending WSR 04-24-097, filed 12/1/04, effective 1/1/05)

WAC 314-24-001 Definitions. ~~((1))~~ **Per RCW 66.04.010(2), an "authorized representative"** means a person who:

~~((a))~~ **(1)** Is required to have a federal basic permit issued by the alcohol and tobacco tax and trade bureau;

~~((b))~~ **(2)** Has its business located in the United States outside of the state of Washington;

~~((c))~~ **(3)** Acquires ownership of wine that is produced anywhere outside Washington by a winery which does not ~~((hold a certificate of approval issued by the board,))~~ distribute those brands for transportation into and resale in the state of Washington ~~((;))~~;

~~((d))~~ **(4)** Is appointed by the winery referenced in ~~((e))~~ subsection (3) of this ~~((subsection))~~ section as its ~~((exclusive))~~ authorized representative for marketing and selling its products within the United States or within Washington state, in accordance with a written agreement between the authorized representative and the winery. ~~((The board may waive the requirement for the written agreement of exclusivity in situations consistent with the normal marketing practices of certain products, such as classified growths.))~~

AMENDATORY SECTION (Amending Order 184, Resolution No. 193, filed 5/13/86)

WAC 314-24-070 Domestic wineries—Purchase and use of bulk wines, brandy or wine spirits—Import permit required—Records—Wine returned to Washington. (1) Domestic wineries may purchase and receive under federal bond from any holder of a domestic winery license, holder of the fruit and/or wine distillery license provided in section 23-D of the Washington State Liquor Act (RCW 66.24.140), or out-of-state holder of a federal winery or fruit distillery basic permit, bulk wine, brandy or bulk wine spirits manufactured or produced by such holder, and use the same in the manufacture or production of wines: Provided, That every domestic winery which imports wine, brandy or wine spirits manufactured outside the state of Washington for use as authorized in this section must first be in possession of a permit issued by the board, in accordance with RCW 66.20.010(5) of the Washington State Liquor Act. Applications for such permits must be submitted to the board in writing. Such permits expire at the end of the board's fiscal year, and are subject to renewal at that time upon written request and remittance of said annual fee. Wine manufactured or produced from one kind of fruit or berry may not receive wine, brandy or wine spirits manufactured or produced from another kind of fruit or berry. Such brandy or wine spirits so purchased shall be used exclusively and only for the purpose of adding wine spirits to wines. In those cases where the holder of a domestic winery license shall also hold such fruit and/or wine distillery license, then, and in such cases, such domestic winery may use brandy or wine spirits manufactured or produced under such distillery license as a wine spirits addition in the manufacture or production of wine by such holder of the domestic winery license.

(2) Any domestic winery using wine, brandy or wine spirits as provided in subsection (1) of this section, shall

make and file with the board, not later than the tenth day of each month upon forms prescribed and furnished by the board, a report showing all transactions of such domestic winery in the purchase and/or use of wine, brandy or wine spirits as provided in said subsection (1), and shall retain one copy of such report in its own files, and shall keep and preserve for a period of not less than two years any bills of lading or other documents supporting such report. One copy of the bill of lading covering such sale and shipment to a domestic winery is to be forwarded to the board by the shipping winery or fruit distillery, at the time of such shipment.

(3) A domestic winery may ship Washington wine out of and may return such wine to Washington state for ultimate sale. The following conditions apply:

(a) The wine is produced in Washington by a licensed winery.

(b) The export shall be from the licensed winery and returned to the same entity.

(c) The returned wine must not have been altered in any way, with the exception of sparkling wine.

(d) A domestic winery returning previously exported Washington wine must comply with tax collection and tracking requirements initiated by the liquor control board.

(e) A domestic winery must keep on file for audit purposes clear source records (shipping documents, etc.) with monthly reporting documents. Records need to indicate what wine was returned to the state that was previously reported as an export (including number of cases and gallons).

