

**WSR 10-02-021**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed December 29, 2009, 12:56 p.m., effective January 29, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of amending these rules is to consider making editorial and clarifying changes, and to make it consistent with current laws and standards. Remove incorrect statutory authority reference 42 C.F.R. 489.52 in the footnote in all sections of chapter 388-97 WAC. The anticipated effects are to make the rule clearer, easier to read, understand and apply.

The department is proposing new sections WAC 388-97-0725 Notice to others of preliminary findings, 388-97-4166 Liability insurance required, 388-97-4167 Liability insurance required—Commercial general liability insurance or businesses liability insurance coverage, 388-97-4168 Liability insurance required—Professional liability insurance coverage, 388-97-4425 Notice—Service complete, and 388-97-4430 Notice—Proof of service.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-97-1420 and 388-97-3820; and amending WAC 388-97-0001, 388-97-0100, 388-97-0280, 388-97-0580, 388-97-0720, 388-97-1400, 388-97-1440, 388-97-1460, 388-97-1480, 388-97-1500, 388-97-1520, 388-97-1540, 388-97-1560, 388-97-1580, 388-97-1600, 388-97-1800, 388-97-1820, 388-97-1900, 388-97-2060, 388-97-2280, 388-97-4200, 388-97-4220, 388-97-4320, 388-97-4340, and 388-97-4440.

Statutory Authority for Adoption: Chapters 18.51 and 74.42 RCW.

Adopted under notice filed as WSR 09-20-062 on October 2, 2009.

Changes Other than Editing from Proposed to Adopted Version: Changes are shown with new language underlined and deleted text lined through.

**WAC 388-97-0001 Definitions.**

"Nursing facility (NF)" or "medicaid-certified nursing facility" means a nursing home, or any portion of a long-term care wing or unit of a hospital, veterans' home, or residential habilitation center, that ~~has been~~ is certified to provide nursing services to medicaid recipients under Section 1919(a) of the federal Social Security Act.

**WAC 388-97-1440 Tuberculosis—No ~~skin~~ testing.**

The nursing home is not required to have a person tested for tuberculosis if the person has:

- (1) A documented history of a previous positive skin test; ~~results with ten or more millimeters induration;~~
- (2) A documented history of a previous positive blood test; or
- (3) Documented evidence of:
  - (a) Adequate therapy for active disease; or
  - (b) Completion of treatment for latent tuberculosis infection preventive therapy.

**WAC 388-97-1460 Tuberculosis—One ~~step~~ testing.**

The nursing home is only required to have a person take ~~a one step skin or blood~~ test if the person has any of the following:

- (1) A documented history of a negative result from ~~a~~ previous two step ~~testing~~ done no more than one to three weeks apart; or
- (2) A documented negative result from one ~~step~~ skin or blood ~~testing~~ in the previous twelve months.

**WAC 388-97-1480 Tuberculosis—Two step skin testing.**

Unless the person meets the requirement for having no skin testing or only ~~a one step skin~~ test, the nursing home, choosing to do skin testing, must ensure that each person has the following two-step skin testing:

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

**WAC 388-97-1800 Criminal history disclosure and background inquiries.**

(1) As used in this section, the term "nursing home" includes a nursing facility and a skilled nursing facility.

- (2) The nursing home must:
  - (a) Have a valid criminal history background check for any individual employed, directly or by contract, or any individual accepted as a volunteer or student who may have unsupervised access to any resident; and
  - (b) Repeat the check every two years.
  - (3) A nursing home licensed under chapter 18.51 RCW must make a background inquiry request to one of the following:
    - (a) The Washington state patrol;
    - (b) The department;
    - (c) The most recent employer licensed under chapters 18.51, 18.20, and 70.128 RCW provided termination of that employment was within twelve months of the current employment application and provided the inquiry was completed by the department or the Washington state patrol within the two years of the current date of application; or
    - (d) A nurse pool agency licensed under chapter 18.52C RCW, or hereafter renamed, provided the background inquiry was completed by the Washington state patrol within two years before the current date of employment in the nursing home.

(4) A nursing home may not rely on a criminal background inquiry from a former employer, including a nursing pool, if the nursing home knows or has reason to know that the individual applying for the job has, or may have, a disqualifying conviction or finding.

- (5) Nursing homes must:
  - (a) Request a background inquiry of any individual employed, directly or by agreement or contract, or accepted as a volunteer or student; and
  - (b) Notify appropriate licensing or certification agency of any individual resigning or terminated as a result of a criminal conviction or a civil adjudication proceeding; as defined in RCW 43.43.830.

(6) Before a nursing home employs any individual, directly or by contract, or accepts any individual as a volunteer or student, a nursing home must:

(a) Inform the individual that the nursing home must make a background inquiry and require the individual to sign a disclosure statement, under penalty or perjury and in accordance with RCW 43.43.834;

(b) Inform the individual that he or she may request a copy of the results of the completed background inquiry described in this section; and

(c) Require the individual to sign a statement authorizing the nursing home, the department, and the Washington state patrol to make a background inquiry; and

(d) Verbally inform the individual of the background inquiry results within seventy-two hours of receipt.

(7) The nursing home must establish procedures ensuring that:

(a) The individual is verbally informed of the background inquiry results within seventy-two hours of receipt;

(b) All disclosure statements and background inquiry responses and all copies are maintained in a confidential and secure manner;

(c) Disclosure statements and background inquiry responses are used for employment purposes only;

(d) Disclosure statements and background inquiry responses are not disclosed to any individual except:

(i) The individual about whom the nursing home made the disclosure or background inquiry;

(ii) Authorized state employees including the department's licensure and certification staff, resident protection program staff and background inquiry unit staff;

(iii) Authorized federal employees including those from the Department of Health and Human Services, Centers for Medicare and Medicaid Services;

(iv) The Washington state patrol auditor; and

(v) Potential employers licensed under chapters 18.51, 18.20, and 70.128 RCW who are making a request as provided for under subsection (1) of this section.

(e) A record of findings be retained by the nursing home for twelve months beyond the date of employment termination.

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

**WAC 388-97-1820 Disqualification from nursing home employment.** (1) The nursing home must not employ directly or by contract, or accept as a volunteer or student, any individual:

(a) Who has been found to have abused, neglected, exploited or abandoned a minor or vulnerable adult by a court of law, by a disciplining authority, including the state department of health; ~~or by the department's resident protection program.~~

(b) ~~Against whom~~ With a finding of abuse or neglect, exploitation, misappropriation of property or abandonment has been entered on any department or state registry of a child that is:

(i) Listed on the department's background check central unit (BCCU) report; or

(ii) Disclosed by the individual, except for findings made before December, 1998; or

(c) ~~Who~~ With a finding of ~~as been subject to an order of protection under 74.34 RCW for abandonment, abuse, neglect, or financial exploitation of a vulnerable adult, or misappropriation of resident property; that is:~~

(i) Listed on any registry, including the department registry;

(ii) Listed on the department's background check central unit (BCCU) report; or

(iii) Disclosed by the individual, except for Adult Protective Services findings made before October, 2003.

(2) Except as provided in this section, the nursing home must not employ directly or by contract, or accept as a volunteer or student, any individual who may have unsupervised access to residents if the individual:

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

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

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

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

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

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

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

(c) Has been convicted of:

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

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

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

or

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

(d) ~~Has been convicted of~~ Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct.

(e) Has been convicted of criminal mistreatment.

(f) ~~Has been convicted in another state of a crime that is equivalent to a crime listed in subsection (2)(a) through (d) of this section.~~

(3) The term "**vulnerable adult**" is defined in RCW 74.34.020; the term "**unsupervised access**" is defined in RCW 43.43.830.

(4) In addition to chapters 18.51 and 74.42 RCW, these rules are authorized by RCW 43.20A.710, 43.43.830 through 43.43.842 and 74.39A.050(8).

**WAC 388-97-1900 Dialysis services provided in nursing home.** (1) The nursing home must ensure that appropriate care, treatment, and services are provided to each nursing home resident who receives dialysis in the nursing home.

(2) For the purposes of this section the following definitions apply:

(a) "Dialysis" means the process of separating crystalloids and colloids in solution by means of the crystalloids and colloids unequal diffusion through a natural or artificial semi-permeable membrane. This includes both peritoneal and hemodialysis.

(b) A "**kidney center**" means a facility as defined and certified by the federal government to provide end stage renal (ESRD) services.

~~(2)~~ (3) The nursing home must not administer dialysis for a resident with acute renal failure in the nursing home.

~~(3)~~ (4) A nursing home may only administer maintenance dialysis in the nursing home after:

(a) ~~After~~ Other options have been analyzed and rejected, based on the resident's best interest; and

(b) ~~Following a joint~~ A decision is made jointly by a team of individuals representing including representatives of the kidney center and the nursing home, the resident, and the resident's nephrologist. A "**kidney center**" means a facility as defined and certified by the federal government to provide end stage renal (ESRD) services.

~~(4)~~ (5) The nursing home must ensure that a current written agreement is in effect with each kidney center responsible for the management and care of each nursing home resident undergoing dialysis. The agreement must include all aspects of how the resident's care is to be managed including:

(a) Medical and nonmedical emergencies;

(b) Development and implementation of the resident's care plan related to dialysis issues;

(c) Interchange of information useful/necessary for the care of the resident; and

(d) The responsibility for waste handling, sterilization, and disinfection of equipment for dialysis done in the nursing home.

(6) The nursing home must ensure implementation of policies and procedures developed with the kidney center that:

(a) Meet current standards of practice;

(b) Addresses both dialysis provided by or in the nursing home as well as dialysis provided by the kidney center; and

(c) Addresses all of the nursing home responsibilities related to a resident on dialysis.

~~(6))~~ Only a registered nurse from the kidney center or a dialysis helper may administer dialysis in the nursing home.

(a) A dialysis helper may be a registered nurse; ~~(and)~~ or

(b) ~~(When)~~ If a dialysis helper is not a registered nurse, the nursing home must have a registered nurse who has completed an in-service class approved by the kidney center, on the premises during dialysis.

~~(7))~~ (5) A physician, designated or approved by ~~(the)~~ a kidney center, must be on call at all times dialysis is being administered in the nursing home.

~~(8))~~ (6) The resident's attending physician and the kidney center must provide, or direct and supervise, the continuing medical management and surveillance of the care of each nursing home resident receiving dialysis.

~~(9))~~ (7) The nursing home must:

(a) ~~Ensure the kidney center develops a dialysis treatment plan; (and)~~

(b) ~~Coordinate and update changes to the dialysis treatment plan with the kidney center; and~~

(c) ~~Incorporate this treatment plan into the resident's comprehensive plan of care and include specific medical orders for medications, treatment, and diet.~~

~~(10))~~ (8) The dialysis room in the nursing home must be in compliance with federal standards established for ESRD facilities. This includes:

(a) ~~Storage space available for equipment and supplies;~~

(b) ~~A telephone at the bedside of each dialysis resident; and~~

(c) ~~A mechanical means of summoning additional staff to the dialysis area in the event of a dialysis emergency~~

#### NEW SECTION

**WAC 388-97-1910 Dialysis services provided outside of nursing home.** (1) If dialysis services are provided outside the nursing home, the nursing home must coordinate with the kidney center to ensure the resident's comprehensive plan of care is monitored and changed as needed.

(2) The nursing home must ensure that a current written agreement is in effect with the kidney center responsible for the management and care of each nursing home resident undergoing dialysis.

(3) The nursing home must ensure that the agreement:

(a) Delineates the nursing home's functions, responsibilities and services and that the kidney center must assist the nursing home in ensuring appropriate care, treatment, and services related to dialysis;

(b) Delineates the functions, responsibilities, and services of the kidney center including but not limited to:

(i) The provision of clinical and chemical laboratory services;

(ii) The services of a qualified dietitian;

(iii) Social services;

(i) Preventative maintenance and emergency servicing of dialysis and water purification equipment;

(ii) The certification and continuing education of dialysis helpers and periodic review and updating of dialysis helpers' competencies;

(vii) An in-hospital dialysis program for the care and treatment of a dialysis resident with a complication or acute condition necessitating hospital care; and

(viii) A continuing in-service education program for nursing home staff working with a dialysis resident.

(iii) A program for periodic, on-site review of the nursing home's dialysis rooms;

(iv) Selection, procurement, and installation of dialysis equipment;

(v) Selection and procurement of dialysis supplies;

(vi) Proper storage of dialysis supplies; and

~~(vii) Specification, procurement, and installation of the purification process for treatment of water used as a diluent in the dialyzing fluid.~~

~~(e) Provides that if a problem occurs, the kidney center must contact and inform the nursing home medical director.~~

#### NEW SECTION

~~**WAC 388-97-4165 Application—Liability insurance required.** (1) The applicant must submit insurer executed evidence of liability insurance coverage with the application.~~

~~(2) The coverage and evidence of coverage must comply with the requirements of WAC 388-97-4167 and 388-97-4168.~~

#### NEW SECTION

**WAC 388-97-4166 Liability insurance required—Ongoing.** The nursing home must:

(1) Obtain liability insurance upon licensure and maintain the insurance as required in WAC 388-97-4167 and 388-97-4168; and

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

**WAC 388-97-4200 Department review of initial nursing home license applications.** (1) All initial nursing home license applications must be reviewed by the department under this chapter.

(2) The department will not begin review of an incomplete license application.

(3) The proposed licensee must respond to any department request for additional information within five working days.

(4) When the application is determined to be complete, the department will consider the proposed licensee or any partner, officer, director, managerial employee, or owner of five percent or more of the proposed licensee, separately and jointly, in its review. The department will review:

(a) The information contained in the application;

(b) Survey and complaint investigation citations in every facility each individual and entity named in the application has been affiliated with during the past ten years;

(c) Compliance history;

(d) Financial assessments;

(e) Actions against the proposed licensee (i.e., revocation, suspension, refusal to renew, etc.);

(f) All criminal convictions, and relevant civil or administrative actions or findings including, but not limited to, findings, including professional disciplinary actions, and findings of abuse, neglect, exploitation, abandonment, or domestic violence resulting from a civil adjudication proceeding, as defined in RCW 43.43.830; and

(g) Other relevant information.

(5) The department will notify the proposed licensee of the results of the review.

**WAC 388-97-4220 Reasons for denial, suspension, modification, revocation of, or refusal to renew a nursing home license.** (1) The department may deny, suspend, modify, revoke, or refuse to renew a nursing home license when the department finds the proposed or current licensee, or any

partner, officer, director, managing employee, owner of five percent or more of the proposed or current licensee of the nursing home, owner of five percent or more of the assets of the nursing home, proposed or current administrator, or employee or individual providing nursing home care or services has:

(a) Failed or refused to comply with the:

(i) Requirements established by chapters 18.51, 74.42, or 74.46 RCW and regulations adopted under these chapters; or

(ii) Medicaid requirements of Title XIX of the Social Security Act and medicaid regulations, including 42 CFR, Part 483.

(b) A history of significant noncompliance with federal or state regulations in providing nursing home care;

(c) No credit history or a poor credit history;

(d) Engaged in the illegal use of drugs or the excessive use of alcohol or been convicted of "crimes relating to drugs" as defined in RCW 43.43.830 which are not listed in subsection (3)(c);

(e) Unlawfully operated a nursing home, or long term care facility as defined in RCW 70.129.010, without a license or under a revoked or suspended license;

(f) Previously held a license to operate a hospital or any facility for the care of children or vulnerable adults, and that license has been revoked, or suspended, or the licensee did not seek renewal of the license following written notification of the licensing agency's initiation of revocation or suspension of the license;

(g) Obtained or attempted to obtain a license by fraudulent means or misrepresentation;

(h) Permitted, aided, or abetted the commission of any illegal act on the nursing home premises;

(i) Been convicted of a felony or other crime that would not be automatically disqualifying under RCW 74.39A.-050(8) or this chapter, if the conviction reasonably relates to the competency of the individual to own or operate a nursing home;

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

(k) Failed to:

(i) Provide any authorization, documentation, or information the department requires in order to verify information contained in the application;

(ii) Meet financial obligations as the obligations fall due in the normal course of business;

(iii) Verify additional information the department determines relevant to the application;

(iv) Report abandonment, abuse, neglect or financial exploitation in violation of chapter 74.34 RCW; or in the case of a skilled nursing facility or nursing facilities, failure to report as required by 42 C.F.R. 483.13; or

(v) Pay a civil fine the department assesses under this chapter within ten days after assessment becomes final.

(l) Been certified pursuant to RCW 74.20A.320 as a person who is not in compliance with a child support order (license suspension only);

(m) Knowingly or with reason to know makes a false statement of a material fact in the application for a license or

license renewal, in attached data, or in matters under department investigation;

(n) Refused to allow department representatives or agents to inspect required books, records, and files or portions of the nursing home premises;

(o) Willfully prevented, interfered with, or attempted to impede the work of authorized department representatives in the:

(i) Lawful enforcement of provisions under this chapter or chapters 18.51 or 74.42 RCW; or

(ii) Preservation of evidence of violations of provisions under this chapter or chapters 18.51 or 74.42 RCW.

(p) Retaliated against a resident or employee initiating or participating in proceedings specified under RCW 18.51.220; or

(q) Discriminated against medicaid recipients as prohibited under RCW 74.42.055.

(2) In determining whether there is a history of significant noncompliance with federal or state regulations under subsection (1)(b), the department may, at a minimum, consider:

(a) Whether the violation resulted in a significant harm or a serious and immediate threat to the health, safety, or welfare of any resident;

(b) Whether the proposed or current licensee promptly investigated the circumstances surrounding any violation and took steps to correct and prevent a recurrence of a violation;

(c) The history of surveys and complaint investigation findings and any resulting enforcement actions;

(d) Repeated failure to comply with regulations;

(e) Inability to attain compliance with cited deficiencies within a reasonable period of time; and

(f) The number of violations relative to the number of facilities the proposed or current licensee, or any partner, officer, director, managing employee, employee or individual providing nursing home care or services has been affiliated within the past ten years, or owner of five percent or more of the proposed or current licensee or of the assets of the nursing home.

