

**WSR 10-02-096**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Disability Services Administration)  
[Filed January 6, 2010, 10:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-13-092.

Title of Rule and Other Identifying Information: The department is amending and creating new sections in chapter 388-106 WAC, Long-term care services.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on February 23, 2010, at 10:00 a.m.

Date of Intended Adoption: Not earlier than February 24, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSR-PAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on February 23, 2010.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by February 9, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending and adopting new rules in chapter 388-106 WAC as follows:

- Updating how the individual budget amount is calculated after the New Freedom participant is assigned a classification as a result of an assessment performed in CARE.
- Updating how unused funds from New Freedom individual budgets will be maintained and/or returned to the department.
- Clarifying what services are available under the New Freedom waiver.
- Updating the role of a designated New Freedom representative to not allow payment as a personal care provider.
- New WAC to address institutionalized participants and their budgets.
- New WAC to address what services are not allowed under New Freedom.
- Adding two applicable definitions for clarity.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.-520.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Karen Fitzharris, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2446.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a small business economic impact statement is not required, as no new costs will be imposed on small businesses or nonprofits.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Karen Fitzharris, Home and Community Services, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2446, fax (360) 407-7582, e-mail Karen.digre-fitzharris@dshs.wa.gov.

December 30, 2009

Don Goldsby, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

**WAC 388-106-0010 What definitions apply to this chapter? "Ability to make self understood"** means how you make yourself understood to those closest to you; express or communicate requests, needs, opinions, urgent problems and social conversations, whether in speech, writing, sign language, symbols, or a combination of these including use of a communication board or keyboard:

(a) Understood: You express ideas clearly;

(b) Usually understood: You have difficulty finding the right words or finishing thoughts, resulting in delayed responses, or you require some prompting to make self understood;

(c) Sometimes understood: You have limited ability, but are able to express concrete requests regarding at least basic needs (e.g. food, drink, sleep, toilet);

(d) Rarely/never understood. At best, understanding is limited to caregiver's interpretation of client specific sounds or body language (e.g. indicated presence of pain or need to toilet.)

**"Activities of daily living (ADL)"** means the following:

(a) Bathing: How you take a full-body bath/shower, sponge bath, and transfer in/out of tub/shower.

(b) Bed mobility: How you move to and from a lying position, turn side to side, and position your body while in bed, in a recliner, or other type of furniture.

(c) Body care: How you perform with passive range of motion, applications of dressings and ointments or lotions to the body and pedicure to trim toenails and apply lotion to feet. In adult family homes, contracted assisted living, enhanced adult residential care, and enhanced adult residential care-specialized dementia care facilities, dressing changes using clean technique and topical ointments must be performed by a licensed nurse or through nurse delegation in accordance with chapter 246-840 WAC. Body care excludes:

(i) Foot care if you are diabetic or have poor circulation;

or

(ii) Changing bandages or dressings when sterile procedures are required.

(d) Dressing: How you put on, fasten, and take off all items of clothing, including donning/removing prosthesis.

(e) Eating: How you eat and drink, regardless of skill. Eating includes any method of receiving nutrition, e.g., by mouth, tube or through a vein.

(f) Locomotion in room and immediate living environment: How you move between locations in your room and immediate living environment. If you are in a wheelchair, locomotion includes how self-sufficient you are once in your wheelchair.

(g) Locomotion outside of immediate living environment including outdoors: How you move to and return from more distant areas. If you are living in a boarding home or nursing facility (NF), this includes areas set aside for dining, activities, etc. If you are living in your own home or in an adult family home, locomotion outside immediate living environment including outdoors, includes how you move to and return from a patio or porch, backyard, to the mailbox, to see the next-door neighbor, etc.

(h) Walk in room, hallway and rest of immediate living environment: How you walk between locations in your room and immediate living environment.

(i) Medication management: Describes the amount of assistance, if any, required to receive medications, over the counter preparations or herbal supplements.

(j) Toilet use: How you use the toilet room, commode, bedpan, or urinal, transfer on/off toilet, cleanse, change pad, manage ostomy or catheter, and adjust clothes.

(k) Transfer: How you move between surfaces, i.e., to/from bed, chair, wheelchair, standing position. Transfer does not include how you move to/from the bath, toilet, or vehicle.

(l) Personal hygiene: How you maintain personal hygiene, including combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands (including nail care), and perineum (menses care). Personal hygiene does not include hygiene in baths and showers.

**"Aged person"** means a person sixty-five years of age or older.

**"Agency provider"** means a licensed home care agency or a licensed home health agency having a contract to provide long-term care personal care services to you in your own home.

**"Application"** means a written request for medical assistance or long-term care services submitted to the department by the applicant, the applicant's authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant. The applicant must submit the request on a form prescribed by the department.

**"Assessment details"** means a summary of information that the department entered into the CARE assessment describing your needs.

**"Assessment or reassessment"** means an inventory and evaluation of abilities and needs based on an in-person interview in your own home or your place of residence, using CARE.

**"Assistance available"** means the amount of informal support available if the need is partially met. The department

determines the amount of the assistance available using one of four categories:

(a) Less than one-fourth of the time;

(b) One-fourth to one-half of the time;

(c) Over one-half of the time to three-fourths of the time;

or

(d) Over three-fourths but not all of the time.

**"Assistance with body care"** means you need assistance with:

(a) Application of ointment or lotions;

(b) Trimming of toenails;

(c) Dry bandage changes; or

(d) Passive range of motion treatment.

**"Assistance with medication management"** means you need assistance managing your medications. You are scored as:

(a) Independent if you remember to take medications as prescribed and manage your medications without assistance.

(b) Assistance required if you need assistance from a nonlicensed provider to facilitate your self-administration of a prescribed, over the counter, or herbal medication, as defined in chapter 246-888 WAC. Assistance required includes reminding or coaching you, handing you the medication container, opening the container, using an enabler to assist you in getting the medication into your mouth, alteration of a medication for self-administration, and placing the medication in your hand. This does not include assistance with intravenous or injectable medications. You must be aware that you are taking medications.

(c) Self-directed medication assistance/administration if you are a person with a functional disability who is capable of and who chooses to self-direct your medication assistance/administration.

(d) Must be administered if you must have medications placed in your mouth or applied or instilled to your skin or mucus membrane. Administration must either be performed by a licensed professional or delegated by a registered nurse to a qualified caregiver (per chapter 246-840 WAC). Intravenous or injectable medications may never be delegated. Administration may also be performed by a family member or unpaid caregiver if facility licensing regulations allow.

**"Authorization"** means an official approval of a departmental action, for example, a determination of client eligibility for service or payment for a client's long-term care services.

**"Blind person"** means a person determined blind as described under WAC 388-511-1105 by the division of disability determination services of the medical assistance administration.

**"Categorically needy"** means the status of a person who is eligible for medical care under Title XIX of the Social Security Act. See WAC 388-475-0100 and chapter 388-513 WAC.

**"Client"** means an applicant for service or a person currently receiving services from the department.

**"Current"** means a behavior occurred within seven days of the CARE assessment date, including the day of the assessment. Behaviors that the department designates as current must include information about:

(a) Whether the behavior is easily altered or not easily altered; and

(b) The frequency of the behavior.

**"Decision making"** means your ability and actual performance in making everyday decisions about tasks or activities of daily living. The department determines whether you are:

(a) Independent: Decisions about your daily routine are consistent and organized; reflecting your lifestyle, choices, culture, and values.

(b) Modified independence/difficulty in new situations: You have an organized daily routine, are able to make decisions in familiar situations, but experience some difficulty in decision making when faced with new tasks or situations.

(c) Moderately impaired/poor decisions; unaware of consequences: Your decisions are poor and you require reminders, cues and supervision in planning, organizing and correcting daily routines. You attempt to make decisions, although poorly.

(d) Severely impaired/no or few decisions: Decision making is severely impaired; you never/rarely make decisions.

**"Department"** means the state department of social and health services, aging and disability services administration or its designee.

**"Designee"** means area agency on aging.

**"Difficulty"** means how difficult it is or would be for you to perform an instrumental activity of daily living (IADL). This is assessed as:

(a) No difficulty in performing the activity;

(b) Some difficulty in performing the activity (e.g., you need some help, are very slow, or fatigue easily); or

(c) Great difficulty in performing the activity (e.g., little or no involvement in the activity is possible).

**"Disabling condition"** means you have a medical condition which prevents you from self performance of personal care tasks without assistance.

**"Estate recovery"** means the department's process of recouping the cost of medicaid and long-term care benefit payments from the estate of the deceased client. See chapter 388-527 WAC.

**"Home health agency"** means a licensed:

(a) Agency or organization certified under medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence and reimbursed through the use of the client's medical identification card; or

(b) Home health agency, certified or not certified under medicare, contracted and authorized to provide:

(i) Private duty nursing; or

(ii) Skilled nursing services under an approved medicaid waiver program.

**"Income"** means income as defined under WAC 388-500-0005.

**"Individual provider"** means a person employed by you to provide personal care services in your own home. See WAC 388-71-0500 through 388-71-05909.

**"Disability"** is described under WAC 388-511-1105.

**"Informal support"** means a person or resource that is available to provide assistance without home and community

program funding. The person or resource providing the informal support must be age 18 or older.

**"Institution"** means medical facilities, nursing facilities, and institutions for the mentally retarded. It does not include correctional institutions. See medical institutions in WAC 388-500-0005.

**"Instrumental activities of daily living (IADL)"** means routine activities performed around the home or in the community and includes the following:

(a) Meal preparation: How meals are prepared (e.g., planning meals, cooking, assembling ingredients, setting out food, utensils, and cleaning up after meals). NOTE: The department will not authorize this IADL to plan meals or clean up after meals. You must need assistance with actual meal preparation.

(b) Ordinary housework: How ordinary work around the house is performed (e.g., doing dishes, dusting, making bed, tidying up, laundry).

(c) Essential shopping: How shopping is completed to meet your health and nutritional needs (e.g., selecting items). Shopping is limited to brief, occasional trips in the local area to shop for food, medical necessities and household items required specifically for your health, maintenance or well-being. This includes shopping with or for you.

(d) Wood supply: How wood is supplied (e.g., splitting, stacking, or carrying wood) when you use wood as the sole source of fuel for heating and/or cooking.

(e) Travel to medical services: How you travel by vehicle to a physician's office or clinic in the local area to obtain medical diagnosis or treatment-includes driving vehicle yourself, traveling as a passenger in a car, bus, or taxi.

(f) Managing finances: How bills are paid, checkbook is balanced, household expenses are managed. The department cannot pay for any assistance with managing finances.

(g) Telephone use: How telephone calls are made or received (with assistive devices such as large numbers on telephone, amplification as needed).

**"Long-term care services"** means the services administered directly or through contract by the aging and disability services administration and identified in WAC 388-106-0015.

**"Medicaid"** is defined under WAC 388-500-0005.

**"Medically necessary"** is defined under WAC 388-500-0005.

**"Medically needy (MN)"** means the status of a person who is eligible for a federally matched medical program under Title XIX of the Social Security Act, who, but for income above the categorically needy level, would be eligible as categorically needy. Effective January 1, 1996, an AFDC-related adult is not eligible for MN.

**"New Freedom consumer directed services (NFCDS)"** means a mix of services and supports to meet needs identified in the participant's assessment and identified in a New Freedom spending plan, within the limits of the individual budget, that provide participants with flexibility to plan, select, and direct the purchase of goods and services to meet identified needs. Participants have a meaningful leadership role in:

(a) The design, delivery and evaluation of services and supports;

- (b) Exercising control of decisions and resources, making their own decisions about health and well being;
- (c) Determining how to meet their own needs;
- (d) Determining how and by whom these needs should be met; and
- (e) Monitoring the quality of services received.

**"New Freedom consumer directed services (NFCDS) participant"** means a participant who is an applicant for or currently receiving services under the NFCDS waiver.

**"New Freedom spending plan (NFSP)"** means the plan developed by the participant, within the limits of an individual budget, that details the participant's choices to purchase specific NFCDS and provides required federal medic-aid documentation.

**"Own home"** means your present or intended place of residence:

- (a) In a building that you rent and the rental is not contingent upon the purchase of personal care services as defined in this section;
- (b) In a building that you own;
- (c) In a relative's established residence; or
- (d) In the home of another where rent is not charged and residence is not contingent upon the purchase of personal care services as defined in this section.

**"Past"** means the behavior occurred from eight days to five years of the assessment date. For behaviors indicated as past, the department determines whether the behavior is addressed with current interventions or whether no interventions are in place.

**"Personal aide"** is defined in RCW 74.39.007.

**"Personal care services"** means physical or verbal assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) due to your functional limitations. Assistance is evaluated with the use of assistive devices.

**"Physician"** is defined under WAC 388-500-0005.

**"Plan of care"** means assessment details and service summary generated by CARE.

**"Provider or provider of service"** means an institution, agency, or person:

- (a) Having a signed department contract to provide long-term care client services; and
- (b) Qualified and eligible to receive department payment.

**"Reasonable cost"** means the costs are consistent with the community market standards for comparable services/items.

**"Representative"** means a person who has been chosen by the participant/client or law whose primary duty is to act on behalf of the participant/client to direct their service budget to meet their identified health, safety, and welfare needs.

**"Residential facility"** means a licensed adult family home under department contract or licensed boarding home under department contract to provide assisted living, adult residential care or enhanced adult residential care.

**"Self performance for ADLs"** means what you actually did in the last seven days before the assessment, not what you might be capable of doing. Coding is based on the level of performance that occurred three or more times in the seven-day period and does not include support provided as

defined in WAC 388-106-0010. Your self performance level is scored as:

(a) Independent if you received no help or oversight, or if you needed help or oversight only once or twice;

(b) Supervision if you received oversight (monitoring or standby), encouragement, or cueing three or more times;

(c) Limited assistance if you were highly involved in the activity and given physical help in guided maneuvering of limbs or other nonweight bearing assistance on three or more occasions. For bathing, limited assistance means physical help is limited to transfer only;

(d) Extensive assistance if you performed part of the activity, but on three or more occasions, you needed weight bearing support or you received full performance of the activity during part, but not all, of the activity. For bathing, extensive assistance means you needed physical help with part of the activity (other than transfer);

(e) Total dependence if you received full caregiver performance of the activity and all subtasks during the entire seven-day period from others. Total dependence means complete nonparticipation by you in all aspects of the ADL; or

(f) Activity did not occur if you or others did not perform an ADL over the last seven days before your assessment. The activity may not have occurred because:

- (i) You were not able (e.g., walking, if paralyzed);
- (ii) No provider was available to assist; or
- (iii) You declined assistance with the task.

**"Self performance for IADLs"** means what you actually did in the last thirty days before the assessment, not what you might be capable of doing. Coding is based on the level of performance that occurred three or more times in the thirty-day period. Your self performance is scored as:

(a) Independent if you received no help, set-up help, or supervision;

(b) Set-up help/arrangements only if on some occasions you did your own set-up/arrangement and at other times you received help from another person;

(c) Limited assistance if on some occasions you did not need any assistance but at other times in the last thirty days you required some assistance;

(d) Extensive assistance if you were involved in performing the activity, but required cueing/supervision or partial assistance at all times;

(e) Total dependence if you needed the activity fully performed by others; or

(f) Activity did not occur if you or others did not perform the activity in the last thirty days before the assessment.

**"Service summary"** is CARE information which includes: Contacts (e.g. emergency contact), services the client is eligible for, number of hours or residential rates, personal care needs, the list of formal and informal providers and what tasks they will provide, a provider schedule, referral needs/information, and dates and agreement to the services.

**"SSI-related"** is defined under WAC 388-475-0050.

**"Status"** means the amount of informal support available. The department determines whether the ADL or IADL is:

- (a) Met, which means the ADL or IADL will be fully provided by an informal support;

(b) Unmet, which means an informal support will not be available to provide assistance with the identified ADL or IADL;

(c) Partially met, which means an informal support will be available to provide some assistance, but not all, with the identified ADL or IADL; or

(d) Client declines, which means you do not want assistance with the task.

**"Supplemental Security Income (SSI)"** means the federal program as described under WAC 388-500-0005.

**"Support provided"** means the highest level of support provided (to you) by others in the last seven days before the assessment, even if that level of support occurred only once.

(a) No set-up or physical help provided by others;

(b) Set-up help only provided, which is the type of help characterized by providing you with articles, devices, or preparation necessary for greater self performance of the activity. (For example, set-up help includes but is not limited to giving or holding out an item or cutting food);

(c) One-person physical assist provided;

(d) Two- or more person physical assist provided; or

(e) Activity did not occur during entire seven-day period.

**"You/your"** means the client.

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

**WAC 388-106-1400 What services may I receive under New Freedom consumer directed services (NFCDS)?** (1) In order for services, supports, and/or items to be purchased under New Freedom, they must:

(a) Be for the sole benefit of the participant;

(b) Be a reasonable cost that meets the participant's identified need;

(c) Meet the identified needs and outcomes in the CARE assessment and address the health, safety, and welfare of the participant; and

(d) Be documented on the New Freedom spending plan.

(2) Your consultant may require a physician or other specialist or other licensed professional such as an occupational or physical therapist's recommendation for specific purchases. This recommendation is needed to ensure the service, support and/or item will increase, maintain, or delay decline of functional abilities, and to ensure the purchase supports the health and welfare of the participant.

