WSR 09-22-035

EMERGENCY RULES

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed October 27, 2009, 8:51 a.m., effective October 28, 2009]

Effective Date of Rule: October 28, 2009.

Purpose: These amendments are required to meet the 2009-2011 final legislative budget reductions in ESHB 1244. Specifically, the department will no longer cover orally-administered enteral nutrition products for clients twenty-one years of age and older.

Citation of Existing Rules Affected by this Order: Amending WAC 388-554-100, 388-554-200, 388-554-300, 388-554-400, 388-554-500, 388-554-600, 388-554-700, and 388-554-800.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090.

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: Emergency rule adoption is required in order for the department to fully meet the legislatively-mandated appropriation reduction in ESHB 1244 for the durable medical equipment (DME) for fiscal years 2010-2011. This emergency filing is necessary to continue the current emergency rule filed as WSR 09-14-090 on June 30, 2009, while the department completes the permanent rule-making process. The CR-102 is filed and the public hearing is scheduled for October 27, 2009. Following this, the department plans to formally adopt the permanent rule in early 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 8, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 8, Repealed 0.

Date Adopted: October 14, 2009.

Stephanie E. Vaughn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-04-059, filed 1/28/05, effective 3/1/05)

WAC 388-554-100 Enteral nutrition ((~~program~~))—General. ((~~The medical assistance administration's (MAA's) enteral nutrition program covers the products, equipment, and supplies to provide medically necessary enteral nutrition to eligible medical assistance clients~~)) (1) The department covers the enteral nutrition products, equipment, and related supplies listed in this chapter, according to department rules and subject to the limitations and requirements in this chapter.

(2) The department pays for enteral nutrition products, equipment and related supplies when they are:

(a) Covered;

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

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

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

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

(3) The department requires prior authorization for covered enteral nutrition products, equipment and related supplies when the clinical criteria set forth in this chapter are not met, including the criteria associated with the expedited prior authorization process. The department evaluates requests requiring prior authorization on a case-by-case basis to determine whether they are medically necessary, according to the process found in WAC 388-501-0165.

(4) The department evaluates a request for a service that is in a covered category, but has been determined to be experimental or investigational per WAC 388-531-0550, under the provisions of WAC 388-501-0165.

(5) The department terminates a provider's participation with the department according to chapter 388-502 WAC.

AMENDATORY SECTION (Amending WSR 05-04-059, filed 1/28/05, effective 3/1/05)

WAC 388-554-200 Enteral nutrition ((~~program~~))—Definitions. The following terms and definitions and those found in WAC 388-500-0005 apply to ((~~the enteral nutrition program~~)) this chapter:

"BMI" see **"body mass index."**

"Body mass index (BMI)" ((~~is~~)) - A number that shows body weight ((~~adjusted by~~)) relative to height, and is calculated using inches and pounds or meters and kilograms.

"Department" - The department of social and health services (DSHS).

"Enteral nutrition" ((~~means~~)) - The use of medically necessary nutritional products alone, or in combination with traditional food, when a client is unable to consume enough traditional food to meet nutritional requirements. Enteral nutritional solutions can be given orally or via feeding tubes.

"Enteral nutrition equipment" ((~~means~~)) - Durable medical feeding pumps and intravenous (IV) poles used in

conjunction with nutrition supplies to dispense formula to a client.

"Enteral nutrition product" ((~~means~~)) - Enteral nutrition formulas and/or products.

"Enteral nutrition supplies" ((~~means~~)) - The supplies, such as nasogastric, gastrostomy and jejunostomy tubes, necessary to allow nutritional support via the alimentary canal or any route connected to the gastrointestinal system.

"Growth chart" ((~~is~~)) - A series of percentile curves that illustrate the distribution of select body measurements (i.e., height, weight, and age) in children published by the Centers for Disease Control and Prevention, National Center for Health Statistics. CDC growth charts: United States. http:// www.cdc.gov/growthcharts/

"Nonfunctioning digestive tract" ((~~is~~)) - Caused by a condition that affects the body's alimentary organs and their ability to break down ((~~and~~)), digest, and absorb nutrients.

"Orally administered enteral nutrition products" ((~~means~~)) - Enteral nutrition solutions and products that a client consumes orally for nutritional support.

"Tube-delivery" ((~~means~~)) - The provision of nutritional requirements through a tube into the stomach or small intestine.

((~~**"WIC program"** (Women, infants and children (WIC) program) is a special supplemental nutrition program managed by the department of health (DOH) that serves to safeguard the health of children up to age five, and low-income pregnant and breastfeeding women who are at nutritional risk by providing them with healthy, nutritious foods to supplement diets, information on healthy eating, and referral to health care.~~))

"Women, infants and children (WIC) program((~~.~~))" ((~~See **"WIC program."**~~)) (Also known as WIC program) - A special supplemental nutrition program managed by the department of health (DOH) that serves to safeguard the health of children up to age five and low-income pregnant and breastfeeding women who are at nutritional risk, by providing them with healthy, nutritious foods to supplement diets, information on healthy eating, and referral to health care.

AMENDATORY SECTION (Amending WSR 05-04-059, filed 1/28/05, effective 3/1/05)

WAC 388-554-300 Enteral nutrition ((~~program~~)) — Client eligibility. (1) ((~~Clients in the following medical assistance programs are eligible~~)) To receive oral or tube-delivered enteral nutrition products ((~~and tube-delivered enteral nutrition products and necessary~~)), equipment, and related supplies, ((~~subject to the limitations in this chapter and other applicable WAC~~)) clients must be eligible for one of the following medical assistance programs:

(a) Categorically needy program (CN or CNP);

(b) Categorically needy program - state children's health insurance program (CNP-SCHIP) ((~~(same scope of coverage as CNP)~~));

(c) ((~~General assistance - Unemployable (GA-U)~~)) Children's healthcare programs as defined in WAC 388-505-0210;

(d) Limited casualty program - Medically needy program (LCP-MNP);

(e) ((~~Alien emergency medical program - CNP~~)) General assistance (GAU/ADATSA); and

(f) ((~~Alien emergency medical program - LCP-MNP~~)) Emergency medical only programs when the services are necessary to treat the client's emergency medical condition.

(2) ((~~All clients younger than age twenty-one must be evaluated by a certified dietitian with a current provider number within thirty days of initiation of enteral nutrition products, and periodically (at the discretion of the certified dietitian) while receiving enteral nutrition products. See WAC 388-554-400 (2)(h) for provider requirements.~~

~~(3) Clients enrolled in an MAA managed care plan are eligible for oral enteral nutrition products and tube-delivered enteral nutrition products and necessary equipment and supplies through that plan. If a client becomes enrolled in a managed care plan before MAA completes the purchase (or rental, if applicable) of prescribed enteral products, necessary equipment and supplies:~~

~~(a) MAA rescinds the purchase until the managed care primary care provider (PCP) evaluates the client; and~~

~~(b) The managed care plan's applicable reimbursement policies apply to the purchase of the products, equipment, or supplies, or rental of the equipment, as applicable.~~

~~(4) To receive orally administered enteral nutrition products, a client must:~~

~~(a) Have a valid written physician order from a physician, advanced registered nurse practitioner (ARNP), or physician assistant-certified (PA-C) for all enteral nutrition products;~~

~~(b) When required, have the provider obtain prior authorization as described in WAC 388-554-700;~~

~~(c) Meet the conditions in this section and other applicable WAC;~~

~~(d) Be able to manage their feedings in one of the following ways:~~

~~(i) Independently; or~~

~~(ii) With a caregiver who can manage the feedings; and~~

~~(e) Have at least one of the following medical conditions, subject to the criteria listed:~~

~~(i) Malnutrition/malabsorption as a result of a stated primary diagnosed disease. The client must have:~~

~~(A) A weight-for-length less than or equal to the fifth percentile if the client is younger than age three; or~~

~~(B) A body mass index (BMI) of:~~

~~(I) Less than or equal to the fifth percentile if the client is older than age three and younger than age eighteen; or~~

~~(II) Less than or equal to 18.5 if the client is age eighteen or older.~~

~~(ii) Acquired immune deficiency syndrome (AIDS). The client must be in a wasting state and have:~~

~~(A) A weight-for-length less than or equal to the fifth percentile if the client is younger than age three; or~~

~~(B) A BMI of:~~

~~(I) Less than or equal to the fifth percentile if the client is older than age three and younger than age eighteen; or~~

~~(II) Less than or equal to 18.5 if the client is age eighteen or older.~~

(iii) Amino acid, fatty acid, and carbohydrate metabolic disorders;

(iv) Dysphagia. The client must:

(A) Need to transition from tube feedings to oral feedings or require thickeners to aid swallowing; and

(B) Be evaluated by:

(I) A speech therapist; or

(II) An occupational therapist who specializes in dysphagia.

(v) Chronic renal failure. The client:

(A) Must be receiving dialysis; and

(B) Have a fluid restrictive diet in order to use nutrition bars.

(vi) Malignant cancer(s). The client must be receiving chemotherapy.

(vii) Decubitus pressure ulcers. The client must have:

(A) Stage three or greater decubitus pressure ulcers; and

(B) An albumin level of 3.2 or below.

(viii) Failure to thrive. The client must have a disease or medical condition that is only organic in nature and not due to cognitive, emotional, or psychological impairment. In addition, the client must have:

(A) A weight-for-length less than or equal to the fifth percentile if the client is younger than age three;

(B) A BMI of less than or equal to the fifth percentile if the client is at least age three but younger than age eighteen; and

(C) A BMI of less than or equal to 18.5, an albumin level of 3.5 or below, and a cholesterol level of one hundred sixty or below if the client is age eighteen or older.

(5) A client is eligible to receive delivery of orally administered enteral nutrition products in quantities sufficient to meet the client's medically authorized needs, not to exceed a one month supply. To receive the next month's delivery of authorized products, the client's record must show documentation of the need to refill the products. See WAC 388-554-400 for provider requirements.

(6) To receive tube-delivered enteral nutrition products, necessary equipment and supplies, a client must:

(a) Have a valid written physician order from a physician, ARNP, or PA-C;

(b) Meet the conditions in this section and other applicable WAC; and

(c) Be able to manage their tube feedings in one of the following ways:

(i) Independently; or

(ii) With a caregiver who can manage the feedings; and

(d) Have at least one of the following medical conditions, subject to the criteria listed:

(i) A nonfunction or disease of the structures that normally permit food to reach the small bowel; or

(ii) A disease or condition of the small bowel that impairs digestion and absorption of an oral diet, either of which requires tube feedings to provide sufficient nutrients to maintain weight and strength that is properly proportioned to the client's overall health status)) Clients who are enrolled in a department-contracted managed care organization (MCO) must arrange for enteral nutrition products, equipment, and related supplies directly through his or her department-contracted MCO.

(3) For clients who reside in a nursing facility, adult family home, assisted living facility, boarding home, or any other residence where the provision of food is included in the daily rate, oral enteral nutrition products, equipment, and related supplies are the responsibility of the facility to provide in accordance with chapters 388-76, 388-97 and 388-78A WAC.

(4) For clients who reside in a state-owned facility (i.e. state school, developmental disabilities (DD) facility, mental health facility, Western State Hospital, and Eastern State Hospital) enteral nutrition products, equipment, and related supplies are the responsibility of the state-owned facility to provide.

(5) Clients who have elected and are eligible to receive the department's hospice benefit must arrange for enteral nutrition products, equipment and related supplies directly through the hospice benefit.

(6) Children who qualify for supplemental nutrition from the women, infants, and children (WIC) program must receive supplemental nutrition directly from that program unless the client meets the limited circumstances in WAC 388-554-500 (1)(d).

AMENDATORY SECTION (Amending WSR 05-04-059, filed 1/28/05, effective 3/1/05)

WAC 388-554-400 Enteral nutrition ((~~program~~)) Provider requirements. (1) ((~~A provider of all oral enteral nutrition products and tube-delivered enteral nutrition products and necessary equipment and supplies must~~)) The following providers are eligible to enroll/contract with the department to provide orally-administered enteral nutrition products and tube-delivered enteral nutrition products, equipment, and related supplies:

(a) ((~~Have a current core provider agreement with the medical assistance administration (MAA); and~~

~~(b) Be one of the following provider types:~~

~~(i)~~)) Pharmacy provider; or

(((~~ii~~))) (b) Durable medical equipment (DME) provider.

(2) To ((~~be paid for oral enteral nutrition products and tube-delivered enteral nutrition products and necessary equipment and supplies, an eligible~~)) receive payment for orally-administered enteral nutrition products and tube-delivered enteral nutrition products, equipment and related supplies, a provider must:

(a) Meet the requirements in ((~~WAC 388-502-0020 and other applicable~~)) chapters 388-501 and 388-502 WAC;

(b) ((~~Obtain prior authorization (PA), if required, before delivery to the client and before billing MAA. See WAC 388-554-700 for PA requirements~~)) Provide only those services that are within the scope of the provider's license;

(c) ((~~Deliver orally administered enteral nutrition products in quantities sufficient to meet a client's medically authorized needs, not to exceed a one-month supply~~)) Obtain prior authorization from the department, if required, before delivery to the client and before billing the department;

(d) ((~~Bill MAA for the authorized products and submit a claim for payment to MAA with a date of service being the same as the shipping date~~)) Deliver enteral nutritional prod-

ucts in quantities sufficient to meet the client's authorized needs, not to exceed a one-month supply;

(e) Confirm with the client ((~~and document in the client's record~~)) or the client's caregiver that the next month's delivery of authorized orally administered enteral nutrition products is necessary (((~~see WAC 388-554-300(5)~~))) and document the confirmation in the client's file. ((~~MAA will not reimburse~~)) The department does not pay for automatic periodic delivery of products;

(f) ((~~Notify and inform the client's physician if the client has indicated the product is not being used as prescribed~~)) Furnish clients with new or used equipment that includes full manufacturer and dealer warranties for at least one year; and

(g) ((~~Keep legible, accurate, and complete charts in the client's record to justify the medical necessity of the items provided and include:~~

~~(i) For each item billed, a copy of the prescription. The prescription must:~~

~~(A) Be signed and dated by the prescribing physician;~~

~~(B) List the client's medical condition and exact daily calorie amount of needed enteral product; and~~

~~(C) State the reason why the client is unable to consume enough traditional food to meet nutritional requirements.~~

~~(ii) The medical reason the specific enteral product, equipment, and/or supply is prescribed; and~~

~~(iii) For a client who meets the women, infants and children (WIC) program's target population as defined in WAC 388-554-200, verification from the WIC program that the client:~~

~~(A) Is not eligible for WIC program services;~~

~~(B) Is eligible for WIC program services, but nutritional needs exceed the WIC program's maximum per calendar month allotment; or~~

~~(C) The WIC program cannot provide the prescribed product.~~

~~(h) For a client younger than age twenty-one, retain a copy of each required certified dietitian evaluation, as described in WAC 388-554-300(2).~~

~~(3) MAA may recoup any payment made to a provider for authorized enteral nutrition products if the requirements in subsection (2) of this section and other applicable WAC are not met~~)) Notify the client's physician if the client has indicated the product is not being used as prescribed and document the notification in the client's file.