(3) The department must deny, suspend, revoke, or refuse to renew a proposed or current licensee's nursing home license if the proposed or current licensee or any partner, officer, director, managing employee, owner of five percent or more of the proposed or current licensee of the nursing home or owner of five percent or more of the assets of the nursing home, proposed or current administrator, or employee or individual providing nursing home care or services has been:

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

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

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

(b) Convicted of a "crime relating to financial exploitation" as defined under RCW 43.43.830(;) unless the individual has been convicted of one of the three crimes listed below and the required number of years has passed between the most recent conviction and the date of the application for employment:

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

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

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

(c) ~~Has been e~~Convicted of:

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

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

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

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

(d) ~~Has been e~~Convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;

(e) Convicted of criminal mistreatment;

(f) Found by a court in a criminal proceeding or a protection proceeding under chapter 74.34 RCW, or any comparable state or federal law, to have abandoned, abused, neglected or financially exploited a vulnerable adult;

(g) Found in any final decision issued by a disciplinary board to have sexually or physically abused or exploited any minor or an individual with a developmental disability or to have abused, neglected, abandoned, or financially exploited any vulnerable adult;

(h) Found in any dependency action to have sexually assaulted or exploited any minor or to have physically abused any minor;

(i) Found by a court in a domestic relations proceeding under Title 26 RCW, or any comparable state or federal law, to have sexually abused or exploited any minor or to have physically abused any minor; or

(j) Found to have abused or neglected a child, and the finding is: (i) Listed on the department's background check central unit (BCCU) report; or (ii) Disclosed by the individual, except for findings made before December, 1998; or

(k) Found to have abandoned, abused, neglected, or financially exploited a vulnerable adult, and the finding is:

(i) Listed on any registry, including the department registry;

(ii) Listed on the department's background check central unit (BCCU) report; or

(iii) Disclosed by the individual, except for Adult Protective Services findings made before October, 2003.

~~Found to have abused, neglected, abandoned or financially exploited or mistreated residents or misappropriated their property, and that finding has been entered on any department's registry or list.~~

The changes were made because of comments received and to make the requirements clearer.

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
Definition of nursing facility needs to be clear to include any portion and veteran's home or residential habilitation center.	A change was made in response to this comment to clarify the definition of nursing facility.
WAC 388-97-1440 There may be situations where less than 10 mm may be considered a positive reading.  WAC 388-97-1460 and 388-97-1480 Use of word step to describe one step test is confusing.	A change was made in response to this comment to return to current rule language. This will allow for other positive readings as determined by the health care professional.  A change was made in response to this comment to take out the word step when referring to one skin test and clarifying that one test could be skin or blood test.
WAC 388-97-1800 and 388-97-4200 Statutory reference to definition of civil adjudication proceeding is not needed.	A change was made in response to this comment by deleting the statutory reference since it will be defined in this WAC chapter.
WAC 388-97-1820 and 388-97-4220 Needs clarification on when the finding is disqualifying and what is meant by department or state registry.	A change was made in response to this comment by clarifying that the finding is disqualifying when listed on the registry, background check report or when disclosed by the individual. Added dates of when the findings were issued to allow for when due process was implemented. Included "convicted of criminal mistreatment" as a disqualifying crime since it is already on the Secretary's List of Crimes and Negative Actions.
WAC 388-97-1900 Unclear whether rule applies to peritoneal dialysis or hemodialysis or both. Same requirements may not be appropriate for both.	A change was made in response to these comments. The WAC was simplified and clarified to be consistent with the federal regulations and guidelines.

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
Suggest inclusion language of a current written agreement in effect which delineates the function, responsibilities, and services of both the kidney center and the NH.  (4) Does not correctly describe the role of the kidney center for peritoneal dialysis. (Which is training of NH personnel. Kidney centers do not provide RNs for dialysis for peritoneal dialysis).  (6) Reflect current practice: Delete supervision since the physician and the kidney center does not supervise the NH employee. Delete the word provide as it relates to peritoneal dialysis. Replace word surveillance with oversight.	
WAC 388-97-1910 Assume this rule only applies to hemodialysis. Parts of subsection (3) need be deleted since not applicable for dialysis provided in kidney center and portions of former subsection (5) in WAC 388-97-1900 should be reviewed to see if it needs to be restored to WAC 388-97-1900.	A change was made in response to these comments. This section has been deleted and requirements were clarified in WAC 388-97-1900.
WAC 388-97-4165 and 388-97-4166 It may be a long time before an applicant receives license and the applicant may not have enough information to get the liability insurance ahead of time.	A change was made in response to this comment by deleting the new section requiring the applicant to have liability insurance coverage at the time of application and instead, clarifying that the nursing home must obtain it upon licensure.

A final cost-benefit analysis is available by contacting Lisa N.H. Yanagida, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2589, fax (360) 438-7903, e-mail yanagln2@dshs.wa.gov.

**SUMMARY OF PROPOSED RULES:** The department of social and health services' residential care services (RCS) is proposing amendments to chapter 388-97 WAC, Nursing homes.

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

The highlights of the changes are:

- Editorial and housekeeping changes in the following sections: Definitions, utilization, call systems, new construction, notice and appeal rights, advance directives.
- To be consistent with chapter 521, Laws of 2009, E2SSB 5688 clarified that domestic partners could share a room.
- Clarified tuberculosis requirements to be consistent with current standards.
- Clarified when notice is considered complete and proof of notice.
- Aligned disqualifying crime rules with the department's disqualifying crime lists to make home and community services and RCS lists consistent.
- Clarified and simplified dialysis services requirements to more closely follow federal guidance.
- Added liability insurance requirement to rule.
- Clarified that nursing home may not need to relinquish license and cease operations if residents are relocated due to natural disasters.
- Clarified that new construction must comply with rules in effect at the time of plan approval except in cases where resident health and safety may be jeopardized.

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

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

RCS analyzed these proposed rules and concludes that the new requirements of liability insurance may impose a new cost to the nursing home that does not have an existing contract with DSHS and does not already have liability insurance (approximately three percent [of] licensed nursing homes do not have contracts and may be without liability insurance). The cost of liability insurance ranges in price depending on many variables such as the number of claims the nursing home has made in the past, the number of occurrences, and the length of time the administrator and director of nursing have been working. The estimated average cost for nursing home liability insurance is approximately \$300 a bed.

Most nursing homes already are required to have liability insurance, and RCS understands that nursing homes can deduct the cost of liability insurance when taxes are filed with the Internal Revenue Service, which would mitigate the impact of the cost. RCS does not believe that the proposed rules will result in any job losses or gains for nursing homes. The proposed rule amendments do not disproportionately impact small businesses more than larger businesses.

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

**COSTS:**

- The liability insurance requirement for all nursing homes may impose additional costs to the small number of nursing homes who may not have liability insurance.
- DSHS has shared the draft language with interested parties who participated in a stakeholder meeting to discuss the proposed rule changes. At the meeting, liability insurance was brought up by a stakeholder as a potential cost.
- In addition, the draft language was posted on the aging and disability services administration internet web site for anyone in the public to review and comment.
- DSHS used the input from internal and external stakeholders to determine cost impacts for the drafting of the rule.
- To date, the department has received and considered all written comments on the draft language and one comment on the cost impact for the proposed liability insurance requirement.

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

- o Reducing unnecessary confusion, citations, hearings and appeals;
- o Reducing time and legal costs of appealing unclear rules;
- o Reducing amount of technical support requests and dear provider letters mailed to providers for clarification of rule issues which reduces the amount of time providers need to keep current with requirements.

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

- The liability insurance requirement will provide a consistent standard among all licensed nursing homes in Washington.
- The liability insurance requirement will provide all residents with another level of consumer protection.
- The liability insurance requirement can help nursing homes defend themselves and pay awarded damages without threatening their financial stability.
- The amendments are clearer, and easier to read, understand and apply; and

- Residents will ultimately benefit from the rule revision because providers will be able to better understand and follow the requirements.

**CONCLUSION:** RCS concludes that the benefits of the proposed amendments exceed any possible cost.

These rules continue to implement state laws and regulations related to nursing homes. RCS has complied with the appropriate sections of the Administrative Procedure Act and is prepared to proceed with the rule filing.

Please contact Lisa N.H. Yanagida by e-mail at yanagln2@dshs.wa.gov or by phone at (360) 725-2589 if you have questions.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 6, Amended 25, Repealed 2.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 6, Amended 25, Repealed 2.

Date Adopted: December 29, 2009.

Susan N. Dreyfus  
Secretary

**AMENDATORY SECTION** (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

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

**"Abuse"** means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

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

(2) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prod-

ding, or restraints including chemical restraints, unless the restraint is consistent with licensing requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

**"Civil adjudication proceeding"** means judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44, or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**"Drug"** means a substance:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**"NFPA"** means National Fire Protection Association, Inc.

**"Neglect":**

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

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

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

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

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

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

**"Nursing facility (NF)"** or **"medicaid-certified nursing facility"** means a nursing home, or any portion of a hospital, veterans' home, or residential habilitation center, that ~~((has been))~~ is certified to provide nursing services to medic-aid recipients under Section 1919(a) of the federal Social Security Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Reasonable accommodations are not required if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**"Termination"** means an action taken by:

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

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

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

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

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

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

**"Vulnerable adult"** includes a person:

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

(2) Found incapacitated under chapter 11.88 RCW; or

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

(4) Admitted to any facility, including any boarding home; or

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

(6) Receiving services from an individual provider; or

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

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

**AMENDATORY SECTION** (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

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

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

(i) An accurate, comprehensive assessment process; and

(ii) Documentation by the resident's physician.

(b) The nursing facility (~~((must not make this determination for residents the department))~~) is not responsible to assess under WAC 388-97-1960, PASSR level II screening assessment.

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

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

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

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

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

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

(i) The nursing facility is making a good faith effort to relocate the resident; and

(ii) A location appropriate to the resident's medical and other needs is not available.

(4) Department designees may review any assessment or determination made by a nursing facility of a resident's need for nursing facility care.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

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

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

(3) The nursing home must:

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

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

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

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

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

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

(i) At the resident's request;

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

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

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

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

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

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

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

(i) If the resident chooses to remain in the nursing home, develop with the resident a plan in accordance with chapter 70.122 RCW to implement the resident's wishes. The nursing home may need to actively participate in ensuring the execu-

tion of the plan, including moving the resident at the time of implementation to a care setting that will implement the resident's wishes. Attach the plan to the resident's directive in the resident's clinical record; or

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

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

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

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

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

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

(a) Share a room with his or her spouse (~~(when married residents)~~) or state registered domestic partners when both residents live in the same facility and both ((spouses)) consent to the arrangement and the room complies with the requirements for two occupants; and

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

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

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

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

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

**WAC 388-97-0720 ((Notification)) Notice to individual of preliminary findings.** (1) ~~((Within ten working days of making a preliminary finding,))~~ The department will ~~((send))~~ serve notice of the preliminary finding ~~((:~~

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

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

~~((c) To the appropriate licensing agency))~~ as provided in WAC 388-97-4425.

~~((2) ((The notice will include the following information:~~

~~((a) A description of the allegation;~~

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

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

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

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

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

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

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

~~(c) Law enforcement; and~~

~~(d) Other entities as authorized by law and this chapter including investigative authorities consistent with chapter 74.34 RCW)) The department may establish proof of service as provided in WAC 388-97-4430.~~

#### NEW SECTION

**WAC 388-97-0725 Notice to others of preliminary findings.** Consistent with confidentiality requirements concerning the resident, witnesses, and the reporter, the department may provide notification of a preliminary finding to:

(1) Other divisions within the department;

(2) The agency, program or employer where the incident occurred;

(3) The employer or program that is currently associated with the individual;

(4) Law enforcement;

(5) Other entities as authorized by law including chapter 74.34 RCW and this chapter; and

(6) The appropriate licensing agency.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

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

(1) Intradermal (Mantoux) administration ~~((of))~~ with test results read:

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

(b) By a trained professional; or

(2) ((QuantIFERON TB Gold Blood Test)) A blood test for tuberculosis called interferon-gamma release assay (IGRA).

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

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

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

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

(3) Documented evidence of:

(a) Adequate therapy for active disease; or

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

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

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

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

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

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

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

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

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

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

**WAC 388-97-1500 Tuberculosis—Positive ~~((reaction))~~ test result.** When there is a positive ~~((reaction))~~ result to tuberculosis skin or blood testing the nursing home must:

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

(2) Evaluate each resident or ~~((employee,))~~ person with a positive test result ~~((;))~~ for signs and symptoms of tuberculosis; and

(3) Follow the ~~((direction))~~ recommendation of the ~~((local health department if it requires additional tuberculin testing of residents or personnel for contact investigation))~~ person's health care provider.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

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

(1) After exposure to active tuberculosis;

(2) When tuberculosis symptoms are present; or

(3) For periodic testing as determined by ~~((a))~~ the health ((official)) provider.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

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

~~(1) The signed statement includes the reason for declining; and~~

~~(2) Additional evidence is provided to support the reason)) must ensure that a person take the blood test for tuberculosis if they decline the skin test.~~

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

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

~~(1) ((Notify the local public health officer so that appropriate contact investigation can be performed;~~

~~(2)) Report any person with tuberculosis symptoms or a positive chest Xray to the appropriate health care provider or public health provider;~~

~~(2) Follow the infection control and safety measures ordered by the person's health care provider, including a public health provider;~~

~~(3) Institute appropriate measures for the control of the transmission of droplet nuclei;~~

~~((3)) (4) Apply living or work restrictions where residents or personnel are, or may be, infectious and pose a risk to other residents and personnel; and~~

~~((4)) (5) Ensure that personnel caring for a resident with suspected tuberculosis comply with the WISHA standard for respiratory protection found in chapter 296-842 WAC.~~

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

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

(1) Keep ~~((any))~~ the records ((such as)) of tuberculin test results, reports of X-ray findings, and any physician or public health ((official)) provider orders ((and the person's statement declining the test)) in the nursing home;

(2) Make the records readily available to the appropriate health authority and licensing agency;

(3) Retain ((employee tuberculin testing results)) the records for ((the duration of employment)) eighteen months beyond the date of employment termination; and

~~((3))~~ (4) Provide the ~~((employee))~~ person a copy of his/her test~~(ing)~~ results.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

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

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

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

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

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

(a) Provide a private or semiprivate isolation room:

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

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

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

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

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

(d) Have measures in place for the decontamination of equipment and other items used by the resident.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

**WAC 388-97-1800 Criminal history disclosure and background inquiries.** (1) As used in this section, the term "nursing home" includes a nursing facility and a skilled nursing facility.

(2) The nursing home must:

(a) Have a valid criminal history background check for any individual employed, directly or by contract, or any individual accepted as a volunteer or student who may have unsupervised access to any resident; and

(b) Repeat the check every two years.

(3) A nursing home licensed under chapter 18.51 RCW must make a background inquiry request to one of the following:

(a) The Washington state patrol;

(b) The department;

(c) The most recent employer licensed under chapters 18.51, 18.20, and 70.128 RCW provided termination of that employment was within twelve months of the current employment application and provided the inquiry was completed by the department or the Washington state patrol within the two years of the current date of application; or

(d) A nurse pool agency licensed under chapter 18.52C RCW, or hereafter renamed, provided the background inquiry was completed by the Washington state patrol within two years before the current date of employment in the nursing home(~~(-and)~~).

~~((e))~~ (4) A nursing home may not rely on a criminal background inquiry from a former employer, including a nursing pool, if the nursing home knows or has reason to know that the individual applying for the job has, or may have, a disqualifying conviction or finding.

~~((2))~~ (5) Nursing homes must:

(a) Request a background inquiry of any individual employed, directly or by agreement or contract, or accepted as a volunteer or student; and

(b) Notify appropriate licensing or certification agency of any individual resigning or terminated as a result of ~~((having))~~ a criminal conviction ~~((record))~~ or a civil adjudication proceeding.

~~((3))~~ (6) Before a nursing home employs any individual, directly or by contract, or accepts any individual as a volunteer or student, a nursing home must:

(a) Inform the individual that the nursing home must make a background inquiry and require the individual to sign a disclosure statement, under penalty or perjury and in accordance with RCW 43.43.834;

(b) Inform the individual that he or she may ~~((make a))~~ request ~~((for))~~ a copy of ~~((a))~~ the results of the completed background inquiry ~~((of))~~ described in this section; and

(c) Require the individual to sign a statement authorizing the nursing home, the department, and the Washington state patrol to make a background inquiry; and

(d) Verbally inform the individual of the background inquiry results within seventy-two hours of receipt.

~~((4))~~ (7) The nursing home must establish procedures ensuring that:

(a) The individual is verbally informed of the background inquiry results within seventy-two hours of receipt;

(b) All disclosure statements and background inquiry responses and all copies are maintained in a confidential and secure manner;

(c) Disclosure statements and background inquiry responses are used for employment purposes only;

(d) Disclosure statements and background inquiry responses are not disclosed to any individual except:

(i) The individual about whom the nursing home made the disclosure or background inquiry;

(ii) Authorized state employees including the department's licensure and certification staff, resident protection program staff and background inquiry unit staff;

(iii) Authorized federal employees including those from the Department of Health and Human Services, Centers for Medicare and Medicaid Services;

(iv) The Washington state patrol auditor; and

(v) Potential employers licensed under chapters 18.51, 18.20, and 70.128 RCW who are making a request as provided for under subsection (1) of this section.

(e) A record of findings be retained by the nursing home for twelve months beyond the date of employment termination.