(3) You may use your individual budget to purchase services ((that address an identified need in the CARE assessment)), supports, and/or items that fall into the following service categories ((are)):

((+)) (a) **Personal assistance services**, defined as supports involving the labor of another person to ((help)) assist participants to carry out activities they are unable to perform independently ((as identified in the CARE assessment)). Services may be provided in the participant's home or in the community and may include:

((+)) (i) Direct personal care services defined as activities of daily living, as defined in WAC 388-106-0010;

((+)) (ii) Delegated ((health-related)) nursing tasks, per WAC ((388-71-05805 through)) 246-841-405 and 388-71-05830. Providers of direct personal care services may be

((asked to do nurse delegated tasks under supervision of a nurse)) delegated by a registered nurse to provide nurse delegated tasks according to RCW 18.79.260 and WAC 246-840-910 through 246-840-970;

((+)) (iii) Homemaking, or assistance with instrumental activities of daily living (essential shopping, housework and meal preparation);

((+)) (iv) Other tasks or assistance with activities that support independent functioning, and are necessary due to functional disability;

((+)) (v) Personal assistance with transportation.

((+)) (b) **Treatment and health maintenance, defined as treatments or activities that are beyond the scope of the medicaid state plan that are necessary to promote the participant's health and ability to live independently in the community and:**

((+)) (a) ~~Are beyond the scope of the medicaid state plan that are necessary to promote the participant's health and ability to live and participate in the community;~~

((+)) (i) Are provided for the purpose of preventing further deterioration, or improving or maintaining the participant's current level of functioning; and

((+)) (ii) Are performed or provided by people with specialized skill, registration, certification or licenses as required by state law.

((+)) (c) **Individual directed goods, services and supports**, defined as services, equipment or supplies not otherwise provided through this waiver or through the medicaid state plan((, and address an identified need in the CARE assessment)); and

((+)) (i) Will allow the participant to function more independently; or

((+)) (ii) Increase safety and welfare; or

((+)) (iii) Allow the person to perceive, control, or communicate with their environment.

((+)) (d) **Environmental or vehicle modifications**, defined as(=

(+)) alterations to a participant's residence or vehicle that(=

(+)) are necessary to accommodate the participant's disability and promote functional independence, health, safety, and welfare(=and

(ii) Are not adaptations or improvements, which are of general utility or add to the total square footage.

(b) ~~Vehicles subject to modification must be owned by the participant or participant's family who reside with the participant; and~~

(i) ~~Must be in good working condition, licensed, and insured according to Washington state law; and~~

(ii) ~~Modifications demonstrate cost effectiveness when compared to available alternative transportation).~~

(i) Environmental modifications cannot be adaptations or improvements, which are of general utility or add to the total square footage of the home.

(ii) Vehicles subject to modification must be owned by the participant or participant's family who reside with the participant; must be in good working condition, licensed, and insured according to Washington state law; and demonstrate cost effectiveness when compared to available alternative transportation.

~~((S))~~ **(e) Training and educational supports, (which are) defined as** supports beyond the scope of medicaid state plan services that are necessary to promote the participant's health and ability to live and participate in the community and maintains, slows decline, or improves functioning and adaptive skills. Examples include:

~~((a))~~ **(i)** Training or education on participant health issues, or personal skill development;

~~((b))~~ **(ii)** Training/education to paid or unpaid caregivers related to the needs of the participant.

#### NEW SECTION

**WAC 388-106-1405 What services are not covered under New Freedom consumer directed services (NFCDS)?** Services, supports and/or items that cannot be purchased within New Freedom budgets are:

(1) Services, supports and/or items covered by the state plan, medicare, or other programs or services.

(2) Any fees incurred by the participant, including co-pays, waiver cost of care (participation), or insurance.

(3) Home modifications that add any square footage.

(4) Vacation expenses other than direct personal care.

(5) Rent/room and board.

(6) Tobacco or alcohol products, lottery tickets.

(7) Entertainment items such as television, cable or DVD players.

(8) Vehicle purchases, maintenance or upgrades that do not include maintenance to modifications related to disability.

(9) Tickets and related costs to attend sporting or other recreational events.

(10) Routine household supplies and maintenance, basic food, clothing, and major appliances.

(11) Pets and their related costs.

#### NEW SECTION

**WAC 388-106-1422 What happens to my New Freedom service dollar budget if I am temporarily hospitalized, placed in a nursing facility or intermediate care facilities for the mentally retarded (ICF/MR)?** Participants who have been admitted to a hospital, nursing home or ICF/MR cannot access their New Freedom service budget during their stay.

If you are institutionalized for forty-five days or less and you intend to return to New Freedom when discharged, your service budget will be suspended. Upon discharge home, your service budget will be reinstated.

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

**WAC 388-106-1435 Who can direct New Freedom consumer directed services (NFCDS)?** The NFCDS participant directs services. The participant can also designate a representative to assist them. A New Freedom designated representative cannot also be the participant's paid provider.

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

**WAC 388-106-1445 How is the amount of the individual budget determined?** The department will calculate the individual budget amount after the NFCDS participant is assigned a classification resulting from completion of the comprehensive assessment reporting and evaluation tool, CARE. The calculation will be based on:

(a) The ~~((published))~~ hourly ~~((rate))~~ wage as determined by the collective bargaining agreement for individual provider personal care paid by the department multiplied by the number of hours generated by the assessment, multiplied by a factor of .95, plus an amount equal to the average per participant expenditures for nonpersonal care supports purchased in the COPES waiver. The average will be recalculated in July of each year.

(b) If the participant selects a home care agency, an adjustment will be made for each hour of personal care identified in the NFSP for an amount equal to the difference between the published individual provider rate and home care agency rate.

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

**WAC 388-106-1455 What happens to unused funds from my individual budget?** (1) Unused funds, up to three thousand dollars, may be held in reserve for future purchases documented in the NFSP. Reserves in excess of three thousand dollars may be maintained for planned purchases with approval from the department.

(2) Unused funds, up to five hundred dollars, may be held in reserve for future purchases not yet identified as "planned purchases" in their NFSP.

(3) Unused funds will revert back to the department under the following circumstances:

(a) Funds over five hundred dollars that are not identified for "planned purchases" in the NFSP;

(b) Disenrollment;

(c) Loss of New Freedom eligibility;

(d) Hospitalizations and/or nursing home placements over forty-five days; or

(e) Reserved funds in excess of three thousand dollars held in reserve for future purchases not approved by the department.

#### **WSR 10-03-050**

#### **PROPOSED RULES**

#### **DEPARTMENT OF AGRICULTURE**

[Filed January 15, 2010, 9:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-24-116.

Title of Rule and Other Identifying Information: Chapter 16-92 WAC, Notices of infraction—Penalty schedule.

Hearing Location(s): Kittitas County Event Center, Heritage Center, 512 North Poplar Street, Ellensburg, WA

Chapter 16-92 WAC

NOTICES OF INFRACTIONS—PENALTY SCHEDULE

98926, on February 23, 2010, at 10:00 a.m.; and at the Natural Resources Building, 1111 Washington Street S.E., Second Floor Conference Room 259, Olympia, WA 98504, on February 26, 2010, at 10:00 a.m.

Date of Intended Adoption: March 8, 2010.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504, e-mail WSDARulesComments@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., February 26, 2010.

Assistance for Persons with Disabilities: Contact WSDA receptionist by February 19, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: During the 2009 legislative session, the Washington state department of agriculture (WSDA) was given authority to issue notices of and enforce civil infractions for any person found transporting livestock on the public roads of this state without a valid health certificate or permit and to any person who knowingly transports or accepts delivery of live nonambulatory livestock. WSDA is considering developing a new WAC within Title 16 WAC that would describe the department's penalty schedule for violations of RCW 16.36.116, and the monetary amount per violation.

Reasons Supporting Proposal: Having the ability to issue civil infractions for violations of chapter 16.36 RCW will serve as a deterrent for further violations of the state's animal health requirements, which will protect Washington state's livestock industry and the health, safety, and welfare of the state's citizens.

Statutory Authority for Adoption: Chapters 16.36 and 34.05 RCW.

Statute Being Implemented: Chapter 16.36 RCW.

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

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Paul Kohrs, DVM, Olympia, (360) 902-1835; and Enforcement: Leonard Eldridge, DVM, Olympia, (360) 902-1889.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 (1)(a) requires that an agency prepare a small business economic impact statement (SBEIS) for proposed rules that impose a more than minor cost on businesses in an industry. The department has analyzed the economic effects of the proposed revisions and has concluded that they are negligible costs on the regulated industry and, therefore a formal SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. The WSDA is not a listed agency under RCW 34.05.328 (5)(a)(i).

January 15, 2010  
Robert W. Gore  
Deputy Director

NEW SECTION

**WAC 16-92-005 Purpose.** The purpose of this chapter is to provide for fair and uniform determination of penalties for civil infractions issued under RCW 16.36.116.

NEW SECTION

**WAC 16-92-020 Penalty schedule for notices of infraction.** (1) If any person is in violation of RCW 16.36-116, the director may issue that person a notice of infraction and may assess a penalty.

(2) The following infractions have the base penalty listed, not including statutory assessments.

Civil Infraction Schedule for Violations of Chapter 16.36 RCW

Violation	Base Penalty
RCW 16.36.116 WAC 16-54-030	Transporting livestock on the public roads of this state without a valid health certificate or permit as required under chapters 16.36 RCW and 16-54 WAC.
First offense	\$100.00
2nd offense within three years	\$150.00
3rd offense within three years	\$250.00
RCW 16.36.116	Transporting or accepting delivery of live nonambulatory livestock to, from, or between any livestock market, feedlot, slaughtering facility, or similar facility that trades in livestock.*
First offense	\$250.00
2nd offense within three years	\$500.00
3rd offense within three years	\$1,000.00

\* The transport or acceptance of each nonambulatory livestock animal is considered a separate and distinct violation.

**WSR 10-03-051**  
**PROPOSED RULES**  
**LIQUOR CONTROL BOARD**

[Filed January 15, 2010, 10:16 a.m.]

Supplemental Notice to WSR 09-16-058.

Preproposal statement of inquiry was filed as WSR 09-04-039.

Title of Rule and Other Identifying Information: Chapter 314-52 WAC, advertising has been reviewed for clarity, accuracy, and relevance. The proposed rules implement legislation from 2006 - SHB 3150, 2007 - SSB 5721 and HB 2240, and the following board policies and guidelines: Use of licensed sports team name and trademark, advertising events held at sports/entertainment facilities, criteria for approval of alcohol advertising, advertising vs. information for the purpose of determining extension of money's worth, and coupon offers.

Hearing Location(s): Washington State Liquor Control Board, 3000 Pacific Avenue S.E., Olympia, WA 98504, on February 24, 2010, at 10:00 a.m.

Date of Intended Adoption: March 3, 2010.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504-3080, e-mail rules@liq.wa.gov, fax (360) 664-9689, by February 24, 2010.

Assistance for Persons with Disabilities: Contact Karen McCall by February 24, 2010, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules implement 2006 and 2007 legislation as it pertains to advertising, board policies, and guidelines. The proposed rules were also revised to reflect the agency's focus on public safety and minimizing youth access and exposure to alcohol advertising and marketing.

Reasons Supporting Proposal: The proposed rules reflect current practices and clarify what is allowed and prohibited in the area of advertising as it applies to our stakeholders and liquor licensees.

Statutory Authority for Adoption: RCW 66.08.030, 66.08.060, 66.28.010.

Statute Being Implemented: RCW 66.08.060, 66.28.-010.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: This proposal replaces an earlier proposal filed under WSR 09-16-058. Revisions were made requiring a supplemental CR-102.

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation and Enforcement: Pat Parmer, Chief, Enforcement, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal does not change the impact on liquor licensees or stakeholders.

A cost-benefit analysis is not required under RCW 34.05.328.

January 13, 2010

Sharon Foster

Chairman

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

**WAC 314-52-005 Purpose and application of rules.**

(1) ~~((PREAMBLE: The purpose of this title is to))~~ The liquor control board regulates alcohol advertising to promote public safety, prevent the misuse of alcohol and reduce youth exposure to alcohol advertising and marketing. These rules provide reasonable regulations as to the kind, character, size, and location of advertising of liquor, as authorized by RCW 66.08.060.

(2) No person engaged in business as a ~~((producer,))~~ manufacturer, ~~((bottler,))~~ importer, distributor, or retailer of liquor ~~((, directly or indirectly, or through an affiliate,))~~ shall publish or disseminate ~~((or cause to be published or disseminated))~~ in any media any advertisement of liquor, unless such advertisement is in conformance with these rules ~~((: Provided, That these provisions shall not apply to the publisher of any newspaper, magazine or similar publication, nor to the operator of any radio or television station unless such publisher or operator is engaged in business as a producer, manufacturer, bottler, importer, distributor, or retailer of liquor, directly or indirectly, or through an affiliate)).~~

(3) The board holds each ~~((producer,))~~ manufacturer, ~~((bottler,))~~ importer, distributor, or retailer of liquor responsible for complying with the advertising rules of the Washington state liquor control board in any advertising material placed by them or on their behalf by their agents. If desired, advertising may be submitted prior to publication for an advisory opinion by the ~~((advertising coordinator of the))~~ Washington state liquor control board, but advisory opinions will be restricted to advertising material submitted by ~~((said producers,))~~ manufacturers, ~~((bottlers,))~~ importers, distributors, or retailers of liquor, or their agents.

(4) Liquor advertising materials, defined as institutional or educational advertising in WAC 314-52-015, intended for placement in retail outlets of the Washington state liquor control board shall be presented to the ~~((advertising coordinator of the))~~ Washington state liquor control board for prior approval before placement ~~((: Provided, however, That))~~. All other forms of advertising approved and accepted by the board ((advertising coordinator and which are acceptable to the board merchandising committee under the provisions of WAC 314-52-040)) shall not be prohibited under this rule.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

**WAC 314-52-010 Mandatory statements.** (1) Brand advertising of spirituous liquor by any manufacturer shall contain the following information:

(a) The name and address of the manufacturer responsible for its publication. (Street number may be omitted.)



(b) A conspicuous statement of the class to which the product belongs and the type (~~thereof~~) corresponding with the statement of class and type which is required by federal regulations to appear on the label of the product.

(c) A statement of the alcoholic content (~~by proof, except that for cordials and liqueurs, gin fizzes, cocktails, highballs, bitters and other specialties, the alcoholic content may~~) for distilled spirits shall be stated in (~~percent age by volume or by proof~~) percent alcohol by volume.

(d) In the case of distilled spirits (~~(other than cordials, liqueurs and specialties)~~) produced by blending or rectification, if neutral spirits have been used in the production thereof, there shall be stated the percentage of neutral spirits so used and the name of the commodity from which such neutral spirits have been distilled.

(e) In the case of neutral spirits or of gin produced by a process of continuous distillation, there shall be stated the name of the commodity from which such neutral spirits or gin has been distilled.

(2) Brand advertising of wine by any manufacturer or distributor shall contain the following information:

(a) The name and address of the manufacturer or distributor responsible for its publication. (Street number may be omitted.)

(b) A conspicuous statement of the class, type or distinctive designation to which the product belongs, corresponding with the statement of class, type, or distinctive designation which is required by federal regulation to appear on the label of the product.

(3) Brand advertising of malt beverages by any manufacturer, importer, or distributor shall contain the following information:

(a) The name and address of the manufacturer, importer or distributor responsible for publication of the advertisement. (Street number may be omitted.)

(b) A conspicuous statement of the class to which the product belongs, corresponding to the statement of class which is required by federal regulations to appear on the label of the product.