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

WAC 388-554-500 ((~~Orally administered~~)) Covered enteral nutrition products, equipment and related supplies—((~~Coverage, limitations, and reimbursement~~)) Orally-administered—Clients twenty years of age and younger only. (1) ((~~The enteral nutrition program covers and reimburses medically necessary orally-administered enteral nutrition products, subject to:~~

~~(a) Prior authorization requirements under WAC 388-554-700;~~

~~(b) Duration periods determined by the department;~~

~~(c) Delivery requirements under WAC 388-554-400(2); and~~

~~(d) The provisions in other applicable WAC.~~

~~(2) Except as provided in subsection (3) of this section, the department does not pay separately for orally administered enteral nutrition products:~~

~~(a) When a client resides in a state-owned facility (i.e., state school, developmental disabilities (DD) facility, mental health facility, Western State Hospital, and Eastern State Hospital).~~

~~(b) When a client has elected and is eligible to receive the department's hospice benefit, unless both of the following apply:~~

~~(i) The client has a preexisting medical condition that requires enteral nutritional support; and~~

~~(ii) The preexisting medical condition is not related to the diagnosis that qualifies the client for hospice.~~

~~(3) The department pays separately for a client's orally administered enteral nutrition products when the client:~~

~~(a) Resides in a nursing facility;~~

~~(b) Meets the criteria in WAC 388-554-300; and~~

~~(c) Needs enteral nutrition products to meet one hundred percent of the client's nutritional needs.~~

~~(4) The department does not cover or pay for orally administered enteral nutrition products when the client's nutritional need can be met using traditional foods, baby foods, and other regular grocery products that can be pulverized or blenderized and used to meet the client's caloric and nutritional needs.~~

~~(5) The department:~~

~~(a) Determines reimbursement for oral enteral nutrition products according to a set fee schedule;~~

~~(b) Considers medicare's current fee schedule when determining maximum allowable fees;~~

~~(c) Considers vendor rate increases or decreases as directed by the Legislature; and~~

~~(d) Evaluates and updates the maximum allowable fees for oral enteral nutrition products at least once per year.~~

~~(6) The department evaluates a request for orally administered enteral nutrition products that are in excess of the enteral nutrition program's limitations or restrictions, according to the provisions of WAC 388-501-0165 and 388-501-0169.~~

~~(7) The department evaluates a request for orally administered enteral nutrition products that are listed as noncovered in this chapter according to the provisions of WAC 388-501-0160~~)) The department covers orally-administered enteral nutrition products only for clients twenty years of age and younger as follows:

(a) The client's nutritional needs cannot be met using traditional foods, baby foods, and other regular grocery products that can be pulverized or blenderized and used to meet the client's caloric and nutritional needs;

(b) The client is able to manage their feedings in one of the following ways:

(i) Independently; or

(ii) With a caregiver who can manage the feedings; and

(c) The client meets one of the following clinical criteria:

(i) Acquired immune deficiency syndrome (AIDS). Providers must obtain prior authorization to receive payment. The client must:

(A) Be in a wasting state;

(B) Have a weight-for-length less than or equal to the fifth percentile if the client is three years of age or younger; or

(C) Have a body mass index (BMI) of:

(I) Less than or equal to the fifth percentile if the client is four through seventeen years of age; or

(II) Less than or equal to 18.5 if the client is eighteen through twenty years of age; or

(D) Have a BMI of:

(I) Less than or equal to twenty-five; and

(II) An unintentional or unexplained weight loss of five percent in one month, seven and a half percent in three months, or ten percent in six months.

(ii) Amino acid, fatty acid, and carbohydrate metabolic disorders.

(A) The client must require a specialized nutrition product; and

(B) Providers must follow the department's expedited prior authorization process to receive payment.

(iii) Cancer(s).

(A) The client must be receiving chemotherapy and/or radiation therapy or post-therapy treatment;

(B) The department pays for orally-administered nutritional products for up to three months following the completion of chemotherapy or radiation therapy; and

(C) Providers must follow the department's expedited prior authorization process to receive payment.

(iv) Chronic renal failure.

(A) The client must be receiving dialysis and have a fluid restrictive diet in order to use nutrition bars; and

(B) Providers must follow the department's expedited prior authorization process to receive payment.

(v) Decubitus pressure ulcers.

(A) The client must have stage three or greater decubitus pressure ulcers and an albumin level of 3.2 or below; and

(B) Providers must follow the department's expedited prior authorization process to receive a maximum of three month's payment.

(vi) Failure to thrive or malnutrition/malabsorption as a result of a stated primary diagnosed disease.

(A) The provider must obtain prior authorization to receive payment; and

(B) The client must have:

(I) A disease or medical condition that is only organic in nature and not due to cognitive, emotional, or psychological impairment; and

(II) A weight-for-length less than or equal to the fifth percentile if the client is two years of age or younger; or

(III) A BMI of:

(aa) Less than or equal to the fifth percentile if the client is three through seventeen years of age; or

(bb) Less than or equal to 18.5, an albumin level of 3.5 or below, and a cholesterol level of one hundred sixty or below if the client is age eighteen through twenty years of age; or

(IV) Have a BMI of:

(aa) Less than or equal to twenty five; and

(bb) An unintentional or unexplained weight loss of five percent in one month, seven and a half percent in three months, or ten percent in six months.

(vii) Medical conditions (e.g., dysphagia) requiring a thickener.

(A) The client must:

(I) Require a thickener to aid in swallowing or currently be transitioning from tube feedings to oral feedings; and

(II) Be evaluated by a speech therapist or an occupational therapist who specializes in dysphagia. The report recommending a thickener must be in the client's chart in the prescriber's office.

(B) Providers must follow the department's expedited prior authorization process to receive payment.

(d) If four years of age or younger.

(i) The client must:

(A) Have a certified registered dietition (RD) evaluation with recommendations which support the prescriber's order for oral enteral nutrition products or formulas; and

(B) Have a signed and dated written notification from WIC indicating one of the following:

(I) Client is not eligible for the WIC program; or

(II) Client is eligible for WIC program, but the need for the oral enteral nutrition product or formula exceeds WIC's allowed amount; or

(III) The requested oral enteral nutrition product or formula is not available through the WIC program. Specific, detailed documentation of the tried and failed efforts of similar WIC products, or the medical need for alternative products must be in the prescriber's chart for the client; and

(C) Meet one of the following clinical criteria:

(I) Low birth weight (less than 2500 grams);

(II) A decrease across two or more percentile lines on the CDC growth chart, once a stable growth pattern has been established;

(III) Failure to gain weight on two successive measurements, despite dietary interventions; or

(IV) Documented specific, clinical factors that place the child at risk for a compromised nutrition and/or health status.

(ii) Providers must follow the department's expedited prior authorization process to receive payment.

(e) If five years of age through twenty years of age.

(i) The client must:

(A) Have a certified RD evaluation, for eligible clients, with recommendations which support the prescriber's order for oral enteral nutrition products; and

(B) Meet one of the following clinical criteria:

(I) A decrease across two or more percentile lines on the CDC growth chart, once a stable growth pattern has been established;

(II) Failure to gain weight on two successive measurements, despite dietary interventions; or

(III) Documented specific, clinical factors that place the child at risk for a compromised nutrition and/or health status.

(ii) Providers must follow the department's expedited prior authorization process to receive payment.

(2) Requests to the department for prior authorization for orally-administered enteral nutrition products must include a completed Oral Enteral Nutrition Worksheet Prior Authorization Request (DSHS 13-743), available for download at: http://www1.dshs.wa.gov/msa/forms/eforms.html. The DSHS 13-743 form must be:

(a) Completed by the prescribing physician, advanced registered nurse practitioner (ARNP), or physician assistant-certified (PA-C), verifying all of the following:

(i) The client meets the requirements listed in this section;

(ii) The client's physical limitations and expected outcome;

(iii) The client's current clinical nutritional status, including the relationship between the client's diagnosis and nutritional need;

(iv) For a client eighteen through twenty years of age, the client's recent weight loss history and a comparison of the client's actual weight to ideal body weight and current body mass index (BMI);

(v) For a client younger than eighteen years of age, the client's growth history and a comparison to expected weight gain, and:

(A) An evaluation of the weight-for-length percentile if the client is three years of age or younger; or

(B) An evaluation of the BMI if the client is four through seventeen years of age.

(vi) The client's medical condition and the exact daily caloric amount of needed enteral product;

(vii) The reason why the client is unable to consume enough traditional food to meet nutritional requirements;

(viii) The medical reason the specific enteral product, equipment, and/or supply is prescribed;

(ix) Documentation explaining why less costly, equally effective products or traditional foods are not appropriate;

(x) The number of days or months the enteral nutrition products, equipment, and/or necessary supplies are required; and

(xi) The client's likely expected outcome if enteral nutritional support is not provided.

(b) Written, signed (including the prescriber's credentials), and dated by the prescriber on the same day and before delivery of the product, equipment, or related supply. This form must not be back-dated; and

(c) Be submitted within three months from the date the prescriber signs the prescription.

(3) Clients twenty years of age and younger must be evaluated by a certified registered dietition (RD) within thirty days of initiation of enteral nutrition products and periodically (at the discretion of the certified dietition) while receiving enteral nutrition products. The certified RD must be a current provider with the department.

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

WAC 388-554-600 ((~~Tube-delivered~~)) Covered enteral nutrition products, equipment and related ((~~equipment and~~)) supplies—((~~Coverage, limitations, and reimbursement~~)) Tube-delivered. (1) ((~~The enteral nutrition program covers and reimburses the following, subject to the limitations listed in this section and the provisions in other applicable WAC:~~

~~(a) Tube-delivered enteral nutrition products;~~

~~(b) Tube-delivery supplies;~~

~~(c) Enteral nutrition pump rental and purchase;~~

~~(d) Nondisposable intravenous (IV) poles required for enteral nutrition product delivery; and~~

~~(e) Repairs to equipment.~~

~~(2) The department covers up to twelve months of rental payments for enteral nutrition equipment. After twelve months of rental, the department considers the equipment purchased and it becomes the client's property.~~

~~(3) The department requires a provider to furnish clients new or used equipment that includes full manufacturer and dealer warranties for one year.~~

~~(4) The department covers only one:~~

~~(a) Purchased pump per client in a five year period; and~~

~~(b) Purchased nondisposable IV pole per client for that client's lifetime.~~

~~(5) The department's reimbursement for covered enteral nutrition equipment and necessary supplies includes all of the following:~~

~~(a) Any adjustments or modifications to the equipment that are required within three months of the date of delivery. This does not apply to adjustments required because of changes in the client's medical condition;~~

~~(b) Fitting and set-up; and~~

~~(c) Instruction to the client or the client's caregiver in the appropriate use of the equipment and necessary supplies.~~

~~(6) A provider is responsible for any costs incurred to have another provider repair equipment if all of the following apply:~~

~~(a) Any equipment that the department considers purchased requires repair during the applicable warranty period;~~

~~(b) The provider is unable to fulfill the warranty; and~~

~~(c) The client still needs the equipment.~~

~~(7) If a rental equipment the department considers to have been purchased must be replaced during the warranty period, the department recoups fifty percent of the total amount previously paid toward rental and eventual purchase of the equipment delivered to the client. All of the following must apply:~~

~~(a) The provider is unable to fulfill the warranty; and~~

~~(b) The client still needs the equipment.~~

~~(8) The department rescinds any authorization for prescribed equipment if the equipment was not delivered to the client before the client:~~

~~(a) Loses medical eligibility;~~

~~(b) Becomes covered by a hospice agency and the equipment is used in the treatment of the terminal diagnosis or related condition(s);~~

~~(c) Becomes eligible for a department-contracted managed care plan; or~~

~~(d) Dies.~~

~~(9) Except as provided in subsection (10) of this section, the department does not pay separately for tube-delivered enteral nutrition products or necessary equipment or supplies when a client:~~

~~(a) Resides in a state-owned facility (i.e., state school, developmental disabilities (DD) facility, mental health facility, Western State Hospital, and Eastern State Hospital).~~

~~(b) Has elected and is eligible to receive the department's hospice benefit, unless both of the following apply:~~

~~(i) The client has a preexisting medical condition that requires enteral nutritional support; and~~

~~(ii) The preexisting medical condition is not related to the diagnosis that qualifies the client for hospice.~~

~~(10) The department pays separately for a client's tube-delivered enteral nutrition products and necessary equipment and supplies when:~~

~~(a) The client resides in a nursing facility;~~

~~(b) The client meets the eligibility criteria in WAC 388-554-300; and~~

~~(c) Use of enteral nutrition products meets one hundred percent of the client's nutritional needs.~~

~~(11) The department determines reimbursement for tube-delivered enteral nutrition products and necessary equipment and supplies using the same criteria described in WAC 388-554-500(5).~~

~~(12) The department evaluates a request for tube-delivered enteral nutrition products and necessary equipment and supplies that are in excess of the enteral nutrition program's limitations or restrictions, according to the provisions of WAC 388-501-0165 and 388-501-0169.~~

~~(13) The department evaluates a request for tube-delivered enteral nutrition products and necessary equipment and supplies, that are listed as noncovered in this chapter, under the provision of WAC 388-501-0160~~)) The department covers tube-delivered enteral nutrition products, equipment, and related supplies, without prior authorization, for eligible clients regardless of age, as follows:

(a) When the client meets the following clinical criteria:

(i) The client has a valid prescription;

(A) To be valid, a prescription must:

(I) Be written by a physician, advanced registered nurse practitioner (ARNP), or physician's assistant certified (PA-C);

(II) Be written, signed (including the prescriber's credentials), and dated by the prescriber on the same day and before delivery of the supply, equipment, or device. Prescriptions must not be back-dated;

(III) Be submitted within three months from the date the prescriber signs the prescription; and

(IV) State the specific product requested, diagnosis, estimated length of need (months), and quantity.

(ii) The client is able to manage his or her tube feedings in one of the following ways:

(A) Independently; or

(B) With a caregiver who can manage the feedings; and

(iii) The client has at least one of the following medical conditions:

(A) A nonfunction or disease or clinical condition that impairs the client's ability to ingest sufficient calories and nutrients from products orally or does not permit sufficient calories and nutrients from food to reach the gastrointestinal tract; or

(B) A disease or condition of the small bowel that impairs digestion and absorption of an oral diet, either of which requires tube feedings to provide sufficient nutrients to maintain weight and strength that is properly proportioned to the client's overall health status.