~~((5))~~ (8) The nursing home must not employ individuals who are disqualified under the requirements of WAC 388-97-1820.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

**WAC 388-97-1820 Disqualification from nursing home employment.** (1) The nursing home must not employ directly or by contract, or accept as a volunteer or student, any individual:

(a) Who has been found to have abused, neglected, exploited or abandoned a minor or vulnerable adult by a court of law, by a disciplining authority, including the state department of health~~((-or by the department's resident protection program))~~;

(b) ~~((Against whom))~~ With a finding of abuse~~((-))~~ or neglect~~((-exploitation, misappropriation of property or abandonment has been entered on any state registry, including the nursing assistant registry; or))~~ of a child that is:

(i) Listed on the department's background check central unit (BCCU) report; or

(ii) Disclosed by the individual, except for findings made before December, 1998.

~~((Who has been subject to an order of protection under chapter 74.34 RCW for))~~ With a finding of abandonment, abuse, neglect, or financial exploitation of a vulnerable adult~~((-or misappropriation of resident property))~~ that is:

(i) Listed on any registry, including the department registry;

(ii) Listed on the department's background check central unit (BCCU) report; or

(iii) Disclosed by the individual, except for adult protective services findings made before October, 2003.

(2) Except as provided in this section, the nursing home must not employ directly or by contract, or accept as a volunteer or student, any individual who may have unsupervised access to residents if the individual:

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

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

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

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

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

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

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

~~((b))~~ (c) Has been convicted of ~~((crimes relating to financial exploitation as defined under RCW 43.43.830))~~;

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

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

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

(iv) Violation of the uniform precursor drug act (VUPDA).

(d) Has been convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct.

(e) Has been convicted of criminal mistreatment.

(f) Has been convicted in another state of a crime that is equivalent to a crime listed in subsection (2)(a) through (e) of this section.

(3) The term "**vulnerable adult**" is defined in RCW 74.34.020; the term "**unsupervised access**" is defined in RCW 43.43.830.

(4) In addition to chapters 18.51 and 74.42 RCW, these rules are authorized by RCW 43.20A.710, 43.43.830 through 43.43.842 and 74.39A.050(8).

**AMENDATORY SECTION** (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

**WAC 388-97-1900 Dialysis services.** (1) The nursing home must ensure that appropriate care, treatment, and services are provided to each nursing home resident ~~((receiving))~~ who receives dialysis in the nursing home.

(2) For the purposes of this section the following definitions apply:

(a) "Dialysis" means the process of separating crystalloids and colloids in solution by means of the crystalloids and colloids unequal diffusion through a natural or artificial semi-permeable membrane. This includes both peritoneal and hemodialysis.

(b) A "kidney center" means a facility as defined and certified by the federal government to provide end stage renal (ESRD) services.

~~((2))~~ Dialysis for acute renal failure must not be administered in a nursing home.)

(3) The nursing home must not administer dialysis for a resident with acute renal failure in the nursing home.

(4) A nursing home may only administer maintenance dialysis in the nursing home after ~~((the))~~:

(a) ~~((Analysis of other options and elimination of these options))~~ Other options have been analyzed and rejected, based on the resident's best interest; and

(b) A decision is made jointly by a team of individuals representing the kidney center and the nursing home, the resident, and the resident's nephrologist, and the nursing home. A "kidney center" means those facilities as defined and cer-

ified by the federal government to provide end stage renal (ESRD) services).

~~((4))~~ (5) The nursing home must ensure that ~~((~~

~~(a) A) a current written agreement is in effect with each kidney center responsible for the management and care of each nursing home resident undergoing dialysis, and~~

~~(b) Such agreement delineates the functions, responsibilities, and services of both the kidney center and the nursing home.~~

~~(5) The kidney center must assist the nursing home in ensuring appropriate care, treatment, and services related to dialysis. Responsibilities of the kidney center must include, but not be limited to:~~

~~(a) The provision of clinical and chemical laboratory services;~~

~~(b) The services of a qualified dietitian;~~

~~(c) Social services;~~

~~(d) Preventative maintenance and emergency servicing of dialysis and water purification equipment;~~

~~(e) The certification and continuing education of dialysis helpers and periodic review and updating of dialysis helpers' competencies. A "dialysis helper" means an individual who has completed an in-service class approved by the kidney center and has been hired by the resident to provide to the resident care related only to the dialysis treatment;~~

~~(f) An in-hospital dialysis program for the care and treatment of a dialysis resident with a complication or acute condition necessitating hospital care;~~

~~(g) A continuing in-service education program for nursing home staff working with a dialysis resident;~~

~~(h) A program for periodic, on-site review of the nursing home's dialysis rooms;~~

~~(i) Selection, procurement, and installation of dialysis equipment;~~

~~(j) Selection and procurement of dialysis supplies;~~

~~(k) Proper storage of dialysis supplies; and~~

~~(l) Specification, procurement, and installation of the purification process for treatment of water used as a diluent in the dialyzing fluid.~~

~~(6) Only a registered nurse from the kidney center or a dialysis helper may administer dialysis in the nursing home.~~

~~(a) A dialysis helper may be a registered nurse; and~~

~~(b) When a dialysis helper is not a registered nurse, the nursing home must have a registered nurse who has completed an in-service class approved by the kidney center, on the premises during dialysis.~~

~~(7) A physician, designated or approved by the kidney center, must be on call at all times dialysis is being administered in the nursing home.~~

~~(8) The resident's attending physician and the kidney center must provide, or direct and supervise, the continuing medical management and surveillance of the care of each nursing home resident receiving dialysis.~~

~~(9) The nursing home must:~~

~~(a) Ensure the kidney center develops a dialysis treatment plan; and~~

~~(b) Incorporate this treatment plan into the resident's comprehensive plan of care and include specific medical orders for medications, treatment, and diet.~~



~~(10) The dialysis room in the nursing home must be in compliance with federal standards established for ESRD facilities. This includes:~~

~~(a) Storage space available for equipment and supplies;  
(b) A telephone at the bedside of each dialysis resident;  
and~~

~~(c) A mechanical means of summoning additional staff to the dialysis area in the event of a dialysis emergency)).  
The agreement must include all aspects of how the resident's care is to be managed including:~~

~~(a) Medical and nonmedical emergencies;~~

~~(b) Development and implementation of the resident's care plan related to dialysis issues;~~

~~(c) Interchange of information useful/necessary for the care of the resident; and~~

~~(d) The responsibility for waste handling, sterilization, and disinfection of equipment for dialysis done in the nursing home.~~

~~(6) The nursing home must ensure implementation of policies and procedures developed with the kidney center that:~~

~~(a) Meet current standards of practice;~~

~~(b) Addresses both dialysis provided by or in the nursing home as well as dialysis provided by the kidney center; and~~

~~(c) Addresses all of the nursing home responsibilities related to a resident on dialysis.~~

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

**WAC 388-97-2060 New construction compliance.** The nursing home must ensure that:

(1) New construction, as defined in WAC 388-97-2160, complies with all the requirements of subchapter II of this chapter;

(2) New construction ~~((approved by the department of health, certificate of need and construction review, before the effective date of this chapter complies with the rules in effect at the time of the plan approval))~~ must maintain compliance with the regulations in effect at the time of initial submission to the department of health, certificate of need and construction review services; except if the previous construction jeopardizes resident health and safety, the department may require compliance with current construction rules;

(3) The department of health, certificate of need and construction review programs, ((is)) are contacted for review and ~~((issues an))~~ that the programs issue applicable determinations and approvals for all new construction; and

(4) Construction is completed in compliance with the final construction review services approved documents. Compliance with these standards and regulations does not relieve the nursing home of the need to comply with applicable state and local building and zoning codes.

(5) The department has done a pre-occupancy survey and has notified the nursing home that ~~((they))~~ it may begin admitting residents.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

**WAC 388-97-2280 Call systems on resident care units.** The nursing home must provide ~~((the following, or an equivalent))~~ a system that meets ((these)) the following standards:

(1) A wired or wireless communication system which registers a call by distinctive light at the room door and by distinctive light and audible tone at the staff work station. The system must be equipped to receive resident calls from:

(a) The bedside of each resident;

(b) Every common area, dining and activity areas, common use toilet rooms, and other areas used by residents; and

(c) Resident toilet, bath and shower rooms.

(2) An emergency signal device ~~((activated by a nonconductive pull cord, or adapted to))~~ that meets the needs of the resident((- The nursing home must locate the signal device)) and adapted for easy reach by the resident. A signal device must be adapted to meet resident needs and, in the dementia unit, may be adapted for staff and family use, see WAC ~~((388-97-2990))~~ 388-97-2900.

#### NEW SECTION

**WAC 388-97-4166 Liability insurance required.** The nursing home must:

(1) Obtain liability insurance upon licensure and maintain the insurance as required in WAC 388-97-4167 and 388-97-4168; and

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

#### NEW SECTION

**WAC 388-97-4167 Liability insurance required—Commercial general liability insurance or business liability insurance coverage.** The nursing home must have commercial general liability insurance or business liability insurance that includes:

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

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

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

(4) Minimum limits of:

(a) Each occurrence at one million dollars; and

(b) General aggregate at two million dollars.

#### NEW SECTION

**WAC 388-97-4168 Liability insurance required—Professional liability insurance coverage.** The nursing home must have professional liability insurance or errors and omissions insurance. The insurance must include:

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

- (2) Minimum limits of:
  - (a) Each occurrence at one million dollars; and
  - (b) Aggregate at two million dollars.

**AMENDATORY SECTION** (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

**WAC 388-97-4200 Department review of initial nursing home license applications.** (1) All initial nursing home license applications must be reviewed by the department under this chapter.

(2) The department will not begin review of an incomplete license application.

(3) The proposed licensee must respond to any department request for additional information within five working days.

(4) When the application is determined to be complete, the department will consider the proposed licensee or any partner, officer, director, managerial employee, or owner of five percent or more of the proposed licensee, separately and jointly, in its review. The department will review:

- (a) The information contained in the application;
- (b) Survey and complaint investigation (~~((findings))~~) citations in every facility each individual and entity named in the application has been affiliated with during the past ten years;
- (c) Compliance history;
- (d) Financial assessments;
- (e) Actions against the proposed licensee (i.e., revocation, suspension, refusal to renew, etc.);
- (f) All criminal convictions, and relevant civil or administrative actions or findings including, but not limited to, findings (~~((under 42 C.F.R. § 488.335, disciplinary findings, and))~~) including professional disciplinary actions, and findings of abuse, neglect, exploitation, (~~((or))~~) abandonment, or domestic violence resulting from a civil adjudication proceeding; and
- (g) Other relevant information.

(5) The department will notify the proposed licensee of the results of the review.

**AMENDATORY SECTION** (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

**WAC 388-97-4220 Reasons for denial, suspension, modification, revocation of, or refusal to renew a nursing home license.** (1) The department may deny, suspend, modify, revoke, or refuse to renew a nursing home license when the department finds the proposed or current licensee, or any partner, officer, director, managing employee, owner of five percent or more of the proposed or current licensee of the nursing home, owner of five percent or more of the assets of the nursing home, proposed or current administrator, or employee or individual providing nursing home care or services has:

- (a) Failed or refused to comply with the:
  - (i) Requirements established by chapters 18.51, 74.42, or 74.46 RCW and regulations adopted under these chapters; or
  - (ii) Medicaid requirements of Title XIX of the Social Security Act and Medicaid regulations, including 42 CFR, Part 483.

(b) A history of significant noncompliance with federal or state regulations in providing nursing home care;

(c) No credit history or a poor credit history;

(d) Engaged in the illegal use of drugs or the excessive use of alcohol or been convicted of "crimes relating to drugs" as defined in RCW 43.43.830, unless subsection (3)(c) applies;

(e) Unlawfully operated a nursing home, or long term care facility as defined in RCW 70.129.010, without a license or under a revoked or suspended license;

(f) Previously held a license to operate a hospital or any facility for the care of children or vulnerable adults, and that license has been revoked, or suspended, or the licensee did not seek renewal of the license following written notification of the licensing agency's initiation of revocation or suspension of the license;

(g) Obtained or attempted to obtain a license by fraudulent means or misrepresentation;

(h) Permitted, aided, or abetted the commission of any illegal act on the nursing home premises;

(i) Been convicted of a felony or other crime that would not be (~~((prohibited))~~) automatically disqualifying under RCW 74.39A.050(8) or this chapter, if (~~((#))~~) the conviction reasonably relates to the competency of the individual to own or operate a nursing home;

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

(k) Failed to:

(i) Provide any authorization, documentation, or information the department requires in order to verify information contained in the application;

(ii) Meet financial obligations as the obligations fall due in the normal course of business;

(iii) Verify additional information the department determines relevant to the application;

(iv) Report abandonment, abuse, neglect or financial exploitation in violation of chapter 74.34 RCW; or in the case of a skilled nursing facility or nursing facilities, failure to report as required by 42 C.F.R. 483.13; or

(v) Pay a civil fine the department assesses under this chapter within ten days after assessment becomes final.

(~~((k))~~) (l) Been certified pursuant to RCW 74.20A.320 as a person who is not in compliance with a child support order (license suspension only);

(~~((H))~~) (m) Knowingly or with reason to know makes a false statement of a material fact in the application for a license or license renewal, in attached data, or in matters under department investigation;

(~~((#))~~) (n) Refused to allow department representatives or agents to inspect required books, records, and files or portions of the nursing home premises;

(~~((#))~~) (o) Willfully prevented, interfered with, or attempted to impede the work of authorized department representatives in the:

(i) Lawful enforcement of provisions under this chapter or chapters 18.51 or 74.42 RCW; or

(ii) Preservation of evidence of violations of provisions under this chapter or chapters 18.51 or 74.42 RCW.

~~((p))~~ (p) Retaliated against a resident or employee initiating or participating in proceedings specified under RCW 18.51.220; or

~~((q))~~ (q) Discriminated against medicaid recipients as prohibited under RCW 74.42.055.

(2) In determining whether there is a history of significant noncompliance with federal or state regulations under subsection (1)(b), the department may, at a minimum, consider:

(a) Whether the violation resulted in a significant harm or a serious and immediate threat to the health, safety, or welfare of any resident;

(b) Whether the proposed or current licensee promptly investigated the circumstances surrounding any violation and took steps to correct and prevent a recurrence of a violation;

(c) The history of surveys and complaint investigation findings and any resulting enforcement actions;

(d) Repeated failure to comply with regulations;

(e) Inability to attain compliance with cited deficiencies within a reasonable period of time; and

(f) The number of violations relative to the number of facilities the proposed or current licensee, or any partner, officer, director, managing employee, employee or individual providing nursing home care or services has been affiliated within the past ten years, or owner of five percent or more of the proposed or current licensee or of the assets of the nursing home.

(3) The department must deny, suspend, revoke, or refuse to renew a proposed or current licensee's nursing home license if the proposed or current licensee or any partner, officer, director, managing employee, owner of five percent or more of the proposed or current licensee of the nursing home or owner of five percent or more of the assets of the nursing home, proposed or current administrator, or employee or individual providing nursing home care or services has been:

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

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

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

(b) Convicted of a "crime relating to financial exploitation" as defined under RCW 43.43.830(~~(c)~~) unless the individual has been convicted of one of the three crimes listed below and the required number of years has passed between the most recent conviction and the date of the application for employment:

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

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

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

(c) Convicted of:

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

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

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

or

(iv) Violation of the uniform precursor drug act (VUPDA).

(d) Convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;

(e) Convicted of criminal mistreatment;

(f) Found by a court in a criminal proceeding or a protection proceeding under chapter 74.34 RCW, or any comparable state or federal law, to have abandoned, abused, neglected or financially exploited a vulnerable adult;

~~((g))~~ (g) Found in any final decision issued by a disciplinary board to have sexually or physically abused or exploited any minor or an individual with a developmental disability or to have abused, neglected, abandoned, or financially exploited any vulnerable adult;

~~((h))~~ (h) Found in any dependency action to have sexually assaulted or exploited any minor or to have physically abused any minor;

~~((i))~~ (i) Found by a court in a domestic relations proceeding under Title 26 RCW, or any comparable state or federal law, to have sexually abused or exploited any minor or to have physically abused any minor; ~~((j))~~

~~((k))~~ (j) Found to have abused(~~(c)~~) or neglected(~~(c)~~) ~~abandoned or financially exploited or mistreated residents or misappropriated their property, and that finding has been entered on a nursing assistant registry~~) a child, and the finding is:

(i) Listed on the department's background check central unit (BCCU) report; or

(ii) Disclosed by the individual, except for findings made before December, 1998.

(k) Found to have abandoned, abused, neglected, or financially exploited a vulnerable adult, and the finding is:

(i) Listed on any registry, including the department registry;

(ii) Listed on the department's background check central unit (BCCU) report; or

(iii) Disclosed by the individual, except for adult protective services findings made before October, 2003.

**AMENDATORY SECTION** (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

**WAC 388-97-4320 Relocation of residents.** (1) In the event of license revocation or suspension, decertification, or other emergency closures the department (~~(must))~~ will:

(a) Notify residents and, when appropriate, resident representatives of the action;

(b) Assist with residents' relocation and identify possible alternative living choices and locations; and

(c) The nursing home will assist the residents to the extent it is directed to do so by the department.

(2) When a resident's relocation occurs due to an emergency closure from a natural disaster, the nursing home may not be required to cease its business operations unless directed to do so by the department.

(3) When a resident's relocation occurs due to a nursing home's voluntary closure, or voluntary termination of its medicare or medicaid contract or both, the nursing home must:

(a) Notify the department and all residents and resident representatives in accordance with WAC 388-97-1640;

(b) Notify the Centers for Medicare and Medicaid Services and the public as required by 42 C.F.R. 489.52, or a successor regulation, if the closure or termination affects the provision of medicare services; and

(c) Provide appropriate discharge planning and coordination for all residents including a plan to the department for safe and orderly transfer or discharge of residents from the nursing home.