~~((4) Alcoholic content of beer. Retail licensees who choose to offer beer for sale at both less than four percent by weight and more than four percent by weight, alcoholic content, packaged in identical packages, shall be required to separate the two strengths of beer in their displays, and shall be required to identify by point of sale advertising which is the higher strength and which is the lower strength beer. Manufacturers, importers and distributors of such beer shall supply such shelf tickets free of charge to retail licensees. Provided, however, That no promotion of the higher alcoholic content shall be included in such advertising.))~~

AMENDATORY SECTION (Amending Order 108, Resolution No. 117, filed 8/11/82)

**WAC 314-52-015 General.** (1) Institutional advertising shall mean advertising which promotes company or brand name identification, but does not directly solicit purchase or consumption of liquor. Educational advertising shall mean factual information on liquor, its manufacture, history, consumption and methods of ascertaining the quality of various

types of liquors (~~(such as German wines, French cognacs, or other classifiable types of product. All liquor advertising shall be modest, dignified and in good taste and shall not contain:~~

~~(1) Any statement or illustration that)), All liquor advertising on products sold in the state of Washington may not contain any statement, picture, or illustration that:~~

~~(a) Is false or misleading ((in any material particular.~~

~~(2) Any statement, picture, or illustration which));~~

~~(b) Promotes over consumption((-~~

~~(3) Any statement, picture, illustration, design, device, or representation which is undignified, obscene, indecent, or in bad taste.~~

~~(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which is likely to mislead the consumer.~~

~~(5) Any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which is likely to mislead the consumer.~~

~~Nothing in this section shall prohibit the use of any enforceable guaranty in substantially the following form: "We will refund the purchase price to the purchaser if he is in any manner dissatisfied with the contents of this package."~~

~~(6) Any statement that the product is produced, blended, made, bottled, packed or sold under, or in accordance with, any authorization, law, or regulation of any municipality, county, or state, federal or foreign government unless such statement is required or specifically authorized by the laws or regulations of such government; and if municipal, state or federal permit number is stated, such permit number shall not be accompanied by any additional statement relating thereto.~~

~~(7) Any statement, design or device representing that));~~

~~(c) Uses the Washington state liquor control board's seal or refers to Washington state liquor control board, except where required by law;~~

~~(d) Represents the use of liquor has curative or therapeutic effects, if such statement is untrue ((in any particular.)) or tends to create a misleading impression((-~~

~~(8) Any statement, picture, or illustration implying that));~~

~~(e) Implies the consumption of liquor enhances athletic prowess, or any statement, picture, or illustration ((referring)) that refers to any known athlete, if such statement, picture, or illustration implies, or if the reader may reasonably infer, that the use of liquor contributed to ((such)) any known athlete's athletic achievements((-~~

~~(9) Any depiction of));~~

~~(f) Depicts a child or other person under legal age to consume liquor((- any depiction of)), or includes:~~

~~(i) Objects, such as toys or characters, ((suggestive of)) suggesting the presence of a child, ((not)) or any other depiction designed in any manner ((as)) to be especially appealing to children or other persons under legal age to consume liquor((-~~

~~(10) Any reference to any religious character, sign or symbol, except in relation to kosher wines or where such are a part of an approved label)); or~~

~~(ii) Is designed in any manner that would be especially appealing to children or other persons under twenty-one years of age.~~

(g) Is targeted principally to minors by implying that the consumption of alcoholic beverages is fashionable or the accepted course of behavior for persons under twenty-one years of age; or

(h) Uses subliminal or similar techniques. "Subliminal or similar techniques" as used in this section, refers to any device or technique that is used to convey, or attempts to convey, a message to a person by means of images or sounds of a very brief nature that cannot be perceived at a normal level of awareness.

(2) If advertising claims the alcohol product has a curative or therapeutic effect or enhances health or performance, the licensee must:

(a) Cite the name of the author and date of the research or study supporting the claim; and

(b) Provide a copy of this research or study to the board.

AMENDATORY SECTION (Amending Order 108, Resolution No. 117, filed 8/11/82)

**WAC 314-52-030 Liquor advertising prohibited in school publications.** No liquor advertising shall:

(1) Be carried in any publication connected or affiliated with any elementary or secondary schools; ((~~nor shall any liquor advertising~~)) or

(2) Be connected with such schools ((~~when broadcast over radio or television~~: ~~Provided, That institutional advertising, as defined in WAC 314 52 015, may be carried, if the board advertising coordinator interposes no objection~~)) in any media.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

**WAC 314-52-040 Contests, competitive events, premiums and coupons.** (1) Liquor advertisements may offer consumers premiums or prizes, upon completion of any coupon, contest, or competitive event, which may or may not require proof of purchase of the advertised product((:)). Provided, ((~~however~~)) that:

(a) No one under twenty-one years of age is allowed to participate, and no premiums, prizes, coupons, contests, or competitive events are targeted to persons under twenty-one years of age;

(b) Contests or sweepstakes that offer prizes or premiums to consumers through a game of chance or random drawing, shall not require proof of purchase, and must comply with the requirements of RCW ((~~9.46.020(14))~~) 9.46.0356 regarding ((~~lotteries~~: ~~And provided further, That no~~)) gambling.

(2) Liquor advertisements are prohibited by manufacturers, importers, or distributors ((~~may~~)) that:

(a) Offer any premium or prize redeemable through a Washington state liquor store or any retail liquor outlet licensed by the state of Washington, such as "instant" or "in-store" redeemable offers;

(b) Offer an "instant rebate" on either liquor or nonliquor items; or

(c) Offer any premium redeemable through retail outlets prohibited by the advancement of "money or money's worth"

from a nonretail licensee to a retail licensee in chapter 66.28 RCW.

(3) A retailer may have its own coupon offers, provided the "after rebate" price does not put the product below cost, and provided there is no undue influence by a nonretail licensee, the coupon is at the retailer's free initiative and the retailer is covering the entire cost.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

**WAC 314-52-070 Outdoor advertising.** (1) "Outdoor advertising" by manufacturers, importers, distributors, and retail licensees for these purposes shall include all signs affixed or hanging in the windows and on the outside of the premises visible to the general public((~~, whether permanent or temporary~~)) from the public right of way, advertising the sale and/or service of liquor ((~~excluding point-of-sale brand signs, which are defined and governed as otherwise provided in WAC 314-52-113~~) as well as)), excluding trade name and room name signs.

(2) The board limits each retail licensed premises to a total of four signs referring to alcoholic beverages, brand names, or manufacturers that are affixed or hanging in the windows and on the outside of the premises that are visible to the general public from the public right of way. The board also limits the size of a sign advertising alcohol, brand names, or manufacturers that are affixed or hanging in the windows and on the outside of the premises that are visible to the general public from the public right of way to sixteen hundred square inches.

"Sign" is defined as a board, poster, neon, or placard displayed to advertise.

A local jurisdiction has the option to exempt liquor licenses in their jurisdiction from the outdoor advertising restrictions in this section through a local ordinance.

(3) Outdoor signs shall be designed, installed, and ((~~used in a manner not offensive to the public, and shall comply~~)) in compliance with all liquor advertising rules. These rules include, but are not limited to:

(a) WAC 314-52-015((~~+~~), which:

(i) Prohibits any statement or illustration that is false or misleading in any material particular;

(ii) Prohibits any statement, picture or illustration which promotes overconsumption;

(iii) Prohibits any statement, picture, illustration, design, device, or representation which is undignified, obscene, indecent, or in bad taste.)) which contains advertising prohibitions; and

(b) WAC 314-52-110((~~+~~), which requires that every advertisement by a retail licensee shall carry the licensed trade name or the registered franchise name or the trademark name. The term "trade name" shall mean the "licensed trade name" as it appears on the issued license)) which contains advertising requirements by a retail licensee.

((~~+~~)) (4) Prior board approval is not required before installation and use of outdoor ((~~signs~~)) advertising; however, outdoor ((~~signs~~)) advertising ((~~excluding outdoor readerboard messages and/or interior signs visible through a window of a premises~~)) not in compliance with board rules

will be required to be altered or removed at the licensee's expense. If prior approval is desired, the licensee, applicant or their agent may submit ~~((three copies))~~ a copy to the board ~~((advertising coordinator))~~ for approval.

~~((4))~~ (5) No outdoor advertising of liquor except in subsection (2) of this section, shall be placed ~~((in proximity to))~~ within five hundred feet of schools, ((churches)) places of worship, ((or playfields)) public playgrounds, or athletic fields used primarily by minors~~((;))~~ where the administrative body of said schools, churches, ((playfields, object to such placement, nor)) public playgrounds or athletic fields object to such placement, or any place which the board in its discretion finds contrary to the public interest. "Tourist Oriented Directional Signs" per RCW 47.36.320, are exempt from this requirement.

The five hundred foot distance for outdoor advertising is measured from the property line of the school, place of worship, public playground or athletic field to the outdoor advertising.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

**WAC 314-52-085 Programs and program folders.**

Programs and program folders, for the purpose of this section, shall mean brochures for use at sporting arenas which have, as a part of their operations, whether directly or indirectly, a retail licensed premises. No manufacturer, importer, distributor, or their agent, shall provide, without cost, directly or indirectly, programs or program folders for retail licensees~~((; Provided, however, That sporting arenas as described above, or their agents))~~, however:

(1) A premises holding a sports entertainment facility liquor license may accept bona fide liquor advertising from manufacturers, importers, distributors or their agents, for publication in the program or program folder of the ((sporting arena: Provided further, That such)) sports entertainment facility liquor licensee; and

(2) Advertising is paid for by said manufacturer, importer, distributor or their agent at the published advertising rate for all program or program folder advertisers, including nonliquor advertisers~~((; And also provided, That such advertising shall carry with it no express or implied offer on the part of the manufacturer, importer, distributor or their agent, or promise on the part of the retail licensee whose operation is directly or indirectly part of the sporting arena, to stock or list any particular brand of liquor to the total or partial exclusion of any other brand))~~.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

**WAC 314-52-090 Advertising sponsored jointly by retailers and manufacturers, importers, or distributors~~((; prohibited))~~.** (1) The name of a retail licensee shall not appear in, or as a part of, or supplementary to, any advertising of a manufacturer, importer or distributor~~((;))~~, except:

(a) To produce brochures and materials promoting tourism in Washington state;

(b) A manufacturer, importer, or distributor may list on their web sites information related to retailers who sell or promote their products.

(2) The brand name of liquor may appear in or as a part of advertising by a retail licensee: Provided, ((That)) such advertising is upon the retail licensee's free initiative and no moneys or moneys' worth has been offered ((the retail licensee)) or solicited as an inducement to secure such mention ((by)) of any manufacturer, importer, or ((distributor or their agent, or solicited by the retail licensee or his agent.

(2) RCW 66.28.010 shall also apply to joint advertising insofar as it is relevant)) distributor's product.

(3) A professional sports team who holds a liquor license may accept liquor advertisements from manufacturers, importers, or distributors for use in sports entertainment facilities and may allow a manufacturer, importer, or distributor to use the name and trademark of the professional sports team in their advertising and promotions, if such advertising:

(a) Is paid for by the manufacturer, importer, or distributor at reasonable fair market value; and

(b) Carries no express or implied offer by the manufacturer, importer, or distributor on the part of the retail licensee to stock or list any particular brand of liquor to the total or partial exclusion of any other brand.

NEW SECTION

**WAC 314-52-097 Financial arrangements between sports entertainment facility licensees and liquor manufacturers, importers, and distributors.**

A sports entertainment facility licensee and affiliated business may enter into arrangements with a manufacturer, importer, or distributor for brand advertising or promotional events at the sports entertainment facility under the following conditions:

(1) The facility has a capacity of five thousand or more;

(2) Entities required by WAC 314-12-030 placed on the sports entertainment facility license due to financial interest, may receive advertising from liquor manufacturers, importers, or distributors;

(3) The advertising agreement under the provisions of this section must be made by written agreement;

(4) The license must stock and offer for sale other competitive brands of liquor in addition to those of the advertising manufacturer, importer, or distributor;

(5) The agreement may not contain credit or money's worth to be provided by the manufacturer, importer, distributor, or sports entertainment facility licensee;

(6) There will be no exclusionary contracts between a sports entertainment facility licensee and manufacturer, importer, or distributor; and

(7) The advertising manufacturer, importer, or distributor may not exercise undue influence in any manner over the sports entertainment facility licensee's liquor purchasing and sales operations.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

**WAC 314-52-110 Advertising by retail licensees.** (1) Every advertisement by a retail licensee shall carry the licensed trade name or the registered franchise name or the

trademark name. The term "trade name" shall be defined as the (~~("licensed trade")) name(")~~) as it appears on the license issued to the licensee: (~~(Provided, however, That such))~~)

(a) Words such as tavern, cafe, grocery, market, (food store, food center, delicatessen,) wine shop, (beer parlor) and other similar words used to identify the type of business licensed, and numbers used to identify chain licensees ((of the same trade name)), shall neither be required nor prohibited as part of the trade name in advertisements(=And provided further, That),

(b) Advertisements by ((public)) a spirit, beer and wine restaurant licensee((s)) may also refer to cocktails, bar, lounge and/or the "room name." The term "room name" shall be defined as the name of the room designated as the cocktail lounge and/or the dining room ((if both are in the same room)).

(2) No retail licensee shall offer for sale any liquor for on premises consumption under advertising slogans where the expressed or implied meaning is that a customer, in order to receive a reduced price, would be required to purchase more than one drink at a time, such as "two for the price of one," ("two for one drinks,") "buy one—get one free," or "two for \$ \_\_\_\_\_ ((," nor any similar phrase or slogan where the express or implied meaning is that a customer, in order to receive a reduced price, would be required to purchase more than one drink or quantity of liquor at one time))."

(3) Beer, wine, or spirituous liquor shall not be advertised, offered for sale, or sold by retail licensees at less than acquisition cost. The provisions of this section shall not apply to any sales made:

(a) For the purpose of discontinuing the trade of any product or disposing of seasonal goods after the season has passed:

(b) When the goods are damaged or deteriorated in quality, or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or depreciation provided notice is given to the public;

(c) By an officer acting under the orders of any court; or

(d) In an endeavor to meet the prices of a competitor selling the same article or product in the same locality or trade area and in the ordinary channels of trade.

(4) Specialty shops, wineries, breweries, and craft distilleries acting as a retail licensee, providing free tastings to the public, are prohibited from using any term that implies the product is free in their advertising for such events.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

**WAC 314-52-113 Brand signs and point-of-sale displays on retail licensed premises.** Manufacturers, importers or distributors may furnish brand signs and point-of-sale material to retailers under the following conditions:

(1) The brand signs and point-of-sale material shall have no value to the retailer except as brand advertisement; such signs as those (~~(which)) that~~ provide illumination for cash registers, pool tables, and other parts of the premises, have a functional value and are not authorized. The brand signs and point-of-sale material shall remain the property of, and be the

responsibility of, the manufacturers, importers or distributors.

(2) (~~The term "point of sale material" as used herein, shall include such manufacturer, importer or distributor supplied items as display cards, placards, table tents, recipes, display bins, decalcomanias, price cards, shelf strips, product information pamphlets, bottle hangers, matches, scorecards, calendars, and other such brand advertising material for display at the point of sale.~~)

(~~3)) Giant inflatables, such as inflated beer cans, bottles, ((animals,)) and banners may be provided as point-of-sale ((by manufacturers, importers, or distributors)) to retailers for display purposes ((on their property)) inside the licensed premises, provided the following conditions are met:~~

(a) (~~All retail licensees are afforded equal opportunity to display item;~~)

(~~b)) Novelty items as defined in WAC 314-52-080 are not provided by manufacturers, importers, or distributors to customers in conjunction with the display;~~)

(b) Inflatables are not targeted or appeal principally to youth; and

(c) The display shall be removed if objected to by local officials, or if the board(~~, in its discretion,))~~ finds it contrary to the public interest.

(~~4) Animal mascots and)) (3) Costumed individuals representing beer, wine, or liquor manufacturers may be provided as point-of-sale ((by manufacturers, importers, or distributors)) to retailers for display and promotion purposes on their property, provided the following conditions are met:~~)

(a) The costumed individual is limited to the manufacturer, importer, distributor, or employee thereof and the costumed individual's activities on-premises are limited to socializing with customers and not conducting any activity that the retail licensee would otherwise have to assign employees to;

(b) (~~All retail licensees are afforded equal opportunity for such displays;~~)

(~~e)) Novelty items as defined in WAC 314-52-080 and ((including)) the purchase of drinks, are not to be provided to customers by the costumed individual in conjunction with such displays;~~)

(~~4)) (c) The costumed individual must comply with the regulations regarding lewd and obscene conduct (WAC ((314-16-125)) 314-11-050);~~)

(d) The costumed individual may not be targeted or appeal principally to youth; and

(e) (~~If the board finds it contrary to the public interest, it may prohibit the use of the above mentioned activities.)) The board may prohibit the use of costumed individuals if the use is contrary to the public interest.~~)

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

**WAC 314-52-115 Advertising by clubs—Signs.** (1) Clubs shall not engage in any form of soliciting or advertising which may be construed as implying that the club operates a (~~(public spirit, beer and wine restaurant)) premises((, a tavern)) open to the public, or that social functions at which club liquor may be consumed, are open to the public(~~(=Provided,~~~~

however, ~~Circularizing membership shall not be considered advertising, and where~~). Clubs that provide lunch or dinner to the public~~((, this)) may ((be advertised: Provided further, Such advertising))~~ advertise but must specify no liquor service is available.

(2) Clubs and/or their auxiliary organizations may advertise social or other club events to their membership through the public media under the following conditions: ~~((Provided, Such))~~

(a) Advertising ~~((is))~~ must be clearly directed to their membership only ~~((and))~~;

(b) Advertising cannot be construed as implying that the general public is welcome to attend~~((~~

~~(3) Advertising of the club functions by means of placards placed for public viewing shall be governed by the provisions of subsection (2) of this section.~~

~~(4))~~; and

(c) Advertising club functions with placards placed for public viewing shall be governed by (a) and (b) of this subsection.

(3) Advertising may be directed to the public generally in connection with events of special public interest ~~((such as Flag Day, Memorial Day, Veterans Day or such other occasions))~~ under provisions set forth in WAC 314-40-080(3).

~~((5))~~ (4) A private club may hold a public membership function as outlined in WAC 314-40-040(6). The function must be advertised as a membership drive.

(5) Clubs shall not advertise the events held with the nonclub event endorsement per RCW 66.24.425(3).

(6) Clubs desiring to have radio or television broadcasts originating from their licensed premises may do so~~((=))~~ provided~~((=That))~~;

(a) Such broadcasts consist only of entertainment or other matter which is in the public interest and may not contain:

(i) Any announcement of opening or closing hours~~((=))~~;

(ii) Any invitation to visit the club~~((=))~~; or

(iii) Any statement which may be construed as advertising or any implication that the club is operated as a public place.