(b) With the following limitations:

(i) One purchased pump, per client, in a five-year period; and

(ii) One nondisposable intravenous pole required for enteral nutrition product delivery, per client, per lifetime.

(c) Providers must follow the department's expedited prior authorization process to receive payment.

(2) The department pays for up to twelve months of rental payments for tube-delivered enteral nutrition equipment. After twelve months of rental, the department considers the equipment purchased and it becomes the client's property.

(3) The department pays for replacement parts for tube-delivered enteral nutrition equipment, with prior authorization, when:

(a) Owned by the client;

(b) Less than five years old; and

(c) No longer under warranty.

AMENDATORY SECTION (Amending WSR 05-04-059, filed 1/28/05, effective 3/1/05)

WAC 388-554-700 Enteral nutrition products, equipment and related supplies—((~~Prior~~)) Authorization ((~~requirements~~)). (1) ((~~All requests for oral enteral nutrition products, repairs to equipment, and replacement of necessary supplies for tube-delivery of enteral nutrition products require prior authorization as described in this section. See also WAC 388-501-0165.~~

~~(2) When MAA receives an initial request for prior authorization, the prescription(s) for those items cannot be older than three months from the date MAA receives the request.~~

~~(3) MAA may authorize orally administered enteral nutrition products that are listed in MAA's published issuances, including billing instructions and numbered memoranda, only if medical necessity is established and the provider furnishes all of the following information to MAA:~~

~~(a) A copy of the signed and dated physician order completed by the prescribing physician, advanced registered nurse practitioner (ARNP), or physician assistant-certified (PA-C), which includes client's medical condition and exact daily calorie amount of prescribed enteral nutrition product;~~

~~(b) Documentation from the client's physician, ARNP, or PA-C that verifies all of the following:~~

~~(i) The client has one of the medical conditions listed in WAC 388-554-300 (4)(e);~~

~~(ii) The client's physical limitations and expected outcome;~~

~~(iii) The client's current clinical nutritional status, including the relationship between the client's diagnosis and nutritional need;~~

~~(iv) For a client age eighteen or older, the client's recent weight loss history and a comparison of the client's actual weight to ideal body weight and current body mass index (BMI);~~

~~(v) For a client younger than age eighteen, the client's growth history and a comparison to expected weight gain, and:~~

~~(A) An evaluation of the weight-for-length percentile if the client is younger than age three; or~~

~~(B) An evaluation of the BMI if the client is older than age three and younger than age eighteen.~~

~~(v) Documentation explaining why less costly, equally effective products or traditional foods are not appropriate (see WAC 388-554-500(4));~~

~~(vi) The client's likely expected outcome if enteral nutritional support is not provided; and~~

~~(vii) Number of days or months the enteral nutrition products, equipment, and/or necessary supplies are required.~~

~~(4) A provider may resubmit a request for prior authorization for oral enteral nutrition products or replacement of necessary supplies for tube-delivery of enteral nutrition products that MAA has denied. MAA requires the provider to include new documentation that is relevant to the request~~)) The department requires providers to obtain authorization for covered orally-administered enteral nutrition products, and tube-delivered enteral equipment and related supplies as required in this chapter and in published department billing instructions and/or numbered memoranda or when the clinical criteria required in this chapter are not met.

(a) For prior authorization (PA), a provider must submit a written request to the department as specified in WAC 388-554-500(2).

(b) For expedited prior authorization (EPA), a provider must establish that the client's condition meets the clinically appropriate EPA criteria outlined in this chapter and in the department's published enteral nutrition billing instructions. The appropriate EPA number must be used when the provider bills the department.

(c) Upon request, a provider must provide documentation to the department showing how the client's condition met the criteria for PA or EPA.

(2) Authorization requirements in this chapter are not a denial of service for the client.

(3) When an oral enteral nutrition product or tube-delivered enteral nutrition equipment or related-supply requires authorization, the provider must properly request authorization in accordance with the department's rules, billing instructions, and numbered memoranda.

(4) When authorization is not properly requested, the department rejects and returns the request to the provider for further action. The department does not consider the rejection of the request to be a denial of service.

(5) The department's authorization does not necessarily guarantee payment.

(6) The department evaluates requests for authorization for covered enteral nutrition products, equipment, and related-supplies that exceed limitations in this chapter on a case-by-case basis in accordance with WAC 388-501-0169.

(7) The department may recoup any payment made to a provider if the department later determines that the service was not properly authorized or did not meet the EPA criteria. Refer to WAC 388-502-0100 (1)(c).

(8) If a fee-for-service client enrolls in a department-contracted MCO before the department completes the purchase or rental of prescribed enteral products, necessary equipment and supplies:

(a) The department rescinds the authorization of the purchase or rental;

(b) The department stops paying for any equipment on the last day of the month preceding the month in which the client becomes enrolled in the managed care plan; and

(c) The department-contracted MCO determines the client's continuing need for the equipment and is then responsible for the client.

(9) The department rescinds any authorization for prescribed equipment if the equipment was not delivered to the client before the client:

(a) Loses medical eligibility;

(b) Becomes covered by a hospice agency and the equipment is used in the treatment of the terminal diagnosis or related condition(s);

(c) Becomes eligible for a department-contracted managed care plan; or

(d) Dies.

AMENDATORY SECTION (Amending WSR 05-04-059, filed 1/28/05, effective 3/1/05)

WAC 388-554-800 Noncovered—Enteral nutrition ((~~program requirements for WIC program-eligible clients~~)) products, equipment, and related-supplies. ((~~Clients who qualify for supplemental nutrition from the women, infants, and children (WIC) program must receive supplemental nutrition through that program. The medical assistance administration (MAA) may cover the enteral nutrition products and supplies for WIC program-eligible clients only when all of the following are met:~~

~~(1) The provider requests prior authorization for the enteral nutrition product or supply;~~

~~(2) Documentation from the WIC program is attached to the request form that verifies:~~

~~(a) The client's enteral nutrition need is in excess of WIC program allocations; or~~

~~(b) The WIC program cannot supply the prescribed product; and~~

~~(3) The client meets the enteral nutrition program requirements in this chapter~~)) (1) The department does not cover the following:

(a) Nonmedical equipment, supplies, and related services, including but not limited to, back-packs, pouches, bags, baskets, or other carrying containers; and

(b) Orally administered enteral nutrition products for clients twenty-one years of age and older.

(2) An exception to rule (ETR), as described in WAC 388-501-0160, may be requested for a noncovered service.

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

NEW SECTION

WAC 388-554-900 Reimbursement—Enteral nutrition products, equipment, and related-supplies. (1) The department's payment for covered enteral nutrition products, equipment and related supplies includes all of the following:

(a) Any adjustments or modifications to the equipment required within three months of the date of delivery. This does not apply to adjustments required because of changes in the client's medical condition;

(b) Instructions to the client and/or caregiver on the safe and proper use of equipment provided;

(c) Full service warranty;

(d) Delivery and pick-up; and

(e) Fitting and adjustments.

(2) If changes in circumstance occur during the rental period, such as death or ineligibility, the department discontinues payment effective on the date of the change in circumstance.

(3) The department does not pay for simultaneous rental and a purchase of any item.

(4) The department does not reimburse providers for equipment that is supplied to them at no cost through suppliers/manufacturers.

(5) The provider who furnishes enteral nutrition equipment to a client is responsible for any costs incurred to have another provider repair equipment if all of the following apply:

(a) Any equipment that the department considers purchased requires repair during the applicable warranty period;

(b) The provider refuses or is unable to fulfill the warranty; and

(c) The client still needs the equipment.

(6) If the rental equipment must be replaced during the warranty period, the department recoups fifty percent of the total amount previously paid toward rental and eventual purchase of the equipment delivered to the client if:

(a) The provider is unwilling or unable to fulfill the warranty; and

(b) The client still needs the equipment.

WSR 09-22-037
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)

[Filed October 27, 2009, 9:23 a.m., effective October 28, 2009]

Effective Date of Rule: October 28, 2009.

Purpose: Under sections 201 and 209, chapter 564, Laws of 2009 (ESHB 1244) for fiscal years 2010 and 2011, funding for dental services is reduced from current levels. The department is amending language in sections in chapter 388-535 WAC in order to meet these targeted budget expenditure levels. The changes include, for clients through age twenty, reducing coverage of restorative services (crowns) and reducing coverage for repairs to partial dentures; for clients age twenty-one and older, reducing coverage for endodontic treatment and oral and maxillofacial surgery; and for all clients, reducing coverage for partial dentures.

Citation of Existing Rules Affected by this Order: Amending WAC 388-535-1084, 388-535-1090, 388-535-1100, 388-535-1261, 388-535-1266, 388-535-1267, 388-535-1269, and 388-535-1271.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.800.

Other Authority: Sections 201 and 209, chapter 564, Laws of 2009 (ESHB 1244).

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: Emergency rule adoption is required in order for the department to comply with sections 201 and 209 of the operating budget for fiscal years 2010 and 2011 with respect to dental services. This emergency filing is necessary to continue the current emergency rules filed as WSR 09-14-093 on June 30, 2009, while the department prepares drafts for the permanent rule to share with providers for their input. Following this, the department plans to formally adopt the permanent rules in early 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 8, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 8, Repealed 0.

Date Adopted: October 14, 2009.

Stephanie E. Vaughn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-06-042, filed 3/1/07, effective 4/1/07)

WAC 388-535-1084 Covered dental-related services for clients through age twenty—Restorative services. The department covers medically necessary dental-related restorative services, subject to the coverage limitations listed, for clients through age twenty as follows:

(1) **Restorative/operative procedures.** The department covers restorative/operative procedures performed in a hospital or an ambulatory surgical center for:

(a) Clients ages eight and younger;

(b) Clients ages nine through twenty only on a case-by-case basis and when prior authorized; and

(c) Clients of the division of developmental disabilities according to WAC 388-535-1099.

(2) **Amalgam restorations for primary and permanent teeth.** The department considers:

(a) Tooth preparation, all adhesives (including amalgam bonding agents), liners, bases, and polishing as part of the amalgam restoration.

(b) The occlusal adjustment of either the restored tooth or the opposing tooth or teeth as part of the amalgam restoration.

(c) Buccal or lingual surface amalgam restorations, regardless of size or extension, as a one surface restoration. The department covers one buccal and one lingual surface per tooth.

(d) Multiple amalgam restorations of fissures and grooves of the occlusal surface of the same tooth as a one surface restoration.

(e) Amalgam restorations placed within six months of a crown preparation by the same provider or clinic to be included in the payment for the crown.

(3) **Amalgam restorations for primary posterior teeth only.** The department covers amalgam restorations for a maximum of two surfaces for a primary first molar and maximum of three surfaces for a primary second molar. (See subsection (9)(c) of this section for restorations for a primary posterior tooth requiring additional surfaces.) The department does not pay for additional amalgam restorations.

(4) **Amalgam restorations for permanent posterior teeth only.** The department:

(a) Covers two occlusal amalgam restorations for teeth one, two, three fourteen, fifteen, and sixteen, if the restorations are anatomically separated by sound tooth structure.

(b) Covers amalgam restorations for a maximum of five surfaces per tooth for a permanent posterior tooth, once per client, per provider or clinic, in a two-year period.

(c) Covers amalgam restorations for a maximum of six surfaces per tooth for teeth one, two, three, fourteen, fifteen, and sixteen, once per client, per provider or clinic, in a two-year period (see (a) of this subsection).

(d) Does not pay for replacement of amalgam restoration on permanent posterior teeth within a two-year period unless the restoration has an additional adjoining carious surface. The department pays for the replacement restoration as one multi-surface restoration. The client's record must include radiographs and documentation supporting the medical necessity for the replacement restoration.

(5) **Resin-based composite restorations for primary and permanent teeth.** The department:

(a) Considers tooth preparation, acid etching, all adhesives (including resin bonding agents), liners and bases, polishing, and curing as part of the resin-based composite restoration.

(b) Considers the occlusal adjustment of either the restored tooth or the opposing tooth or teeth as part of the resin-based composite restoration.

(c) Considers buccal or lingual surface resin-based composite restorations, regardless of size or extension, as a one surface restoration. The department covers only one buccal and one lingual surface per tooth.

(d) Considers resin-based composite restorations of teeth where the decay does not penetrate the DEJ to be sealants (see WAC 388-535-1082(4) for sealants coverage).

(e) Considers multiple preventive restorative resin, flowable composite resin, or resin-based composites for the occlusal, buccal, lingual, mesial, and distal fissures and grooves on the same tooth as a one surface restoration.

(f) Does not cover preventive restorative resin or flowable composite resin on the interproximal surfaces (mesial and/or distal) when performed on posterior teeth or the incisal surface of anterior teeth.

(g) Considers resin-based composite restorations placed within six months of a crown preparation by the same provider or clinic to be included in the payment for the crown.

(6) **Resin-based composite restorations for primary teeth only.** The department covers:

(a) Resin-based composite restorations for a maximum of three surfaces for a primary anterior tooth (see subsection (9)(b) of this section for restorations for a primary anterior tooth requiring a four or more surface restoration). The department does not pay for additional composite or amalgam restorations on the same tooth after three surfaces.

(b) Resin-based composite restorations for a maximum of two surfaces for a primary first molar and a maximum of three surfaces for a primary second molar. (See subsection (9)(c) of this subsection for restorations for a primary posterior tooth requiring additional surfaces.) The department does not pay for additional composite restorations on the same tooth.

(c) Glass ionimer restorations only for primary teeth, and only for clients ages five and younger. The department pays for these restorations as a one surface resin-based composite restoration.

(7) **Resin-based composite restorations for permanent teeth only.** The department covers:

(a) Two occlusal resin-based composite restorations for teeth one, two, fourteen, fifteen, and sixteen if the restorations are anatomically separated by sound tooth structure.

(b) Resin-based composite restorations for a maximum of five surfaces per tooth for a permanent posterior tooth, once per client, per provider or clinic, in a two-year period.

(c) Resin-based composite restorations for a maximum of six surfaces per tooth for permanent posterior teeth one, two, three, fourteen, fifteen, and sixteen, once per client, per provider or clinic, in a two-year period (see (a) of this subsection).

(d) Resin-based composite restorations for a maximum of six surfaces per tooth for a permanent anterior tooth, once per client, per provider or clinic, in a two-year period.

(e) Replacement of resin-based composite restoration on permanent teeth within a two-year period only if the restoration has an additional adjoining carious surface. The department pays the replacement restoration as a one multi-surface restoration. The client's record must include radiographs and documentation supporting the medical necessity for the replacement restoration.