~~((3))~~ (4) The department may provide residents assistance with relocation.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

**WAC 388-97-4340 License relinquishment.** (1) A nursing home licensee must voluntarily relinquish its license when:

(a) The nursing home ceases to do business as a nursing home; and

(b) Within twenty-four hours after the last resident is discharged from the facility.

(2) The nursing home may not be required to relinquish its license when residents must be relocated due to emergency closures from natural disasters.

(3) The relinquished license must be returned to the department.

~~((3))~~ (4) If a nursing home licensee fails to voluntarily relinquish its license when required, the department will revoke the license.

#### NEW SECTION

**WAC 388-97-4425 Notice—Service complete.** Service of the department notices is complete when:

(1) Personal service is made;

(2) The notice is addressed to the facility or to the individual at his or her last known address, and deposited in the United States mail;

(3) The notice is faxed and the department receives evidence of transmission;

(4) Notice is delivered to a commercial delivery service with charges prepaid; or

(5) Notice is delivered to a legal messenger service with charges prepaid.

#### NEW SECTION

**WAC 388-97-4430 Notice—Proof of service.** The department may establish proof of service by any of the following:

(1) A declaration of personal service;

(2) An affidavit or certificate of mailing to the nursing home or to the individual to whom the notice is directed;

(3) A signed receipt from the person who accepted the certified mail, the commercial delivery service, or the legal messenger service package; or

(4) Proof of fax transmission.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

**WAC 388-97-4440 (~~Notice and~~) Appeal rights.** (1) The (~~notification and hearing~~) appeal rights in this section apply to any appealable action taken by the department under chapters 18.51, 74.42 and 74.39A RCW. (~~Notification~~) Notice and appeal(~~s~~) requirements for resident protection program findings are described in WAC 388-97-0720 and 388-97-0740.

(2) The following actions may be appealed:

(a) Imposition of a penalty under RCW 18.51.060 or 74.42.580;

(b) (~~An action by the department such as~~) A denial of a license under RCW 18.51.054, a license suspension under RCW 18.51.067 or a condition on a license under RCW 74.39A.050; or

(c) Deficiencies cited on the state survey report.

(3) The appeal process will be governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 18.51.065 and 74.42.580, chapter 388-02 WAC and this chapter. If (~~any provision in this chapter conflicts with~~) there is a conflict between chapter 388-02 WAC and this chapter, (~~the provision of~~) this chapter will govern.

(4) The purpose of an administrative hearing will be to review actions taken by the department under chapters 18.51, 74.42 or 74.39A RCW, and under this chapter.

(5) The office of administrative hearings must receive an administrative hearing request from the applicant, licensee or nursing home (~~must receive a request for an administrative hearing with the office of administrative hearings~~) within twenty days of receipt of written notification of the department's action (~~as defined~~) listed in subsection (2) of this section. Further information about administrative hearings is available in chapter 388-02 WAC and at the office of administrative hearing (OAH) web site: [www.oah.wa.gov](http://www.oah.wa.gov).

(6) Orders of the department imposing a stop placement, license suspension, emergency closure emergency transfer of residents, temporary management or conditions on a license are effective immediately upon verbal or written notice and must remain in effect until they are rescinded by the department or through the state administrative appeals process.

(7) Deficiencies cited on the federal survey report may not be appealed through the state administrative appeals process. If a federal remedy is imposed, the Centers for Medicare and Medicaid Services will notify the nursing facility of appeal rights under the federal administrative appeals process.

~~((8) The department's decision to petition to remove a finding of neglect under WAC 388-97-0780 (3)(e) may not be appealed.)~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-97-1420	Tuberculosis—Mantoux skin testing.
WAC 388-97-3820	Stairways, ramps, and corridors in new construction.

**WSR 10-03-029**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed January 12, 2010, 10:59 a.m., effective February 12, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The Washington legislature adopted SSB 5166 (chapter 408, Laws of 2009) regarding license suspension for noncompliance with child support orders. The division of child support (DCS) is adopting final rules to implement this legislation, which took effect on July 26, 2009. DCS adopted emergency rules under WSR 09-15-183 which were effective on July 26, 2009, and adopted a second set of emergency rules under WSR 09-23-110, effective November 20, 2009. DCS is now adopting final rules in order to implement SSB 5166 and to make certain changes to clarify procedures.

**AMENDATORY SECTIONS:** WAC 388-14A-4500 What is the division of child support's license suspension program?, 388-14A-4505 The notice of noncompliance and intent to suspend licenses, 388-14A-4510 Who is subject to the DCS license suspension program?, 388-14A-4515 How do I avoid having my license suspended for failure to pay child support?, 388-14A-4520 Signing a (~~repayment~~) payment agreement may avoid certification for noncompliance, 388-14A-4525 How to obtain a release of certification for noncompliance, and 388-14A-4530 (~~Administrative hearings~~) What happens at an administrative hearing regarding license suspension (~~are limited in scope~~)?

**NEW SECTIONS:** WAC 388-14A-4512 When may the division of child support certify a noncustodial parent for license suspension?, 388-14A-4527 How does a noncustodial parent request an administrative hearing regarding license suspension?, 388-14A-4535 Can the noncustodial parent file a late request for hearing if a license has already been suspended?, and 388-14A-4540 When is a DCS conference board available regarding license suspension issues?

Citation of Existing Rules Affected by this Order: Amending WAC 388-14A-4500, 388-14A-4505, 388-14A-4510, 388-14A-4515, 388-14A-4520, 388-14A-4525, and 388-14A-4530.

Statutory Authority for Adoption: SSB 5166 (chapter 408, Laws of 2009); RCW 34.05.060, 43.20A.550, 74.04.-055, 74.04.057, 74.20A.310, 74.20A.320(10), 74.20A.350 (14).

Adopted under notice filed as WSR 09-23-068 on November 13, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 4, Amended 7, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 7, Repealed 0.

Date Adopted: January 8, 2010.

Don Goldsby, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 03-18-114, filed 9/2/03, effective 10/15/03)

**WAC 388-14A-4500 What is the division of child support's license suspension program?** (1) RCW 74.20A.-320 and sections 2 through 4 of SSB 5166 (chapter 408, Laws of 2009) provide((s)) that, in some circumstances, the division of child support (DCS) may certify for license suspension a noncustodial parent (NCP) who is not in compliance with a child support order. These statutes call((s)) the NCP "the responsible parent."

(a) "Certify" means to notify the department of licensing or other state licensing entities that the NCP is not in compliance with a child support order and to ask them to take appropriate action against licenses held by the NCP. Before DCS can certify an NCP, DCS serves a notice on the NCP as described in WAC 388-14A-4505 and 388-14A-4510. This notice is called the notice of noncompliance and intent to suspend licenses, and is sometimes called the notice of noncompliance.

(b) "Responsible parent" is defined in 388-14A-1020. The responsible parent is also called the "noncustodial parent."

(2) "Noncompliance with a child support order" is defined in RCW 74.20A.020(18) and in WAC 388-14A-4510(3).

(3) When DCS certifies the NCP, the department of licensing or other licensing entities take action to deny, suspend, or refuse to renew the NCP's license, according to the terms of RCW 74.20A.320 (~~((8) and (12))~~) (4) and section 3 of SSB 5166 (chapter 408, Laws of 2009).

(4) This section and sections WAC 388-14A-4505 through 388-14A-4530 cover the DCS license suspension program.

(5) DCS may certify an NCP who is not in compliance with a child support order to the department of licensing or any appropriate licensing entity. In determining which licensing entity receives the certification, DCS considers:

(a) The number and kind of licenses held by the parent; and

(b) The effect that suspension of a particular license will have in motivating the parent to pay support or to contact DCS to make appropriate arrangements for other relief.

(6) DCS may certify a parent to any licensing agency through which it believes the parent has obtained a license. DCS may certify a parent to as many licensing agencies as DCS feels necessary to accomplish the goals of the license suspension program.

(7) In certain circumstances spelled out in WAC 388-14A-4510 (2) and (3), DCS may serve the notice of noncompliance on a noncustodial parent but may stay the commencement of the ~~((twenty-day))~~ objection period in WAC 388-14A-4505 (4)(b).

AMENDATORY SECTION (Amending WSR 03-18-114, filed 9/2/03, effective 10/15/03)

**WAC 388-14A-4505 The notice of noncompliance and intent to suspend licenses.** (1) Before certifying a noncustodial parent (NCP) for noncompliance, the division of child support (DCS) must serve the NCP with a notice of noncompliance and intent to suspend licenses. This notice tells the NCP that DCS intends to submit the NCP's name to the department of licensing and any other appropriate licensing entity as a licensee who is not in compliance with a child support order.

(2) DCS must serve the notice by certified mail, return receipt requested. If DCS is unable to serve the notice by certified mail, DCS must serve the notice by personal service, as provided in RCW 4.28.080.

(3) The notice must include a copy of the NCP's child support order and must contain the address and phone number of the DCS office which issued the notice.

(4) The notice must contain the information required by RCW 74.20A.320(2), ~~((telling the NCP that))~~ including:

(a) ~~((The NCP may request an administrative hearing, but that the hearing is limited in scope (see WAC 388-14A-4530)))~~ The address and telephone number of DCS office that issued the notice;

(b) ~~((DCS will certify the NCP unless the NCP makes a request for hearing within twenty calendar days of the date of service of the notice, except when a longer period of time is given, as provided in WAC 388-14A-4510 (2) or (3);~~

~~((e) The NCP may avoid certification by agreeing to make timely payments of current support and agreeing to a reasonable payment schedule on the support debt;~~

~~((d) Certification by DCS will result in suspension or nonrenewal of the NCP's license by the licensing entity until DCS issues a release stating that the NCP is in compliance with the child support order;~~

~~((e) Suspension of a license may affect the NCP's insurance coverage, depending on the terms of any policy;~~

~~((f) Filing a petition to modify the support obligation may stay (or put a hold on) the certification process; and~~

~~((g) Even after certification, the NCP may obtain a release from certification by complying with the support order))~~ That in order to prevent DCS from certifying the NCP's name to the department of licensing or other licensing entity, the NCP has twenty days from receipt of the notice, or sixty days after

receipt if the notice was served outside the state of Washington, to contact the department and:

(i) Pay the overdue support amount in full;

(ii) Request a hearing as provided in WAC 388-14A-4527;

(iii) Agree to a payment schedule as provided in WAC 388-14A-4520; or

(iv) File an action to modify the child support order with the appropriate court or administrative forum, in which case DCS will stay the certification process up to six months.

(c) That failure to contact DCS within twenty days of receipt of the notice (or sixty days if the notice was served outside of the state of Washington) will result in certification of the NCP's name to the department of licensing and any other appropriate licensing entity for noncompliance with a child support order. Upon receipt of the notice:

(i) The licensing entity will suspend or not renew the NCP's license and the department of licensing (DOL) will suspend or not renew any driver's license that the NCP holds until the NCP provides DOL or the other licensing entity with a release from DCS stating that the NCP is in compliance with the child support order;

(ii) The department of fish and wildlife will suspend a fishing license, hunting license, occupational licenses (such as a commercial fishing license), or any other license issued under chapter 77.32 RCW that the NCP may possess. In addition, suspension of a license by the department of fish and wildlife may also affect the NCP's ability to obtain permits, such as special hunting permits, issued by the department. Notice from DOL that an NCP's driver's license has been suspended shall serve a notice of the suspension of a license issued under chapter 77.32 RCW.

(d) That suspension of a license will affect insurability if the NCP's insurance policy excludes coverage for acts occurring after the suspension of a license; and

(e) If the NCP subsequently comes into compliance with the child support order, DCS will promptly provide the NCP and the appropriate licensing entities with a release stating the NCP is in compliance with the order.

AMENDATORY SECTION (Amending WSR 03-18-114, filed 9/2/03, effective 10/15/03)

**WAC 388-14A-4510 Who is subject to the DCS license suspension program?** (1) The division of child support (DCS) may serve a notice of noncompliance on a noncustodial parent (NCP) who is not in compliance with a child support order ~~((when:))~~.

~~((a) ((The NCP is required to pay child support under a court order or administrative order;~~

~~((b) The NCP is at least six months in arrears; and~~

~~((c) The NCP is not currently making payments to the Washington state support registry under a wage withholding action issued by DCS.~~

~~((2))~~ DCS may serve a notice of noncompliance on an NCP who meets the criteria of ~~((subsection (1) above))~~ this section, even if the NCP is in jail or prison. Unless the NCP has other resources available while in jail or prison, DCS stays the commencement of the ~~((twenty-day))~~ objection

period set out in WAC 388-14A-4505 (4)(b) until the NCP has been out of jail or prison for thirty days.

~~((3))~~ (b) DCS may serve a notice of noncompliance on an NCP who meets the criteria of ~~((subsection (1) above))~~ this section, even if the NCP is a public assistance recipient. DCS stays the commencement of the ~~((twenty-day))~~ objection period in WAC 388-14A-4505 (4)(b) until the thirty days after the NCP's cash assistance grant is terminated.

~~((4))~~ (2) Compliance with a child support order for the purposes of the license suspension program means the NCP owes no more than six months' worth of child support.

(3) ~~((2))~~ Noncompliance with a child support order~~((2))~~ for the purposes of the license suspension program means an NCP has:

(a) An obligation to pay child support under a court or administrative order; and

(b) Accumulated a support debt, also called an ~~((arrear-  
age-~~or~~))~~ arrears or arrearage, totaling more than six months' worth of child support payments; or

~~((b))~~ (c) Failed to do one of the following:

(i) Make payments required by a court order or administrative order towards a support debt in an amount that is more than six months' worth of payments; or

(ii) Make payments to the Washington state support registry under a written agreement with DCS toward~~((s-a))~~ current support ~~((debt in an amount that is more than six months' worth of payments))~~ and arrearages and the arrearages still amount to more than six months' worth of child support payments~~((~~or~~))~~

~~((e))~~ Failed to make payments required by a court order or administrative order towards a support debt in an amount that is more than six months' worth of payments).

~~((5))~~ There is no minimum dollar amount for the six months of arrears. The following are examples of when a NCP is at least six months in arrears:

~~((a))~~ The child support order requires monthly payments of five hundred dollars. The NCP has not made a single payment since the order was entered seven months ago. This NCP is at least six months in arrears;

~~((b))~~ The child support order requires monthly payments of one hundred dollars. The NCP has paid for the last few months, but owes a back debt of over six hundred dollars. This NCP is at least six months in arrears;

~~((e))~~ The NCP owes a support debt according to a judgment, which requires payments of one hundred dollars per month. The NCP has not made payment for eight months. This NCP is at least six months in arrears; or

~~((d))~~ The child support order required monthly payments of two hundred dollars, but the child is over eighteen so no current support is owed. However, the NCP has a debt of over twelve hundred dollars. This NCP is at least six months in arrears.

~~((6))~~ For the purposes of the license suspension program, a NCP is in compliance with the child support order when the amount owed in arrears is less than six months' worth of support~~((t))~~.

(4) There is no minimum dollar amount required for license suspension, as long as the arrears owed by the NCP amount to more than six months' worth of support payments:

**Example 1.** Assume the child support order sets current support at one hundred dollars per month: The NCP has not made a single payment since the order was entered seven months ago. This NCP is more than six months in arrears.

**Example 2.** Assume the child support order sets current support at one hundred dollars per month: The NCP has paid for the last few months, but owes arrears of over six hundred dollars. This NCP is more than six months in arrears.

**Example 3.** Assume the child support order sets current support at one hundred dollars per month: The child is over eighteen, and no more current support is owed. However, the NCP has a debt of over one thousand two hundred dollars. This NCP is more than six months in arrears.

**Example 4.** Assume a judgment of three thousand dollars is entered by the court: The order requires the NCP to pay fifty dollars per month toward the arrears. The NCP has not made payments toward this obligation for eight months. This NCP is more than six months in arrears.

#### NEW SECTION

**WAC 388-14A-4512 When may the division of child support certify a noncustodial parent for license suspension?** The division of child support (DCS) may certify a noncustodial parent (NCP) as being in noncompliance with a support order and may request the department of licensing (DOL) or any other licensing entity to suspend the NCP's license if:

(1) The NCP has failed to make a timely objection to a notice of noncompliance served under WAC 388-14A-4505. A timely objection must be filed within twenty days of receipt of the notice, or within sixty days of receipt if the notice was served outside of the state of Washington;

(2) The NCP has failed to file a motion with the appropriate court or administrative forum to modify the child support obligation within twenty days of service of the notice of noncompliance served under WAC 388-14A-4505 (or within sixty days if the notice was served outside of the state of Washington);

(3) The NCP has failed to comply with a payment agreement entered into under WAC 388-14A-4520;

(4) A hearing results in a final administrative order which determines that the NCP is not in compliance with a child support order and has not made a good faith effort to comply;

(5) The court enters a judgment on a petition for judicial review upholding an administrative order that determined that the NCP is not in compliance with a child support order and did not made a good faith effort to comply;

(6) The NCP has failed to comply with a payment schedule ordered by an administrative law judge (ALJ) under WAC 388-14A-4530; or

(7) The NCP failed to make satisfactory progress toward modification of the support order after a stay was granted under WAC 388-14A-4515(2).