NEW SECTION

WAC 314-24-107 Winery warehouse license. (1) A licensee holding a domestic winery license under RCW 66.24.170 and acting as a distributor of its own products may apply for a winery warehouse license. There is no fee for this license.

(2) A winery warehouse is a premises located off the winery premises that is used for the storage of bulk wine and the distribution of the winery's own products. Storage of bulk wine may require a federal registry number.

(3) No part of the production process may take place at the winery warehouse premises.

(4) There may be no retail sales from the winery warehouse premises.

(5) The winery warehouse must be approved by the board under RCW 66.24.010 and the number of warehouses off the winery premises may not exceed one.

AMENDATORY SECTION (Amending WSR 07-02-076, filed 12/29/06, effective 1/29/07)

WAC 314-24-150 Wine records—Preservation. (1) Every domestic winery, wine distributor, wine certificate of approval holder, wine shipper permit holder, and wine importer shall keep wine accounts separate from other accounts, and maintain proper records in a form approved by the board showing all transactions in wine.

(2) Every domestic winery, wine distributor, and wine importer, shall, in the case of sales of wine within the state, keep and preserve all invoices, bills of lading, sales slips, and other evidence of sale, in the office of the domestic winery,

wine distributor or wine importer for at least ~~((two))~~ three years after each sale.

(3) Every domestic winery, wine distributor, and wine importer, shall, in the case of wine exported from the state, keep and preserve all bills of lading and other evidence of shipment in the office of the domestic winery, wine distributor, or wine importer for at least two years after each shipment.

(4) Both the shipping and receiving licensees and permittees, as the case may be, shall keep and preserve all invoices, bills of lading, sales slips, and other evidence of sale, transfer or shipment in their respective offices for at least ~~((two))~~ three years after each sale, transfer or shipment.

(5) Licensees and permittees may maintain microfilm records containing reproductions (including microfiche) of any record, document, or report if first approved by the board. Request for approval shall be directed to the financial division of the Washington state liquor control board and must include the following information:

(a) Records proposed to be reproduced.

(b) Reproduction process.

(c) Manner of preserving the reproduction.

(d) Facilities provided for examining or viewing such reproduction.

If the request is approved, the licensee or permittee shall provide for the examining, viewing, and reproduction of such records the same as if they were the original records.

(6) If the licensee or permittee keeps records within an automated data processing (ADP) system, the system must include a method for producing legible records that will provide the same information required of that type of record within this section. The ADP system is acceptable if it complies with the following guidelines:

(a) Provides an audit trail so that details (invoices and vouchers) underlying the summary accounting data may be identified and made available upon request.

(b) Provides the opportunity to trace any transaction back to the original source or forward to a final total. If print-outs of transactions are not made when they are processed, the system must have the ability to reconstruct these transactions.

(c) Has available a full description of the ADP portion of the accounting system. This should show the applications being performed, the procedures employed in each application, and the controls used to ensure accurate and reliable processing.

(7) The provisions contained in subsections (5) and (6) of this section do not eliminate the requirement to maintain source documents, but they do allow the source documents to be maintained in some other location.

AMENDATORY SECTION (Amending WSR 07-02-076, filed 12/29/06, effective 1/29/07)

WAC 314-24-190 Wine suppliers and distributors ~~((price postings))~~. RCW 66.28.180 requires wine distributors and suppliers to ~~((file price postings with the board))~~ maintain all current and prior price lists at its liquor licensed location.

(1) **Definitions**—For the purposes of this chapter:

(a) A ("wine price posting" or "price posting") "price list" means a declaration of the prices ((of wine sold from a supplier to a distributor or from a distributor to a retailer, in effect as filed with the liquor control board either electronically or hard copy, under the provisions of RCW 66.28.180 and Title 314 WAC)) at which any and all brands of wine and any and all packages within a brand are to be sold by the person maintaining the list. Distributors must maintain a price list showing all such prices for sales to retailers. Each supplier functioning as a distributor must maintain a price list showing all such prices for sales to retailers as well as showing such prices for sales to distributors. The price list will contain the wholesale prices at which any and all brands of wine sold by the supplier or distributor shall be available to retailers within the state.