(8) **Crowns.** The department:

(a) Covers the following crowns once every five years, per tooth, for permanent anterior teeth for clients ages twelve through twenty when the crowns meet prior authorization criteria in WAC 388-535-1220 and the provider follows the prior authorization requirements in (d) of this subsection:

(i) Porcelain/ceramic crowns to include all porcelains, glasses, glass-ceramic, and porcelain fused to metal crowns; and

(ii) Resin crowns and resin metal crowns to include any resin-based composite, fiber, or ceramic reinforced polymer compound.

(b) ((~~Covers full coverage metal crowns once every five years, per tooth, for permanent posterior teeth to include high noble, titanium, titanium alloys, noble, and predominantly base metal crowns for clients ages eighteen through twenty when they meet prior authorization criteria and the provider follows the prior authorization requirements in (d) and (e) of this subsection.~~

~~(c)~~)) Considers the following to be included in the payment for a crown:

(i) Tooth and soft tissue preparation;

(ii) Amalgam and resin-based composite restoration, or any other restorative material placed within six months of the crown preparation. Exception: The department covers a one surface restoration on an endodontically treated tooth, or a core buildup or cast post and core;

(iii) Temporaries, including but not limited to, temporary restoration, temporary crown, provisional crown, temporary prefabricated stainless steel crown, ion crown, or acrylic crown;

(iv) Packing cord placement and removal;

(v) Diagnostic or final impressions;

(vi) Crown seating, including cementing and insulating bases;

(vii) Occlusal adjustment of crown or opposing tooth or teeth; and

(viii) Local anesthesia.

(((~~(d)~~))) (c) Requires the provider to submit the following with each prior authorization request:

(i) Radiographs to assess all remaining teeth;

(ii) Documentation and identification of all missing teeth;

(iii) Caries diagnosis and treatment plan for all remaining teeth, including a caries control plan for clients with rampant caries;

(iv) Pre- and post-endodontic treatment radiographs for requests on endodontically treated teeth; and

(v) Documentation supporting a five-year prognosis that the client will retain the tooth or crown if the tooth is crowned.

(((~~(e)~~))) (d) Requires a provider to bill for a crown only after delivery and seating of the crown, not at the impression date.

(9) **Other restorative services.** The department covers:

(a) All recementations of permanent indirect crowns.

(b) Prefabricated stainless steel crowns with resin window, resin-based composite crowns, prefabricated esthetic coated stainless steel crowns, and fabricated resin crowns for primary anterior teeth once every three years without prior authorization if the tooth requires a four or more surface restoration.

(c) Prefabricated stainless steel crowns for primary posterior teeth once every three years without prior authorization if:

(i) Decay involves three or more surfaces for a primary first molar;

(ii) Decay involves four or more surfaces for a primary second molar; or

(iii) The tooth had a pulpotomy.

(d) Prefabricated stainless steel crowns for permanent posterior teeth once every three years when prior authorized.

(e) Prefabricated stainless steel crowns for clients of the division of developmental disabilities according to WAC 388-535-1099.

(f) Core buildup, including pins, only on permanent teeth, when prior authorized at the same time as the crown prior authorization.

(g) Cast post and core or prefabricated post and core, only on permanent teeth, when prior authorized at the same time as the crown prior authorization.

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 07-06-042, filed 3/1/07, effective 4/1/07)

WAC 388-535-1090 Covered dental-related services for clients through age twenty—Prosthodontics (removable). The department covers medically necessary prosthodontics (removable) services, subject to the coverage limitations listed, for clients through age twenty as follows:

(1) **Prosthodontics.** The department:

(a) Requires prior authorization for all removable prosthodontic and prosthodontic-related procedures, except as stated in (c)(ii)(B) of this subsection. Prior authorization requests must meet the criteria in WAC 388-535-1220. In addition, the department requires the dental provider to submit:

(i) Appropriate and diagnostic radiographs of all remaining teeth.

(ii) A dental record which identifies:

(A) All missing teeth for both arches;

(B) Teeth that are to be extracted; and

(C) Dental and periodontal services completed on all remaining teeth.

(iii) A prescription written by a dentist when a denturist's prior authorization request is for an immediate denture or a cast metal partial denture.

(b) Covers complete dentures, as follows:

(i) A complete denture, including an immediate denture or overdenture, is covered when prior authorized.

(ii) Three-month post-delivery care (e.g., adjustments, soft relines, and repairs) from the seat date of the complete denture, is considered part of the complete denture procedure and is not paid separately.

(iii) Replacement of an immediate denture with a complete denture is covered if the complete denture is prior authorized at least six months after the seat date of the immediate denture.

(iv) Replacement of a complete denture or overdenture is covered only if prior authorized at least five years after the seat date of the complete denture or overdenture being replaced. The replacement denture must be prior authorized.

(c) Covers partial dentures, as follows:

(i) A partial denture, including a resin ((~~or flexible base~~)) partial denture, is covered for anterior and posterior teeth when the partial denture meets the following department coverage criteria.

(A) The remaining teeth in the arch must have a reasonable periodontal diagnosis and prognosis;

(B) The client has established caries control;

(C) One or more anterior teeth are missing or four or more posterior teeth are missing;

(D) There is a minimum of four stable teeth remaining per arch; and

(E) There is a three-year prognosis for retention of the remaining teeth.

(ii) Prior authorization of partial dentures:

(A) Is required for clients ages nine and younger; and

(B) Not required for clients ages ten through twenty. Documentation supporting the medical necessity for the service must be included in the client's file.

(iii) Three-month post-delivery care (e.g., adjustments, soft relines, and repairs) from the seat date of the partial denture, is considered part of the partial denture procedure and is not paid separately.

(iv) Replacement of a resin or flexible base denture is covered only if prior authorized at least three years after the seat date of the resin or flexible base partial denture being replaced. The replacement denture must be prior authorized and meet department coverage criteria in (c)(i) of this subsection.

(d) Covers cast-metal framework partial dentures, as follows:

(i) Cast-metal framework with resin-based partial dentures, including any conventional clasps, rests, and teeth, are covered for clients ages eighteen through twenty only once in a five-year period, on a case-by-case basis, when prior authorized and department coverage criteria listed in subsection (d)(v) of this subsection are met.

(ii) Cast-metal framework partial dentures for clients ages seventeen and younger are not covered.

(iii) Three-month post-delivery care (e.g., adjustments, soft relines, and repairs) from the seat date of the cast metal partial denture is considered part of the partial denture procedure and is not paid separately.

(iv) Replacement of a cast metal framework partial denture is covered on a case-by-case basis and only if placed at least five years after the seat date of the partial denture being replaced. The replacement denture must be prior authorized and meet department coverage criteria listed in (d)(v) of this subsection.

(v) Department authorization and payment for cast metal framework partial dentures is based on the following criteria:

(A) The remaining teeth in the arch must have a stable periodontal diagnosis and prognosis;

(B) The client has established caries control;

(C) All restorative and periodontal procedures must be completed before the request for prior authorization is submitted;

(D) There are fewer than eight posterior teeth in occlusion;

(E) There is a minimum of four stable teeth remaining per arch; and

(F) There is a five-year prognosis for the retention of the remaining teeth.

(vi) The department may consider resin partial dentures as an alternative if the department determines the criteria for cast metal framework partial dentures listed in (d)(v) of this subsection are not met.

(e) Requires a provider to bill for removable prosthetic procedures only after the seating of the prosthesis, not at the impression date. Refer to subsection (2)(e) and (f) for what the department may pay if the removable prosthesis is not delivered and inserted.

(f) Requires a provider to submit the following with a prior authorization request for removable prosthetics for a client residing in an alternate living facility (ALF) as defined in WAC 388-513-1301 or in a nursing facility:

(i) The client's medical diagnosis or prognosis;

(ii) The attending physician's request for prosthetic services;

(iii) The attending dentist's or denturist's statement documenting medical necessity;

(iv) A written and signed consent for treatment from the client's legal guardian when a guardian has been appointed; and

(v) A completed copy of the denture/partial appliance request for skilled nursing facility client form (DSHS 13-788) available from the department's published billing instructions.

(g) Limits removable partial dentures to resin-based partial dentures for all clients residing in one of the facilities listed in (f) of this subsection. The department may consider cast metal partial dentures if the criteria in subsection (1)(d) are met.

(h) Requires a provider to deliver services and procedures that are of acceptable quality to the department. The department may recoup payment for services that are determined to be below the standard of care or of an unacceptable product quality.

(2) **Other services for removable prosthodontics.** The department covers:

(a) Adjustments to complete and partial dentures three months after the date of delivery.

(b) Repairs to complete and partial dentures, once in a twelve month period. The department covers additional repairs on a case-by-case basis and when prior authorized.

(c) A laboratory reline or rebase to a complete or cast-metal partial denture, once in a three-year period when performed at least six months after the seating date. An additional reline or rebase may be covered for complete or cast-metal partial dentures on a case-by-case basis when prior authorized.

(d) Up to two tissue conditionings, and only when performed within three months after the seating date.

(e) Laboratory fees, subject to the following:

(i) The department does not pay separately for laboratory or professional fees for complete and partial dentures; and

(ii) The department may pay part of billed laboratory fees when the provider obtains prior authorization, and the client:

(A) Is not eligible at the time of delivery of the prosthesis;

(B) Moves from the state;

(C) Cannot be located;

(D) Does not participate in completing the complete, immediate, or partial dentures; or

(E) Dies.

(f) A provider must submit copies of laboratory prescriptions and receipts or invoices for each claim when billing for laboratory fees.

AMENDATORY SECTION (Amending WSR 07-06-042, filed 3/1/07, effective 4/1/07)

WAC 388-535-1100 Dental-related services not covered for clients through age twenty. (1) The department does not cover the following for clients through age twenty:

(a) The dental-related services described in subsection (2) of this section unless the services are covered under the early periodic screening, diagnosis and treatment (EPSDT) program. See WAC 388-534-0100 for information about the EPSDT program.

(b) Any service specifically excluded by statute.

(c) More costly services when less costly, equally effective services as determined by the department are available.

(d) Services, procedures, treatment, devices, drugs, or application of associated services:

(i) Which the department or the Centers for Medicare and Medicaid Services (CMS) considers investigative or experimental on the date the services were provided.

(ii) That are not listed as covered in one or both of the following:

(A) Washington Administrative Code (WAC).

(B) The department's current published documents.

(2) The department does not cover dental-related services listed under the following categories of service for clients through age twenty (see subsection (1)(a) of this section for services provided under the EPSDT program):

(a) **Diagnostic services.** The department does not cover:

(i) Extraoral radiographs.

(ii) Comprehensive periodontal evaluations.

(b) **Preventive services.** The department does not cover:

(i) Nutritional counseling for control of dental disease.

(ii) Tobacco counseling for the control and prevention of oral disease.

(iii) Removable space maintainers of any type.

(iv) Sealants placed on a tooth with the same-day occlusal restoration, preexisting occlusal restoration, or a tooth with occlusal decay.

(v) Space maintainers for clients ages nineteen through twenty.

(c) **Restorative services.** The department does not cover:

(i) Restorations for wear on any surface of any tooth without evidence of decay through the enamel or on the root surface;

(ii) Gold foil restorations.

((~~(ii)~~)) (iii) Metallic, resin-based composite, or porcelain/ceramic inlay/onlay restorations.

((~~(iii)~~)) (iv) Crowns for cosmetic purposes (e.g., peg laterals and tetracycline staining).

((~~(iv)~~)) (v) Permanent crowns for ((~~third molars one, sixteen, seventeen, and thirty-two~~)) bicuspids or molar teeth.

((~~(v)~~)) (vi) Temporary or provisional crowns (including ion crowns).

((~~(vi)~~)) (vii) Labial veneer resin or porcelain laminate restorations.

((~~(vii)~~)) (viii) Any type of coping.

((~~(viii)~~)) (ix) Crown repairs.

((~~(ix)~~)) (x) Polishing or recontouring restorations or overhang removal for any type of restoration.

(d) **Endodontic services.** The department does not cover:

(i) Any endodontic therapy on primary teeth, except as described in WAC 388-535-1086 (3)(a).

(ii) Apexification/recalcification for root resorption of permanent anterior teeth.

(iii) Any apexification/recalcification procedures for bicuspid or molar teeth.

(iv) Any apicoectomy/periradicular services for bicuspid or molar teeth.

(v) Any surgical endodontic procedures including, but not limited to, retrograde fillings (except for anterior teeth), root amputation, reimplantation, and hemisections.

(e) **Periodontic services.** The department does not cover:

(i) Surgical periodontal services including, but not limited to:

(A) Gingival flap procedures.

(B) Clinical crown lengthening.

(C) Osseous surgery.

(D) Bone or soft tissue grafts.

(E) Biological material to aid in soft and osseous tissue regeneration.

(F) Guided tissue regeneration.

(G) Pedicle, free soft tissue, apical positioning, subepithelial connective tissue, soft tissue allograft, combined connective tissue and double pedicle, or any other soft tissue or osseous grafts.

(H) Distal or proximal wedge procedures.

(ii) Nonsurgical periodontal services including, but not limited to:

(A) Intracoronal or extracoronal provisional splinting.

(B) Full mouth or quadrant debridement.

(C) Localized delivery of chemotherapeutic agents.

(D) Any other type of nonsurgical periodontal service.

(f) **Removable prosthodontics.** The department does not cover:

(i) Removable unilateral partial dentures.

(ii) Any interim complete or partial dentures.

(iii) Flexible base partial dentures.

(iv) Any type of permanent soft reline (e.g., molloplast).

(v) Precision attachments.

((~~(iv)~~)) (vi) Replacement of replaceable parts for semi-precision or precision attachments.

(g) **Implant services.** The department does not cover:

(i) Any type of implant procedures, including, but not limited to, any tooth implant abutment (e.g., periosteal implant, eposteal implant, and transosteal implant), abutments or implant supported crown, abutment supported retainer, and implant supported retainer.

(ii) Any maintenance or repairs to procedures listed in (g)(i) of this subsection.

(iii) The removal of any implant as described in (g)(i) of this subsection.

(h) **Fixed prosthodontics.** The department does not cover:

(i) Any type of fixed partial denture pontic or fixed partial denture retainer.

(ii) Any type of precision attachment, stress breaker, connector bar, coping, cast post, or any other type of fixed attachment or prosthesis.

(i) **Oral and maxillofacial surgery.** The department does not cover:

(i) Any oral surgery service not listed in WAC 388-535-1094.

(ii) Any oral surgery service that is not listed in the department's list of covered current procedural terminology (CPT) codes published in the department's current rules or billing instructions.