(b) The only reference to the club during such broadcasts shall be limited to a statement at the opening and closing of the program as originating from the club quarters.

#### NEW SECTION

**WAC 314-52-130 Public and civic events.** (1) Industry members may sponsor public and civic events and provide the following:

(a) Signage with the industry members name or brand name of their products; and

(b) Programs or flyers to be disseminated at the event.

(2) Acknowledgment of the sponsor, either by name, brand, or both, is allowed in any media advertisement where the function recognizes the sponsors of the event. The size of the alcohol industry sponsor acknowledgment may not exceed the size of the event name.

(3) Inflatables are not allowed inside the event areas.

(4) There may be no giveaways of alcohol promotional items of any kind to persons under twenty-one years of age at

events held in public areas including, but not limited to, street fairs, parks, and government buildings.

(5) Industry members may not sponsor a special occasion license at public and civic events. Money may not be given directly to the special occasion licensee, or employees thereof, but industry members may provide the following advertising for a special occasion licensed event:

(a) Signage with the industry members name or brand name of their products;

(b) Media coverage of the event; and

(c) Programs or flyers to be disseminated at the event.

(6) Inflatables are not allowed inside special occasion license areas unless the area is completely enclosed with no view to the inside from the public right of way.

(7) There may be no giveaways of alcohol promotional items of any kind in special occasion license areas.

(8) The board limits each special occasion licensed premises to a total of four signs referring to alcoholic beverages, brand names, or manufacturers that are affixed or hanging in the windows and on the outside of the special occasion licensed premises that are visible to the general public from the public right of way. The board also limits the size of a sign advertising alcohol, brand names, or manufacturers that are affixed or hanging in the windows and on the outside of the special occasion premises that are visible to the general public from the public right of way to sixteen hundred square inches.

(9) Brand advertising is allowed inside the special occasion license event area where alcohol sales and consumption occur.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 314-52-020 Use of insignia or reference to liquor control board prohibited—Exception.

WAC 314-52-114 Advertising by retail licensees, offering for sale, or selling beer, wine or spirituous liquor at less than cost—Prohibited—Exceptions.

#### **WSR 10-03-054**

#### **PROPOSED RULES**

#### **HORSE RACING COMMISSION**

[Filed January 15, 2010, 11:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-22-087.

Title of Rule and Other Identifying Information: WAC 260-24-510 Association officials and employees—Stewards, changes appeal time for riding violations and clarifies stewards ability to grant licenses with conditions.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on March 11, 2010, at 9:30 a.m.

Date of Intended Adoption: March 11, 2010.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail [dmoore@whrc.state.wa.us](mailto:dmoore@whrc.state.wa.us), fax (360) 459-6461, by March 8, 2010.

Assistance for Persons with Disabilities: Contact Patty Sorby by March 8, 2010, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This clarifies that the stewards have the authority to grant a license with conditions. Also the appeal time for riding violations is changed to seventy-two hours and clarifies to licensees when fines are due.

Reasons Supporting Proposal: This complies with the recommended model rule for public records.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: [Horse racing commission], governmental.

Name of Agency Personnel Responsible for Drafting: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

January 15, 2010  
Douglas L. Moore  
Deputy Secretary

**AMENDATORY SECTION** (Amending WSR 08-05-088, filed 2/15/08, effective 3/17/08)

**WAC 260-24-510 Stewards.** (1) General authority:

(a) The stewards for each race meet are responsible to the executive secretary for the conduct of the race meet and the initial agency determination of alleged rule violations in accordance with these rules;

(b) The stewards will enforce the rules of racing in chapters 260-12 through 260-84 WAC, excluding chapters 260-49 and 260-75 WAC. The stewards will take notice of alleged misconduct or rule violations and initiate investigations into such matters;

(c) The stewards' authority includes regulation of all racing officials, track management, licensed personnel, other persons responsible for the conduct of racing, and patrons, as necessary to insure compliance with these rules;

(d) All nominations, entries, and scratches will be monitored by a steward;

(e) The stewards have authority to resolve conflicts or disputes related to violations of the rules of racing and to discipline violators in accordance with the provisions of these rules;

(f) The stewards have the authority to interpret the rules and to decide all questions of racing. The stewards of the race meet are hereby given authority to exercise their full power, recommending to the commission the imposition of more severe penalties if necessary.

(2) The stewards' period of authority will commence and terminate at the direction of the executive secretary. One steward will be designated as the presiding steward by the executive secretary.

(3) Stewards ruling conference regarding violations of rules of racing:

(a) The stewards have authority to charge any licensee or other person with a violation of these rules, to make rulings and to impose penalties including the following:

(i) Issue a reprimand;

(ii) Assess a fine not to exceed \$2,500.00, except as provided in chapter 260-84 WAC;

(iii) Require forfeiture or redistribution of purse or award, when specified by applicable rules;

(iv) Place a licensee on probation;

(v) Grant a license with conditions;

(vi) Suspend a license or racing privileges for not more than one year per violation;

~~((vi))~~ (vii) Revoke or deny a license; or

~~((vii))~~ (viii) Exclude from facilities under the jurisdiction of the commission.

(b) The stewards' imposition of reprimands, fines and suspensions will be based on the penalties in chapter 260-84 WAC.

For any violation not specifically listed in chapter 260-84 WAC, the stewards have discretion to impose the penalties as provided in (a) of this subsection.

(c) The stewards may direct a jockey to meet with the film analyst whenever a jockey is involved in questionable, unsafe or potentially dangerous riding. Jockeys referred to the film analyst must appear when directed. Failure to appear when directed will be considered a violation of the rules of racing for which penalties may be imposed.

(d) The stewards have the authority to conduct a ruling conference, and the authority to:

(i) Direct the attendance of witnesses and commission employees;

(ii) Direct the submission of documents, reports or other potential evidence;

(iii) Inspect license documents, registration papers and other documents related to racing or the rule violation;

(iv) Question witnesses; and

(v) Consider all relevant evidence.

(e) The stewards must serve notice of a conference to person(s) alleged to have committed a violation, which must contain the following information:

(i) A statement of the time and place the conference will be held;

(ii) A reference to the particular sections of the WAC involved;

(iii) A short and plain statement of the alleged violation; and

(iv) A statement that if the person does not appear, the ruling will be made in his/her absence, and that failure to

appear will be considered a separate violation of the rules of racing.

(f) Failure to appear for a ruling conference will be considered a violation of the rules of racing for which penalties may be imposed.

(g) It is the duty and obligation of every licensee to make full disclosure to the board of stewards and commission investigators conducting an investigation into any alleged violation of these rules, of any knowledge he/she possesses of a violation of any rule of racing. No person may refuse to respond to questions before the stewards or commission investigators on any relevant matter within the authority of the stewards or commission, except in the proper exercise of a legal privilege, nor may any person respond falsely before the stewards or to commission investigators.

(h) At the ruling conference, the stewards will allow the person alleged to have committed a violation to make a statement regarding the alleged violation.

(i) All ruling conferences will be recorded.

(j) Every ruling by the stewards from a ruling conference must be served in writing on the person(s) or parties found in violation within five days and must include:

(i) Time and place the ruling was made;

(ii) Statement of rules violated;

(iii) Details of the violation;

(iv) Penalties to be imposed;

(v) Procedure for requesting a hearing before the commission to challenge the ruling; and

(vi) Plain statement of the options of the person found in violation, which must include:

(A) Accepting the penalty imposed by the stewards; or

(B) Requesting a hearing before the commission challenging the stewards' ruling within seven days of service of the ruling, with the exception of riding violations which must be challenged within seventy-two hours of service of the ruling.

(k) Penalties imposed by the stewards, except for those penalties in (l), (m), and (q) of this subsection, will be stayed if a request for hearing before the commission is filed within the seven days of service of the ruling, or seventy-two hours in the case of riding violations.

(l) If the stewards determine that a person's actions constitute an immediate and/or substantial danger to human and/or equine health, safety, or welfare, and a request for hearing before the commission is filed within seven days of service of the ruling, no stay will be granted except by a hearing before the commission. The hearing before the commission will occur within thirty days of filing the request for hearing before the commission.

(m) If the stewards deny an application for license or suspend or revoke an existing license for any reasons listed in WAC 260-36-120(2), and a request for hearing before the commission is filed within seven days of service of the ruling, no stay will be granted except by a hearing before the commission. A hearing before the commission over whether or not to grant a stay will occur at the discretion of the commission.

(n) The stewards' ruling will be posted and a copy provided to the racing association.

(o) If a person does not file a request for hearing before the commission within seven days or in the format required by chapter 260-08 WAC, then the person is deemed to have waived his or her right to a hearing before the commission. After seven days (or seventy-two hours for riding violations), if a request for hearing before the commission has not been filed, the stewards' penalty will be imposed. All fines are due immediately following the period a person has to challenge a ruling, unless otherwise approved by the stewards.

(p) "Service" of the notice of ruling conference or a stewards' ruling may be by either personal service to the person or by depositing the notice of ruling conference or stewards' ruling into the mail to the person's last known address in which case service is complete upon deposit in the U.S. mail.

(q) If the stewards determine that a person's actions constitute an immediate, substantial danger to human and/or equine health, safety, or welfare, the stewards may enter a ruling summarily suspending the license and/or ejecting the person from the grounds pending a ruling conference before the board of stewards. A summary suspension takes effect immediately on issuance of the ruling. If the stewards suspend a license under this subsection, the licensee is entitled to a ruling conference before the board of stewards, not later than five days after the license was summarily suspended. The licensee may waive his/her right to a ruling conference before the board of stewards on the summary suspension.

(4) Protests, objections and complaints. The stewards will ensure that an investigation is conducted and a decision is rendered in every protest, objection and complaint made to them.

(5) Stewards' presence:

(a) On each racing day at least one steward will be on duty at the track beginning three hours prior to first race post time.

(b) Three stewards must be present in the stewards' stand during the running of each race.

(6) Order of finish for parimutuel wagering:

(a) The stewards will determine the official order of finish for each race in accordance with these rules of racing;

(b) The decision of the stewards as to the official order of finish, including the disqualification of a horse or horses as a result of any event occurring during the running of the race, is final for purposes of distribution of the parimutuel wagering pool.

(7) The stewards have the authority to cancel wagering on an individual betting interest or on an entire race and also have the authority to cancel a parimutuel pool for a race or races, if such action is necessary to protect the integrity of parimutuel wagering.

(8) Records and reports:

(a) The stewards will prepare a weekly report of their regulatory activities. The report will contain the name of the racetrack, the date, the weather and track conditions, claims, inquiries, protests, objections, complaints and conferences. The report will be filed with and approved by the executive secretary;

(b) Not later than seven days after the last day of a race meet, unless approved by the executive secretary, the presiding steward will submit a written report regarding the race meet to the executive secretary. The report will contain:

(i) The stewards' observations and comments regarding the conduct of the race meet, the overall conditions of the association grounds during the race meet; and

(ii) Any recommendations for improvement by the association or action by the commission.

(9) Stewards' list:

(a) The stewards will maintain a stewards' list of the horses which are ineligible to be entered in a race because of poor or inconsistent performance or behavior on the racetrack that may endanger the health or safety of other participants in racing;

(b) The stewards may place a horse on the stewards' list when there exists a question as to the exact identification or ownership of said horse;

(c) A horse which has been placed on the stewards' list because of inconsistent performance or behavior, may be removed from the stewards' list when, in the opinion of the stewards, the horse can satisfactorily perform competitively in a race without endangering the health or safety of other participants in racing;

(d) A horse which has been placed on the stewards' list because of questions as to the exact identification or ownership of the horse, may be removed from the stewards' list when, in the opinion of the stewards, proof of exact identification and/or ownership has been established.

(e) An owner or trainer who disagrees with the stewards' decision of placing or maintaining a horse on the stewards' list may request and be granted a stewards' ruling conference to challenge the decision of the stewards.

Reasons Supporting Proposal: Rules are needed to implement the 2008 Initiative Measure No. 1029 and 2009 ESSB 6180, which establishes chapter 18.88B RCW and makes changes to chapters 74.39A and 18.130 RCW, and to establish rules for the certification of home care aides. This certification allows the department to assure long-term care workers have met minimum training requirements. Through the certification examination, it also assures long-term care workers have established competency. Rules also allow the department to deny or restrict applicants or to discipline licensees whose background check reveals criminal history.

Statutory Authority for Adoption: Chapters 18.88B and 74.39A RCW.

Statute Being Implemented: Chapter 18.88B RCW.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kendra Pitzler, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4723.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kendra Pitzler, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4723, fax (360) 236-2406, e-mail [kendra.pitzler@doh.wa.gov](mailto:kendra.pitzler@doh.wa.gov).

January 15, 2010

Mary C. Selecky

Secretary

**WSR 10-03-055**

**PROPOSED RULES**

**DEPARTMENT OF HEALTH**

[Filed January 15, 2010, 11:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-07-053.

Title of Rule and Other Identifying Information: New chapter 246-980 WAC, Certification requirements for home care aides.

Hearing Location(s): Department of Health, Point Plaza East, Room 152/153, 310 Israel Road N.E., Olympia, WA 98501, on March 3, 2010, at 9:00 a.m.

Date of Intended Adoption: March 5, 2010.

Submit Written Comments to: Kendra Pitzler, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2406, by February 24, 2010.

Assistance for Persons with Disabilities: Contact Kendra Pitzler by February 24, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rules is to establish certification requirements for home care aides. The proposed rules will clarify which long-term care workers must obtain certification. They will also define certification, examination and continuing education requirements, as well as fees.

**Chapter 246-980 WAC**

**HOME CARE AIDE RULES**

NEW SECTION

**WAC 246-980-010 Definitions.** The definitions in this section and in RCW 74.39A.009 apply throughout this chapter unless the context clearly requires otherwise.

(1) "Activities of daily living" means self-care abilities related to personal care such as bathing, body care, bed mobility, eating, locomotion, use of the toilet, personal hygiene, dressing, and transfer. Activities of daily living include instrumental activities of daily living.

(2) "Date of hire" means:

(a) The date of service authorization for individual providers hired by the department of social and health services.

(b) The date the long-term care worker is hired by an employer other than the department of social and health services.

(3) "Department" means the department of health.

(4) "Elderly" means a person who is at least sixty years of age.

(5) "Individual provider" means a person, including a personal aide, who has contracted with the department of social and health services to provide personal care or respite



care services to functionally disabled persons under the medicaid personal care, community options program entry system, chore services program, or respite care program, or to provide respite care or residential services and support to persons with developmental disabilities under chapter 71A.12 RCW, or to provide respite care as defined in RCW 74.13.-270.

(6) "Instrumental activities of daily living" means routine activities performed in the home or the community such as meal preparation, shopping, house cleaning, laundry, maintaining employment, travel to medical services, use of the telephone, and management of personal finances.

(7) "Long-term care worker" means all persons who are long-term care workers for the elderly or persons with disabilities, including, but not limited to, individual providers of home care services; direct care employees of home care agencies; providers of home care services to persons with developmental disabilities under Title 71A RCW; all direct care workers in state-licensed boarding homes, assisted living facilities, and adult family homes; respite care providers; community residential service providers; and any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities. "Long-term care worker" does not include:

(a) Persons employed by the following facilities or agencies: Nursing homes subject to chapter 18.51 RCW; hospitals or other acute care settings; residential habilitation centers under chapter 71A.20 RCW; facilities certified under 42 CFR, Part 483; hospice agencies subject to chapter 70.127 RCW; adult day care centers; and adult day health care centers; or

(b) Persons who are not paid by the state or by a private agency or facility licensed by the state to provide personal care services.

(8) "Personal care services" means physical or verbal assistance with activities of daily living and instrumental activities of daily living provided because of a person's functional disability.

(9) "Supported living provider" means a person or entity certified as a supported living provider by the department of social and health services, including the state operated living alternative (SOLA) program, who delivers services and support to meet a client's identified needs. Supported living providers provide instruction, support, and services under chapter 388-101 WAC to clients in their own home to help them live independently.

#### **REQUIREMENTS FOR LONG-TERM CARE WORKERS THAT ARE REQUIRED TO BE CERTIFIED AS A HOME CARE AIDE**

##### NEW SECTION

**WAC 246-980-020 Who must be certified as a home care aide?** (1) Any person who is hired as a long-term care worker for the elderly or persons with disabilities, regardless of the employment title, must obtain certification as a home care aide. This includes, but is not limited to:

(a) An individual provider of home care services who is reimbursed by the state;

(b) A direct care employee of a home care agency;

(c) A provider of home care services to persons with developmental disabilities under Title 71A RCW;

(d) A direct care worker in a state licensed boarding home;

(e) A direct care worker in a state licensed adult family home;

(f) A respite care provider who is reimbursed by the state or employed by a private agency or facility licensed by the state to provide personal care services;

(g) A community residential service provider who is reimbursed by the state or employed by a private agency or facility licensed by the state to provide personal care service; and

(h) Any other direct care workers providing home or community-based services to the elderly or persons with developmental disabilities.

(2) Long-term care workers who meet the above criteria but are exempted under WAC 246-980-070 are not required to obtain certification.

##### NEW SECTION

**WAC 246-980-030 Can a nonexempt long-term care worker begin working before obtaining certification as a home care aide?** A long-term care worker may provide care before receiving certification as a home care aide if all the following conditions are met:

(1) Before providing care, the long-term care worker must complete the training required by RCW 74.39A.073 (4)(a) and (b).