AMENDATORY SECTION (Amending WSR 03-18-114, filed 9/2/03, effective 10/15/03)

**WAC 388-14A-4515 How do I avoid having my license suspended for failure to pay child support? (1)**

After service of the notice of noncompliance, the division of child support (DCS) stays (delays) certification action if the noncustodial parent (NCP) takes one of the following actions within twenty days of service ((of the notice)), or within sixty days of service if the notice was served outside of Washington:

(a) Contacts DCS and makes arrangements to pay the support debt in full;

(b) Requests an administrative hearing ((under WAC 388-14A-4530)) as provided in WAC 388-14A-4527; ((of))

~~((b))~~ (c) Provides proof that the NCP receives TANF, GAU, GAX or SSI;

(d) Provides proof that the NCP is currently incarcerated at a state or federal correctional facility;

(e) Provides proof that NCP has filed a proceeding to modify the support order; or

(f) Contacts DCS to negotiate ((a reasonable payment schedule on the arrears and agrees to make timely payments of current support)) and sign a written payment agreement as described in WAC 388-14A-4520.

(i) The stay for negotiation and obtaining signatures may last a maximum of thirty calendar days ((after)) from the date the NCP contacts DCS; and

(ii) If no written payment ((schedule)) agreement has been ((agreed to in writing after)) signed within thirty calendar days ((have passed)) from the date the NCP contacted DCS, DCS ((may proceed with certification of noncompliance);

~~(iii) A reasonable payment schedule is described in WAC 388-14A-4520, below; and~~

~~(iv) The NCP may request a conference board review under WAC 388-14A-6400 if the NCP feels that DCS has not negotiated in good faith)) schedules the matter for administrative hearing under WAC 388-14A-4530.~~

(2) If the NCP files a court or administrative action to modify the child support obligation, DCS stays the certification action.

~~((3))~~ (a) The stay for modification action may not exceed six months unless DCS finds good cause to extend the stay.

~~((4))~~ (b) The NCP must notify DCS that a modification proceeding is pending and must provide a copy of the motion or request for modification to DCS.

~~((5))~~ (3) A stay of certification does not require DCS to withdraw the notice of noncompliance.

(4) A stay of certification granted because the NCP is incarcerated, or because the NCP receives TANF, GAU, GAX or SSI is lifted thirty days after the justification no longer applies to the NCP.

AMENDATORY SECTION (Amending WSR 03-18-114, filed 9/2/03, effective 10/15/03)

**WAC 388-14A-4520 Signing a ((repayment)) payment agreement may avoid certification for noncompliance.** (1) If a noncustodial parent (NCP) signs a ((repayment)) payment agreement, the division of child support (DCS) stays the certification action. ((The NCP must agree to pay current support in a timely manner and make regular payments on the support debt.))

(2) The signing of a payment agreement does not require DCS to withdraw the notice of noncompliance.

(3) By signing a payment agreement, the NCP waives the right to an administrative hearing on any notice of noncompliance served before the date the NCP signs the agreement.

(4) The ((repayment)) payment agreement must state that if the NCP fails to make payments under the terms of the agreement and the NCP owes a debt of more than six months' worth of child support payments, DCS may resume certification action with no further notice to the NCP.

~~((3) The signing of a repayment agreement does not require DCS to withdraw the notice of noncompliance.))~~

~~((4))~~ (5) In ((setting the repayment amount)) proposing or approving a payment agreement, DCS must take into account:

(a) The amount of the arrearages.

(b) The amount of the current support order.

(c) The ((financial situation of the NCP and the)) earnings of the NCP.

(d) The needs of all children who rely on the NCP for support. ((The NCP must supply sufficient financial information to allow DCS to analyze and document the NCP's financial situation and requirements, including normal living expenses and emergencies.))

(e) Any documented factors which make the NCP eligible for a monthly arrears payment less than the amount suggested in the table in subsection (8) of this section, including but not limited to:

(i) Special needs children; or

(ii) Uninsured health care expenses.

(f) Any documented factors which make the NCP eligible for an arrears payment higher than the amount suggested in the table in subsection (8) of this section, including but not limited to the factors listed in RCW 26.19.075 for deviation from the standard calculation for child support obligations.

(g) If the NCP does not supply sufficient financial information and documentation to allow DCS to analyze and document the NCP's current financial situation and requirements, DCS may not be able to tailor a payment plan to the individual circumstances of the NCP.

~~((5))~~ (6) The payment agreement must require timely payments of current support and on the arrears, but may in appropriate circumstances:

(a) Provide for the payment of less than the current monthly support obligation for a reasonable time without requiring any payment on the arrears; and

(b) Provide for the payment of current support only for a reasonable time without requiring any payment on the arrears; and

(c) Require a reasonable payment schedule on the arrears once the NCP is paying the entire current monthly support obligation.

(7) The payment agreement may, in appropriate cases, require the NCP to engage in employment-enhancing activities to attain a satisfactory payment level. These employment-enhancing activities must be tailored to the individual circumstances of the NCP.

(8)(a) A reasonable monthly arrears payment is defined as a percentage of the NCP's "adjusted net income," which is the NCP's net monthly income minus any current support



obligation. Documented factors as specified in subsection (4) of this section may be the basis for adjustments to the amounts on this table in order to develop a payment agreement which is tailored to the individual financial circumstances of the NCP.

(b) The following table sets forth the suggested monthly payments on arrears:

Monthly adjusted net income (ANI)	Monthly arrears payment = Percentage of ANI
\$1,000 or less	2%
\$1,001 to \$1,200	3%
\$1,201 to \$1,500	4%
\$1,501 to \$1,900	5%
\$1,901 to \$2,400	6%
\$2,401 to \$3,000	7%
\$3,001 or more	8%

~~((6))~~ (c) Examples of how to calculate the arrears payment are as follows:

(a) Monthly net income	=	\$1,500
Current support	=	\$300
Adjusted net income (ANI)	=	\$1,200
Arrears payment = 3% of ANI	=	\$36
<del>(((\$1,200))</del>		
(b) Monthly net income	=	\$3,100
Current support	=	\$-0-
Adjusted net income (ANI)	=	\$3,100
Arrears payment = 8% of ANI	=	\$248
<del>(((\$3,100))</del>		

~~((7))~~ The NCP must document any factors which make the NCP eligible for an arrears payment less than the amount shown in the table in subsection (5). Such factors include, but are not limited to:

- ~~(a) Special needs children, or~~
- ~~(b) Uninsured medical expenses.~~

~~(8)~~ The custodial parent and/or DCS must document any factors which make the NCP eligible for an arrears payment higher than the amount shown in the table in subsection (5). Such factors include, but are not limited to the factors listed in RCW 26.19.075 for deviation from the standard calculation for child support obligations.

~~(9)~~ If the NCP signs a repayment agreement under this section under the circumstances spelled out in WAC 388-14A-4510 (2) or (3), the NCP may make voluntary payments but DCS does not resume certification action until thirty days after NCP is released or stops receiving public assistance))

(9) If the NCP and DCS are unable to agree to a payment plan, DCS schedules the matter for an administrative hearing.

(10) If the NCP fails to make payments under the terms of the agreement, DCS may resume certification action with no further notice to the NCP.

AMENDATORY SECTION (Amending WSR 03-18-114, filed 9/2/03, effective 10/15/03)

**WAC 388-14A-4525 How to obtain a release of certification for noncompliance.** (1) After the division of child support (DCS) has certified a noncustodial parent (NCP) to a licensing entity for noncompliance, the NCP may obtain a release from DCS ~~((by taking the following actions))~~ if one of the following occurs:

(a) ~~((Paying))~~ NCP pays the support debt in full, in which case DCS withdraws the notice of noncompliance; ~~((or))~~

(b) ~~((Signing))~~ NCP enters into a ~~((repayment))~~ payment agreement under WAC 388-14A-4520 ~~((and paying the first installment due under the agreement. Signing a repayment agreement does not require DCS to withdraw the notice of noncompliance));~~

(c) DCS confirms that the NCP receives GAU, GAX, TANF or SSI;

(d) DCS confirms that the NCP is currently incarcerated at a state or federal correctional facility;

(e) The prosecuting attorney determines that the NCP is substantially complying with a contempt repayment agreement and recommends release;

(f) DCS receives any type of recurring payment, including but not limited to:

(i) Employer payments;

(ii) Unemployment compensation;

(iii) Labor and industries benefits;

(iv) Social security benefits;

(v) Retirement account garnishments;

(g) DCS believes that release of the certification for non-compliance will facilitate the NCP seeking employment, modification of the child support order(s), or compliance with the current order(s);

(h) DCS certified the NCP because the NCP failed to make a timely objection to the notice of noncompliance and:

(i) The NCP filed a late request for hearing; and

(ii) The final administrative order entered under WAC 388-14A-4530 contains a finding that the NCP made a good faith effort to comply with the order and establishes a payment schedule.

(2) If the NCP and DCS are unable to reach a payment agreement that would lead to release of the certification, the NCP may request a conference board under WAC 388-14A-6400.

(3) By signing a payment agreement with DCS, the NCP waives the administrative hearing right associated with any notice of noncompliance under WAC 388-14A-4505 which was served before the agreement was signed.

(4) DCS retains the right to reinstate the suspension action if the NCP meets the conditions of reinstatement but:

(a) Fails to follow through in a timely fashion with any verbal or written agreement made with DCS; or

(b) Fails to comply with the payment schedule contained in an administrative order entered under WAC 388-14A-4530.

(5) DCS may reinstate the suspension action at any time after releasing the certification, as long as the NCP's case still meets qualifications for certification.

(6) Unless the NCP pays the support debt in full, DCS is not required to withdraw the notice of noncompliance.

(7) DCS must provide a copy of the release to any licensing entity to which DCS has certified the NCP.

~~((3))~~ (8) The NCP must comply with any requirements of the licensing entity to get the license reinstated or reissued.

#### NEW SECTION

**WAC 388-14A-4527 How does a noncustodial parent request an administrative hearing regarding license suspension?** (1) After service of a notice of noncompliance and intent to suspend licenses under WAC 388-14A-4505, the noncustodial parent (NCP) may request an administrative hearing, also known as an adjudicative proceeding, under chapter 34.05 RCW.

(a) Any objection to the notice of noncompliance is considered to be a request for hearing, no matter how the objection is phrased.

(b) An objection that does not lead to the signing of a payment agreement under WAC 388-14A-4520 is considered to be a request for hearing on the notice.

(c) Even if the NCP specifically makes a request for hearing, the division of child support (DCS) always attempts to negotiate a payment agreement under WAC 388-14A-4520.

(2) A hearing request may be made in writing or orally, and may be made in person or by phone.

(3) A timely request for hearing must be received by DCS within twenty days of service of the notice of noncompliance, or within sixty days if the notice was served outside of the state of Washington.

(4) The effective date of a written request for hearing is the day the request is received by DCS. A written request for hearing must include:

- (a) The NCP's current mailing address; and
- (b) The NCP's daytime phone number, if available.

(5) The NCP may make an oral request for hearing under WAC 388-14A-6100:

(a) The request must contain sufficient information for DCS to identify the NCP, the DCS action objected to, and the case or cases involved in the hearing request.

(b) The effective date of an oral request for hearing is the date that the NCP makes a complete oral request for hearing, to any DCS representative in person or by leaving a message on the automated voice mail system of any DCS field office.

(6) If the NCP makes a timely request for hearing, DCS stays (delays) the certification process until a final administrative order is entered.

(7) If the NCP makes a late request for hearing after DCS has already certified the NCP to a licensing agency based on NCP's failure to make a timely objection to the notice of noncompliance and the licensing agency has suspended the NCP's license, DCS schedules the matter for hearing with the office of administrative hearings, as provided in WAC 388-14A-4535.

(8) If DCS certified the NCP to a licensing agency based on NCP's failure to comply with a payment agreement or a payment schedule established by a final administrative order,

the NCP does not have any additional hearing right on the original notice of noncompliance.

(a) If the NCP previously signed a payment agreement, the NCP waived the administrative hearing right associated with any notice of noncompliance which was served before the agreement was signed.

(b) If the NCP failed to comply with a payment schedule established by a final administrative order, the NCP has already exercised the hearing right associated with the underlying notice of noncompliance.

(c) The NCP may attempt to negotiate a payment agreement with DCS, and may request a conference board if negotiations are not successful, as provided in subsections (2) and (3) of WAC 388-14A-4525.

AMENDATORY SECTION (Amending 03-18-114, filed 9/2/03, effective 10/15/03)

**WAC 388-14A-4530 ~~((Administrative hearings))~~ What can happen at an administrative hearing regarding license suspension ~~((are limited in scope))~~?** (1) An administrative hearing on a notice of noncompliance under WAC 388-14A-4505 is limited to the following issues:

(a) Whether the person named in the child support order is the noncustodial parent (NCP);

(b) Whether the NCP is required to pay child support under a child support order; ~~((and))~~

(c) Whether the NCP is ~~((at least))~~ more than six months in arrears; and

(d) Whether the NCP has made a good faith effort to comply with the order.

(2) When determining whether the NCP has made a good faith effort to comply with the order, the administrative law judge (ALJ) must consider whether the NCP:

(a) Kept DCS informed of any changes in address or employment;

(b) Provided employer information when employed so that DCS could institute income withholding;

(c) Paid at least one month's worth of current support by voluntary payment during a period when the NCP was not employed; or

(d) Can show any other relevant fact-based factors on which the ALJ may base a finding of good faith.

(3) If the ALJ finds that the NCP is not in compliance with the support order, but has made a good faith effort to comply, the ALJ must formulate a payment schedule after considering:

(a) The amount of the arrearages owed;

(b) The amount of the current support order;

(c) The earnings of the NCP; and

(d) The needs of all children who rely on the NCP for support.

(4) The ALJ must:

(a) Consider the individual financial circumstances of the NCP in evaluating the parent's ability to pay; and

(b) Establish a fair and reasonable payment schedule tailored to the NCP's individual circumstances.

(5) The payment schedule may:

(a) Include a graduated payment plan as described in WAC 388-14A-4520(8);

(b) Require the NCP to engage in employment-enhancing activities in order to attain a satisfactory payment level; and

(c) May be for the payment of less than current monthly support for a reasonable time.

(6) Unless the NCP shows an ability to pay immediately, the payment schedule is not required to include a lump sum payment for the amount of the arrears.

(7) The administrative order must contain a provision stating that:

(a) If the NCP does not comply with the payment schedule, DCS may proceed with the certification process with no further notice to the NCP;

(b) The payment schedule is for the limited purpose of avoiding license suspension; and

(c) DCS's authority to collect any and all amounts authorized under chapters 26.18, 26.23, 47.20 and 74.20A RCW is not affected by the payment schedule.

(8) The administrative law judge (ALJ) is not required to calculate the outstanding support debt beyond determining whether the NCP is at least six months in arrears. Any debt calculation shall not be binding on the department or the NCP beyond the determination that there is at least six months of arrears.

~~((3) If the NCP requests a hearing on the notice, DCS stays the certification process until the hearing results in a finding that the NCP is not in compliance with the order, or that DCS is authorized to certify the NCP.~~

~~(4))~~ (9) If the NCP requests a hearing on the notice of noncompliance under the circumstances spelled out in WAC 388-14A-4510 ~~((2) and (3))~~ (1)(a) or (b), DCS asks the office of administrative hearings to schedule a hearing. If the hearing results in a finding that the NCP is not in compliance with the order, or that DCS is authorized to certify the NCP, DCS stays the certification process until thirty days after the NCP:

(a) Is released from jail or prison; or

(b) Stops receiving cash public assistance.

#### NEW SECTION

**WAC 388-14A-4535 Can the noncustodial parent file a late request for hearing if a license has already been suspended?** (1) The noncustodial parent (NCP) may file a late request for hearing if the division of child support (DCS) has certified the noncustodial parent (NCP) because of the NCP's failure to object to the notice of noncompliance as provided in WAC 388-14A-4512(1), even if the department of licensing (DOL) or other licensing entity has suspended the NCP's license.

(2) When an NCP files a late request for hearing, DCS does not release the certification until:

(a) The NCP pays the support debt in full;

(b) DCS and the NCP sign a payment agreement under WAC 388-14A-4520;

(c) There is a final administrative order entered establishing a payment schedule because the NCP made a good faith effort to comply with the order; or

(d) There is a final administrative order entered determining that the NCP did not owe more than six months worth

of support and that license suspension was not appropriate at the time of the certification.

(3) If the late request for hearing is filed within one year of the date the notice was served, DCS schedules the matter for administrative hearing under WAC 388-14A-4530.

(4) If the late request for hearing is filed more than one year after the date the notice was served, DCS schedules the matter for administrative hearing under WAC 388-14A-4530. At the hearing:

(a) The NCP must show good cause for the late request for hearing.

(b) The administrative law judge (ALJ) must find that the NCP has made a showing of good cause before granting relief in an administrative order.

(5) DCS and the NCP may negotiate and sign a payment agreement under WAC 388-14A-4520 at any time during this process.

(6) If DCS certified the NCP to a licensing agency based on NCP's failure to comply with a payment agreement or a payment schedule established by a final administrative order, the NCP does not have any additional hearing right on the original notice of noncompliance.

(a) If the NCP previously signed a payment agreement, the NCP waived the administrative hearing right associated with any notice of noncompliance which was served before the agreement was signed. See WAC 388-14A-4525(3).

(b) If the NCP failed to comply with a payment schedule established by a final administrative order, the NCP has already exercised the hearing right associated with the underlying notice of noncompliance.

#### NEW SECTION

**WAC 388-14A-4540 When is a DCS conference board available regarding license suspension issues?** (1) A noncustodial parent (NCP) may request a conference board under WAC 388-14A-6400 to resolve any complaints and problems concerning a division of child support (DCS) case.

(2) If the NCP and DCS are not successful in negotiating a payment agreement to avoid license suspension or to get a license reinstated, NCP may request a conference board at any time.

(a) A conference board is not available to the NCP regarding negotiations that occur immediately after the service of a notice of noncompliance under WAC 388-14A-4505.

(b) During that time period, the NCP has a right to an administrative hearing on the notice, and if the NCP is not able to negotiate a payment agreement, the appropriate remedy is an administrative hearing under WAC 388-14A-4530.