(b) A "wine supplier" means a domestic winery, certificate of approval holder, wine importer, wine distributor acting as the first United States importer, or a distributor selling wine to another distributor.

(c) A "wine distributor" means a distributor selling to a retailer, a domestic winery acting as a distributor, or a certificate of approval holder with a direct shipping to Washington retailer endorsement selling wine of its own production to a retailer.

(2) ((Filing deadlines.

(a) Wine supplier filing deadlines	(b) Wine distributor filing deadlines
All price postings, distributor appointments, written contracts, and memoranda of oral agreements must be received by the board not later than the twenty fifth day of the month, and if approved will become effective on the first day of the second calendar month following the date of filing.	All price postings must be received by the board not later than the tenth day of the month, and if approved will become effective on the first day of the calendar month following the date of filing.

(e) The board will allow up to an additional five days for revisions of filings to correct errors and omissions filed during the current posting period. The board may in individual cases, for good cause shown, extend the filing date.

(d) When a price posting has been deposited in the United States mail addressed to the board, it will be considered filed or received on the date shown by the United States post office cancellation mark on the envelope, or on the date it was mailed if it is established to the satisfaction of the board that the actual mailing occurred on an earlier date.

(3) **Filing date exception**—Whenever a filing deadline falls on Saturday, Sunday, or a legal holiday, a price posting may be filed not later than the close of business the next business day.

(4) **No changes from previous month**—If a wine supplier or distributor makes no changes in any items or prices listed in the last filed and approved price posting, the prices will remain in effect for each succeeding posting period until a revised price posting is filed and approved.

~~(5) Temporary~~ **Products and price ((reductions)) lists**—If a wine supplier or distributor ((files price postings that)) lists selected items on which prices are temporarily reduced ((for one posting period only)), ((these)) the prices ((postings)) must clearly reflect all items(;) and the selling price((, and the posting period for which the price reductions will be in effect. At the expiration of the posting period during which the reductions were in effect, the special price posting will become void and the last regularly filed and effective price posting will again become effective)). All products must be made available to all retail licensees to the extent it is reasonably practical to do so and all retail licensees must be given reasonable notice of all prices and price changes.

~~((6))~~ (3) **Distributor changes**—

(a) The following guidelines apply when a wine supplier makes a distributor change outside of the regular distributor appointment timelines ((outlined in subsection (2) of this rule:

(i))₂. The supplier must notify the board in writing that he/she wishes to change his/her current distributor and appoint a new distributor to be effective immediately.

((ii) The new distributor must agree to take the currently posted prices of the old distributor until the new distributor is able to post his/her own prices during the next regular posting period.

(iii) If a wine supplier has a territory or brand agreement with a distributor and wants to change a distributor appointed to a certain brand(s) or territory(ies), the board may allow the new distributor to assume the prior distributor's price postings for the brand and/or territory in order to avoid disruption of the market.)

(b) A wine supplier must notify the board if any of the contracts or agreements listed in this rule are revised or terminated by either party. ((The board may immediately authorize a price posting if a wine distributor assumes the wholesale price postings from the previously appointed distributor.

(c) Prices and other conditions of price postings in effect at the time of the distributor change may not be changed until subsequent filing are submitted to the board and become effective.

~~((7))~~ (4) **Price ((postings)) lists for new distributors**—When the board issues a new wine distributor license, the licensee ((may file an initial price posting and request that the price posting be placed into effect immediately. The board may grant this immediate approval if the price posting is in compliance with this rule and with all other applicable laws and rules)) must have a price list available.

~~((8))~~ (5) **Accommodation sales**—The provisions of this rule do not apply((, and filings are not required,)) when a wine distributor makes an accommodation sale to another wine distributor and this sale is made at a selling price that does not exceed the laid-in cost of the wine being sold. Accommodation sales may only be made when the distributor purchasing the wine is an appointed distributor of the supplier, when the distributor is an authorized purchaser of the brand and product being sold, and when the supplying distributor is appointed by the supplier.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-24-210 Return of wine by retailer—Replacement—Conditions. No wine shall be returned by any retail licensee to any wine distributor except as herein provided.