(2) The long-term care worker must submit an application for home care aide certification to the department within three days of hire. An application is considered to be submitted on the date it is post-marked or, for applications submitted in person or on-line, the date it is accepted by the department.

(3) The long-term care worker may not work for more than one hundred fifty calendar days from their date of hire.

##### NEW SECTION

**WAC 246-980-040 What must a long-term care worker do to be eligible for a home care aide certification and what documentation is required?** (1) To qualify for certification as a home care aide, the applicant must:

(a) Successfully complete the entry level training required by RCW 74.39A.073 before taking the examination;

(b) Successfully complete the home care aide certification examination; and

(c) Complete four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

(2) Applicants must submit directly to the examination contractor:

(a) A completed application for examination provided by the examination contractor;

(b) The fee required by the examination contractor; and

(c) A certificate of completion indicating that the applicant has successfully completed the entry level training required by RCW 74.39A.073.

(3) Applicants must submit to the department:

(a) A completed application for certification on forms provided by the department;

(b) The required fee; and

(c) A certificate of completion indicating that the applicant has successfully completed the entry level training required by RCW 74.39A.073.

(4) Applicants must submit to a state and federal background check as required by RCW 74.39A.055.

#### NEW SECTION

**WAC 246-980-050 How long does a long-term care worker have to complete the home care aide training and certification requirements?** (1) Training:

(a) A long-term care worker must successfully complete all training required by RCW 74.39A.073 within one hundred twenty calendar days of the date of hire as a long-term care worker.

(b) A long-term care worker who has not completed the training within one hundred twenty calendar days must stop providing care until certification as a home care aide has been granted.

(c) If a long-term care worker's employment is terminated before reaching the one hundred twenty day deadline and the required training has not been completed, and the long-term care worker is rehired within twelve months of the date of termination, the long-term care worker may receive credit for the training already acquired.

(2) Certification: A long-term care worker who has not been issued a home care aide certification within one hundred fifty days of the date of hire must stop providing care until the certification has been granted.

#### NEW SECTION

**WAC 246-980-060 How does a home care aide renew a certification or reinstate an expired certification?** (1) To renew a home care aide certification:

(a) Certificates must be renewed every year by the home care aide's birthday as provided in chapter 246-12 WAC, Part 2.

(b) Verification of twelve hours of continuing education as required by RCW 74.39A.340 and WAC 246-980-110 must accompany the certification renewal.

(2) To reinstate an expired certification:

(a) If the certification has been expired for less than three years, the applicant must submit proof of twelve continuing education hours as required by RCW 74.39A.340 and WAC 246-980-110 for each year it has been expired, and meet the requirements of chapter 246-12 WAC, Part 2.

(b) If the certification has been expired for more than three years, the applicant must successfully repeat the training and examination requirements in WAC 246-980-040 and meet the requirements of chapter 246-12 WAC, Part 2.

### REQUIREMENTS FOR LONG-TERM CARE WORKERS EXEMPT FROM CERTIFICATION AS A HOME CARE AIDE

#### NEW SECTION

**WAC 246-980-070 Who is exempt from obtaining a home care aide certification?** (1) The following individuals are not required to obtain certification as a home care aide. If they choose to voluntarily become certified, they must successfully complete the entry level training required by RCW 74.39A.073, successfully complete the home care aide certification examination and meet all other requirements of WAC 246-980-080(1).

(a) An individual who is employed by a nursing home subject to chapter 18.51 RCW, hospital, or other acute care setting; hospice agency subject to chapter 70.127 RCW; adult day care center; or adult day health center, and who does not hold a current health care credential described under subsection (2)(a) of this section.

(b) An individual provider caring only for a biological, step, or adoptive child or parent.

(c) An individual hired prior to June 30, 2014, as an individual provider who provides twenty hours or less of care for one person in any calendar month. Individual providers hired after June 30, 2014, will be required to obtain certification.

(d) An individual employed by a supported living provider.

(e) An individual employed by a residential habilitation center licensed under chapter 71A.20 RCW or a facility certified under 42 CFR, Part 483.

(f) Direct care employees who are not paid by the state or by a private agency or facility licensed by the state to provide personal care services.

(2) The following long-term care workers are not required to obtain certification as a home care aide. If they choose to voluntarily become certified, they must successfully complete the home care aide certification examination and meet all other requirements of WAC 246-980-080(2). The training requirements under RCW 74.39A.073 are not required.

(a) An individual who holds an active credential by the department as a:

(i) Registered nurse, a licensed practical nurse, nurse technician, or advanced registered nurse practitioner under chapter 18.79 RCW;

(ii) Nursing assistant-certified under chapter 18.88A RCW;

(iii) Certified counselor or advisor under chapter 18.19 RCW;

(iv) Speech language pathologist assistant or audiologist under chapter 18.35 RCW;

(v) Occupational therapist under chapter 18.59 RCW; or

(vi) Physical therapist assistant under chapter 18.74 RCW.

(b) A home health aide who is employed by a medicare certified home health agency and has met the requirements of 42 CFR, Part 483.35.

(c) An individual with special education training and an endorsement granted by the superintendent of public instruction under RCW 28A.300.010.

(d) An individual employed as a long-term care worker on January 1, 2011, who completes all of the training requirements in effect as of the date of hire. This exemption expires if the long-term care worker has not provided care for over three years.

(i) The department may require the exempt long-term care worker who is employed on or before January 1, 2011, to provide proof of that employment. Proof may include a letter or similar documentation from the employer that hired the long-term care worker on or before January 1, 2011, indicating the first and last day of employment, the job title, a job description, and proof of completing training requirements. For an individual provider reimbursed by the department of social and health services, the department will accept verification from the department of social and health services or the Northwest Training Partnership.

(ii) A long-term care worker who is employed on or before January 1, 2011, but has not completed the required basic training as of January 1, 2011, must complete the training within one hundred twenty days of the date of hire to qualify for this exemption.

#### NEW SECTION

**WAC 246-980-080 How does an exempt individual apply for certification as a home care aide?** (1) An individual exempt from certification under WAC 246-980-070(1) may apply for certification as a home care aide as follows:

(a) To qualify for certification as a home care aide, the applicant must:

(i) Successfully complete entry level training as required by RCW 74.39A.073 before taking the examination;

(ii) Successfully complete the home care aide certification examination; and

(iii) Complete four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

(b) Applicants must submit directly to the examination contractor:

(i) A completed application for examination provided by the examination contractor;

(ii) The fee required by the examination contractor; and

(iii) A certificate of completion indicating that the applicant has successfully completed entry level training required by RCW 74.39A.073.

(c) Applicants must submit to the department:

(i) A completed application for certification on forms provided by the department;

(ii) The required fee; and

(iii) A certificate of completion indicating that the applicant has successfully completed the entry level training as required by RCW 74.39A.073.

(d) Applicants must submit to a state and federal background check as required by RCW 74.39A.055.

(2) A long-term care worker exempt from certification under WAC 246-980-070(2) may apply for certification as a home care aide as follows:

(a) To qualify for certification as a home care aide, the applicant must:

(i) Successfully complete the home care aide certification examination; and

(ii) Complete four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

(b) Applicants must submit directly to the examination contractor a completed application for examination and the fee required by the examination contractor.

(c) Applicants must submit to the department:

(i) A completed application for certification on forms provided by the department; and

(ii) Proof the individual qualifies for exemption under WAC 246-840-070(2); and

(iii) The required fee.

(d) Applicants must submit to a state and federal background check as required by RCW 74.39A.055.

#### NEW SECTION

**WAC 246-980-090 How does an exempt home care aide renew a home care aide certification or reinstate an expired home care aide certification?** (1) To renew a home care aide certification:

(a) Certificates must be renewed every year by the home care aide's birthday as provided in chapter 246-12 WAC, Part 2.

(b) Verification of twelve hours of continuing education as required by RCW 74.39A.340 and WAC 246-980-110 must accompany the certification renewal.

(2) To reinstate a certification that has been expired for less than three years, the applicant must submit proof of twelve continuing education hours as required by RCW 74.39A.340 and WAC 246-980-110 for each year it has been expired, and meet the requirements of chapter 246-12 WAC, Part 2.

(3) To reinstate a certification that has been expired for more than three years:

(a) A long-term care worker exempt from certification under WAC 246-980-070(1) must:

(i) Submit proof that the applicant has worked at least eight hours as a long-term care worker within the last three years and submit twelve hours of continuing education per year as required by RCW 74.39A.340 and WAC 246-980-110; or

(ii) Successfully repeat the training and examination requirements in WAC 246-980-080.

(b) A long-term care worker exempt from certification under WAC 246-980-070(2) must:

(i) Submit proof that the applicant has worked at least eight hours as a long-term care worker within the past three years and submit twelve hours of continuing education per year as required by RCW 74.39A.340 and WAC 246-980-110; or

(ii) Successfully repeat the certification examination requirements in WAC 246-980-080.

**GENERAL REQUIREMENTS FOR THE APPLICATION FOR HOME CARE AIDE CERTIFICATION BY BOTH REQUIRED AND VOLUNTARY HOME CARE AIDES**

NEW SECTION

**WAC 246-980-100 Examination and reexamination for home care aide certification.** (1) The certification examination will consist of both a written knowledge test and a skills demonstration.

(2) The certification examination will test the core competencies, including but not limited to, communication skills, worker self-care, problem solving, maintaining dignity, consumer directed care, cultural sensitivity, body mechanics, fall prevention, skin and body care, home care aide roles and boundaries, supporting activities of daily living, and food preparation and handling.

(3) The applicant must apply directly to the examination contractor to take the examination.

(4) The examination contractor will notify the applicant of the date, time, and place of the examination.

(5) The examination contractor will notify both the department and the applicant of the examination results.

(a) An applicant who does not successfully complete any portion of the examination can follow the examination contractor's procedures for review and appeal.

(b) An applicant who does not successfully complete any portion of the examination may retake that portion of the examination two times.

(i) To retake the examination, an applicant must submit an application for reexamination, along with the required reexamination fee directly to the examination contractor.

(ii) An application for reexamination may be submitted any time after the applicant receives notice of not successfully completing any portion of the certification examination.

(c) An applicant who does not successfully complete both portions of the certification examination within two years of completing the required training or who does not successfully complete both portions of the certification examination after completing the certification examination three times:

(i) Must retake and successfully complete the core competencies portion of the entry-level training as required by RCW 74.39A.073; and

(ii) Cannot continue to provide care as a long-term care worker until the certification has been issued.

NEW SECTION

**WAC 246-980-110 Continuing education.** (1) Home care aides must demonstrate completion of twelve hours of continuing education per year as required by RCW 74.39A.-340. The required continuing education must be obtained during the period between renewals. Continuing education is subject to the provisions of chapter 246-12 WAC, Part 7.

(2) Verification of completion of the continuing education requirement is due upon renewal. If the first renewal period is less than a full year from the date of certification, no continuing education will be due for the first renewal period.

NEW SECTION

**WAC 246-980-120 Home care aide—Application—Conviction data—Criteria for denial or conditional license.** (1) Applicants who have any criminal history may be denied certification or may be granted certification with conditions pursuant to RCW 18.130.055.

(2) In determining whether to deny certification or grant certification with conditions due to the applicant's criminal history, the department may consider the following factors:

(a) The severity of the crime as classified under law;

(b) The number of convictions and whether the applicant has exhibited a pattern of criminal conduct;

(c) The amount of time elapsed since the date of conviction or the date of offense;

(d) The amount of time the applicant has spent in the community after release from custody;

(e) Whether any conviction is listed by the department of social and health services as a disqualifying crime, including those offenses listed in RCW 43.43.830 (5), (6), or (7);

(f) Whether the applicant has complied with court-ordered conditions such as treatment, restitution, or other remedial or rehabilitative measures;

(g) Other remediation or rehabilitation by the applicant subsequent to the conviction date;

(h) Whether the applicant disclosed the conviction on the certification application; and

(i) Any other factor relating to the applicant's ability to practice as a home care aide with reasonable skill and safety.

NEW SECTION

**WAC 246-980-990 Home care aide certification fees.**

(1) Certifications must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged for home care aide:

Title of Fee	Fee
Application	\$110.00
Certification renewal	110.00
Late renewal penalty	55.00
Expired certification reactivation	55.00
Duplicate certification	15.00
Verification	25.00

**WSR 10-03-056**

**PROPOSED RULES**

**HORSE RACING COMMISSION**

[Filed January 15, 2010, 11:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-20-058.

Title of Rule and Other Identifying Information: To add a section in WAC 260-52-040, the race - paddock to finish requiring the [that] a safety crop be used.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on March 11, 2010, at 9:30 a.m.

Date of Intended Adoption: March 11, 2010.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail [dmoore@whrc.state.wa.us](mailto:dmoore@whrc.state.wa.us), fax (360) 459-6461, by March 8, 2010.

Assistance for Persons with Disabilities: Contact Patty Sorby by March 8, 2010, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Incorporates the ARCI model rule on the new riding crop to require its use at tracks in Washington, with the exclusion of nonprofit race meets.

Reasons Supporting Proposal: This complies with the recommended model rule for public records.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: [Horse racing commission], governmental.

Name of Agency Personnel Responsible for Drafting: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

January 15, 2010  
Douglas L. Moore  
Deputy Secretary

AMENDATORY SECTION (Amending WSR 08-05-088, filed 2/15/08, effective 3/17/08)

**WAC 260-52-040 Post to finish.** (1) All horses must be ridden out in every race. A jockey may not ease up or coast to the finish, without reasonable cause, even if the horse has no apparent chance to win prize money. A jockey must always give his/her best effort during a race. Each horse must be ridden to win. No jockey may cause his/her horse to shorten its stride so as to give the appearance of having suffered a foul.

(2) If a jockey strikes or touches another jockey or another jockey's horse or equipment, his/her mount may be disqualified.

(3) When clear in a race a horse may be ridden to any part of the course. If any horse swerves, or is ridden to either side, so as to interfere with, impede, or intimidate any other horse, the horse may be disqualified.

(4) A horse may not interfere with another horse and thereby cause the other horse to lose ground or position, or cause the other horse to break stride. When this interference occurs in the part of the race where the other horse loses the opportunity to place where it might reasonably be expected to finish, the stewards may disqualify the interfering horse.

(5) If the stewards determine the foul was intentional, or due to careless riding, the jockey may be held responsible.

(6) In a straightaway race, every horse must maintain position as nearly as possible in the lane in which it starts. If a horse is ridden, drifts or swerves out of its lane and interferes, impedes, or intimidates another horse, it may be considered a foul and may result in the disqualification of the offending horse.

(7) When a horse is disqualified, the stewards may place the offending horse behind the horse(s) it interfered with, place it last, or declare it unplaced and ineligible for any purse money and/or time trial qualification. In the case of multiple disqualifications, under no circumstance may a horse regain its finishing position once it has been disqualified.

(8) If a horse is disqualified, any horses it is coupled with may also be disqualified.

(9) When a horse is disqualified in a time trial race, for the purposes of qualifying only, it must receive the time of the horse it is placed behind plus one-hundredth of a second penalty or more exact measurement if photo finish equipment permits, and remain eligible to qualify for the finals or consolations of the race on the basis of the assigned time.

(10) In time trials, horses must qualify on the basis of time and order of finish. Times are determined by the official timer. If the automatic timer malfunctions, averages of a minimum of three hand times must be used for that individual race. In the instance of horses competing in the same race receiving identical times, order of finish must determine qualifiers. In the event two or more horses receive identical times for the final qualifying position, a draw by lot conducted by the stewards will determine the final qualifying positions.

(11) If a horse that qualified for the finals should be unable to enter due to racing soundness or scratched for any other reason other than a positive test or rule violation, the owner will receive last place purse money. If more than one horse is scratched from the final, then those purse moneys will be added together and distributed equally among those owners.

(12) If a qualifier for a final or consolation is disqualified for ineligibility or a rule violation after the time trials are declared official, but prior to entry for the final or consolation, the nonqualifier with the next fastest time must replace the disqualified horse. If a qualifier is disqualified after entry for the final or consolation for any reason other than unsoundness, illness or death, the purse will be redistributed among the remaining qualifiers.

(13) Possession of any electrical or mechanical stimulating or shocking device by a jockey, horse owner, trainer or other person will be considered prima facie evidence of a violation of these rules and is sufficient grounds for the stewards to scratch or disqualify any horse involved, and summarily suspend the individual in possession of the device.