#### **WSR 10-03-065**

#### **PERMANENT RULES**

#### **DEPARTMENT OF**

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

(Aging and Disability Services Administration)

[Filed January 15, 2010, 2:57 p.m., effective February 15, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is amending existing sections and adding new sections to chapter 388-101 WAC, Certified community residential services and supports. The purpose of amending and adding to these rules is to make editorial and clarifying changes and to make the rules consistent with current law and standards. The anticipated effects are to make the rules clearer, easier to read, understand and apply.

The department is proposing new sections WAC 388-101-3165 Access to certification evaluation report and plan of correction, 388-101-3205 Liability insurance required, 388-101-3206 Liability insurance required—Commercial general liability insurance or business liability insurance coverage, 388-101-3207 Liability insurance required—Professional liability insurance coverage, 388-101-3372 Medical devices, 388-101-4269 Individual defined, 388-101-4350 Notice—Service complete, and 388-101-4360 Notice—Proof of service.

Citation of Existing Rules Affected by this Order: Amending WAC 388-101-3060, 388-101-3080, 388-101-3090, 388-101-3250, 388-101-3520, 388-101-4010, 388-101-4170, 388-101-4270, 388-101-4280, 388-101-4290, 388-101-4300, 388-101-4310, 388-101-4320, 388-101-4330, and 388-101-4340.

Statutory Authority for Adoption: RCW 71A.12.080.

Adopted under notice filed as WSR 09-21-094 on October 20, 2009.

Changes Other than Editing from Proposed to Adopted Version: The changes, other than editing changes, follow (changes are shown below with new language underlined and deleted text lined through):

~~**WAC 388-101-3055 Application for initial certification—Liability insurance required.** (1) The applicant must submit insurer executed evidence of liability insurance coverage before certification.~~

~~(2) The coverage and evidence of coverage must comply with the requirements of WAC 388-101-3206 and 388-101-3207.~~

**WAC 388-101-3080 The department may deny—Application.**

~~(1) The department may deny an application for initial certification if the department has determined:~~

~~(a) That funding is not available; or~~

~~(b) There is not a programmatic need for additional service providers in the area of the state the applicant intends to serve.~~

~~(2) The department may deny the application for initial certification or change of ownership if any person named in the application has:~~

~~(1a) Shown a lack of the understanding, character, ability, or emotional stability that is necessary to meet the identified needs of vulnerable adults;~~

~~(2b) Had a contract terminated or a certification or license revoked or denied by the department, or has been subjected to department enforcement actions;~~

~~(3e) Had a contract terminated, or a certification or license revoked or denied in another state, or has been subjected to an enforcement action in another state;~~

~~(4d) Obtained or attempted to obtain a license or certification by fraudulent means or misrepresentation;~~

~~(5e) Relinquished or been denied a license or license renewal to operate a home or facility that was licensed for the care of children or vulnerable adults;~~

~~(6f) Refused to permit authorized department representatives to interview clients or to have access to client records;~~

~~(7g) Been convicted of a drug-related conviction within the past five years without evidence of rehabilitation, unless denial is required under WAC 388-06-0180(4); or~~

~~(8h) Been convicted of an alcohol-related conviction within the past five years without evidence of rehabilitation.~~

(9) Been convicted of any felony that the department determines is reasonably related to the competency of the person to be involved in the ownership or operation of the service provider.

**WAC 388-101-3090 The department must deny—Application.**

(1) The department must deny an application for initial certification or change of ownership if any person named in the application has ~~been~~:

(a) ~~Been~~ Been convicted of a crime listed under WAC 388-06-0170(1);

(b) ~~Been~~ Been convicted of a disqualifying crime under WAC 388-06-0180;

(c) ~~Been~~ Found by a court in a criminal proceeding, a protection proceeding, or ~~in~~ a civil damages lawsuit under chapter 74.34 RCW, to have abused, neglected, abandoned, or financially exploited a vulnerable adult;

(d) ~~Been~~ Found ~~in any dependency action to have abused, sexually assaulted,~~ neglected, financially exploited, or abandoned ~~physically abused~~ any minor or vulnerable adult by a court of law or a disciplining authority, including the department of health. Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceedings under Title 26 RCW, and vulnerable adult protection proceedings under chapter 74.34 RCW;

(e) A substantiated finding of abuse or neglect of a child that is:

(i) Listed on the department's background check central unit (BCCU) report; or

(ii) Disclosed by the individual, except for findings made before December 1998; or

(f) A substantiated finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult that is:

(i) Listed on any registry, including the department's registry;

(ii) Listed on the department's background check central unit (BCCU) report; or

(iii) Disclosed by the individual, except for Adult Protective Services findings made before October 2003.

~~(e) Found by a court in a domestic relations proceeding under Title 26 RCW, or any comparable state or federal law, to have sexually abused, exploited, or physically abused any minor;~~

~~(f) Found in any final decision issued by a disciplinary board to have sexually or physically abused or exploited any minor or to have abused, neglected, abandoned, or financially exploited any vulnerable adult, as defined under chapter 74.34 RCW; or~~

~~(g) Found to have abused, neglected, financially exploited, abandoned, or mistreated a minor or vulnerable adult, as defined in chapter 74.34 RCW, and the finding has been entered on any department registry or on any state or federal agency list.~~

(2) The department must deny an application for initial certification or change of ownership if any person named in the application has a pending ~~criminal charge for a crime that is disqualifying under this section as described in WAC 388-06-0200.~~

**WAC 388-101-3205 Liability insurance required. Ongoing-**

The service provider must:

(1) ~~Obtain liability insurance upon certification and maintain the liability insurance as required in WAC 388-101-3206 and 388-101-3207; and~~

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

**WAC 388-101-3250 Background checks.**

(1) Service providers must follow the background check requirements described in chapter 388-06 WAC and in this chapter. In the event of an inconsistency, this chapter applies.

(2) The service provider must obtain background checks including, but not limited to background inquiries and criminal history disclosure from the department for all administrators, employees, volunteers, students, and subcontractors who may have unsupervised access to clients.

(3) The service provider must not allow the following persons to have unsupervised access to clients until the service provider receives ~~successful~~ background check results from the department verifying that the person does not have any convictions, pending criminal charges, or findings described in WAC 388-101-3090:

- (a) Administrators;
- (b) Employees;
- (c) Volunteers or students; and
- (d) Subcontractors.

(4) If the background check results show that the individual has a conviction, pending criminal charge, or finding that is not disqualifying under WAC 388-101-3090, then the service provider must conduct a character, suitability, and competence review as described in WAC 388-06-0190.

~~(54)~~ Persons identified in subsection (2) of this section who have lived in Washington state less than three years or who are otherwise required to complete a fingerprint-based background check may be hired for a one hundred twenty-day provisional period when:

- (a) The person is not disqualified based on the initial result of the background check from the department; and
- (b) A fingerprint-based background check is pending.

~~(65)~~ The service provider must notify the person, within ten days of receiving the result, that he or she may request a copy of the background check.

~~(76)~~ The service provider must renew the background check at least every thirty-six months and keep current department background checks for each administrator, employee, volunteer, student, or subcontractor of a service provider.

~~(87)~~ Licensed boarding homes or adult family homes must adhere to the current regulations in this chapter and in the applicable licensing laws.

~~(98)~~ Service providers must prevent unsupervised access to clients by any administrator, employee, subcontractor, student, or volunteer who has a disqualifying conviction, pending criminal charge, or finding described in WAC 388-101-3090.

(10) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the service provider.

**WAC 388-101-3372 Medical devices.**

(1) For purposes of this section the term "medical device" means any piece of medical equipment used to treat a client's assessed need.

(2) Use of some medical devices ~~often~~ poses a safety risk for clients. Examples of medical devices with known safety risks are transfer poles, helmets, straps and belts on wheelchairs or beds, and bed side rails.

(3) Medical devices with known safety risks must not be used by the service provider:

- (a) As a restraint; or
- (b) For staff convenience.

(4) Before using medical devices with known safety risks for any client, the service provider must:

- (a) Review the client's assessment to identify the client's need;
- (b) Identify and implement interventions that might decrease the need for the use of a medical device;
- (c) Document the use of less restrictive and less invasive options, successful or not;
- (d) Provide the client and client's family or legal representative with information about the anticipated benefits and safety risks of using the device to enable them to make an informed decision about whether or not to use the device;
- (e) Obtain a current physician's order that describes the medical necessity for use of the device and the anticipated duration of use; and
- (f) Provide written instructions to staff regarding safe and proper use of the device.

The changes were made because of comments received and to make the requirements clearer.

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
<p><b>General</b> Some comments reflected concerns that the revised rules would not be applied in a consistent and reasonable manner.</p>	<p>Evaluators will be provided guidance and training in the application and interpretation of these rules prior to implementation.</p>

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
<p><b>WAC 388-101-3055 Application for initial certification—Liability insurance required.</b>                      (1) Requiring liability insurance coverage before an agency enters into a contract may not be a reasonable standard.</p>	<p>A change was made in response to this comment. Proposed WAC 388-101-3055 was deleted. WAC 388-101-3205 was amended to require liability insurance upon certification instead of before certification.</p>
<p><b>WAC 388-101-3080 The department may deny—Application.</b>                      (1) The proposed language is not consistent with federal rules governing the DDD home and community based services waiver program.                      (2) The proposed language is not clear enough in identifying reasons that the department may deny an initial application for certification.</p>	<p>Changes were made in response to these comments. The department deleted language that was inconsistent with federal waiver requirements. Language was added to clarify when the department may deny an initial application for certification.</p>
<p><b>WAC 388-101-3090 The department must deny—Application.</b>                      (1) The proposed language is not clear enough in identifying when the department must deny an initial application for certification.</p>	<p>Changes were made in response to this comment. The department has added language to clarify when an initial application for certification must be denied.</p>
<p><b>WAC 388-101-3165 Access to certification evaluation report and plan of correction.</b>                      (1) Who does "anyone" refer to?                      (2) Is this section subject to public disclosure laws? The section does not place any time lines in making the documents available.                      (3) Referenced document is a public document. The proposed rule is unnecessary.</p>	<p>No changes were made in response to comments (1) and (2). They do not include any specific recommendations.                      No changes were made in response to comment (3). Service providers can determine the method they use to make the information available to persons who request it.</p>

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
<p><b>WAC 388-101-3206 Liability insurance required—Commercial general liability insurance or business liability insurance coverage.</b>                      (1) Coverage for acts and omissions of employees and volunteers is an additional requirement not in contract. Creates significant financial hardship to providers.</p>	<p>No change was made in response to this comment. The current community residential services contract already requires coverage for the acts and omissions of the contractor's employees and volunteers.</p>
<p><b>WAC 388-101-3250 Background checks.</b>                      (1) This section needs to clarify when providers must prevent unsupervised access to clients and when they must conduct character, competency, and suitability reviews.</p>	<p>Changes were made in response to these comments. Language was added to clarify when service providers must prevent unsupervised access to clients and when they must conduct character, competency, and suitability reviews.</p>
<p><b>WAC 388-101-3372 Medical devices.</b>                      (1) Does "straps and belts on wheelchairs" include the wheelchair seatbelt?                      (2) The term "medical device" is too wide open for interpretation. There should be a list of all devices that the requirement applies to.                      (3) The definition of medical devices is too broad and should be limited to those devices which may restrict or limit movement or mobility or may otherwise cause a potential safety risk.                      (4) Subsection (4)(a) through (d) impose a medical model on providers and are unreasonable expectations for a nonmedical program.</p>	<p>A change was made in response to comments (1) through (3) regarding this section. Language has been added to clarify that the rule applies to medical devices with known safety risks. No change was made in response to comment (4). If the service provider uses a medical device with a known safety risk for a client, they need to make sure they try less restrictive and less invasive options before use. The requirement is necessary for the protection of client health and safety.</p>

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
<b>WAC 388-101-3520 Shared expenses and client related funds.</b> (1) Equitable means "fair." It is not clear if the rule means client shares should be proportionate to their income. Suggest the wording be changed to "shared proportionately."	No change was made in response to this comment. The rule requires providers to ensure that common household expenses are shared among clients in a fair manner.

A final cost-benefit analysis is available by contacting John Gaskell, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-3210, fax (360) 438-7903, e-mail gaskejw@dshs.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 8, Amended 15, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 8, Amended 15, Repealed 0.

Date Adopted: January 14, 2010.

Susan N. Dreyfus  
Secretary

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

**WAC 388-101-3060 Change of ownership.** (1) To apply for a change of ownership, an applicant must submit an application and the required reports and documents to the department when there is a change of:

- (a) The business entity ownership; or
- (b) The form of legal organization.

(2) ~~((The service provider))~~ When applying for a change of ownership, an applicant may be required to provide any or all items listed in WAC 388-101-3050.

(3) For group homes, applicants must also meet the applicable change of ownership requirements found in:

- (a) WAC 388-76-10105 for licensed adult family homes;
- or
- (b) WAC 388-78A-2770 through 388-78A-2787 for licensed boarding homes.

(4) If the applicant is not a current service provider, the applicant must apply for initial certification.

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

**WAC 388-101-3080 The department may deny— Application.** The department may deny the application for initial certification or change of ownership if any person named in the application has:

(1) ~~((Has))~~ Shown a lack of the understanding, character, ability, or emotional stability that is necessary to meet the identified needs of vulnerable adults;

(2) Had a ~~((department))~~ contract~~((;))~~ terminated or a certification((;)) or license ((withdrawn)) revoked or denied by the department, or has been subjected to department enforcement actions;

(3) Had a contract terminated, or a certification((;)) or license ((withdrawn)) revoked or denied in another state, or ((was)) has been subjected to an enforcement action in another state;

(4) Obtained or attempted to obtain a license or certification by fraudulent means or misrepresentation;

(5) ~~((Has))~~ Relinquished or been denied a license or license renewal to operate a home or facility that was licensed for the care of children or vulnerable adults;

(6) Refused to permit authorized department representatives to interview clients or to have access to client records;

(7) ~~((Has))~~ Been convicted of a drug-related conviction within the past five years without evidence of rehabilitation, unless denial is required under WAC 388-06-0180(4); or

(8) ~~((Has))~~ Been convicted of an alcohol-related conviction within the past five years without evidence of rehabilitation.

(9) Been convicted of any felony that the department determines is reasonably related to the competency of the person to be involved in the ownership or operation of the service provider.

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

**WAC 388-101-3090 The department must deny— Application.** (1) The department must deny an application for initial certification or change of ownership if any person named in the application ~~((was))~~ has:

~~((+))~~ (a) Been convicted of a crime ((against children or other persons or crimes relating to financial exploitation as defined under RCW 43.43.830 or 43.43.842)) listed under WAC 388-06-0170(1);

(b) Been convicted of a disqualifying crime under WAC 388-06-0180;

~~((2))~~ (c) Been found by a court in a criminal proceeding, a protection proceeding, or ((+)) a civil damages lawsuit under chapter 74.34 RCW, to have abused, neglected, abandoned, or financially exploited a vulnerable adult;

~~((3))~~ (d) Been found ((in any dependency action under chapter 13.34 RCW)) to have ((sexually assaulted)) abused, neglected, financially exploited, or ((physically abused any)) abandoned a minor or vulnerable adult by a court of law or a disciplining authority, including the department of health.

Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceedings under title 26 RCW, and vulnerable adult protection proceedings under chapter 74.34 RCW;

~~((4) Found by a court in a domestic relations proceeding under Title 26 RCW to have sexually abused, exploited, or physically abused any minor;~~

~~(5) Found in any final decision issued by a disciplinary board to have sexually or physically abused or exploited any minor or have abused, neglected, abandoned, or financially exploited any vulnerable adult as defined under chapter 74.34 RCW; or~~

~~(6) The subject of a stipulated finding of fact, conclusion of law, an agreed order, finding of fact, final order issued by a disciplining authority or final decision by any federal or state agency or department, a court of law, or entered into a state registry or department or agency list with a finding of abuse, neglect, financial exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW)) (e) A substantiated finding of abuse or neglect of a child that is:~~

~~(i) Listed on the department's background check central unit (BCCU) report; or~~

~~(ii) Disclosed by the individual, except for findings made before December 1998; or~~

~~(f) A substantiated finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult that is:~~

~~(i) Listed on any registry, including the department's registry;~~

~~(ii) Listed on the department's background check central unit (BCCU) report; or~~

~~(iii) Disclosed by the individual, except for adult protective services findings made before October 2003.~~

~~(2) The department must deny an application for initial certification or change of ownership if any person named in the application has a pending charge for a crime that is disqualifying under this section.~~

#### NEW SECTION

**WAC 388-101-3165 Access to certification evaluation report and plan of correction.** The service provider must make the certification evaluation report and related plan of correction available to anyone upon request.

#### NEW SECTION

**WAC 388-101-3205 Liability insurance required.** The service provider must:

(1) Obtain liability insurance upon certification and maintain the insurance as required in WAC 388-101-3206 and 388-101-3207; and

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

#### NEW SECTION

**WAC 388-101-3206 Liability insurance required—Commercial general liability insurance or business liability insurance coverage.** The service provider must have

commercial general liability insurance or business liability insurance that includes:

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

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

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

(4) Minimum limits of:

(a) Each occurrence—one million dollars;

(b) General aggregate—two million dollars; and

(c) For community protection service providers—three million dollars general aggregate.

#### NEW SECTION

**WAC 388-101-3207 Liability insurance required—Professional liability insurance coverage.** If the service provider employs professional staff, the service provider must have professional liability insurance or errors and omissions insurance. The insurance must include:

(1) Coverage for losses caused by errors and omissions of the service provider, its employees, and volunteers; and

(2) Minimum limits of:

(a) Each occurrence—one million dollars; and

(b) General aggregate—two million dollars.