(j) **Adjunctive general services.** The department does not cover:

(i) Anesthesia, including, but not limited to:

(A) Local anesthesia as a separate procedure.

(B) Regional block anesthesia as a separate procedure.

(C) Trigeminal division block anesthesia as a separate procedure.

(D) Medication for oral sedation, or therapeutic intramuscular (IM) drug injections, including antibiotic and injection of sedative.

(E) Application of any type of desensitizing medicament or resin.

(ii) Other general services including, but not limited to:

(A) Fabrication of an athletic mouthguard.

(B) Occlusion analysis.

(C) Occlusal adjustment, tooth or restoration adjustment or smoothing, or odontoplasties.

(D) Enamel microabrasion.

(E) Dental supplies such as toothbrushes, toothpaste, floss, and other take home items.

(F) Dentist's or dental hygienist's time writing or calling in prescriptions.

(G) Dentist's or dental hygienist's time consulting with clients on the phone.

(H) Educational supplies.

(I) Nonmedical equipment or supplies.

(J) Personal comfort items or services.

(K) Provider mileage or travel costs.

(L) Fees for no-show, cancelled, or late arrival appointments.

(M) Service charges of any type, including fees to create or copy charts.

(N) Office supplies used in conjunction with an office visit.

(O) Teeth whitening services or bleaching, or materials used in whitening or bleaching.

AMENDATORY SECTION (Amending WSR 07-06-041, filed 3/1/07, effective 4/1/07)

WAC 388-535-1261 Covered dental-related services for clients age twenty-one and older—Endodontic services. The department covers dental-related endodontic services only as listed in this section for clients age twenty-one and older (for dental-related services provided to clients eligible under the GA-U or ADATSA program, see WAC 388-535-1065).

(1) **Pulpal debridement.** The department covers pulpal debridement on permanent teeth. Pulpal debridement is not covered when performed with palliative treatment or when performed on the same day as endodontic treatment.

(2) **Endodontic treatment.** The department:

(a) Covers endodontic treatment for permanent anterior teeth only;

(b) Considers the following included in endodontic treatment:

(i) Pulpectomy when part of root canal therapy;

(ii) All procedures necessary to complete treatment; and

(iii) All intra-operative and final evaluation radiographs for the endodontic procedure.

(c) Pays separately for the following services that are related to the endodontic treatment:

(i) Initial diagnostic evaluation;

(ii) Initial diagnostic radiographs; and

(iii) Post treatment evaluation radiographs if taken at least three months after treatment.

~~((d) Requires prior authorization for endodontic retreatment and considers endodontic retreatment to include:~~

~~(i) The removal of post(s), pin(s), old root canal filling material, and all procedures necessary to prepare the canals;~~

~~(ii) Placement of new filling material; and~~

~~(iii) Retreatment for permanent maxillary and mandibular anterior teeth only.~~

~~(e) Pays separately for the following services that are related to the endodontic retreatment:~~

~~(i) Initial diagnostic evaluation;~~

~~(ii) Initial diagnostic radiographs; and~~

~~(iii) Post treatment evaluation radiographs if taken at least three months after treatment.~~

~~(f) Does not pay for endodontic retreatment when provided by the original treating provider or clinic.~~))

AMENDATORY SECTION (Amending WSR 07-06-041, filed 3/1/07, effective 4/1/07)

WAC 388-535-1266 Covered dental-related services for clients age twenty-one and older—Prosthodontics (removable). The department covers dental-related prosthodontics (removable) services only as listed in this section for clients age twenty-one and older (for dental-related services provided to clients eligible under the GA-U or ADATSA program, see WAC 388-535-1065).

(1) **Removable prosthodontics.** The department:

(a) Requires prior authorization requests for all removable prosthodontics and prosthodontic-related procedures listed in this subsection. Prior authorization requests must meet the criteria in WAC 535-1280. In addition, the department requires the dental provider to:

(i) Submit:

(A) Appropriate and diagnostic radiographs of all remaining teeth.

(B) A dental record that identifies:

(I) All missing teeth for both arches;

(II) Teeth that are to be extracted; and

(III) Dental and periodontal services completed on all remaining teeth.

(C) A prescription written by a dentist when a denturist's prior authorization request is for an immediate denture or cast metal partial denture.

(ii) Obtain a signed agreement of acceptance from the client at the conclusion of the final denture try-in for a department authorized complete denture or a cast-metal denture described in this section. If the client abandons the complete denture or the cast-metal partial denture after signing the agreement of acceptance, the department will deny subsequent requests for the same type dental prosthesis if the request occurs prior to the dates specified in this section. A copy of the signed agreement that documents the client's acceptance of the dental prosthesis must be submitted to the department's dental prior authorization section before the department pays the claim.

(b) Covers a complete denture, as follows:

(i) A complete denture, including an immediate denture or overdenture, is covered when prior authorized and the complete denture meets department coverage criteria;

(ii) Post-delivery care (e.g., adjustments, soft relines, and repairs) provided within three months of the seat date of a complete denture, is considered part of the complete denture procedure and is not paid separately;

(iii) Replacement of an immediate denture with a complete denture is covered only when the replacement occurs at least ((~~six months~~)) five years from the seat date of the immediate denture. The replacement complete denture must be prior authorized; and

(iv) Replacement of a complete denture or overdenture is covered only when the replacement occurs at least five years from the seat date of the complete denture or overdenture being replaced. The replacement denture must be prior authorized.

(c) Covers partial dentures as follows:

(i) Department authorization and payment for a resin ((~~or flexible~~)) base partial denture for anterior and posterior teeth is based on the following criteria:

(A) The remaining teeth in the arch must have a reasonable periodontal diagnosis and prognosis;

(B) The client has established caries control;

(C) One or more anterior teeth are missing, or four or more posterior teeth (excluding second and third molars) per arch are missing (the department does not pay for replacement of second or third molars);

(D) There is a minimum of four stable teeth remaining per arch; and

(E) There is a three-year prognosis for retention of all remaining teeth.

(ii) Post-delivery care (e.g. adjustments, soft relines, and repairs) provided after three months from the seat date of the partial denture, is considered part of the partial denture and is not paid separately; and

(iii) Replacement of a resin ((~~or flexible~~)) base denture is covered only when the replacement occurs at least three years from the seat date of the partial denture being replaced. The replacement denture must be prior authorized and meet department coverage criteria.

(d) Covers cast metal framework partial dentures as follows:

(i) A cast metal framework with resin-based denture, including any conventional clasps, rests, and teeth, is covered on a case-by-case basis when prior authorized and department coverage criteria listed in (d)(iv) of this subsection are met.

(ii) Post-delivery care (e.g., adjustments, soft relines, and repairs) provided within three months of the seat date of the cast metal partial denture, is considered part of the partial denture procedure and is not paid separately.

(iii) Replacement of a cast metal framework partial denture is covered on a case-by-case basis and only when the replacement occurs at least five years from the seat date of the partial denture being replaced. The replacement denture must be prior authorized and meet department coverage criteria listed in (d)(iv) of this subsection.

(iv) Department authorization and payment for cast metal framework partial dentures is based on the following criteria:

(A) The remaining teeth in the arch must have a stable periodontal diagnosis and prognosis;

(B) The client has established caries control;

(C) All restorative and periodontal procedures must be completed before the request for prior authorization is submitted;

(D) ((~~There are fewer than eight posterior teeth in occlusion~~)) Four or more posterior teeth (excluding second and third molars) per arch are missing (the department does not pay for replacement of second or third molars);

(E) There is a minimum of four stable teeth remaining per arch;

(F) There is a five-year prognosis, based on the sole discretion of the department, for retention of all remaining teeth.

(v) The department may consider resin partial dentures as an alternative if the criteria for cast metal framework partial dentures listed in (d)(iv) of this subsection do not meet department specifications.

(e) Requires the provider to bill for covered removable prosthetic procedures only after the seating of the prosthesis, not at the impression date. Refer to (2)(c) and (d) of this subsection if the removable prostheses is not delivered and inserted.

(f) Requires a provider to submit the following with prior authorization requests for removable prosthetics for a client residing in a nursing home, group home, or other facility:

(i) The client's medical diagnosis and prognosis;

(ii) The attending physician's request for prosthetic services;

(iii) The attending dentist's or denturist's statement documenting medical necessity;

(iv) A written and signed consent from the client's legal guardian when a guardian has been appointed; and

(v) A completed copy of the Denture/Partial Appliance Request for Skilled Nursing Facility Client form (DSHS 13-788) available from the department.

(g) Limits removable partial dentures to resin based partial dentures for all clients who reside in one of the facilities listed in (f) of this subsection. The department may consider

cast metal partial dentures if the criteria in (d) of this subsection are met.

(h) Requires a provider to deliver services and procedures that are of acceptable quality to the department. The department may recoup payment for services that are determined to be below the standard of care or of an unacceptable product quality.

(2) **Other services for removable prosthetics.** The department covers:

(a) Repairs to complete ((~~and partial~~)) dentures;

(b) A laboratory reline or rebase to a complete or cast metal partial denture, once in a three-year period when performed at least six months after the seat date; and

(c) Laboratory fees, subject to all of the following:

(i) The department does not pay laboratory and professional fees for complete and partial dentures, except as stated in (ii) of this subsection;

(ii) The department may pay part of billed laboratory fees when the provider has obtained prior authorization from the department, and:

(A) At the time of delivery of the prosthesis, the patient is no longer an eligible medical assistance client (see also WAC 388-535-1280(3));

(B) The client moves from the state; or

(C) The client dies.

(iii) A provider must submit copies of laboratory prescriptions and receipts or invoices for each claim when billing for laboratory fees.

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 07-06-041, filed 3/1/07, effective 4/1/07)

WAC 388-535-1267 Covered dental-related services for clients age twenty-one and older—Oral and maxillofacial surgery services. The department covers oral and maxillofacial surgery services only as listed in this section for clients age twenty-one and older (for dental-related services provided to clients eligible under the GA-U or ADATSA program, see WAC 388-535-1065).

(1) **Oral and maxillofacial surgery services.** The department:

(a) Requires enrolled dental providers who do not meet the conditions in WAC 388-535-1070(3) to bill claims for services that are listed in this subsection using only the current dental terminology (CDT) codes.

(b) Requires enrolled providers (oral and maxillofacial surgeons) who meet the conditions in WAC 388-535-1070(3) to bill claims using current procedural terminology (CPT) codes unless the procedure is specifically listed in the department's current published billing instructions as a CDT covered code (e.g., extractions).

(c) Does not cover oral surgery services described in WAC 388-535-1267 that are performed in a hospital operating room or ambulatory surgery center.

(d) Requires the client's record to include supporting documentation for each type of extraction or any other surgical procedure billed to the department. The documentation must include:

(i) An appropriate consent form signed by the client or the client's legal representative;

(ii) Appropriate radiographs;

(iii) Medical justification with diagnosis;

(iv) Client's blood pressure, when appropriate;

(v) A surgical narrative;

(vi) A copy of the post-operative instructions; and

(vii) A copy of all pre- and post-operative prescriptions.

(e) Covers routine and surgical extractions.

(f) Covers debridement of a granuloma or cyst that is five millimeters or greater in diameter. The department includes debridement of a granuloma or cyst that is less than five millimeters as part of the global fee for the extraction.

(g) Covers biopsy, as follows:

(i) Biopsy of soft oral tissue ((~~or brush biopsy do~~)) does not require prior authorization; and

(ii) All biopsy reports must be kept in the client's record.

(h) ((~~Covers alveoloplasty only when three or more teeth are extracted per arch.~~

~~(i)~~)) Covers surgical excision of soft tissue lesions only on a case-by-case basis and when prior authorized.

(((~~j) Covers only the following excisions of bone tissue in conjunction with placement of immediate, complete, or partial dentures when prior authorized:~~

~~(i) Removal of lateral exostosis;~~

~~(ii) Removal of torus palatinus or torus mandibularis; and~~

~~(iii) Surgical reduction of soft tissue or osseous tuberosity.~~))

(2) **Surgical incision-related services.** The department covers ((~~the following surgical incision-related services:~~

~~(a)~~)) uncomplicated intraoral and extraoral soft tissue incision and drainage of abscess. The department does not cover this service when combined with an extraction or root canal treatment. Documentation supporting medical necessity must be in the client's record((~~; and~~

~~(b) Removal of foreign body from mucosa, skin, or subcutaneous alveolar tissue when prior authorized. Documentation supporting medical necessity must be in the client's record~~)).

AMENDATORY SECTION (Amending WSR 07-06-041, filed 3/1/07, effective 4/1/07)

WAC 388-535-1269 Covered dental-related services for clients age twenty-one and older—Adjunctive general services. The department covers dental-related adjunctive general services only as listed in this section for clients age twenty-one and older (for dental-related services provided to clients eligible under the GA-U or ADATSA program, see WAC 388-535-1065).

(1) **Adjunctive general services.** The department:

(a) Covers palliative (emergency) treatment, not to include pulpal debridement, for treatment of dental pain, limited to once per day, per client, as follows:

(i) The treatment must occur during limited evaluation appointments;

(ii) A comprehensive description of diagnosis and services provided must be documented in the client's record; and

(iii) Appropriate radiographs must be in the client's record to support medical necessity for the treatment.

(b) Covers local anesthesia and regional blocks as part of the global fee for any procedure being provided to clients.

(c) Covers office based oral or parenteral sedation:

(i) For services listed as covered in WAC 388-535-1267;

(ii) For all current published current procedural terminology (CPT) dental codes;

(iii) When the provider's current valid anesthesia permit is on file with the department; and

(iv) For clients of the division of developmental disabilities according to WAC 388-535-1099.

(d) Covers office based general anesthesia for:

(i) Extraction of three or more teeth;

(ii) ((~~Services listed as covered in WAC 388-535-1267 (1)(h) and (j);~~

~~(iii) For~~)) All current published CPT dental codes;

(((~~(iv)~~))) (iii) When the provider's current valid anesthesia permit is on file with the department; and

(((~~(v)~~))) (iv) For clients of the division of developmental disabilities, according to WAC 388-535-1099.

(e) Covers inhalation of nitrous oxide, once per day.

(f) Requires providers of oral or parenteral conscious sedation, or general anesthesia to meet:

(i) The prevailing standard of care;

(ii) The provider's professional organizational guidelines;

(iii) The requirements in chapter 246-817 WAC; and

(iv) Relevant department of health (DOH) medical, dental, and nursing anesthesia regulations;

(g) Pays for anesthesia services according to WAC 388-535-1350;

(h) Covers professional consultation/diagnostic services as follows:

(i) A dentist or a physician other than the practitioner providing treatment must provide the services; and

(ii) A client must be referred by the department for the services to be covered.