~~((14) Any jockey carrying a whip during a race must use the whip in a manner consistent with using his/her best efforts to win.~~

~~(15) Any jockey who uses a whip during the running of a race is prohibited from whipping a horse:~~

~~(a) In an excessive or brutal manner;~~

~~(b) On the head, flanks, or on any part of its body other than the shoulders or hind quarters;~~

- ~~(c) During the post parade except when necessary to control the horse;~~  
~~(d) When the horse is clearly out of the race;~~  
~~(e) Steadily, even though the horse is showing no response to the whip.))~~

**NEW SECTION**

**WAC 260-52-045 The riding crop.** (1) Only riding crops approved by the stewards and meeting the following specifications will be allowed:

- (a) Maximum weight of 8 ounces;
  - (b) Maximum length (including flap) of 30 inches;
  - (c) Minimum diameter of the shaft of one-half inch; and
  - (d) The contact area of the shaft must be smooth with no protrusions or raised surface.
- (2) The only additional feature that may be attached to the riding crop is a flap. If a flap is attached it must meet the following specifications:
- (a) Maximum length of the flap from the end of the shaft is one inch;
  - (b) Maximum width of the flap is 1.6 inches, with a minimum width of 0.8 inch;
  - (c) The flap, from the end of the shaft, may not contain any reinforcements or additions;
  - (d) There may be no binding within 7 inches of the end of the flap;
  - (e) The flap must be humane, cushioned with memory foam or other similar shock absorbing material, unaltered from the original manufacturer, and sewn down each side of the outer layer;
  - (f) The flap must be dark in color and made of a material that does not harden over time; and
  - (g) The requirement for the riding crop is waived for Class C race meets as defined in RCW 67.16.130.
- (3) The riding crop is subject to approval by the stewards and subject to inspection by any steward, commission racing official, official veterinarian, or investigator.
- (4) Although the use of a riding crop is not required, any jockey who uses a riding crop during a race may do so only in a manner consistent with exerting his/her best efforts to win. In all races where a jockey will ride without a riding crop, an announcement will be made over the public address system. No device designed to increase or retard the speed of a horse, other than an approved riding crop is permitted on the grounds of any racing association. Riding crops may not be used on 2-year-old horses before April 1 of each year.
- (5) Prohibited uses of the riding crop include striking a horse:
- (a) On the head, flanks or on any other part of its body other than the shoulders or hind quarters except when necessary to control a horse;
  - (b) During the post parade or after the finish of the race, except when necessary to control the horse;
  - (c) Excessively or brutally causing welts or breaks in the skin;
  - (d) When the horse is clearly out of the race or has obtained its maximum placing;
  - (e) Persistently even though the horse is showing no response under the riding crop; and

- (f) Striking another rider or horse.
- (6) The riding crop should only be used for safety, correction, and encouragement. All riders should consider the following when using the riding crop:
  - (a) Showing the horse the riding crop and giving the horse time to respond before striking the horse;
  - (b) Giving the horse the chance to respond before using the riding crop again; and
  - (c) Using the riding crop in rhythm with the horse's stride.
- (7) After the race or during training all horses are subject to inspection by a steward, official veterinarian, commission racing official, or investigator.
- (8) Any trainer, owner, or other licensee that instructs a jockey to use the riding crop in a manner not consistent with these rules may be subject to disciplinary action.

**WSR 10-03-058****PROPOSED RULES****HORSE RACING COMMISSION**

[Filed January 15, 2010, 11:11 a.m.]

## Original Notice.

Preproposal statement of inquiry was filed as WSR 09-15-090.

Title of Rule and Other Identifying Information: Chapter 260-36 WAC, Licensing, addresses the requirement to revoke or deny a license on an individual with pending felony charges.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on March 11, 2010, at 9:30 a.m.

Date of Intended Adoption: March 11, 2010.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail [dmoore@whrc.state.wa.us](mailto:dmoore@whrc.state.wa.us), fax (360) 459-6461, by March 8, 2010.

Assistance for Persons with Disabilities: Contact Patty Sorby by March 8, 2010, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This would allow the board of stewards to review individual[s] with pending felony charges circumstances and make a decision whether or not to revoke or deny a license depending on the circumstances. Previously, any pending felony charge would require a revocation or denial.

Reasons Supporting Proposal: This complies with the recommended model rule for public records.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: [Horse racing commission], governmental.

Name of Agency Personnel Responsible for Drafting: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

January 15, 2010  
Douglas L. Moore  
Deputy Secretary

AMENDATORY SECTION (Amending WSR 07-01-052, filed 12/14/06, effective 1/14/07)

**WAC 260-36-120 Denial, suspension, and revocation—Grounds.** (1) The commission or its designee may refuse to issue or may deny a license to an applicant, may modify or place conditions upon a license, may suspend or revoke a license issued, may order disciplinary measures, or may ban a person from all facilities under the commission's jurisdiction, if the applicant licensee, or other person:

(a) Has been convicted of violating any law regarding gambling or a controlled substance;

(b) Has pending ~~((misdemeanor or gross misdemeanor))~~ criminal charges ~~((, as classified by the laws of the state of Washington or the laws of the jurisdiction in which the conviction occurred));~~

(c) Has failed to meet the minimum qualifications required for the license for which they are applying;

(d) Has failed to disclose or states falsely any information required in the application;

(e) Has been found in violation of statutes or rules governing racing in this state or other jurisdictions;

(f) Has a proceeding pending to determine whether the applicant or licensee has violated the rules of racing in this state or other racing jurisdiction;

(g) Has been or is currently excluded from a racetrack at which parimutuel wagering on horse racing is conducted by a recognized racing jurisdiction;

(h) Has had a license denied by any racing jurisdiction;

(i) Is a person whose conduct or reputation may adversely reflect on the honesty and integrity of horse racing or who may interfere or has interfered with the orderly conduct of a race meeting;

(j) Demonstrates financial irresponsibility by accumulating unpaid obligations, defaulting in obligations or issuing drafts or checks that are dishonored or payment refused;

(k) Has violated any of the alcohol or substance abuse provisions outlined in chapter 260-34 WAC;

(l) Has violated any of the provisions of chapter 67.16 RCW;

(m) Has violated any provisions of Title 260 WAC;

(n) Has association with persons of known disreputable character; or

(o) Has not established the necessary skills or expertise to be qualified for a license as required by WAC 260-36-060.

(2) The commission or its designee must deny the application for license or suspend or revoke an existing license if the applicant or licensee:

(a) Has been convicted of any felony crime against a person. "Crime against a person" means a conviction for any offense enumerated in chapters 9A.32, 9A.36, 9A.40, 9A.42, and 9A.44 RCW, or an offense which would constitute an

offense enumerated in those chapters if committed in Washington state;

(b) Has been convicted of any felony drug crime involving the possession or use of any drug as defined in chapter 69.41 RCW or any controlled substance as defined in chapter 69.50 RCW within the past three years;

(c) Has been convicted of any other felony drug crime as defined in chapter 69.41 RCW or felony crime involving a controlled substance as defined in chapter 69.50 RCW, or a felony drug crime which would constitute an offense enumerated in those chapters if committed in Washington state;

(d) Has been convicted of any other felony crime within the past ten years. Other felony crime includes any felony conviction not listed in (a), (b), and (c) of this subsection. This also includes an offense committed in another jurisdiction, which would constitute a felony if committed in Washington state;

(e) Has five or more convictions for gross misdemeanors within the last three years, as classified by the laws of the state of Washington or the laws of the jurisdiction in which the conviction occurred;

(f) Is subject to current prosecution ~~((or pending charges))~~ for any felony crime;

(g) Has any felony conviction under appeal;

(h) Is currently suspended or revoked in Washington or by another recognized racing jurisdiction;

(i) Is certified under RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order; or

(j) Has any outstanding arrest warrants.

(3) In considering a challenge of a decision denying or revoking a license pursuant to subsection (2) of this section, the commission may only reverse the denial or revocation on a showing by the appellant of mitigating information and that the best interests of horse racing would not be compromised by granting or reinstating a license.

(4) A license suspension or revocation will be reported in writing to the applicant or licensee and the Association of Racing Commissioners International, Inc.

### WSR 10-03-059

#### PROPOSED RULES

#### HORSE RACING COMMISSION

[Filed January 15, 2010, 11:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-21-025.

Title of Rule and Other Identifying Information: WAC 260-28-235 Trainer—Duty to provide employees financial relief from injury, describes the process for upgrading L&I coverage from a Class C track to a Class A or B track.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on March 11, 2010, at 9:30 a.m.

Date of Intended Adoption: March 11, 2010.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail

dmoore@whrc.state.wa.us, fax (360) 459-6461, by March 8, 2010.

Assistance for Persons with Disabilities: Contact Patty Sorby by March 8, 2010, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This explains the process and address[es] how to upgrade L&I coverage when transferring from a Class C track to a Class A or B track including coverage for both exercise riders and grooms.

Reasons Supporting Proposal: This complies with the recommended model rule for public records.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: [Horse racing commission], governmental.

Name of Agency Personnel Responsible for Drafting: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

January 15, 2010  
Douglas L. Moore  
Deputy Secretary

AMENDATORY SECTION (Amending WSR 07-07-007, filed 3/8/07, effective 4/8/07)

**WAC 260-28-235 Trainer—Duty to provide employees financial relief from injury.** At the time of submitting a license application, or when required by other rule, all trainers must pay the industrial insurance premium assessment required by RCW 67.16.300 and 51.16.210 for each person in their employment. The industrial insurance premiums will be based on the type of race meet the trainer is licensed to participate at and the applicable sections in chapter 260-36 WAC.

(1) Trainers who are licensed at a Class A or B race meet must pay the industrial insurance premiums established by the department of labor and industries for parimutuel horse racing at major tracks.

(2) Trainers who are licensed at a Class C race meet will pay the industrial insurance premiums established by the department of labor and industries for parimutuel horse racing for nonprofit tracks.

(3)(a) If a trainer who is licensed at a Class A or B race meet wishes to run a horse(s) at a Class C race meet during the same calendar year, the trainer from the Class A or B race meet is not required to pay any additional industrial insurance premiums to participate at a Class C race meet unless the trainer adds a groom slot or an assistant trainer, or starts different horses or adds more horses in training than they had at the Class A or B race meet. Should a trainer increase the number of employees or different horses started or in training, the trainer must pay the additional industrial insurance premiums for the Class C race meet.

(b) If a trainer who is licensed at a Class C race meet wishes to run a horse(s) at a Class A or B race meet during the same calendar year, the trainer from the Class C race meet must first pay the difference in industrial insurance premiums between what he/she has paid at the Class C race meet and the industrial insurance premiums due at the Class A or B race meet.

## WSR 10-03-060

### PROPOSED RULES

### HORSE RACING COMMISSION

[Filed January 15, 2010, 11:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-22-071.

Title of Rule and Other Identifying Information: WAC 260-44-050 Weighing out—Equipment included in jockey's weight, removes language regarding the whip, which will be moved to WAC 260-52-040 and add language to clarify weight in bad weather conditions.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on March 11, 2010, at 9:30 a.m.

Date of Intended Adoption: March 11, 2010.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail dmoore@whrc.state.wa.us, fax (360) 459-6461, by March 8, 2010.

Assistance for Persons with Disabilities: Contact Patty Sorby by March 8, 2010, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The change removes language regarding the whip which is moved to WAC 260-52-040 to incorporate the new safety riding crop. Also clarifies practice of allowing extra weight for jockeys during inclement weather conditions to allow for extra clothing.

Reasons Supporting Proposal: This complies with the recommended model rule for public records.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: [Horse racing commission], governmental.

Name of Agency Personnel Responsible for Drafting: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

January 15, 2010  
Douglas L. Moore  
Deputy Secretary



AMENDATORY SECTION (Amending WSR 07-07-035, filed 3/12/07, effective 4/12/07)

**WAC 260-44-050 Weighing out—Equipment included in jockey's weight.** (1) The jockey's weight must also include their clothing and boots, and the saddle and its attachments.

(2) The following items may not be included in a jockey's weight: ~~((Whip))~~ Riding crop, head number, bridle, bit, reins, number cloth, blinker, over girth, protective helmet or safety vest.

(3) ~~((Whips must have closed poppers, with a maximum length of four inches and minimum width of one and one-quarter inches. Whips must have three rows of one-inch feathers made of leather or other material approved by the stewards. The maximum length of a whip may not exceed thirty one inches (including popper). The maximum weight of a whip may not exceed one pound.))~~ Upon approval by the board of stewards or their designee, jockeys may be allowed up to two pounds more than published weights to account for inclement weather clothing and equipment.

**WSR 10-03-063**  
**PROPOSED RULES**  
**HORSE RACING COMMISSION**

[Filed January 15, 2010, 2:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-23-020.

Title of Rule and Other Identifying Information: WAC 260-44-120 Weighing in—Weigh in/weigh out—Tolerances—Penalties, adopting the model rules to clarify the differences when a jockey weighs in and out.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on March 11, 2010, at 9:30 a.m.

Date of Intended Adoption: March 11, 2010.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail [dmoore@whrc.state.wa.us](mailto:dmoore@whrc.state.wa.us), fax (360) 459-6461, by March 8, 2010.

Assistance for Persons with Disabilities: Contact Patty Sorby by March 8, 2010, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Explains how a jockey's weight may show additional weight than that listed while weighing in to allow for safety equipment, (helmet, vest, etc.). Also requires the associations to post in the program this explanation for the public's education.

Reasons Supporting Proposal: This complies with the recommended model rule for public records.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: [Horse racing commission], governmental.

Name of Agency Personnel Responsible for Drafting: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia,

WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

January 15, 2010  
Douglas L. Moore  
Deputy Secretary

AMENDATORY SECTION (Amending WSR 07-07-035, filed 3/12/07, effective 4/12/07)

**WAC 260-44-120 Weighing in—Weigh in/weigh out—Tolerances—Penalties.** (1) Each jockey will weigh in at no less than the same weight he/she weighed out. If a jockey is ~~((short of))~~ under the ~~((weigh out amount by more than two pounds))~~ weight that is assigned, and after consideration of mitigating circumstances by the board of stewards, his/her mount ((with)) may be disqualified. If a weight discrepancy arises after a race has been declared official, a change in the order of finish will not affect the parimutuel payoffs.

(2) ~~((If any jockey weighs in at more than two pounds over his/her proper or declared weight, the clerk of scales will report the overweight to the stewards for possible disciplinary action. In considering discipline the stewards will consider any excess weight caused by rain or mud.))~~ The post race weighing in of jockeys includes safety vest, helmet, sweat, dirt and mud that have accumulated on the jockey, jockey's clothing, and jockey's safety equipment. This may account for additional weight, depending on specific equipment as well as weather and track condition.

(3) A notice shall be included in the official program that all jockeys will carry approximately three pounds more than published weight to account for safety equipment (vest and helmet), that is not included in weighing out procedures. Additionally, upon approval jockeys may weigh an additional two pounds for inclement weather gear.

**WSR 10-03-067**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed January 15, 2010, 3:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-15-133.

Title of Rule and Other Identifying Information: The department is proposing changes to WAC 388-418-0005 How will I know what changes I must report? and 388-416-0005 How long can I get Basic Food?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff

Lane. A map or directions are available at <http://www.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on February 23, 2010, at 10:00 a.m.

Date of Intended Adoption: Not earlier than February 24, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m., on February 23, 2010.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by February 9, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [jennisha.johnson@dshs.wa.gov](mailto:jennisha.johnson@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to expand "simplified reporting" to elderly or disabled households that do not receive food benefits through the Washington combined application program (WASH-CAP) by reducing the certification period from twenty-four to twelve months with no midcertification review requirement for Basic Food. This option under the 2008 farm bill reduces the changes elderly or disabled households must report under the Washington Basic Food program.

The department is also proposing to clarify what relative and nonrelative caregivers must report regarding the children in their care.

Reasons Supporting Proposal: The United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) approved this change to our current simplified reporting waiver, but did not approve our request to require households subject to simplified reporting to report when they move. Thus, the current requirement for Basic Food household under simplified reporting to report when they move has been removed from the draft language.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.010.

Statute Being Implemented: RCW 74.04.050, 74.04.-055, 74.04.057, 74.04.510, 74.08.090, 74.08A.010.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Holly St. John, P.O. Box 45470, Olympia, WA 98504-5470, (360) 725-4895.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendments only affect DSHS clients by simplifying reporting requirements for Washington Basic Food program and clarifying reporting requirements for relative and nonrelative caregivers of children.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "This section does not apply to...rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents." These rules affect the reporting requirements for Washington

Basic Food program and reporting requirements for relative and nonrelative caregivers for children as outlined in WAC 388-416-0005 and 388-418-0005.

January 12, 2010

Don Goldsby, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-19-060, filed 9/16/05, effective 11/1/05)

**WAC 388-416-0005 How long can I get Basic Food?**

(1) The length of time the department determines your assistance unit (AU) is eligible to get Basic Food is called a certification period. The department may certify your AU for up to:

(a) **Six months** if your AU:

(i) Includes an able-bodied adult without dependents (ABAWD) who receives Basic Food in your AU and your AU does not live in an exempt area as described in WAC 388-444-0030;

(ii) Includes a person who receives ADATSA benefits as described in chapter 388-800 WAC;

(iii) Is considered homeless under WAC 388-408-0050; or

(iv) Includes a migrant or seasonal farmworker as described under WAC 388-406-0021.

(b) ~~((Twenty four months if all adults in your AU are elderly persons or individuals with disabilities and no one in your AU has earned income.~~

~~((c))~~ **Twelve months** if your AU does not meet any of the conditions for six ~~((or twenty four))~~ months.

(2) If you receive transitional food assistance, we set your certification period as described under WAC 388-489-0015.

(3) If your AU is homeless **or** includes an ABAWD when you live in a nonexempt area, we may shorten your certification period.

(4) We terminate your Basic Food benefits when:

(a) We get proof of a change that makes your AU ineligible; or

(b) We get information that your AU is ineligible; and

(c) You do not provide needed information to verify your AU's circumstances.