**AMENDATORY SECTION** (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

**WAC 388-101-3250 Background checks.** (1) Service providers must follow the background check requirements described in chapter 388-06 WAC and in this chapter. In the event of an inconsistency, this chapter applies.

(2) The service provider must obtain background checks including, but not limited to background inquiries and criminal history disclosure from the department for all administrators, employees, volunteers, students, and subcontractors who may have unsupervised access to clients.

~~((2))~~ (3) The service provider must not allow the following persons to have unsupervised access to clients until the service provider receives ~~((successful))~~ background check results from the department verifying that the person does not have any convictions, pending criminal charges, or findings described in WAC 388-101-3090:

(a) Administrators;

(b) Employees;

(c) Volunteers or students; and

(d) Subcontractors.

~~((3) Service providers or applicants))~~ (4) If the background check results show that the individual has a conviction, pending criminal charge, or finding that is not disqualifying under WAC 388-101-3090, then the service provider must conduct a character, suitability, and competence review as described in WAC 388-06-0190.

(5) Persons identified in subsection (2) of this section who have lived in Washington state less than three years or who are otherwise required to complete a fingerprint-based



background check may be hired for a one hundred twenty-day provisional period (~~(as allowed under law)~~) when:

(a) The ~~((applicant or service provider))~~ person is not disqualified based on the initial result of the background check from the department; and

(b) A fingerprint-based background check is pending.

~~((4))~~ (6) The service provider must notify the person, within ten days of receiving the result, that he or she may request a copy of the background check.

~~((5))~~ (7) The service provider must renew the background check at least every thirty-six months and keep current department background checks for each administrator, employee, volunteer, student, or subcontractor of a service provider.

~~((6))~~ (8) Licensed boarding homes or adult family homes must adhere to the current regulations in this chapter and in the applicable licensing laws.

~~((7))~~ (9) Service providers must ~~((follow the requirements of RCW 43.43.830 through 43.43.842 and RCW 74.15.030))~~ prevent unsupervised access to clients by any administrator, employee, subcontractor, student, or volunteer who has a disqualifying conviction, pending criminal charge, or finding described in WAC 388-101-3090.

(10) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the service provider.

#### NEW SECTION

**WAC 388-101-3372 Medical devices.** (1) For purposes of this section the term "medical device" means any piece of medical equipment used to treat a client's assessed need.

(2) Use of some medical devices poses a safety risk for clients. Examples of medical devices with known safety risks are transfer poles, helmets, straps and belts on wheelchairs or beds, and bed side rails.

(3) Medical devices with known safety risks must not be used by the service provider:

- (a) As a restraint; or
- (b) For staff convenience.

(4) Before using medical devices with known safety risks for any client, the service provider must:

(a) Review the client's assessment to identify the client's need;

(b) Identify and implement interventions that might decrease the need for the use of a medical device;

(c) Document the use of less restrictive and less invasive options, successful or not;

(d) Provide the client and client's family or legal representative with information about the anticipated benefits and safety risks of using the device to enable them to make an informed decision about whether or not to use the device;

(e) Obtain a current physician's order that describes the medical necessity for use of the device and the anticipated duration of use; and

(f) Provide written instructions to staff regarding safe and proper use of the device.

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

**WAC 388-101-3520 Shared expenses and client related funds.** (1) For purposes of this section "common household expenses" means costs for rent, shared food and household supplies, and utilities, including but not limited to water, garbage, cable television/radio, telephone, and electricity.

(2) The service provider must ensure that common household expenses are shared equitably among all clients living in the household.

(3) If the service provider ~~((does not manage the client's funds and))~~ receives funds for the client from any source, the service provider must be able to show that all the funds received are:

~~((1))~~ (a) Given to the client or the client's legal representative;

~~((2))~~ (b) Deposited to the client's account; or

~~((3))~~ (c) Used only for the client.

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

**WAC 388-101-4010 Community protection—~~((Written individual))~~ Treatment plan.** ~~((1))~~ The community protection service provider must ~~((develop and))~~ implement ~~((a))~~ the client's ~~((written individual))~~ treatment plan as ~~((required in the residential services contract and that is based on:~~

~~((a))~~ A qualified professional's risk assessment of emotional and behavioral issues related to community protection risks; or

~~((b))~~ A written risk assessment and treatment recommendations by:

~~((i))~~ A sexual offender treatment provider or sexual offender treatment provider affiliate if the client has a sexual offense history; or

~~((ii))~~ A licensed psychologist or psychiatrist with specialized training in the treatment of or three or more years' experience treating violent or aggressive behavior when the person being assessed has demonstrated violent, dangerous, or aggressive behavior.

(2) ~~In addition to the requirements in WAC 388-101-3460 through 388-101-3510, the community protection service provider must include the following in the client's written individual plan:~~

~~((a))~~ Intervention strategies and techniques related to community protection risks;

~~((b))~~ Restrictions and measures, including security precautions; and

~~((c))~~ A therapist's approval of the written individual plan.

(3) For community protection clients with a history of sexual offending, the assessment by a certified sexual offender treatment provider or sexual offender treatment provider affiliate may serve as the functional assessment and treatment recommendations related to the sexual behaviors) written by a qualified professional/therapist in accordance with any procedures published by the department.

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

**WAC 388-101-4170 ((Mandating)) Mandated reporting policies and procedures.** (1) The service provider must develop, train on and implement written policies and procedures for:

- (a) Immediately reporting mandated reporting incidents to:
    - (i) The department and law enforcement;
    - (ii) Appropriate persons within the service provider's agency as designated by the service provider; and
    - (iii) The alleged victim's legal representative.
  - (b) Protecting clients;
  - (c) Preserving evidence when necessary; and
  - (d) Initiating an outside review or investigation.
- (2) The service provider must not have or implement any policies or procedures that interfere with a mandated reporter's obligation to report.

NEW SECTION

**WAC 388-101-4269 Individual defined.** As used in WAC 388-101-4270 through 388-101-4340, the term "individual" means anyone used by the service provider to provide services to clients who is alleged to have abandoned, abused, neglected, or financially exploited a client. "Individual" includes but is not limited to administrators, employees, contractors, subcontractors, volunteers, and students.

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

**WAC 388-101-4270 Notice to individual of preliminary findings.** (1) The department will ~~((notify the alleged perpetrator in writing within ten working days of making a preliminary finding of abandonment, abuse, neglect or financial exploitation of a client. The written notice:~~

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

~~(b) Will include the necessary information for the alleged perpetrator to ask for an administrative hearing to challenge the preliminary finding)) serve notice of the preliminary finding as provided in WAC 388-101-4350.~~

~~(2) ((The department must make a reasonable, good faith effort to determine the last known address of the alleged perpetrator.~~

~~(3) The department will serve notice of the preliminary finding as provided in chapter 388-02 WAC.~~

~~(4)) The department may ((extend the time frame for written notification beyond ten working days for good cause)) establish proof of service as provided in WAC 388-101-4360.~~

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

**WAC 388-101-4280 ((Reporting)) Notice to others of preliminary findings.** ~~((+ In a manner))~~ Consistent with confidentiality requirements concerning the client, witnesses,

and reporter, the department may provide notification of a preliminary finding to:

- ~~((a))~~ (1) Other divisions within the department;
- ~~((b))~~ (2) The agency or program identified under RCW 74.34.068 with which the ~~((alleged perpetrator is))~~ individual was associated as an employee, volunteer or contractor;
- ~~((c))~~ (3) The employer or program that is currently associated with the individual ~~((alleged to have abandoned, abused, neglected, or financially exploited a client, if known));~~
- ~~((d))~~ (4) Law enforcement; ~~((and))~~
- ~~((e))~~ (5) Other entities as authorized by law and this chapter including investigative authorities consistent with chapter 74.34 RCW; and
- (6) The appropriate licensing agency.
- ~~((2) The notification will identify the finding as a preliminary finding.)~~

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

**WAC 388-101-4290 Disputing a preliminary finding.** (1) An ~~((alleged perpetrator of abandonment, abuse, neglect, or financial exploitation of a client))~~ individual may request an administrative hearing to challenge a preliminary finding made by the department.

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

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

(4) The written request for a hearing must include:

(a) The full legal name, current address and phone number of the ~~((alleged perpetrator))~~ individual;

(b) A brief explanation of why the ~~((alleged perpetrator))~~ individual disagrees with the preliminary finding;

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

(d) The ~~((alleged perpetrator's))~~ individual's signature.

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

**WAC 388-101-4300 Disclosure of investigative and finding information.** (1) Confidential information about clients and mandated reporters received from the department may only be used by the ~~((alleged perpetrator))~~ individual to challenge ~~((preliminary))~~ findings through the appeal process. It may only be shared with persons who are involved in the appeal.

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

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

**WAC 388-101-4310 Hearing procedures to dispute a preliminary finding.** (1) Chapters 34.05 and 74.34 RCW, chapter 388-02 WAC, and the provisions of this chapter govern any appeal regarding a preliminary finding. In the event of a conflict between the provisions of this chapter and chapter 388-02 WAC, the provisions of this chapter shall prevail.

(2) The administrative law judge shall determine whether the preliminary finding is supported by a preponderance of the evidence ~~((supports the preliminary finding that the alleged perpetrator abandoned, abused, neglected, or financially exploited a vulnerable adult, and shall issue a preliminary order))~~.

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

**WAC 388-101-4320 Appeal of the ~~((administrative law judge's preliminary))~~ initial order ~~((on a finding))~~.** (1) If the ~~((alleged perpetrator))~~ individual or the department disagrees with the administrative law judge's decision, either party may challenge this decision by filing a petition for review with the department's board of appeals under chapters 34.05 RCW and 388-02 WAC.

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

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

**WAC 388-101-4330 Finalizing a preliminary finding.** (1) A preliminary finding becomes a final finding when:

(a) The department gives the ~~((alleged perpetrator))~~ individual notice of the preliminary finding ~~((pursuant to))~~ under WAC 388-101-4270 and the ~~((alleged perpetrator))~~ individual does not request an administrative hearing;

(b) The administrative law judge:

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

(ii) Issues ~~((a preliminary))~~ an initial order upholding the finding and the ~~((alleged perpetrator))~~ individual fails to appeal the ~~((preliminary))~~ initial order to the department's board of appeals; or

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

(2) The final finding is permanent and will only be removed from the department's records if ~~((=~~

~~((a)))~~ it is rescinded following judicial review ~~((= or~~

~~((b)))~~ The department may decide to remove the single finding of neglect from its records based upon a written petition by the alleged perpetrator provided that no further findings have occurred, and at least one calendar year has passed since the finding was finalized and recorded).

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

**WAC 388-101-4340 Reporting final findings.** (1) The department will report a final finding of abandonment, abuse, neglect ~~((and))~~ or financial exploitation within ten working days to the following:

(a) The ~~((perpetrator))~~ individual against whom the final finding was made;

(b) The service provider that was associated with the ~~((perpetrator))~~ individual during the time of the incident;

(c) The service provider that is currently associated with the ~~((perpetrator))~~ individual against whom the final finding was made, if known;

(d) The appropriate licensing, contracting, or certification authority; and

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

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

#### NEW SECTION

**WAC 388-101-4350 Notice—Service complete.** Service of the department notices is complete when:

(1) Personal service is made;

(2) The notice is addressed to the service provider or to the individual at his or her last known address, and deposited in the United States mail;

(3) The notice is faxed and the department receives evidence of transmission;

(4) Notice is delivered to a commercial delivery service with charges prepaid; or

(5) Notice is delivered to a legal messenger service with charges prepaid.

#### NEW SECTION

**WAC 388-101-4360 Notice—Proof of service.** The department may establish proof of service by any of the following:

(1) A declaration of personal service;

(2) An affidavit or certificate of mailing to the service provider or to the individual to whom the notice is directed;

(3) A signed receipt from the person who accepted the certified mail, the commercial delivery service, or the legal messenger service package; or

(4) Proof of fax transmission.

### WSR 10-04-002

#### PERMANENT RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed January 21, 2010, 9:08 a.m., effective February 21, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is amending WAC 388-825-068 What medicaid state plan services can DDD authorize?, on a permanent basis to maintain consistency with changes being made to chapters 388-106 and 388-71 WAC as a result of 2009 legislation.

Citation of Existing Rules Affected by this Order: Amending WAC 388-825-068.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.040, 71A.14.030.

Other Authority: Washington state 2009-11 budget (ESHB 1244), section 205 (1)(j), and section 1915(i) of the Social Security Act.

Adopted under notice filed as WSR 09-15-161 on July 21, 2009.

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

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

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

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

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

Date Adopted: January 13, 2010.

Don Goldsby, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 08-11-072, filed 5/19/08, effective 6/19/08)

**WAC 388-825-068 What medicaid state plan services can DDD authorize?** DDD ~~((can))~~ may authorize the following medicaid state plan services:

- (1) Medicaid personal care, per chapter 388-106 WAC;
- (2) Private duty nursing for adults age eighteen and older; per chapter 388-106 WAC;
- (3) Private duty nursing for children under the age of eighteen, per WAC 388-551-3000;
- (4) Adult day health for adults, per chapter 388-106 WAC ~~((388-106-0810 and 388-106-0815))~~; and
- (5) ICF/MR services, per chapters 388-835 and 388-837 WAC.

<del>((Medicaid State Plan Services))</del>	
<del>((Adult day health ICF/MR services Medically intensive home care program for children Private duty nursing for adults))</del>	<del>((Medicaid personal care • In-home • Adult family home • Adult residential care))</del>

**WSR 10-04-003**

**PERMANENT RULES**

**BUILDING CODE COUNCIL**

[Filed January 21, 2010, 2:54 p.m., effective July 1, 2010]

Effective Date of Rule: July 1, 2010.

Purpose: To adopt and amend the 2009 Edition of the Uniform Plumbing Code standards, chapter 51-57 WAC.

Citation of Existing Rules Affected by this Order: Amending WAC 51-57-003 and 51-57-008.

Statutory Authority for Adoption: RCW 19.27.074 and 19.27.031.

Other Authority: Chapters 19.27 and 34.05 RCW.

Adopted under notice filed as WSR 09-17-143 on August 19, 2009.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: November 12, 2009.

Peter D. DeVries  
Council Chair

AMENDATORY SECTION (Amending WSR 07-03-043, filed 1/11/07, effective 7/1/07)

**WAC 51-57-003 Uniform Plumbing Code Standards.** The ~~((2006))~~ 2009 edition of the Uniform Plumbing Code Standards (Appendixes A, B and I), published by the International Association of Plumbing and Mechanical Officials are hereby adopted by reference.

AMENDATORY SECTION (Amending WSR 07-03-043, filed 1/11/07, effective 7/1/07)

**WAC 51-57-008 Implementation.** The Uniform Plumbing Code Standards adopted by chapter 19.27 RCW shall become effective in all counties and cities of this state on July 1, ~~((2007))~~ 2010, unless local government residential amendments have been approved by the state building code council.

**WSR 10-04-006**  
**PERMANENT RULES**  
**OFFICE OF**  
**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2009-02—Filed January 22, 2010,  
9:23 a.m., effective February 22, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule making will repeal WAC 284-01-050 dealing with electronic signatures.

Citation of Existing Rules Affected by this Order: Repealing WAC 284-01-050.

Statutory Authority for Adoption: RCW 48.02.060.

Adopted under notice filed as WSR 09-20-094 on October 7, 2009.

A final cost-benefit analysis is available by contacting Chris Carlson, P.O. Box 40258, Olympia, WA 98504, phone (360) 725-7042, fax (360) 586-3109, e-mail ChrisCA@oic.wa.gov.

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

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

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

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

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

Date Adopted: January 22, 2010.

Mike Kreidler  
Insurance Commissioner

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 284-01-050	Provisions relating to electronic authentication.
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**WSR 10-04-008**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed January 22, 2010, 9:36 a.m., effective February 22, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of these rules is to consider making clarifying changes and consolidate terms to simplify the rules. The impact of the rules is to make the rules clearer, easier to read, understand, and apply.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-76-10185; and amending WAC 388-76-10035, 388-76-10036, 388-76-10040, 388-76-10090, 388-76-10105, 388-76-10110, 388-76-10200, 388-76-10415, 388-76-10505, 388-76-10550, 388-76-10860, 388-76-10970, 388-76-10975, and 388-76-10985.

Statutory Authority for Adoption: RCW 70.128.040.

Adopted under notice filed as WSR 09-21-070 on October 16, 2009.

Changes Other than Editing from Proposed to Adopted Version: Changes are shown with new language underlined and deleted text lined through.

**WAC 388-76-10105 Application—Change of ownership.** (1) Under this section, "control of the provider" means the possession, directly or indirectly, of the power to direct the management, operation and/or policies of the adult family home, whether through ownership, voting control, by agreement, by contract or otherwise.

(2) A change of ownership of an adult family home requires both a new license application and a new license.

(3) A change of ownership occurs when there is a change in:

- (a) The provider; or
- (b) The control of a provider.

(4) Events which constitute a change of ownership include, but are not limited to:

(a) The form of legal organization of the adult family home is changed, such as when an adult family home forms:

- (i) A partnership;
- (ii) A corporation;
- (iii) A limited liability company; or
- (iv) When it merges with another legal organization.

(b) The adult family home transfers business operations and management responsibility to another party, whether or not there is a partial or whole transfer of real property, personal property, or both.

(c) Two people are both licensed as a married couple or domestic partners to operate an adult family home and an event, such as a separation, divorce, or death, results in only one person operating the home.

(d) Dissolution of a business partnership that is licensed to operate the adult family home.

(e) If the adult family home is a corporation and the corporation:

- (i) Is dissolved;
- (ii) Merges with another corporation, resulting in a change in the control of the provider; or
- (iii) Consolidates with one or more corporations to form a new corporation;

(iv) Whether by a single transaction or multiple transactions within a continuous twenty-four month period, transfers fifty percent or more of its shares to one or more of the following:

- (A) New or former shareholders; or
- (B) Present shareholders, each having less than five percent of the shares before the initial transaction.