(2) **Nonemergency dental services.** The department covers nonemergency dental services performed in a hospital or ambulatory surgical center for clients of the division of developmental disabilities according to WAC 388-535-1099.

(3) **Professional visits.** The department covers:

(a) Up to two house/extended care facility calls (visits) per facility, per provider. The department limits payment to two facilities per day, per provider.

(b) One hospital call (visit), including emergency care, per day, per provider, per client. The department does not pay for additional hospital calls if billed for the same client on the same day.

(c) Emergency office visits after regularly scheduled hours. The department limits payment to one emergency visit per day, per provider.

(4) **Drugs and/or medicaments (pharmaceuticals).** The department covers drugs and/or medicaments (pharmaceuticals) only when used with parenteral conscious sedation, deep sedation, or general anesthesia. The department's dental program does not pay for oral sedation medications.

(5) **Miscellaneous services.** The department covers:

(a) Behavior management that requires the assistance of one additional dental staff other than the dentist only for clients of the division of developmental disabilities((~~.~~)) (see WAC 388-535-1099). Documentation supporting the need for the behavior management must be in the client's record.

(b) Treatment of post-surgical complications (e.g., dry socket). Documentation supporting the medical necessity for the service must be in the client's record.

AMENDATORY SECTION (Amending WSR 07-06-041, filed 3/1/07, effective 4/1/07)

WAC 388-535-1271 Dental-related services not covered for clients age twenty-one and older. (1) The department does not cover the following for clients age twenty-one and older (see WAC 388-535-1065 for dental-related services for clients eligible under the GA-U or ADATSA program):

(a) The dental-related services and procedures described in subsection (2) of this section;

(b) Any service specifically excluded by statute;

(c) More costly services when less costly, equally effective services as determined by the department are available; and

(d) Services, procedures, treatment, devices, drugs, or application of associated services:

(i) Which the department or the Centers for Medicare and Medicaid Services (CMS) considers investigative or experimental on the date the services were provided.

(ii) That are not listed as covered in one or both of the following:

(A) Washington Administrative Code (WAC).

(B) The department's published documents (e.g., billing instructions).

(2) The department does not cover dental-related services listed under the following categories of service for clients age twenty-one and older:

(a) **Diagnostic services.** The department does not cover:

(i) Detailed and extensive oral evaluations or reevaluations;

(ii) Comprehensive periodontal evaluations;

(iii) Extraoral or occlusal intraoral radiographs;

(iv) Posterior-anterior or lateral skull and facial bone survey films;

(v) Sialography;

(vi) Any temporomandibular joint films;

(vii) Tomographic survey;

(viii) Cephalometric films;

(ix) Oral/facial photographic images;

(x) Viral cultures, genetic testing, caries susceptibility tests, adjunctive prediagnostic tests, or pulp vitality tests; or

(xi) Diagnostic casts.

(b) **Preventive services.** The department does not cover:

(i) Nutritional counseling for control of dental disease;

(ii) Tobacco counseling for the control and prevention of oral disease;

(iii) Oral hygiene instructions (included as part of the global fee for oral prophylaxis);

(iv) Removable space maintainers of any type;

(v) Sealants;

(vi) Space maintainers of any type or recementation of space maintainers; or

(vii) Fluoride trays of any type.

(c) **Restorative services.** The department does not cover:

(i) Restorative/operative procedures performed in a hospital operating room or ambulatory surgical center for clients age twenty-one and older. For clients of the division of developmental disabilities, see WAC 388-535-1099;

(ii) Restorations for wear on any surface of any tooth without evidence of decay through the enamel or on the root surface;

(iii) Gold foil restorations;

(((~~(iii)~~))) (iv) Metallic, resin-based composite, or porcelain/ceramic inlay/onlay restorations;

(((~~(iv)~~))) (v) Prefabricated resin crowns;

(((~~(v)~~))) (vi) Temporary or provisional crowns (including ion crowns);

(((~~(vi)~~))) (vii) Any type of permanent or temporary crown. For clients of the division of developmental disabilities see WAC 388-535-1099;

(((~~(vii)~~))) (viii) Recementation of any crown, inlay/onlay, or any other type of indirect restoration;

(((~~(viii)~~))) (ix) Sedative fillings;

(((~~(ix)~~))) (x) Preventive restorative resins;

(((~~(x)~~))) (xi) Any type of core buildup, cast post and core, or prefabricated post and core;

(((~~(xi)~~))) (xii) Labial veneer resin or porcelain laminate restoration;

(((~~(xii)~~))) (xiii) Any type of coping;

(((~~(xiii)~~))) (xiv) Crown repairs; or

(((~~(xix)~~))) (xv) Polishing or recontouring restorations or overhang removal for any type of restoration.

(d) **Endodontic services.** The department does not cover:

(i) Indirect or direct pulp caps;

(ii) Endodontic therapy on any primary teeth for clients age twenty-one and older;

(iii) Endodontic therapy on permanent bicuspids or molar teeth;

(iv) Endodontic retreatment of permanent anterior, bicuspid, or molar teeth;

(v) Any apexification/recalcification procedures;

(((~~(v)~~))) (vi) Any apicoectomy/periradicular service; or

(((~~(vi)~~))) (vii) Any surgical endodontic procedures including, but not limited to, retrograde fillings, root amputation, reimplantation, and hemisections.

(e) **Periodontic services.** The department does not cover:

(i) Surgical periodontal services that include, but are not limited to:

(A) Gingival or apical flap procedures;

(B) Clinical crown lengthening;

(C) Any type of osseous surgery;

(D) Bone or soft tissue grafts;

(E) Biological material to aid in soft and osseous tissue regeneration;

(F) Guided tissue regeneration;

(G) Pedicle, free soft tissue, apical positioning, subepithelial connective tissue, soft tissue allograft, combined connective tissue and double pedicle, or any other soft tissue or osseous grafts; or

(H) Distal or proximal wedge procedures; or

(ii) Nonsurgical periodontal services, including but not limited to:

(A) Intracoronal or extracoronal provisional splinting;

(B) Full mouth debridement;

(C) Localized delivery of chemotherapeutic agents; or

(D) Any other type of nonsurgical periodontal service.

(f) **Prosthodontics (removable).** The department does not cover any type of:

(i) Removable unilateral partial dentures;

(ii) Adjustments to any removable prosthesis;

(iii) Repairs to any partial denture;

(iv) Flexible base partial dentures;

(v) Replacement of second or third molars for any removable prosthesis;

(vi) Any type of permanent soft reline (e.g., molloplast);

(vii) Chairside complete or partial denture relines;

(((~~(iv)~~))) (viii) Any interim complete or partial denture;

(((~~(v)~~))) (ix) Precision attachments; or

(((~~(vi)~~))) (x) Replacement of replaceable parts for semi-precision or precision attachments.

(g) **Oral and maxillofacial prosthetic services.** The department does not cover any type of oral or facial prosthesis other than those listed in WAC 388-535-1266.

(h) **Implant services.** The department does not cover:

(i) Any implant procedures, including, but not limited to, any tooth implant abutment (e.g., periosteal implant, eposteal implant, and transosteal implant), abutments or implant supported crown, abutment supported retainer, and implant supported retainer;

(ii) Any maintenance or repairs to procedures listed in (h)(i) of this subsection; or

(iii) The removal of any implant as described in (h)(i) of this subsection.

(i) **Prosthodontics (fixed).** The department does not cover any type of:

(i) Fixed partial denture pontic;

(ii) Fixed partial denture retainer;

(iii) Precision attachment, stress breaker, connector bar, coping, or cast post; or

(iv) Other fixed attachment or prosthesis.

(j) **Oral and maxillofacial surgery.** The department does not cover:

(i) Any nonemergency oral surgery performed in a hospital or ambulatory surgical center for current dental terminology (CDT) procedures;

(ii) Brush biopsy;

(iii) Any type of alveoplasty;

(iv) Any type of excisions of bone tissue including, but not limited to:

(A) Removal of lateral exostosis;

(B) Removal of torus palatinus or torus mandibularis; and

(C) Surgical reduction of osseous tuberosity.

(v) Any type of surgical reduction of fibrous tuberosity;

(vi) Removal of foreign body from mucosa, skin, or subcutaneous tissue;

(vii) Vestibuloplasty;

(((~~(iii)~~))) (viii) Frenuloplasty/frenulectomy;

(((~~(iv)~~))) (ix) Any oral surgery service not listed in WAC 388-535-1267;

(((~~(v)~~))) (x) Any oral surgery service that is not listed in the department's list of covered current procedural terminology (CPT) codes published in the department's current rules or billing instructions;

(((~~(vi)~~))) (xi) Any type of occlusal orthotic splint or device, bruxing or grinding splint or device, temporomandibular joint splint or device, or sleep apnea splint or device; or

(((~~(vii)~~))) (xii) Any type of orthodontic service or appliance.

(k) **Adjunctive general services.** The department does not cover:

(i) Anesthesia to include:

(A) Local anesthesia as a separate procedure;

(B) Regional block anesthesia as a separate procedure;

(C) Trigeminal division block anesthesia as a separate procedure;

(D) Analgesia or anxiolysis as a separate procedure except for inhalation of nitrous oxide;

(E) Medication for oral sedation, or therapeutic drug injections, including antibiotic or injection of sedative; or

(F) Application of any type of desensitizing medicament or resin.

(ii) Other general services including, but not limited to:

(A) Fabrication of athletic mouthguard, occlusal guard, or nightguard;

(B) Occlusion analysis;

(C) Occlusal adjustment, tooth or restoration adjustment or smoothing, or odontoplasties;

(D) Enamel microabrasion;

(E) Dental supplies, including but not limited to, toothbrushes, toothpaste, floss, and other take home items;

(F) Dentist's or dental hygienist's time writing or calling in prescriptions;

(G) Dentist's or dental hygienist's time consulting with clients on the phone;

(H) Educational supplies;

(I) Nonmedical equipment or supplies;

(J) Personal comfort items or services;

(K) Provider mileage or travel costs;

(L) Missed or late appointment fees;

(M) Service charges of any type, including fees to create or copy charts;

(N) Office supplies used in conjunction with an office visit; or

(O) Teeth whitening services or bleaching, or materials used in whitening or bleaching.

WSR 09-23-010
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 09-250—Filed November 5, 2009, 1:46 p.m., effective November 5, 2009, 1:46 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing regulations.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-44-05000D; and amending WAC 220-44-050.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: These rules were adopted by the Pacific Fisheries Management Council and provide harvest of available stocks of bottomfish, while reserving brood stock for future fisheries. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: November 5, 2009.

Philip Anderson
Director

NEW SECTION

WAC 220-44-05000E Coastal bottomfish catch limits. Notwithstanding the provisions of WAC 220-44-050, effective immediately until further notice:

(1) It is unlawful to possess, transport through the waters of the state, or land into any Washington port, bottomfish taken from Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A-1, 59A-2, 60A-1, 60A-2, 61, 62, or 63, in excess of the amounts or less than the minimum sizes, or in violation of any gear, handling or landing requirement, established by the Pacific Fisheries Management Council and published in the Federal Register, Volume 74, Number 207, published on October 28, 2009 and Volume 74, Number 212, published on November 4, 2009. Therefore, persons must consult the federal regulations, which are incor-

porated by reference and made a part of Chapter 220-44 WAC. Where rules refer to the fishery management area, that area is extended to include Washington State waters coterminous with the Exclusive Economic Zone.

(a) Effective immediately until further notice, it is unlawful to possess, transport through the waters of the state, or land into any Washington port, walleye pollock taken with trawl gear from Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A-1, 59A-2, 60A-1, 60A-2, 61, 62, or 63, except by trawl vessels participating in the directed Pacific whiting fishery and the directed coastal groundfish fishery.

(b) Effective immediately until further notice, it is unlawful for trawl vessels participating in the directed Pacific whiting and/or the directed coastal groundfish fishery to land incidental catches of walleye pollock greater than forty percent of their total landing by weight, not to exceed 10,000 pounds.

(2) At the time of landing of coastal bottom fish into a Washington port, the fish buyer receiving the fish is required to clearly mark on the fish receiving ticket, in the space reserved for dealer's use, all legally defined trawl gear aboard the vessel at the time of delivery. The four trawl gear types are: midwater trawl, roller trawl, small foot rope trawl (foot rope less than eight inches in diameter), and selective flatfish trawl gear. The notation of the gear type(s) aboard the vessel is required prior to the signing of the fish receiving ticket by the vessel representative.

(3) Vessels engaged in chartered research for the National Marine Fisheries Service (NMFS) may land and sell bottomfish caught during that research without the catch being counted toward any trip or cumulative limit for the participating vessel. Vessels that have been compensated for research work by NMFS with an Exempted Fishing Permit (EFP) to land fish as payment for such research may land and sell fish authorized under the EFP without the catch being counted toward any trip or cumulative limit for the participating vessel. Any bottomfish landed during authorized NMFS research or under the authority of a compensating EFP for past chartered research work must be reported on a separate fish receiving ticket and not included on any fish receiving ticket reporting bottomfish landed as part of any trip or cumulative limit. Bottomfish landed under the authority of NMFS research work or an EFP compensating research with fish must be clearly marked "NMFS Compensation Trip" on the fish receiving ticket in the space reserved for dealer's use. The NMFS scientist in charge must sign the fish receiving ticket in the area reserved for dealer's use if any bottomfish are landed during authorized NMFS research. If the fish are landed under the authority of an EFP as payment for research work, the EFP number must be listed in the dealer's use space.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-44-05000D	Coastal bottomfish catch limits. (09-138)

WSR 09-23-021
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 09-253—Filed November 6, 2009, 3:40 p.m., effective November 6, 2009, 3:40 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-31100D and 220-47-41100L; and amending WAC 220-47-311 and 220-47-411.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation modifies commercial fishing schedules for Salmon Management and Catch Reporting Areas 12, 12B and 12C per agreement with tribal comanagers. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 2.

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

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

Date Adopted: November 6, 2009.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-47-31100D Purse seine—Open periods. Notwithstanding the provisions of WAC 220-47-311:

(1) Effective 12:01 a.m. November 11, through 11:59 p.m. November 11, 2009, it is unlawful to take, fish for or possess salmon taken for commercial purposes with purse seine gear in waters of Puget Sound Management and Catch Reporting Areas 12 and 12B.

(2) Effective immediately through November 23, 2009, it is unlawful to take, fish for or possess salmon taken for commercial purposes with purse seine gear in waters of Puget Sound Management and Catch Reporting Area 12C.

NEW SECTION

WAC 220-47-41100L Gill nets—Open periods. Notwithstanding the provisions of WAC 220-47-411:

(1) Effective 12:01 a.m. November 12, through 11:59 p.m. November 12, 2009, it is unlawful to take, fish for or possess salmon taken for commercial purposes with gill net gear in waters of Puget Sound Management and Catch Reporting Areas 12 and 12B.