AMENDATORY SECTION (Amending WSR 07-20-042, filed 9/26/07, effective 10/27/07)

**WAC 388-418-0005 How will I know what changes I must report?** You must report changes to the department based on the kinds of assistance you receive. ~~((The set of changes you must report for people in your assistance unit under chapter 388-408 WAC is based on the benefits you receive that require you to report the most changes. It is the first program that you receive benefits from in the list below.~~

~~For example:~~

~~If you receive long term care and Basic Food benefits, you tell us about changes based on the long term care requirements because it is the first program in the list below you receive benefits from.))~~ We inform you of your reporting requirements on letters we send you about your benefits.

Please follow the steps below to determine the types of changes you must report:

(1) If you receive assistance from any of the programs listed in subsection (a) through (e) of this section, you must report changes for people in your assistance unit under chapter 388-408 WAC, based on the **first** program you receive benefits from.

(a) If you receive **long term care** benefits such as a home and community based waiver (Basic, Basic Plus, ~~(ehore, community protection, COPES, nursing home, Hospice, or medically needy waiver)) CORE, Community Protection, COPES, New Freedom, Medically Needy~~), care in a medical institution (nursing home, hospice care center, state veterans home, ICF/MR, RHC) or hospice, you must tell us if you have a change of:

~~((a))~~ (i) Residence;

~~((b))~~ (ii) Marital status;

~~((c))~~ (iii) Living arrangement;

~~((d))~~ (iv) Income;

~~((e))~~ (v) Resources;

~~((f))~~ (vi) Medical expenses; and

~~((g))~~ (vii) If we allow you expenses for your spouse or dependents, you must report changes in their income or shelter cost.

~~((2))~~ (b) If you receive **medical benefits based on age, blindness, or disability (SSI-related medical), or ADATSA** benefits, you need to tell us if:

~~((a))~~ (i) You move;

~~((b))~~ (ii) A family member moves into or out of your home;

~~((c))~~ (iii) Your resources change; or

~~((d))~~ (iv) Your income changes. This includes the income of you, your spouse or your child living with you.

~~((3) If you receive Basic Food and all adults in your assistance unit are elderly persons or individuals with disabilities and have no earned income, you need to tell us if:~~

~~(a) You move;~~

~~(b) You start getting money from a new source;~~

~~(c) Your income changes by more than fifty dollars;~~

~~(d) Your liquid resources, such as your cash on hand or bank accounts, are more than two thousand dollars; or~~

~~(e) Someone moves into or out of your home.~~

~~(4)) (c) If you receive **cash** benefits, other than WorkFirst career services benefits, you need to tell us if:~~

~~((a))~~ (i) You move;

~~((b))~~ (ii) Someone moves out of your home;

~~((c))~~ (iii) Your total gross monthly income goes over the:

~~((i)) (A) Payment standard under WAC 388-478-0030 if you receive general assistance; or~~

~~((ii)) (B) Earned income limit under WAC 388-478-0035 and 388-450-0165 for all other programs;~~

~~((d))~~ (iv) You have liquid resources more than four thousand dollars; or

~~((e))~~ (v) You have a change in employment. Tell us if you:

~~((i))~~ (A) Get a job or change employers;

~~((ii))~~ (B) Change from part-time to full-time or full-time to part-time;

~~((iii))~~ (C) Have a change in your hourly wage rate or salary; or

~~((iv))~~ (D) Stop working.

~~((5))~~ (d) If you are a relative or nonrelative caregiver and receive cash benefits on behalf of a child in your care but not for yourself or other adults in your household, you need to tell us if:

~~((i))~~ (i) You move;

~~((ii))~~ (ii) The child you are caring for moves out of the home;

~~((iii))~~ (iii) The child's parent moves into your home;

~~((iv))~~ (iv) The child's earned or unearned income changes (see WAC 388-450-0070 for how we count the earned income of a child);

~~((v))~~ (v) The child has liquid resources more than four thousand dollars.

~~((e))~~ If you receive **family medical** benefits, you need to tell us if:

~~((a))~~ (i) You move;

~~((b))~~ (ii) A family member moves out of your home; or

~~((c))~~ (iii) If your income goes up or down by one hundred dollars or more a month and you expect this income change will continue for at least two months.

If you do not receive assistance from any of the programs listed in subsection (a) through (e) of this section, but you do receive benefits from any of the programs listed in subsections (f) through (i) of this section, you must report changes for the people in your assistance unit under chapter 388-408 WAC, based on all the benefits you receive.

~~((6))~~ (f) If you receive **Basic Food** benefits, you need to tell us if:

~~((a))~~ You move;

~~((b))~~ (i) Your total gross monthly income is more than the gross monthly income limit under WAC 388-478-0060; or

~~((c))~~ (ii) Anyone who receives food benefits in your assistance unit must meet work requirements under WAC 388-444-0030 and their hours at work go below twenty hours per week.

~~((7))~~ (g) If you receive **children's medical** benefits, you need to tell us if:

~~((a))~~ (i) You move; or

~~((b))~~ (ii) A family member moves out of the house.

~~((8))~~ (h) If you receive **pregnancy medical** benefits, you need to tell us if:

~~((a))~~ (i) You move; or

~~((b))~~ (ii) You are no longer pregnant.

~~((9))~~ (i) If you receive **other medical** benefits, you need to tell us if:

~~((a))~~ (i) You move; or

~~((b))~~ (ii) A family member moves out of the home.

~~((10) If you receive transitional food assistance or WorkFirst career services benefits, you do not have to report any changes in your circumstances.)~~

**WSR 10-03-074**  
**PROPOSED RULES**  
**GAMBLING COMMISSION**

[Filed January 19, 2010, 8:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-20-089.

Title of Rule and Other Identifying Information: New section WAC 230-06-046 Additional requirements for licensed business premises of class E, F, or house-banked card rooms.

Hearing Location(s): Lacey Community Center, 6729 Pacific Avenue S.E., Lacey, WA 98503, (360) 491-0857, on March 12, 2010, at 9:00 a.m.

Date of Intended Adoption: March 12, 2010.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail SusanA@wsgc.wa.gov, fax (360) 486-3625, by February 22, 2010.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by February 22, 2010, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Staff has raised concerns as to whether two card rooms with fifteen tables each, located adjacent to each other, and owned by the same group or organization, appear as one large card room with thirty tables. The appearance of one large card room with thirty tables could be viewed as a violation of RCW 9.46-0282 (social card game definition) and as an unauthorized expansion of gambling in violation of the constitutional restriction found in Article II, Section 24. Staff has concerns over the potential increase in the number of locations similar to this and/or the potential of three or more card rooms owned by the same group or organization located adjacent to each other, thereby creating a perception of one large card room with forty-five or more tables.

This new rule will outline restrictions for class E, F, or house-banked card rooms that are adjacent to each other. Without these restrictions, licensed class E, F, and house-banked card rooms may appear to exceed the fifteen table limit by locating multiple licensed card rooms in a location where each establishment shares a common wall or structure. These restrictions do not apply to class E, F, or house-banked card rooms that are licensed on or before the effective date of this rule.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 9.46.070.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Michelle M. Pardee, Lacey, (360) 486-3465; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Pursuant to RCW 19.85.025 and 34.05.320, a small business economic impact

statement has not been prepared because the proposed rule change would not impose costs on the licensees.

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

January 15, 2010

Michelle M. Pardee

Acting Rules Coordinator

NEW SECTION

**WAC 230-06-046 Additional requirements for licensed business premises of class E, F, or house-banked card rooms.** (1) The licensed business premises of class E, F, or house-banked card rooms may be adjacent to each other if each licensed business premises:

(a) Shares no inside public access between the two licensed business premises; and

(b) Has no employee access between the two licensed business premises visible to the public; and

(c) Posts signs at each entrance that is accessible by the public that clearly notify customers of the licensed business premises' identity; and

(d) Does not share windows or similar structures that allow customers to see into the other licensed business premises.

(2) These restrictions do not apply to class E, F, or house-banked card room physical locations that have these features and were licensed on the effective date of this rule.

**WSR 10-03-075**  
**PROPOSED RULES**  
**GAMBLING COMMISSION**

[Filed January 19, 2010, 8:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-22-073.

Title of Rule and Other Identifying Information: Amending WAC 230-14-090 Controlling prizes, punchboard and pull-tabs.

Hearing Location(s): Lacey Community Center, 6729 Pacific Avenue S.E., Lacey, WA 98503, (360) 491-0857, on March 12, 2010, at 9:00 a.m.

Date of Intended Adoption: March 12, 2010.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail SusanA@wsgc.wa.gov, fax (360) 486-3625, by February 22, 2010.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by February 22, 2010, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Punch board and pull-tab operators have always been required to award pull-tab prizes in either cash or merchandise. This specific language in former WAC 230-30-070 was inadvertently left out of WAC 230-14-090 during our rules simplification project.

This proposed rule change does not create any new requirements or operational changes for punch board and pull-tab operators.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 9.46.070.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Michelle M. Pardee, Lacey, (360) 486-3465; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Pursuant to RCW 19.85.025 and 34.05.320, a small business economic impact statement has not been prepared because the proposed rule change would not impose costs on the licensees.

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

January 15, 2010

Michelle M. Pardee

Acting Rules Coordinator

AMENDATORY SECTION (Amending Order 614, filed 8/10/07, effective 1/1/08)

**WAC 230-14-090 Controlling prizes.** Punch board and pull-tab operators must:

- (1) Protect players from fraud and game manipulation.
- (2) Award all prizes won.
- (3) Only award cash or merchandise prizes.
- (4) Not offer to pay cash instead of merchandise prizes.

((4)) (5) Not award additional punches or tabs as a prize. Prizes, however, may involve the opportunity to advance and win a larger prize on the same punch board or pull-tab series. Operators must award an immediate additional opportunity to advance called a bonus prize when offered in a bonus pull-tab series or a step-up prize when offered on a punch board.

green Park Drive S.W., Olympia, WA 98504-7250, on March 11, 2010, at 1:30 p.m.

Date of Intended Adoption: March 11, 2010.

Submit Written Comments to: Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., P.O. Box 47250, Olympia, WA 98504-7250, e-mail records@utc.wa.gov, fax (360) 586-1150, by February 22, 2010. Please include: "Docket A-091124" in your comments.

Assistance for Persons with Disabilities: Contact Susan Holman by February 25, 2010, TTY (360) 586-8203 or (360) 664-1243.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal would revise adoption-by-reference dates to reflect the current version of adopted material in WAC 480-120-999.

Reasons Supporting Proposal: The commission adopts by reference parts of Title 47 of the Code of Federal Regulations in WAC 480-120-999. The proposal will make commission rules consistent with current published versions of federal rules.

Statutory Authority for Adoption: RCW 80.01.040 and 81.04.160.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington utilities and transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Alan Lundeen, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1118; Implementation and Enforcement: David W. Danner, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1208.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules will not result in or impose more than minor costs. Because there will not be more than [a] minor increase in costs resulting from the proposed rule changes, a small business economic impact statement is not required under RCW 19.85.030(1).

A cost-benefit analysis is not required under RCW 34.05.328. The commission is not an agency to which RCW 34.05.328 applies. The proposed rules are not significant legislative rules of the sort referenced in RCW 34.05.328(5).

January 20, 2010

David W. Danner

Executive Director and Secretary

**WSR 10-03-089**  
**PROPOSED RULES**  
**UTILITIES AND TRANSPORTATION**  
**COMMISSION**

[Filed January 20, 2010, 8:20 a.m.]

Original Notice.

Expedited rule making—Proposed notice was filed as WSR 09-20-099.

Title of Rule and Other Identifying Information: WAC 480-120-999 Adoption by reference.

Hearing Location(s): Commission Hearing Room 206, Second Floor, Richard Hemstad Building, 1300 South Ever-

AMENDATORY SECTION (Amending Docket A-081419, General Order R-554, filed 12/23/08, effective 1/23/09)

**WAC 480-120-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **American National Standards for Telecommunications** - "*Network Performance Parameters for Dedicated Digital Services for Rates Up To and Including DS3* - Speci-

fications" (ANSI T1.510-1999) is published by the American National Standards Institute (ANSI).

(a) The commission adopts the version in effect on December 29, 1999, and reaffirmed ((2004)) 2008.

(b) This publication is referenced in WAC 480-120-401 (Network performance standards).

(c) The American National Standards for Telecommunications "*Network Performance Parameters for Dedicated Digital Services for Rates Up To and Including DS3 - Specifications*" is a copyrighted document. Copies are available from ANSI in Washington, D.C. and from various third-party vendors.

(2) **The Institute of Electrical And Electronic Engineers (IEEE) Standard Telephone Loop Performance Characteristics** (ANSI/IEEE Std 820-1984) is published by the ANSI and the IEEE.

(a) The commission adopts the version in effect as published in 2005.

(b) This publication is referenced in WAC 480-120-401 (Network performance standards).

(c) *The IEEE Standard Telephone Loop Performance Characteristics* is a copyrighted document. Copies are available from ANSI and IEEE in Washington, D.C. and from various third-party vendors.

(3) **The National Electrical Safety Code** is published by the IEEE.

(a) The commission adopts the version in effect on January 1, 2002.

(b) This publication is referenced in WAC 480-120-402 (Safety).

(c) *The National Electrical Safety Code* is a copyrighted document. Copies are available from IEEE in Washington, D.C. and from various third-party vendors.

(4) **Title 47 Code of Federal Regulations**, cited as 47 CFR, is published by the United States Government Printing Office (~~except sections 64.2003 through 64.2009~~).

~~(a) The commission adopts the version in effect on October 1, 1998.~~

~~(b) This publication is referenced in WAC 480-120-359 (Accounting requirements for companies not classified as competitive) and WAC 480-120-349 (Retaining and preserving records and reports).~~

~~(c) Copies of Title 47 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.~~

~~(5) Sections 64.2003 through 64.2009 of **Title 47 of the Code of Federal Regulations**, cited as 47 CFR §§ 64.2003 through 64.2009, are published by the United States Government Printing Office.~~

~~(a) The commission adopts the version in effect on October 1, 2008.~~

~~(b) This publication is referenced in WAC 480-120-202 (Customer Proprietary Network Information).~~

~~(c) Copies of Sections 64.2003 through 64.2009 of Title 47 of the Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from third-party vendors).~~

~~(a) For this publication as referenced in WAC 480-120-359 (Accounting requirements for companies not classified~~

~~as competitive) and WAC 480-120-349 (Retaining and preserving records and reports), the commission adopts the version of the relevant sections in effect on October 1, 1998.~~

~~(b) For this publication as referenced in WAC 480-120-202 (Customer proprietary network information), the commission adopts the version of the relevant sections in effect on October 1, 2008.~~

~~(c) The 1998 version of CFR Title 47 is available on-line in pdf format via GPO Access and the National Archives and Records Administration at [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html).~~

~~(d) The 2008 version of CFR Title 47 is available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.~~

## WSR 10-03-094

### PROPOSED RULES

### DEPARTMENT OF LICENSING

[Filed January 20, 2010, 9:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-21-055.

Title of Rule and Other Identifying Information: Chapter 308-20 WAC, Cosmetology, barber, manicurist and estheticians, amending WAC 308-20-010 Definitions, 308-20-040 Student records, 308-20-107 Use and training of instructor-trainees, 308-20-115 Reciprocity—Persons licensed in other jurisdictions, 308-20-120 Written and performance examinations, 308-20-572 Preinspection of schools, and 308-20-575 School license renewal process.

Hearing Location(s): Department of Licensing, Building 2, Conference Room 209, 405 Black Lake Boulevard S.W.

Olympia, WA 98502, on February 24, 2010, at 2:30 p.m.

Date of Intended Adoption: February 25, 2010.

Submit Written Comments to: Cameron Dalmas, Department of Licensing, Cosmetology Program, P.O. Box 9026, Olympia, WA 98507, e-mail [ndalmas@dol.wa.gov](mailto:ndalmas@dol.wa.gov), fax (360) 664-2550, by February 19, 2010.

Assistance for Persons with Disabilities: Contact Cameron Dalmas by February 19, 2010, TTY (360) 664-8885 or (360) 664-6643.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The following rule changes clarify language for monthly student reports, instructor-trainees, reciprocity, and school inspections and renewals. The amendment of WAC 308-20-120 will allow the department to open the contract up for bidding from other potential examination proctors.

WAC 308-20-010 Definitions, subsection (2) adds language to the existing rule to include that the monthly student report must include the month and year.

WAC 308-20-040 Student records, subsection (1) adds language to the existing rule to include that each monthly student report shall include the month and the year. Subsection (4) adds language to the existing rule to include that schools shall maintain student records on the school premises.

WAC 308-20-107 Use and training of instructor-trainees, subsection (2) adds language to the existing rule to include that instructor-trainees shall hold a current Washington State cosmetology, barber, manicurist or esthetician license "in good standing" prior to becoming an instructor-trainee.

WAC 308-20-115 Reciprocity—Persons licensed in other jurisdictions, subsection (4) adds language to the existing rule to include that the department shall issue a license to any person who provides proof that he or she has passed an examination approved by the director. Removes "approved examinations with the minimum passing score approved by the director."

WAC 308-20-120 Written and performance examinations, removes subsection (2) that specifies the National Interstate Council of State Boards of Cosmetology (NIC) examinations as the approved written and performance examinations required for applicants.