(1) Wine which is not in a salable condition may be returned by a retail licensee to the wine distributor from whom purchased, provided it is immediately replaced by the wine distributor with an identical quantity, type and brand of wine: Provided, That if the brand of wine is not presently in the wine distributor's stock and is not available to the distributor in the immediate future, a cash refund may be made to the retail licensee upon the approval of the board first being obtained.

(a) Every wine distributor shall maintain on the licensed premises for a period of ~~((two))~~ three years complete records of all refunds and exchanges made under this section including an inventory of unsalable wine returned to such distributor by any retail licensee.

(b) Such unsalable wine which requires reconditioning or destruction shall be returned by the wine distributor to the domestic winery which manufactured or produced the same, or to the importer who imported such wine. When wine which has been returned to a domestic winery by any person for reconditioning or destruction has been assembled at the winery, a complete inventory in duplicate of unsalable wine shall be filed with the board by the winery with a request that inspection be made of the returned wine before the reconditioning process or destruction is started. When wine has been returned by the distributor to the importer who imported such wine, a complete inventory of said wine shall be filed in duplicate with the board by the importer with a request that inspection be made of the returned wine before the wine is destroyed or returned to the out-of-state manufacturer.

(c) Wine which is not in a salable condition and has been returned to a domestic winery or importer by a distributor may be replaced by the supplier with an identical quantity, type, and brand of wine: Provided, That if the brand of wine is not presently in the winery or importer's stock and is not available to the supplier in the immediate future, a cash refund or credit may be made to the distributor by the supplier. Credit extended for the return of product should be noted on a separate document from the original invoice. Except as provided herein, no other adjustment, by way of a cash refund or otherwise, shall be made by the winery or wine distributor.

(2) Wine may be returned by a retail licensee or by a governmental agency who has seized the same to the wine distributor selling such wine in the event the retailer goes out of the business of selling wine at retail or has their license changed to a wine restricted license, and in such case a cash refund may be made upon return of the wine, provided that consent of the board is first had and obtained.

(3) Wine different from that ordered which has been delivered in error to a retail licensee may be returned to a wine distributor and either replaced with that wine which was ordered or a cash refund may be made upon the approval of the board first being obtained: Provided, That the error in

delivery shall be discovered and corrected within eight days of the date the delivery was made.

(4) A distributor may return salable wine to a Washington winery provided the winery reimburses the distributor for the cost of the wine plus the wine tax which was paid by the distributor. The winery will then put any wine returned from a distributor into their tax paid area at the winery.

NEW SECTION

WAC 314-28-005 Definitions. The following definition applies to distilleries.

"Domestic distillery" means any distillery licensed under RCW 66.24.140 and located in the state of Washington.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-44-005 Agent's license required—Eligible employers defined—Certain classes limited—Bona fide entity defined—Prohibited practices. (1) No person shall canvass for, solicit, receive or take orders for the purchase or sale of any liquor, or act as the agent for the purchase or sale of liquor, nor contact any licensees of the board in goodwill activities, unless such person is holder of an agent's license as provided in RCW 66.24.310, and this regulation.

(2) An agent's license may be issued to the accredited representative of ~~((a person, firm, or corporation holding a certificate of approval issued pursuant to RCW 66.24.270 or 66.24.206, a beer distributor's license, a brewer's license, a beer importer's license, a domestic winery license, a wine importer's license, or a wine distributor's license within the state of Washington, or the accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor, or foreign produced beer or wine. A person, firm, or corporation so qualified, is herein defined to be an eligible employer. Such employer))~~ an industry member. An industry member shall apply to the board for ((such)) an agent's license for ((his)) its accredited representatives on application forms prescribed and furnished by the board.