(2) Effective immediately through November 26, 2009, it is unlawful to take, fish for or possess salmon taken for commercial purposes with gill net gear in waters of Puget Sound Management and Catch Reporting Area 12C.

REPEALER

The following section of the Washington Administrative Code is repealed effective November 24, 2009:

WAC 220-47-31100D Purse seine—Open periods.

The following section of the Washington Administrative Code is repealed effective November 27, 2009:

WAC 220-47-41100L Gill nets—Open periods.

WSR 09-23-043
EMERGENCY RULES
BOARD OF PILOTAGE COMMISSIONERS

[Filed November 9, 2009, 1:19 p.m., effective November 9, 2009, 1:19 p.m.]

Effective Date of Rule: Immediately.

Purpose: To provide more flexibility for pilot trainees to complete initial evaluations and local knowledge exams.

Citation of Existing Rules Affected by this Order: Amending WAC 363-116-078.

Statutory Authority for Adoption: Chapter 88.16 RCW.

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

Reasons for this Finding: The existing time constraints place an undue burden on pilot trainees which, if not modified, may impact the quality of their pilot training program.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: July 9, 2009.

Peggy Larson
Administrator

AMENDATORY SECTION (Amending WSR 08-15-119, filed 7/21/08, effective 8/21/08)

WAC 363-116-078 Training program. After passing the written examination and simulator evaluation, pilot applicants pursuing a pilot license must enter and successfully complete a training program specified by the board.

(1) Notification. Pilot applicants on the list waiting to enter the training program shall provide the board with a current address to be used for notification for entry into the training program. Such address shall be a place at which mail is delivered. In addition, a pilot applicant may provide the board with other means of contact such as a phone number, fax number, and/or an e-mail address. The mailing address will, however, be considered the primary means of notification by the board. It will be the responsibility of the pilot applicant to ensure that the board has a current mailing address at all times. If a pilot applicant cannot personally receive mail at the address provided to the board for any period of time, another person may be designated in writing with a notarized copy to the board as having power of attorney specifically to act in the pilot applicant's behalf regarding such notice. If notice sent to the address provided by the pilot applicant is returned after three attempts to deliver, that pilot applicant will be skipped and the next pilot applicant on the list will be contacted for entry into the training program. A person so skipped will remain next on the list. A pilot applicant or his/her designated attorney in fact shall respond within fifteen calendar days of receipt of notification to accept, refuse, or request a delayed entry into the training program.

(2) Entry. At such time that the board chooses to start a pilot applicant in the training program, notification shall be given to the first person on the list. Pilot applicants shall be eligible in the order of their total combined scores on the written examination and simulator evaluation or as otherwise may be determined by the board. A pilot applicant who refuses entry into the program will be removed from the waiting list with no further obligation by the board to offer a position in the training program to such pilot applicant. A pilot applicant who is not able to start the training program on the date the board sets for that pilot applicant's entry into the training program may, with written consent of the board, delay entry into the training program for up to two months. The board will then give notice to the next pilot applicant on the list to enter the training program. The pilot applicant who delays entry, shall remain eligible for the next position in the training program, provided that the next position becomes available within the earlier of:

(a) Four years from the pilot applicant's taking the written examination; or

(b) The date scheduled for the next pilotage examination. Pilot applicants not able to start in the training program within two months of the date the board sets for that pilot applicant's entry into the training program and who do not obtain the board's written consent to delay entry into the training program shall no longer be eligible for the training program without retaking the examination provided in WAC 363-116-076 and the simulator evaluation provided in WAC 363-116-077.

(3) Training license. Prior to receiving a training license pilot applicants must pass a physical examination by a board-designated physician and in accordance with the requirements of WAC 363-116-120 for initial pilot applicants. A form provided by the board must be completed by the physician and submitted to the board along with a cover letter indicating the physician's findings and recommendations as to the pilot applicant's fitness to pilot. The physical examination must be taken not more than ninety days before issuance of the training license. Holders of a training license will be required to pass a general physical examination annually within ninety days prior to the anniversary date of that license. Training license physical examinations will be at the expense of the pilot applicant. All training licenses shall be signed by the chairperson or his/her designee and shall have an expiration date. Training licenses shall be surrendered to the board upon completion or termination of the training program.

(4) Development. As soon as practical after receiving notification of eligibility for entry into the training program as set forth in this section, the pilot applicant shall meet with the trainee evaluation committee for the purpose of devising a training program for that pilot applicant. The training program shall be tailored to the ability and experience of the individual pilot applicant and shall consist of observation trips, training trips in which the pilot applicant pilots the vessel under the supervision of licensed pilots, ship assist tug trips, and such other forms of learning and instruction that may be designated. The trainee evaluation committee shall recommend a training program for adoption by the board. After adoption by the board, it will be presented to the pilot applicant. If the pilot applicant agrees in writing to the training program, the board shall issue a training license to the pilot applicant, which license shall authorize the pilot applicant to take such actions as are contained in the training program. If the pilot applicant does not agree to the terms of the training program in writing within fifteen business days of it being received by the pilot applicant, that pilot applicant shall no longer be eligible for entry into the training program and the board may give notice to the next available pilot applicant that he/she is eligible for the training program.

(5) Initial evaluation.

(a) The trainee evaluation committee shall create an initial evaluation at the beginning of each pilot applicant's training program subject to approval by the board. The goal of the initial evaluation is to, as soon as practical after adequate observation trips, have the pilot trainee involved in hands-on piloting and ship handling under the supervision of licensed pilots and subject to the evaluation of training pilots. To this end the trainee evaluation committee shall devise an initial evaluation of a specified length not to exceed ((~~six~~)) eight months if the pilot trainee is on stipend and ((~~nine~~)) fifteen months if not on stipend. The initial evaluation shall:

(i) Afford the pilot trainee early and concentrated exposure to a commonly navigated waterway, channel or tributary within the pilotage district and the main ship channel routes between such area and the seaward boundary of the pilotage district;

(ii) Except for pilot trainees taking an examination prior to July 1, 2008, provide the pilot trainee the opportunity to study for and pass any local knowledge examinations provided by the board as to the conditions found in such waterway, channel or tributary;

(iii) Specify a number of training trips in which the pilot trainee pilots vessels under the supervision of licensed pilots; and

(iv) Specify a number of training trips in which the pilot trainee pilots vessels under the supervision of training pilots and the pilot members of the trainee evaluation committee.

(b) As a condition of completing the initial evaluation, the pilot trainee shall:

(i) Pass any required local knowledge examinations given by the board covering the routes described in (a)(i) of this subsection. This examination can be repeated as necessary, provided that it may not be taken more than once in any ((~~thirty~~)) seven day period and further provided that it must be successfully passed before the expiration date of the initial evaluation; and

(ii) Possess a first class pilotage endorsement without tonnage or other restrictions on his/her United States government license to pilot in at least one route in the pilotage district in which the pilot applicant seeks a license.

(c) After completion of the initial evaluation, the trainee evaluation committee shall make a recommendation to the board and the board shall determine, whether the pilot trainee has demonstrated the potential for superior piloting and ship handling and has demonstrated the ability to assimilate and retain the local knowledge necessary to pilot. Unless the board finds that such superior potential exists, it shall terminate the pilot trainee's participation in the training program.

(6) Specification of trips. To the extent possible, the training program shall provide a wide variety of assignments, observation and training trips. The training program may contain deadlines for achieving full or partial completion of certain necessary actions. Where relevant, it may specify such factors as route, sequence of trips, weather conditions, day or night, stern or bow first, draft, size of ship and any other relevant factors. The board may designate specific trips or specific numbers of trips that shall be made with training pilots or with the pilot members of the trainee evaluation committee or with pilots of specified experience. In the Puget Sound pilotage district, pilot applicants taking an examination before July 1, 2008, shall complete a minimum of one hundred thirty trips. After July 1, 2008, all Puget Sound pilotage district pilot applicants shall complete a minimum of one hundred fifty trips. The board shall set from time to time the minimum number of trips for pilot applicants in the Grays Harbor pilotage district. The board will ensure that during the training program the pilot trainee will get significant review by training pilots and the pilot members of the trainee evaluation committee.

(7) Local knowledge. The training program shall provide opportunities for the education of pilot trainees and shall provide for testing of pilot trainees on the local knowledge necessary to become a pilot. This education program shall be developed by the trainee evaluation committee and recommended to the board for adoption and shall be tailored to the needs of the individual pilot trainee. It shall be the responsibility of the pilot trainee to obtain the local knowledge necessary to be licensed as a pilot in the district for which he/she is applying. Prior to the completion of the training program, the board, or its designee, may give such local knowledge examination(s) as it deems appropriate to the pilot trainees who shall be required to pass such examination(s) before completing the training program. The trainee evaluation committee may require a pilot trainee to sit for a local knowledge examination provided the trainee evaluation committee informs the pilot trainee in writing sixty days in advance of the scheduled date of the examination. Failure to sit for the examination on the date scheduled may constitute cause for removal from the training program. The trainee evaluation committee may also establish in writing such interim performance requirements as it deems necessary. These local examinations can be repeated as necessary, except that an examination for the same local area may not be taken more than once in any ((~~thirty~~)) seven day period and all required local ((~~know~~)) knowledge examinations must be successfully passed before the expiration date of the training program. The local knowledge required of a pilot trainee and the local knowledge examination(s) may include the following subjects as they pertain to the pilotage district for which the pilot trainee seeks a license:

(a) Area geography;

(b) Waterway configurations including channel depths, widths and other characteristics;

(c) Hydrology and hydraulics of large ships in shallow water and narrow channels;

(d) Tides and currents;

(e) Winds and weather;

(f) Local aids to navigation;

(g) Bottom composition;

(h) Local docks, berths and other marine facilities including length, least depths and other characteristics;

(i) Mooring line procedures;

(j) Local traffic operations e.g., fishing, recreational, dredging, military and regattas;

(k) Vessel traffic system;

(l) Marine VHF usage and phraseology, including bridge-to-bridge communications regulations;

(m) Air draft and keel clearances;

(n) Submerged cable and pipeline areas;

(o) Overhead cable areas and clearances;

(p) Bridge transit knowledge - signals, channel width, regulations, and closed periods;

(q) Lock characteristics, rules and regulations;

(r) Commonly used anchorage areas;

(s) Danger zone and restricted area regulations;

(t) Regulated navigation areas;

(u) Naval operation area regulations;

(v) Local ship assist and escort tug characteristics;

(w) Tanker escort rules - state and federal;

(x) Use of anchors and knowledge of ground tackle;

(y) Applicable federal and state marine and environmental safety law requirements;

(z) Marine security and safety zone concerns;

(aa) Harbor safety plan and harbor regulations;

(bb) Chapters 88.16 RCW and 363-116 WAC, and other relevant state and federal regulations in effect on the date the examination notice is published pursuant to WAC 363-116-076; and

(cc) Courses in degrees true and distances in nautical miles and tenths of miles between points of land, navigational buoys and fixed geographical reference points, and the distance off points of land for such courses as determined by parallel indexing along pilotage routes.

(8) Length.

(a) In the Puget Sound pilotage district, for pilot applicants taking an examination before July 1, 2008, the minimum length of the training program shall be seven months. For pilot applicants who take an examination on or after July 1, 2008, the minimum length of the training program shall be eight months. The maximum length of the training program shall be thirty-six months if the pilot applicant elects to receive a stipend. The length of the training program shall be established by the board based on the recommendation of the trainee evaluation committee.

(b) In the Grays Harbor pilotage district, the length of the training program shall be set by the board based on the recommendation of the trainee evaluation committee.

(9) Rest. It is the pilot trainee's responsibility to provide adequate rest time so that he/she is fully able to pilot on training trips. Pilot trainees shall not take pilot training trips in which they will be piloting the vessel without observing the rest rules for pilots in place by federal or state law or regulation. For purposes of calculating rest required before a training trip in which the pilot trainee will be piloting after an observation trip in which the pilot trainee did not pilot the vessel, such observation trip shall be treated as though it had been a normal pilot training assignment. Nothing herein shall be construed as requiring any particular amount of rest before any observation trip in which the pilot trainee will not be piloting.

(10) Stipend.

(a) At the initial meeting with the trainee evaluation committee the pilot applicant shall indicate whether he/she wishes to receive a stipend during the training program. In the Puget Sound pilotage district, as a condition of receiving such stipend, pilot applicants will agree to forego during the training program other full- or part-time employment which prevents them from devoting themselves on a full-time basis to the completion of the training program. With the consent of the board and the restructuring of the training program, pilot trainees may elect to change from a stipend to nonstipend status, and vice versa, during the training program. The stipend paid to pilot trainees shall be six thousand dollars per month (or such other amount as may be set by the board from time to time), shall be contingent upon the board's setting of a training surcharge in the tariffs levied pursuant to WAC 363-116-185 and 363-116-300 sufficient to cover the expense of the stipend and shall be paid from a pilot training

account as directed by the board and pursuant thereto shall be paid to pilot trainees as set forth below:

(i) Determinations as to stipend entitlement will be made on a full calendar month basis and documentation of trips will be submitted to the board by the fifth day of the following month. The stipend will be paid on an all or nothing basis for each month except that prorations shall be allowed at the rate of two hundred dollars per day (or such other amount as may be set by the board from time to time), under the following circumstances:

(A) For the first and last months of the training program (unless the training program starts on the first or ends on the last day of a month); or

(B) For a pilot trainee who is deemed unfit for duty by a board-designated physician during a training month; or

(C) For a pilot trainee who requests a change from a nonstipend status to a stipend status, or from a stipend status to a nonstipend status as set forth in (a) (vi) of this subsection.

(ii) A certain minimum number of trips are required each month for eligibility to receive the stipend. This minimum number shall be specified in the training program and shall be the total number of trips required in the training program divided by the number of months in the training program. Only trips required by the training program can be used to satisfy this minimum. Trips will be documented at the end of each month.

(iii) It is the pilot trainee's responsibility to make all hard-to-get trips before the end of the training program. If a training program is extended due to a failure to get all of these trips, the board may elect not to pay the stipend if the missing trips were available to the pilot trainee but not taken.