WAC 308-20-572 Preinspection of schools, changes the section title to Inspection of schools. Subsection (1) adds language to existing rule to include that prior to approval of "application or renewal" for licensure, any person wishing to operate a school shall submit to an inspection of the site.

WAC 308-20-575 School license renewal process, adds language to include that a site inspection shall accompany the renewal request for schools.

Statutory Authority for Adoption: RCW 18.16.030, 43.24.023.

Statute Being Implemented: RCW 18.16.030.

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

Name of Proponent: [Department of licensing], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Susan Colard, 405 Black Lake Boulevard S.W., Olympia, WA 98502, (360) 664-6647.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules will have minor impact to businesses in the industry.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this rule revision. Washington state department of licensing is not a named agency, therefore exempt from the provision.

January 20, 2010

Walt Fahrer

Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 08-22-029, filed 10/28/08, effective 2/1/09)

**WAC 308-20-010 Definitions.** (1) "Chemical compounds formulated for professional use only" are those compounds containing hazardous chemicals in a form not generally sold to the public; including but not limited to, bulk concentrates of permanent wave solution, neutralizers, chemical relaxers, oxidizing agents, flammable substances, facial creams, or approved chemical compounds. These compounds must be designated for use on the hair, face, neck, skin, or scalp.

(2) "Monthly student report" are forms provided by the school, approved by the department, preprinted with the school name. The report must include the month, year and daily activities of the student in each subject, (i.e., number of shampoos, haircuts, perms, colors, etc.) within each course (i.e., barbering, manicuring, cosmetology, esthetics, or instructor-trainee).

(3) "Completed and graduated" is the completion of the school curriculum and the state approved minimum hourly course of training.

(4) "Apprentice salon/shop" is a location certified by the Washington state apprenticeship and training committee, that provides training for individuals accepted into the apprenticeship program. Apprentice salon/shops shall not receive payment from the apprentice for training.

(5) "Apprentice trainer" is a person that is currently licensed and in good standing. This person provides training in a licensed shop approved for the apprenticeship program, who must have received journey level training and have held a license in the curriculum for which he or she is providing training for a minimum of three years.

(6) "Journey level training" is the completion of three years working as a licensed cosmetologist, barber, manicurist or esthetician.

(7) "Completion of the apprenticeship training" is the completion of the apprentice salon/shop curriculum that includes the state approved hourly course of training as described in WAC 308-20-080.

(8) "Monthly apprentice report" forms provided by the apprentice shop, approved by the department, printed with the shop name, for use in recording apprentice training hours and activities.

**AMENDATORY SECTION** (Amending WSR 04-05-005, filed 2/6/04, effective 3/8/04)

**WAC 308-20-040 Student records.** (1) Schools shall collect and record monthly and final student reports. These reports as described in WAC 308-20-010 shall contain the cumulative number of hours the student has attended class and the number of times the student performs an activity as described in WAC 308-20-080. The hours attended shall not be recorded in less than one-quarter hour increments. Each monthly report shall include the month and the year.

(2) Monthly and final student reports shall be signed by either the school owner, school manager or a person the school has authorized to sign the student reports.

(3) The school shall certify to the department that the student has satisfied the minimum instruction guidelines described in WAC 308-20-080 on the student's license examination application. Certification shall be by a person authorized to sign student reports according to subsection (2) of this section.

(4) Schools shall maintain student records on the school premises for at least three years. The student records shall include documentation of student training.

(5) The school shall notify the department of the persons authorized to sign student records.

(6) Weekly reports provided by salon/shops verifying hours student earns in salon training must be included in stu-

dent's records and recorded on student's monthly and final reports.

AMENDATORY SECTION (Amending WSR 03-14-046, filed 6/24/03, effective 7/25/03)

**WAC 308-20-107 Use and training of instructor-trainees.** (1) Instructor-trainees shall be supervised by a licensed instructor. The licensed instructor shall be physically present where the instructor-trainee is working and be available for consultation with the instructor-trainee.

(2) Instructor-trainees shall hold a current Washington state cosmetology, barber, manicurist or esthetician license in good standing prior to becoming an instructor-trainee.

AMENDATORY SECTION (Amending WSR 06-02-048, filed 12/29/05, effective 2/1/06)

**WAC 308-20-115 Reciprocity—Persons licensed in other jurisdictions.** The department shall issue a license to any person who is properly licensed in any state, territory, or possession of the United States, or foreign country if the applicant submits:

- (1) Application;
- (2) Fee;
- (3) Proof that he or she is currently licensed in good standing as a cosmetologist, barber, manicurist, esthetician, instructor, or the equivalent in that jurisdiction;
- (4) Provides proof that he or she has passed an examination approved by the director (~~(approved examinations with the minimum passing score approved by the director)~~).

AMENDATORY SECTION (Amending WSR 06-02-048, filed 12/29/05, effective 2/1/06)

**WAC 308-20-120 Written and performance examinations.** (1) The department shall administer or approve the administration of a written and performance license examination. The department may approve written or performance examinations given by department-approved examination providers.

(2) (~~The director adopts the National Interstate Council of State Boards of Cosmetology (NIC) examinations as the approved written and performance examinations required for applicants.~~

~~(3))~~ (3) The written and performance examinations for cosmetologist, barber, manicurist and esthetician shall reasonably measure the applicant's knowledge of safe and sanitary practice.

~~((4))~~ (4) The written and performance examinations for instructors shall be constructed to measure the applicant's knowledge of lesson planning and teaching techniques.

~~((5))~~ (5) In order to be eligible for licensure, a license applicant must pass both the written and performance examinations in the practice for which they are applying.

~~((6))~~ (6) The minimum passing score for both the written and performance examinations in all practices is a scaled score of 75.

AMENDATORY SECTION (Amending WSR 08-22-029, filed 10/28/08, effective 2/1/09)

**WAC 308-20-572 ((Preinspection)) Inspection of schools.** (1) Prior to approval of application or renewal for licensure, any person wishing to operate a school shall (~~(before opening a school)~~), meet the requirements in RCW 18.16.140; submit to (~~a preinspection~~) an inspection of the site; and provide the following:

- (a) Name of owner and current mailing and physical address if solely owned.
- (b) Names of partners and current mailing and physical addresses if a partnership.
- (c) Names of corporate officers and current mailing and physical addresses if a corporation.
- (d) Name of the school, complete mailing address, and physical address.
- (e) A signed fire inspection report from the local fire authority indicating all standards and requirements have been met.
- (f) Listing of all instructors including license number and expiration date.
- (g) Sample of monthly student reports.
- (h) Sample of student packet to be provided to student at enrollment that must contain, but is not limited to, a copy of the school's catalog, brochure, enrollment contract, and cancellation and refund policies.
- (i) Floor plan drawn to scale showing placement of all equipment; areas designated for the clinic, dispensary, classroom, office and restrooms; and identify student capacity.
- (2) All locations shall pass a preinspection by a department representative by meeting the following requirements:
  - (a) An entrance sign designating the name of the school.
  - (b) A time clock or other equipment necessary for verification of attendance and hours earned.
  - (c) An adequate supply of hot and cold running water shall be available for school operation.
  - (d) Textbooks/teaching materials - textbooks shall be provided for each student in attendance.
  - (e) Lavatories with hot and cold running water.
  - (f) When a salon and school are under the same ownership in the same building, separate operation of the salon and the school must be maintained. Common reception areas and restrooms will be allowed; however, the salon and school must have separate entrances and meet location requirements identified in chapter 18.16 RCW.
  - (g) Emergency evacuation plans posted for staff and students.
  - (h) There must be a sufficient number of tables/desks and chairs to accommodate the registered students.
  - (i) Department of licensing safety and sanitation guidelines posted in all dispensaries and classrooms.
  - (j) Supplemental training space must be located within two miles of the original facility of the licensed school. These facilities must bear the same name as the original licensed school and it is only approved for theory and/or practice rooms. No clinic services shall be provided in additional facilities.
  - (k) Schools must post a sign that contains the words "work done exclusively by students" or "all work performed



by students under supervision of a licensed instructor" in the reception or clinic area.

AMENDATORY SECTION (Amending WSR 03-14-046, filed 6/24/03, effective 7/25/03)

**WAC 308-20-575 School license renewal process.**

Each school shall be renewed on a yearly basis. In addition to the site inspection, the renewal request shall be accompanied by:

- (1) Certification of annual gross tuition and surety bond in an amount equal to ten percent of the annual gross tuition, but not less than ten thousand dollars or more than fifty thousand dollars.
- (2) Changes in curriculum, catalogs, brochures.
- (3) Current list of instructors on forms provided by the department.
- (4) Verification of current student/instructor ratio.
- (5) Licenses must be renewed on or before the expiration date. Failure to renew the license by the expiration date shall result in a penalty.
- (6) Failure to receive a notice of license renewal from the department does not constitute cause for failure to renew.

**WSR 10-03-107**

**PROPOSED RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed January 20, 2010, 11:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-14-016.

Title of Rule and Other Identifying Information: The department is amending WAC 388-832-0145 Who is eligible to receive respite care?, to revise eligibility for respite services for individuals participating in the individual and family services program as directed by the legislature.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on February 23, 2010, at 10:00 a.m.

Date of Intended Adoption: Not earlier than February 24, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on February 23, 2010.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by February 9, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsj14@dshs.wa.gov](mailto:johnsj14@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule is necessary to prevent clients or potential clients from being wrongly

found ineligible for services or benefits. This rule affects caregivers for clients of the division of developmental disabilities participating in the individual and family services program.

Reasons Supporting Proposal: The department was directed to implement SB 5547 by the legislature. The amendments to WAC 388-825-0145 were made effective July 26, 2009, for the reasons stated above.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.040, 71A.12.161.

Statute Being Implemented: SB 5547, chapter 312, Laws of 2009, PV 61st legislature, chapter 34.05 RCW.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Meredith Kelly, 640 Woodland Square Loop S.E., Olympia, WA 98504-5310, (360) 725-3524.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This amendment has no impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 35.05.328 [34.05.328] (5)(b) states the following types of rules do not require a cost-benefit analysis: (1) Emergency rules; (2) internal governmental rules; (3) rules adopting or incorporating, by references without material change, any of the following: Federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs unless they govern shorelines of state-wide significance or are referenced by state law or national consensus codes that establish generally accepted industry standards.

Under SB 5547, chapter 312, Laws of 2009, PV 61st legislature; chapter 34.05 RCW, the department was directed to implement, effective July 26, 2009, changes to eligibility for respite to individuals participating in the individual and family services program.

January 12, 2010

Don Goldsby, Manager

Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

**WAC 388-832-0145 Who is eligible to receive respite care?** You are eligible to receive respite care if you are approved for IFS program services and:

(1) You live in your family home and no one living with you is paid to be your caregiver(-);

(2) You (live) are an adult living in your family home with a ((paid caregiver who is your natural, step, or adoptive)) parent who provides personal care for you; or

(3) You are an adult living with a family member who has replaced your parent as your primary caregiver and who provides personal care to you.

WSR 10-03-108
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed January 20, 2010, 11:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-20-087.

Title of Rule and Other Identifying Information: The department plans to amend chapter 388-828 WAC, The DDD assessment, to include information governing the eligibility algorithm for children's intensive in-home behavioral support (CIIBS) program.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503

Date of Intended Adoption: Not earlier than February 24, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by February 9, 2010

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these rules is to amend chapter 388-828 WAC, The DDD assessment, to include information governing the algorithm the division of developmental disabilities (DDD) uses to determine if a person meets the eligibility requirements for the CIIBS waiver program.

Reasons Supporting Proposal: The need for these rules is [the] result of the 2008 supplemental budget, ESHB 2687, section (1)(i) directing the department to develop and implement a federal HCBS waiver to provide intensive behavior support services for up to one hundred children with developmental disabilities and their families.

CMS approved the waiver as of May 1, 2009. DDD filed emergency rules to allow for the receipt [of] federal funds for CIIBS while stakeholder work continued.

Statutory Authority for Adoption: RCW 71A.12.010 and 71A.12.30 [71A.12.030].

Statute Being Implemented: Title 71A RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Mark R. Eliason, 640 Woodland Square Loop S.E., Lacey, WA 98504, (360) 725-2517; Implementation: Christie Seligman, 640 Woodland Square Loop S.E., Lacey, WA 98504, (360) 725-3448; and Enforcement: Don Clintzman, 640 Woodland Square Loop S.E., Lacey, WA 98504, (360) 725-3426.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This is a brand new program with no existing providers. In conjunction with the implementation of this program, DDD will be developing a provider base.

A cost-benefit analysis is required under RCW 34.05.328. [No further information supplied by agency.]

January 15, 2010

Don Goldsby, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1620 How does DDD determine which panels are mandatory in your DDD assessment? DDD determines which panels are mandatory in your DDD assessment by assigning you to a client group using the following table:

Table with 2 columns: 'If you are approved by DDD to receive:' and 'Your client group is:'. It lists 11 categories of services and maps them to 'Waiver and State-Only Residential' or 'Other Medicaid Paid Services'.

If you are approved by DDD to receive:	Your client group is:
(12) County employment services per chapter 388-850 WAC. (13) Other DDD paid services per chapter 388-825 WAC, such as: (a) Family support services; or (b) Professional services. (14) Nonwaiver voluntary placement program services per chapter 388-826 WAC; (15) SSP only per chapter 388-827 WAC;	State-Only Paid Services
(16) You are not approved to receive any DDD paid services.	No Paid Services

NEW SECTION

**WAC 388-828-8500 What is the children's intensive in-home behavioral support (CIIBS) program algorithm?** The children's intensive in-home behavioral support (CIIBS) program algorithm is a formula in the DDD assessment that calculates your out-of-home placement risk score to determine your eligibility for the CIIBS waiver per chapter 388-845 WAC.

NEW SECTION

**WAC 388-828-8505 When does the DDD assessment run the CIIBS algorithm to determine your eligibility for the CIIBS waiver?** The DDD assessment runs the CIIBS algorithm to determine your eligibility for the CIIBS waiver when your support assessment is moved to current and:

- (1) You are the assessed age of eight or older and under age eighteen;
- (2) Your behavior acuity level is high per WAC 388-828-5640;
- (3) Your caregiver's risk score is medium, high or immediate per WAC 388-828-5300;
- (4) Your ICF/MR score is eligible per WAC 388-828-4400; and
- (5) You are not enrolled in the CIIBS waiver.

NEW SECTION

**WAC 388-828-8510 What elements does the CIIBS algorithm use to calculate your out-of-home placement risk score?** The CIIBS algorithm uses the following elements to determine your out-of-home placement risk score:

- (1) The DDD protective supervision acuity scale (WAC 388-828-5000 to 388-828-5100);
- (2) The DDD caregiver status acuity scale (WAC 388-828-5120 to 388-828-5360);
- (3) The DDD behavioral acuity scale (WAC 388-828-5500 to 388-828-5640);
- (4) The DDD activities of daily living (ADL) acuity scale (WAC 388-828-5380 to 388-828-5480);
- (5) The DDD mobility acuity scale (WAC 388-828-5380 to 388-828-5480); and
- (6) Eligible condition of "autism" as indicated in the DDD determination (WAC 388-823-0500).

NEW SECTION

**WAC 388-828-8515 How does DDD determine your CIIBS out-of-home placement risk score?** Your CIIBS out-of-home placement risk score is calculated using the following table:

Section and WAC reference	If you meet the following criteria:	Then adjust your score by:	Score if you meet criteria
	Clients meeting eligibility criteria in WAC 388-828-8505.		<b>Beginning Score = 0</b>
DDD Determination WAC 388-823-0500	Eligible condition of autism in the DDD determination.	Adding 40 points	=
ADL Acuity Level WAC 388-828-5480	Your ADL support needs level = high, medium or low	Subtracting 54 points	=
Behavior Acuity Scale WAC 388-828-5500 through 388-828-5640	Your most prominent behavior = assault/injury and Severity of your most prominent behavior = "potentially dangerous" or "life threatening"	Adding 14 points	=
Protective Supervision Acuity Scale WAC 388-828-5060	Your answer to the following question: "What level of monitoring does the client typically require during awake hours?" = "Line of sight/earshot"	Adding 13 points	=
DDD Caregiver Status Acuity WAC 388-828-5300	Your caregiver risk level = high or immediate	Adding 136 points	=

Section and WAC reference	If you meet the following criteria:	Then adjust your score by:	Score if you meet criteria
Backup Caregiver Status WAC 388-828-5320	Your answer to the following question: "Under what conditions are other caregiver(s) available?" = "No other caregiver available"	Adding 33 points	=
Mobility Acuity Scale WAC 388-828-5900	Your mobility acuity level = high, medium or low	Subtracting 15 points	=
		Sum of all of scores above is your CIIBS out-of-home placement risk score	=

**NEW SECTION**

**WAC 388-828-8520 How does DDD determine if I am eligible for the CIIBS waiver?** DDD uses the following table to determine if you are eligible for the CIIBS waiver based on your CIIBS out-of-home placement risk score per WAC 388-828-8510:

If your CIIBS out-of-home placement risk score is:	Then your CIIBS eligibility is:
96 or greater	Yes - Severe
17 through 95	Yes - High
Less than 17	No - (not eligible)