(3) Every ~~((firm which))~~ industry member who applies for an agent's license under the provisions of this section shall furnish the board with satisfactory proof ~~((that such firm is))~~ they are in fact a bona fide business entity.

(4) Only the licensed agent of ~~((a distiller, manufacturer, importer, or distributor of spirituous liquor))~~ an industry member may contact retail licensees in goodwill activities when such contacts pertain to spirituous liquor products.

(5) No ~~((distiller, manufacturer, importer, distributor of liquor, or agent thereof,))~~ industry member shall solicit ~~((either in person, by mail or otherwise))~~ in any way, any liquor vendor or employee of the board, except the purchasing agent ~~((thereof))~~, for the purpose or with the intent of furthering the sale of a particular brand or brands of merchandise as against another brand or brands of merchandise.

(6) No ~~((distiller, manufacturer, importer, distributor of liquor, or agent thereof,))~~ industry member shall visit any state liquor store or agency for the purpose of exerting influence on employees for sales promotion or to secure information regarding inventory or any other matter relating to sales. They may deliver, or have delivered, and assemble where

required, consumer offers and display material that have been approved by the board ((or its designee)). Violation of this section will result in a penalty against all company items, which in appropriate cases could mean a partial or total delisting of those items.

(7) No ~~((distiller, manufacturer, importer, or distributor of liquor, or agent thereof,))~~ industry member shall give or offer to any employee of the board any entertainment, gratuity or other consideration for the purpose of inducing or promoting the sale of merchandise.

(8) No ~~((distiller, manufacturer, importer, or distributor, or agent thereof,))~~ industry member shall allow, pay or rebate, directly or indirectly, any cash or merchandise to any ~~((retail licensee))~~ retailer to induce or promote the sale of liquor, including the payment of tips to such ~~((licensees))~~ retailers or their employees and the purchasing of drinks "for the house." Such persons, firms and licensees must operate in conformity with WAC 314-12-140, RCW 66.28.010, 66.28.-040, and other applicable laws and rules.

(9) Upon the infraction of any law or regulation by any ~~((distiller, manufacturer, importer, distributor, or agent))~~ industry member, the board may, in addition to imposing other penalties as prescribed by law, remove such firm's products from the sales list of the board, and/or prohibit the sale of any brand or brands of beer or wine involved as provided in RCW 66.28.030.

(10) Upon the termination of the employment of a licensed agent, his employer shall immediately notify the board and with such notice return to the board the agent's license issued to such person.

AMENDATORY SECTION (Amending WSR 94-14-023, filed 6/27/94, effective 7/28/94)

WAC 314-44-015 Agent license limited authority. (1) Agents licensed under the authority of RCW 66.24.310 may perform goodwill activities as authorized by the board.

(2) Agents licensed under RCW 66.24.310 are prohibited from using their agent's license as a means to represent their being an employee of the board for the purpose of:

- (a) Obtaining admission to liquor licensed establishments~~(s);~~
- (b) Misleading anyone into thinking they are a liquor enforcement officer; or
- (c) Checking identification of patrons.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-52-080 Novelty advertising. (1) Novelty branded promotional advertising items ~~((shall))~~ which are of nominal value, singly or in the aggregate, may be provided to retailers by industry members. Singly or in the aggregate is per licensed location. Such items include, but ((shall)) are not ((be)) limited to((s)): Trays, lighters, blotters, post cards, pencils, coasters, menu cards, meal checks, napkins, clocks, ((wearing apparel,)) mugs, glasses, ((knives, lamp shades, or similar items on which the logo, liquor brand name or name of a manufacturer of an alcoholic beverage has been imprinted.

~~((2) No liquor manufacturer, distributor, or importer, or employee thereof, shall provide without charge, directly or indirectly, any novelty advertising items to any retail licensee; nor shall any retail licensee, or employee thereof, accept without charge any liquor novelty advertising items directly or indirectly, from any manufacturer, distributor, or importer, or employee thereof.~~

~~((3) A manufacturer, distributor, or importer,))~~ bottle or can openers, corkscrews, matches, printed recipes, shirts, hats, visors, and other similar items. Branded promotional items:

(a) Must be used exclusively by the retailer or its employees in a manner consistent with its license;

(b) Must bear imprinted advertising matter of the industry member only;

(c) May only be provided by industry members to retailers and their employees;

(d) May not be provided by or through retailers or their employees to retail customers.