(iv) The trainee evaluation committee with approval by the board may allocate, assign or specify training trips among multiple pilot trainees. Generally, the pilot trainee who finished the qualifying examination and simulator evaluation with the highest score has the right of first refusal of training trips provided that the trainee evaluation committee may, with approval by the board, allocate or assign training trips differently as follows:

(A) When it is necessary to accommodate any pilot trainee's initial evaluation program;

(B) When it is necessary to spread hard-to-get trips among pilot trainees so that as many as possible complete required trips on time. If a pilot trainee is deprived of a hard-to-get trip by the trainee evaluation committee, that trip will not be considered "available" under (a)(ii) of this subsection. However, the pilot trainee will still be required to complete the minimum number of trips for the month in order to receive a stipend, and the minimum number of trips as required to complete his/her training program;

(v) If a pilot trainee elects to engage in any full- or part-time employment, the terms and conditions of such employment must be submitted to the trainee evaluation committee for prior determination by the board of whether such employment complies with the intent of this section prohibiting employment that "prevents (pilot trainees) from devoting themselves on a full-time basis to the completion of the training program."

(vi) If a pilot trainee requests to change to a nonstipend status as provided in this section such change shall be effective for a minimum nonstipend period of thirty days, provided that before any change takes effect the board and the pilot trainee must agree in writing on the terms of a revised training program.

(b) Any approved pilot association or other organization collecting the pilotage tariff levied by WAC 363-116-185 or 363-116-300 shall transfer the pilot training surcharge receipts to the board at least once a month or otherwise dispose of such funds as directed by the board. The board may set different training stipends for different pilotage districts. Receipts from the training surcharge shall not belong to the pilot providing the service to the ship that generated the surcharge or to the pilot association or other organization collecting the surcharge receipts, but shall be disposed of as directed by the board. Pilot associations or other organizations collecting surcharge receipts shall provide an accounting of such funds to the board on a quarterly basis or at such other intervals as may be requested by the board. Any audited financial statements filed by pilot associations or other organizations collecting pilotage tariffs shall include an accounting of the collection and disposition of these surcharges.The board shall direct the disposition of all funds in the account.

(11) Trainee evaluation committee. There is hereby created a trainee evaluation committee to which members shall be appointed by the board. The committee shall include at a minimum: Three active licensed Washington state pilots, who, to the extent possible, shall be from the district in which the pilot trainee seeks a license and at least one of whom shall be a member of the board; one representative of the marine industry from the relevant pilotage district (who may be a board member) who holds, or has held, the minimum U.S. Coast Guard license required by RCW 88.16.090; and one other member of the board who is not a pilot. The committee may include such other persons as may be appointed by the board. The committee shall be chaired by a pilot member of the board and shall meet as necessary to complete the tasks accorded it. In the event that the trainee evaluation committee cannot reach consensus with regard to any issue it shall report both majority and minority opinions to the board.

(12) Training pilots. The board shall designate as training pilots those pilots with a minimum of seven years of piloting in the relevant district who are willing to undergo such training as the board may require and provide. The board may establish a lower experience level for the Grays Harbor pilotage district. Training pilots shall receive such training from the board to better enable them to give guidance and training to pilot trainees and to properly evaluate the performance of pilot trainees. The board shall keep a list of training pilots available for public inspection at all times. All pilot members of the trainee evaluation committee shall also be training pilots.

(13) Evaluation. When a pilot trainee pilots a vessel under the supervision of another pilot, the supervising pilot shall, to the extent possible, communicate with and give guidance to the pilot trainee in an effort to make the trip a valuable learning experience. After each such trip, the supervising pilot shall complete a form provided by the board evaluating the pilot trainee's performance. Evaluation forms prepared by licensed pilots who are not training pilots shall be used by the trainee evaluation committee and the board for

assessing a pilot trainee's progress, providing guidance to the pilot trainee and for making alterations to the training program. All evaluation forms shall be delivered or mailed by the supervising pilot to the board. They shall not be given to the pilot trainee. The supervising pilot may show the contents of the form to the pilot trainee, but the pilot trainee has no right to see the form until it is filed with the board. The trainee evaluation committee shall review these evaluation forms from time to time and the chairperson of the trainee evaluation committee shall report the progress of all pilot trainees at each meeting of the board. If it deems it necessary, the trainee evaluation committee may recommend, and the board may make, changes from time to time in the training program requirements applicable to a pilot trainee, including the length of the training program.

(14) Removal. A pilot trainee may be removed from the training program by the board if it finds any of the following:

(a) Failure to maintain the minimum federal license required by RCW 88.16.090;

(b) Conviction of an offense involving drugs or involving the personal consumption of alcohol;

(c) Failure to devote full time to training in the Puget Sound pilotage district if receiving a stipend;

(d) The pilot trainee is not physically fit to pilot;

(e) Failure to make satisfactory progress toward timely completion of the program or timely meeting of interim performance requirements in the training program;

(f) Inadequate performance on examinations or other actions required by the training program;

(g) Failure to demonstrate the superior skills required in the initial evaluation;

(h) Inadequate performance on training trips; or

(i) Violation of a training program requirement, law, regulation or directive of the board.

(15) Completion of the training program shall include the requirement that the pilot trainee:

(a) Successfully complete the requirements set forth in the training program;

(b) Possess a valid first class pilotage endorsement without tonnage or other restrictions on his/her United States government license to pilot in all of the waters of the pilotage district in which the pilot applicant seeks a license; and

(c) Successfully complete any local knowledge examination(s) required by the board and specified in the training program.

WSR 09-23-049
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 09-254—Filed November 10, 2009, 11:36 a.m., effective November 14, 2009, 12:01 p.m.]

Effective Date of Rule: November 14, 2009, 12:01 p.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-36000Z; and amending WAC 220-56-360.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 2 and those portions of Razor Clam Area 3 opened for harvest. Washington department of health has certified clams from these beaches to be safe for human consumption. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: November 10, 2009.

James B. Scott, Jr.
for Philip Anderson
Director

NEW SECTION

WAC 220-56-36000Z Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 2, or 3, except as provided for in this section:

1. Effective 12:01 p.m. November 14 through 11:59 p.m. November 16, 2009, razor clam digging is allowed in Razor Clam Area 1 and that portion Razor Clam Area 3 that is between the Grays Harbor North Jetty and the southern boundary of the Quinault Indian Nation (Grays Harbor County). Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

2. Effective 12:01 p.m. November 14 through 11:59 p.m. November 17, 2009, razor clam digging is allowed in Razor Clam Area 2. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

3. Effective 12:01 p.m. November 16 through 11:59 p.m. November 16, 2009, razor clam digging is allowed in that portion of Razor Clam Area 3 that is between Olympic National Park South Beach Campground access road (Kalaloch area, Jefferson County) and Browns Point (Kalaloch area, Jefferson County). Digging is allowed from 12:01 p.m. to 11:59 p.m. only.

4. It is unlawful to dig for razor clams at any time in Long Beach, Twin Harbors Beach or Copalis Beach Clam sanctuaries defined in WAC 220-56-372.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. November 18, 2009:

WAC 220-56-36000Z	Razor clams—Areas and seasons.

NEW SECTION

WAC 220-69-24000S Duties of commercial purchasers and receivers. Notwithstanding the provisions of Chapter 220-69 WAC, effective immediately until further notice, during any Grays Harbor or Willapa Bay Fishery opening that is designated by rule as "Quick Reporting Required", reports must be submitted by 10:00 a.m. on the day after the purchase date via one of the following three options: fax at 360-249-1229; e-mail at harborfishtickets@dfw.wa.gov; or phone at 1-866-791-1280. Submission of a report is not complete until the report arrives at the designated department location.

WSR 09-23-065
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 09-256—Filed November 13, 2009, 11:22 a.m., effective November 13, 2009, 11:22 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-69-240.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation provides for a working fax number for quick reports to be submitted to the Washington department of fish and wildlife Region 6 office, which has just completed acquiring a new phone system that changed the fax number. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: November 13, 2009.

Philip Anderson
Director

WSR 09-23-066
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 09-252—Filed November 13, 2009, 11:23 a.m., effective December 1, 2009]

Effective Date of Rule: December 1, 2009.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The Kendall Creek Hatchery in recent years has been unable to secure sufficient eggs from returning hatchery winter steelhead to meet basin production goals. Closure of the fishery is needed to collect sufficient fish to meet egg take needs. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: November 13, 2009.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900E Exceptions to statewide rules—North Fork Nooksack River. Notwithstanding the provisions of WAC 232-28-619, effective December 1, 2009, until further notice, it is unlawful to fish in those waters of the North Fork Nooksack River from the yellow post located at the upstream-most corner of the hatchery grounds approximately 1,000 feet upstream of the mouth of Kendall Creek, downstream to the Mosquito Lake Road Bridge.

WSR 09-23-071
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 09-255—Filed November 13, 2009, 3:12 p.m., effective November 13, 2009, 3:12 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-30700G, 220-47-31100D and 220-47-41100L; and amending WAC 220-47-307.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: A harvestable share of chum salmon are available and the tribes have agreed to the commercial fishing scheduled as adopted in permanent rules for Salmon Management and Catch Reporting Areas 12, 12B and 12C. Per the agreement with the tribes the department of fish and wildlife has agreed to put in a closure zone around Hoodsport Hatchery during the commercial openings. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 3.

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

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

Date Adopted: November 13, 2009.

Philip Anderson
Director

NEW SECTION

WAC 220-47-30700G Closed areas—Puget Sound salmon. Notwithstanding the provisions of WAC 220-47-307, effective immediately until further notice, it is unlawful to take, fish for or possess salmon taken for commercial purposes with gill net or purse seine gear in those waters of Puget Sound Salmon Management and Catch Reporting Area 12C within 1000' from the shore between the Hoodsport Marina Dock and the Dock at Glen Ayr Trailer Park.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-47-31100D	Purse seine—Open periods. (09-253)
WAC 220-47-41100L	Gill nets—Open periods. (09-253)

The following section of the Washington Administrative Code is repealed effective November 27, 2009:

WAC 220-47-30700G	Closes areas—Puget Sound salmon.

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.

WSR 09-23-073
EMERGENCY RULES
OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2009-07—Filed November 16, 2009, 9:26 a.m., effective November 17, 2009]

Effective Date of Rule: November 17, 2009.

Purpose: This rule amends the use of "viatical" to "life" and "viator" to "owner" throughout the rule. It also sets forth: Licensing requirements for life settlement providers and brokers, annual statement filing requirements for life settlement providers, a required disclosure form, contract filing requirements, and the standards for evaluating reasonableness of compensation for the purchase of life insurance policies by life settlement providers.

Citation of Existing Rules Affected by this Order: Amending WAC 284-97-010 through 284-97-050.

Statutory Authority for Adoption: RCW 48.02.060, 48.102.011 (7)(d)(i), 48.102.046(1), 48.102..070(1) [48.102.-070(1)], and 48.102.170.

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

Reasons for this Finding: The Life Settlement Act, chapter 104, Laws of 2009, was enacted by the 2009 legislature. The act repeals the existing sections in the chapter on viatical

settlements and replaces them with new sections on life settlements. This act also changed the licensing requirements of what were viatical settlement providers and brokers into life settlement providers and brokers, as well as changing some of the requirements for licensing. The act also made further changes to contract filing, disclosures, and other matters. The commissioner has commenced permanent rule making to adopt this rule, but did not have sufficient time to complete the adoption prior to the expiration of the previous emergency rule. Therefore, this rule is being adopted to provide for an interim rule until the commissioner can complete the permanent rule-making process.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 5, Amended 6, Repealed 0.

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

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

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

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

Date Adopted: November 16, 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((~~,~~)) 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, investors 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 application 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 obtaining 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 recision 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 recision 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 recision, 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 recision. If notice of recision 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 recision 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)/1.0125^{n} = $_____."~~

~~(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:

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.

Important information about your life insurance policy
from the State of Washington Office of the Insurance Commissioner

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)	*	
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**

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.	*	

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		

PREMIUM INFORMATION

	This column to be completed by Life Settlement Broker/Provider	This column to be used by Insurance Company
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

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

WSR 09-23-110
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Division of Child Support)
[Filed November 18, 2009, 7:46 a.m., effective November 20, 2009]

Effective Date of Rule: November 20, 2009.

Purpose: The Washington legislature adopted SSB 5166 (chapter 408, Laws of 2009) regarding license suspension for noncompliance with child support orders. The division of child support (DCS) adopted emergency rules to implement this legislation, which took effect on July 26, 2009. The emergency rules were filed as WSR 09-15-183 and will expire on November 19, 2009.

DCS has filed the CR-102, Notice of proposed rule making, published as WSR 09-23-068, and the public rule-mak-

ing hearing is scheduled for January 5, 2010. DCS cannot file the CR-103, Permanent rule-making order, until the day after the rule-making hearing, and the final rules will be effective thirty-one days after the CR-103 is published.

DCS began the rule-making process by filing a CR-101, Preproposal notice of inquiry, as WSR 09-14-073, but is unable to complete the regular adoption process by the date the first emergency rules will expire. This second set of emergency rules is exactly the same as the first set of emergency rules. The proposed rules in the CR-102 make some changes to the emergency rules.

Amending WAC 388-14A-4500 What is the division of child support's license suspension program?, 388-14A-4505 The notice of noncompliance and intent to suspend licenses, 388-14A-4510 Who is subject to the DCS license suspension program?, 388-14A-4515 How do I avoid having my license suspended for failure to pay child support?, 388-14A-4520 Signing a ((~~repayment~~)) payment agreement may avoid certification for noncompliance, 388-14A-4525 How to obtain a release of certification for noncompliance and 388-14A-4530 ((~~Administrative hearings~~)) What happens at an administrative hearing regarding license suspension ((~~are limited in scope.~~))?; and new sections WAC 388-14A-4512 When may the division of child support certify a noncustodial parent for license suspension?, 388-14A-4527 How does a noncustodial parent request an administrative hearing regarding license suspension?, 388-14A-4535 Can the noncustodial parent file a late request for hearing if a license has already been suspended?, and 388-14A-4540 When is a DCS conference board available regarding license suspension issues?

Citation of Existing Rules Affected by this Order: Amending WAC 388-14A-4500, 388-14A-4505, 388-14A-4510, 388-14A-4515, 388-14A-4520, 388-14A-4525, and 388-14A-4530.

Statutory Authority for Adoption: SSB 5166 (chapter 408, Laws of 2009); RCW 34.05.060, 43.20A.550, 74.04.055, 74.04.057, 74.20A.310, 74.20A.320(10), 74.20A.350(14).

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

Reasons for this Finding: Chapter 408, Laws of 2009 (SSB 5166) had an effective date of July 26, 2009. Although DCS has begun the regular rule-making process to adopt rules under this bill, we were unable to complete the adoption process by the effective date of the statutory changes, so we adopted emergency rules as WSR 09-15-183. The emergency rules will expire on November 19, 2009. DCS cannot adopt final rules that would be effective by that date. DCS continues the regular rule-making process and plans to adopt final rules as soon as possible.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 4, Amended 7, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 7, Repealed 0.

Date Adopted: November 13, 2009.

Stephanie E. Vaughn
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 09-24 issue of the Register.