(2) An industry member is not obligated to provide any branded promotional items, and a retailer may not require an industry member to provide such branded promotional items as a condition for selling any alcohol to the retailer.

(3) Any industry member, retailer, or other person asserting the provision of branded promotional items has resulted or is more likely than not to result in undue influence or an adverse impact on public health and safety, or is otherwise inconsistent with the criteria in subsection (1) of this section, may file a complaint with the board.

Upon receipt of a complaint the board may conduct an investigation as it deems appropriate in the circumstances.

(a) The board may issue an administrative violation notice to the industry member, to the retailer, or both.

(b) The recipient of the administrative violation notice may request a hearing under chapter 34.05 RCW.

(4) An industry member or their employee ((thereof)), may sell, and a retail licensee may purchase, for use, resale, or distribution on the licensed premises any novelty advertising items. The price ((thereof)) shall be not less than the ((manufacturer's, importer's, or distributor's)) industry member's cost of acquisition. In no event shall credit be extended to any retail licensee. The purchase by retail licensees of such items shall be supported by invoices or signed vouchers which shall be preserved for ((two)) three years on the licensed premises and available for immediate inspection by board enforcement officers.

~~((4) A manufacturer, importer, or distributor))~~ (5) An industry member who sells novelty advertising items to retail licensees shall keep on file the original((s)) or ((copies)) copy of all sales slips, invoices, and other memoranda covering all purchases of novelty advertising items ((from)) by the ((supplier or manufacturer of such items)) industry member and shall also keep on file a copy of all invoices, sales slips, or memoranda reflecting the sales to retail licensees or other disbursement of all novelty advertising items. Such records shall be maintained in a manner satisfactory to the board and must be preserved in the office of the ((manufacturer, importer, or distributor)) industry member for a period of at least ((two)) three years after each purchase or sale. Any manufacturer which does not maintain a principal office

within the state shall, when requested, furnish the above required records at a designated location within the state for review by the board.

(2) Violations of this section will be subject to a fine and/or revocation of the carpool permit.

WSR 09-22-103

PROPOSED RULES

CENTRAL WASHINGTON UNIVERSITY

[Filed November 4, 2009, 11:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-09-025.

Title of Rule and Other Identifying Information: Carpool policies, WAC 106-116-313.

Hearing Location(s): Barge 304, on December 10, 2009, at 11:00 a.m.

Date of Intended Adoption: December 11, 2009.

Submit Written Comments to: Kristy Magdlin, President's Office, 400 East University Way, Ellensburg, WA 98926-7501, e-mail magdlink@cwu.edu, fax (509) 963-3206.

Assistance for Persons with Disabilities: Contact disability support services, TTY (509) 963-2143.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New rule for creation of a carpool permit.

Reasons Supporting Proposal: Establish a carpool policy to reduce number of vehicles on campus and protect the environment.

Statutory Authority for Adoption: Title 28.B [28B] RCW and RCW 28B.35.120(2).

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

Name of Proponent: Central Washington University, public.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Steve Rittreiser, 400 East University Way, Ellensburg, WA 98926, (509) 963-2956.

November 4, 2009

James L. Gaudino

President

NEW SECTION

WAC 106-116-313 Carpool permits. (1) Carpool permits may be issued to employees and students. One transferable permit will be issued by parking services for each carpool. This permit is transferable only among the registered members of the carpool. This permit must be displayed in accordance with the instructions provided with the permit. Parking services will establish the number of persons needed to make up a carpool group. A carpool group must commute to the campus in the same vehicle and live outside the buffer zone established by parking services (<http://www.cwu.edu/~parking>). Carpool vehicles must be parked in designated parking stalls.