(f) Any other event or combination of events that results in a substitution, elimination, or withdrawal of the provider's control of the adult family home.

- (5) The new owner:
- (a) Must correct all deficiencies that exist at the time of the ownership change;
  - (b) Is subject to the provisions of chapters 70.128, 70.129, 74.34 RCW, this chapter and other applicable laws and regulations;
  - (c) Must obtain a new license from the department before the transfer of ownership; and
  - (d) Must not begin operation of the adult family home until the department has granted the license.
- (6) The home must notify each resident, in writing at least thirty days before the effective date of the ownership change.
- (7) In order to prevent disruption to residents, currently licensed providers may request in writing that the department give priority processing to an applicant seeking to be licensed as the new provider for the adult family home. ~~Currently licensed providers seeking a license for a new adult family home may request application processing priority in order to minimize or prevent disruption to current residents. The must:~~
- ~~(a) Make the request to the department in writing, including the reason for changing the ownership of the home; and~~
  - ~~(b) Explain how or why the reason for the change is beyond the control of the home.~~

**WAC 388-76-10200 Adult family home—Staff—Availability—Contact information.** In addition to other licensing requirements for staff availability, the adult family home must:

- (1) Ensure at least one caregiver is present in the home whenever one or more residents are present in the home, unless the resident has been assessed as being safe when left unattended for a specific period of time, and that information is included in the negotiated care plan;
- (2) Designate an experienced, staff member who is capable of responding on behalf of the adult family home by phone or pager at all times.
- (3) Give residents the telephone or pager number for the contact required in subsection (2) of this section;
- (4) Ensure the provider, entity representative or resident manager is readily available to:
  - (a) Each resident;
  - (b) Residents' representatives;
  - (c) Caregivers; and
  - (d) Authorized state staff.

The changes were made because of comments received and to clarify the requirements.

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
<p>WAC 388-76-10105, there was a comment about clarifying whether the adult family home license was for the home or for the person or entity.</p> <p>Under subsection (7) there is a conflict since it refers to licensed adult family home providers seeking to change a licensed adult family home.</p>	<p>No change was made. The current definition of adult family home includes two parts: (1) A residential home in which a person or entity are licensed to provide ... care ...; and (2) ... any person or entity who has been granted a license to operate an adult family home. The license is for both the specific home and for the person or entity. Any change in either the home or person/entity requires a change of ownership application.</p> <p>A change was made in response to this comment by using the language in RCW 70.128.064.</p>
<p>WAC 388-76-10200(1) "The residents in my adult family home do not always require or want staff to be available in the AFH to meet their needs. They do not have needs that require staff all of the time. They want time alone in their home."</p>	<p>A change was made. An exception was added to reflect that if a resident's assessment and care plan specified that the resident was safe to be left unattended and for a specified period of time the home could do so.</p>

A final cost-benefit analysis is available by contacting Lisa N.H. Yanagida, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2589, fax (360) 438-7903, e-mail yanagln2@dshs.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 14, Repealed 14.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 14, Repealed 14.

Date Adopted: January 22, 2010.

Susan N. Dreyfus  
Secretary

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

**WAC 388-76-10035 License requirements—Multiple family home providers.** To be licensed to operate more than one adult family home, the applicant must have:

(1) Evidence ~~((that the provider or entity representative has successfully completed))~~ of successful completion of the forty-eight hour residential care administrator's training to meet the ~~((related))~~ applicable requirements of chapter 388-112 WAC.

(2) Operated an adult family home in Washington for at least one year without a significant violation of chapters 70.128, 70.129 or 74.34 RCW, this chapter or other applicable laws and regulations; and

(3) The ability to operate more than one home.

(4) The following plans for each home the applicant intends to operate:

(a) A twenty-four hour a day, seven day a week staffing plan;

(b) A plan for ~~((how the provider entity representative, or resident manager will manage))~~ managing the daily operations of each home; and

(c) A plan for emergencies, deliveries, staff and visitor parking.

(5) A credit history considered if the history relates to the ability to provide care and services.

(6) An ~~((applicant,))~~ entity representative or a ~~((qualified))~~ resident manager at each home who is responsible for the care of each resident at all times.

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

**WAC 388-76-10036 License requirements—Multiple adult family home management.** When there is more than one home licensed to a provider ~~((or entity)),~~ the adult family home must ensure that:

(1) Each home has one person responsible for managing the overall delivery of care to all residents in the home;

(2) The designated responsible person is the provider, entity representative or a ~~((qualified))~~ resident manager; and

(3) Each responsible person is designated to manage only one adult family home at a given time.

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

**WAC 388-76-10040 License requirements—Qualified person must live-in or be on-site.** (1) The adult family home provider or entity representative must:

(a) Live in the home; or

(b) Employ or contract with a ~~((qualified))~~ resident manager who lives in the home and is responsible for the care and services of each resident at all times.

(2) The provider, entity representative, or ~~((qualified))~~ resident manager is exempt from the requirement to live in the home if:

(a) The home has twenty-four hour staffing coverage; and

(b) A ~~((qualified))~~ staff person who can make needed decisions is always present in the home.

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

**WAC 388-76-10090 Application—Entity application.** An entity submitting an application must:

(1) Include a list of all facilities or homes in which the applicant or persons affiliated with the applicant, managerial employee, or owner of five percent or more of the entity provided care and services to children or vulnerable adults within the last ten years;

(2) Designate an entity representative who:

(a) Is responsible for the daily operations of the adult family home;

(b) Will be considered the department's primary contact person; and

(c) May act as both the entity representative and the resident manager in only one home.

(3) Designate a ~~((qualified))~~ resident manager for the home if the entity representative is not the designated resident manager in subsection (2)(c) of this section.

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

**WAC 388-76-10105 Application—Change of ownership.** (1) Under this section, "control of the provider" means the possession, directly or indirectly, of the power to direct the management, operation and/or policies of the adult family home, whether through ownership, voting control, by agreement, by contract or otherwise.

~~((2))~~ (2) A change of ownership of an adult family home requires both a new license application and a new license.

~~((3))~~ (3) A change of ownership occurs when there is a change in:

(a) The provider ~~((or entity provider));~~ or

(b) ~~The control of ((an entity))~~ a provider.

~~((4))~~ (4) Events which constitute a change of ownership include, but are not limited to:

(a) The form of legal organization of the ~~((provider))~~ adult family home is changed, such as when ~~((a provider))~~ an adult family home forms:

(i) A partnership;

(ii) A corporation;

(iii) ~~((An association))~~ A limited liability company; or

(iv) ~~((A dissolution or merger of a licensed entity))~~

When it merges with another legal organization.

(b) The ~~((provider or entity provider))~~ adult family home transfers business operations and management responsibility to another party, whether or not there is a partial or whole transfer of ~~((adult family home))~~ real property ~~((and/or)),~~ personal property ~~((assets)),~~ or both.

(c) Two people are both licensed as a married couple or domestic partners to operate an adult family home and an

event, such as a separation, divorce, or death, results in only one person operating the home.

~~(d) (An event dissolves the)~~ Dissolution of a business partnership ~~(, if)~~ that is licensed to operate the ~~((provider or entity provider is in a business partnership))~~ adult family home.

(e) If the ~~((provider or entity provider))~~ adult family home is a corporation and the corporation:

- (i) Is dissolved;
- (ii) Merges with another corporation ~~((which is the survivor)),~~ resulting in a change in the control of the provider; or
- (iii) Consolidates with one or more corporations to form a new corporation;
- (iv) Whether by a single transaction or multiple transactions within a continuous twenty-four month period, transfers fifty percent or more of ~~((the stock))~~ its shares to one or more of the following:

(A) New or former ~~((stockholders))~~ shareholders; or

(B) Present ~~((stockholders))~~ shareholders, each having less than five percent of the ~~((stock))~~ shares before the initial transaction.

(f) Any other event or combination of events ~~((which))~~ that results in a substitution, elimination, or withdrawal of ~~((or control of))~~ ~~((the provider or entity))~~ provider's control of the adult family home.

~~((4))~~ (5) The new owner:

- (a) Must correct all deficiencies that exist at the time of the ownership change;
- (b) Is subject to the provisions of chapters 70.128, 70.129, 74.34 RCW, this chapter and other applicable laws and regulations;
- (c) Must obtain a new license from the department before the transfer of ownership; and
- (d) Must not begin operation of the adult family home ~~((as the new owner, provider or entity provider))~~ until the department has granted the license.

~~((5))~~ (6) The home must notify each resident, in writing at least thirty days before the effective date of the ownership change.

~~((6))~~ If a currently licensed provider or entity provider seeking to change ownership wants the department to give priority to processing an application to minimize or prevent disruption of residents that live in the existing home, the applicant must:

~~(a) Make the request to the department in writing, including the reason for changing the ownership of the home; and~~

~~(b) Explain how or why the reason for the change is beyond the control of the home))~~ (7) In order to prevent disruption to residents, currently licensed providers may request in writing that the department give priority processing to an applicant seeking to be licensed as the new provider for the adult family home.

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

**WAC 388-76-10110 Application—Change of location or address.** (1) A change of the adult family home location or address requires both a new license application and a new license.

(2) The home must not start operations of the home at a new location until the department has granted the license for the new location.

(3) The home must notify each resident or resident representative, in writing at least thirty days before the effective date of the change of the home location or address.

~~((4))~~ If a currently licensed provider or entity representative, seeking to change the home location or address wants the department to give priority to processing an application to minimize or prevent the disruption of residents that live in the existing home, the applicant must:

~~(a) Make the request in writing, including the reason for changing the location of the home to the department; and~~

~~(b) Explain how or why the reason for change is beyond the control of the home.))~~

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

**WAC 388-76-10200 Adult family home—Staff—Availability—Contact information.** In addition to other licensing requirements for staff availability, the adult family home must:

(1) Ensure at least one caregiver is present in the home whenever one or more residents are present in the home, unless the resident has been assessed as being safe when left unattended for a specific period of time, and that information is included in the negotiated care plan;

(2) Designate an experienced, ~~((capable))~~ staff member who is capable of responding on behalf of the ~~((provider or entity representative):~~

~~(a))~~ adult family home by phone or pager(~~(;~~

~~(b))~~ at all times ~~((including:~~

~~(i) When no residents are present in the home; and~~

~~(ii) When the provider entity representative and residents are on vacation or away from the home)).~~

~~((2))~~ (3) Give residents the telephone or pager number for the contact required in subsection ~~((1))~~ (2) of this section;

~~((3))~~ (4) Ensure the provider, entity representative or resident manager is readily available to:

(a) Each resident;

(b) Residents' representatives;

(c) Caregivers; and

(d) Authorized state staff.

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

**WAC 388-76-10415 Food services.** The adult family home must:

(1) Ensure ~~((the provider, entity representative and all staff meet))~~ that the safe food handling training requirements of chapter 388-112 WAC are met; and

(2) Serve meals:

(a) In the home where each resident lives; and

(b) That accommodate each resident's:

(i) Preferences;

(ii) Food allergies and sensitivities;

(iii) Caloric needs;

(iv) Cultural and ethnic background; and



(v) Physical condition that may make food intake difficult such as being hard for the resident to chew or swallow.

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

**WAC 388-76-10505 Specialty care—Admitting and retaining residents.** The ~~((provider or entity representative))~~ adult family home must not admit or keep a resident with specialty care needs, such as developmental disability, mental illness, or dementia as defined in WAC 388-76-10000, if the provider, entity representative, resident manager and staff have not completed the specialty care training required by chapter 388-112 WAC.

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

**WAC 388-76-10550 Resident rights—Adult family home staffing—Notification required.** The adult family home must provide the following information to prospective residents and current residents:

(1) Information about the provider, entity representative and resident manager, if there is a resident manager:

(a) Availability in the home, including a general statement about how often he or she is in the home;

(b) Education and training relevant to resident caregiving;

(c) Caregiving experience;

(d) His or her primary responsibilities, including whether he or she makes daily general care management decisions; and

(e) How to contact the provider, entity representative or resident manager when he or she is not in the home.

(2) Information about a licensed practical nurse or registered nurse, if there is one, who is in any way involved in the care of residents:

(a) Who the licensed practical nurse or registered nurse is employed by;

(b) The specific routine hours that the licensed practical nurse or registered nurse is on-site, if they are on-site routinely;

(c) His or her primary responsibilities, including whether he or she makes daily general care management decisions;

(d) The nonroutine times when the licensed practical nurse or registered nurse will be available, such as on-call; and

(e) A description of what the provider or entity representative will do to make available the services of a licensed nurse in an emergency or change in a resident's condition.

(3) A statement indicating whether the provider, ~~((entity provider,))~~ caregiver or staff is qualified or willing to become qualified to perform nurse delegation as allowed under state law.

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

**WAC 388-76-10860 Fire drill plan and procedures for emergency evacuation—Required.** The adult family home must:

(1) Have ~~((a fire drill plan and procedures for the))~~ an emergency evacuation ((~~of~~) plan, including a fire drill plan and procedures for evacuating all residents from the adult family home; and

(2) Not admit ~~((and))~~ or keep residents ~~((the provider or entity representative))~~ who cannot safely ~~((evacuate from the adult family home))~~ be evacuated.

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

**WAC 388-76-10970 Remedies—Specific—Condition(s) on license.** (1) The department may impose reasonable conditions or limits on ~~((the))~~ a new or current license.

(2) Conditions or limits the department may impose on a license include, but are not limited to, the following:

(a) Correction of deficiencies within a specified time;

(b) Training related to the deficiencies;

(c) Limits on the type of residents the ~~((provider or entity representative))~~ adult family home may admit or serve;

(d) Discharge of any resident when the department finds discharge is needed to meet that resident's needs or for the protection of other residents;

(e) Change in license capacity;

(f) Removal of the adult family home's designation as a specialized home;

(g) Prohibition of access to residents by a specified person; and

(h) Demonstration of ability to meet financial obligations necessary to continue operation.

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

**WAC 388-76-10975 Remedies—Specific—Civil penalties.** (1) The department may impose civil penalties of not more than one hundred dollars per day per violation except that:

(a) Fines up to one thousand dollars can be issued under RCW 70.128.150 for willful interference with a representative of the long-term care ombudsman ~~((per RCW 70.129.150))~~; and

(b) Fines up to three thousand dollars can be issued under RCW 74.39A.060 for retaliation against a resident, employee, or any other person making a complaint, providing information to, or cooperating with, the ombudsman, the department, the attorney's general office, or a law enforcement agency ~~((per RCW 74.34.060(7)))~~.

(2) When the ~~((provider or entity provider))~~ adult family home fails to pay a fine ~~((when due))~~ under this chapter when due, the department may, in addition to other remedies, withhold an amount equal to the fine plus interest, if any, from any contract payment due to the provider ~~((or entity provider))~~ from the department.

(3) Civil monetary penalties are due twenty-eight days after the ~~((provider, entity representative))~~ adult family home or the owner or operator of an unlicensed adult family home is served with notice of the penalty unless the ~~((provider or entity representative))~~ adult family home requests a hearing in compliance with chapter 34.05 RCW ~~((and)),~~ RCW 43.20A.215, and this chapter. If the hearing is requested, the

penalty becomes due ten days after a final decision in the department's favor is issued. ~~((Interest accrues beginning))~~ Thirty days after the department serves the ~~((provider or entity provider))~~ adult family home with notice of the penalty, interest begins to accrue at a rate of one percent per month as ~~((per))~~ authorized by RCW 43.20B.695.

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

**WAC 388-76-10985 Remedies—May extend to multiple homes.** (1) ~~((When the department finds that))~~ If a licensed provider ~~((or entity representative))~~ also operates an unlicensed adult family home, the department may impose a remedy or remedies listed in WAC 388-76-10940 on the ~~((provider or entity representative and the provider's or entity representative's))~~ licensed adult family home or homes.

(2) ~~((When the department finds that))~~ If violations ~~((existing))~~ in an adult family home are of such nature as to present a serious risk or harm to residents of other homes operated by the same provider ~~((or entity representative))~~, ~~((and after the department investigates other homes licensed by the same provider or entity representative))~~ the department may impose remedies on those other homes.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-76-10185      Employment—Certain criminal history—Permitted.

**WSR 10-04-010  
PERMANENT RULES  
SUPERINTENDENT OF  
PUBLIC INSTRUCTION**

[Filed January 22, 2010, 12:50 p.m., effective February 22, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Reasons why rules on this subject may be needed and what they might accomplish: The office of superintendent of public instruction (OSPI) shall review and revise the guidelines for skill centers to encourage skill center programs. The new rules will define rules for skill center governance, development of new skill centers, satellite and branch campuses and capital projects.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: OSPI will work in cooperation with the workforce training and education coordinating board, skill center directors, and school administrators to review and revise the rules.

Reasons for Supporting Proposal: Process for developing new rule - negotiated rule making.

Statutory Authority for Adoption: RCW 28A.245.030.

Adopted under notice filed as WSR 09-23-048 on January 5, 2010 [November 10, 2009].

A final cost-benefit analysis is available by contacting Kathleen Lopp, P.O. Box 47200, Olympia, WA 98504-7200,

phone (360) 725-6249, fax (360) 586-9321, e-mail Kathleen.lopp@k12.wa.us.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New X [12], Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New X [12], Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 12, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New X [12], Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New X [12], Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 5, 2010.

Randy Dorn  
State Superintendent

### Chapter 392-600 WAC

#### WASHINGTON STATE SKILL CENTER RULES

#### NEW SECTION

**WAC 392-600-010 Definitions.** (1) A "skill center" is a regional career and technical education partnership. It is established to provide access to comprehensive, industry-defined career and technical programs of study that prepare students for careers, employment, apprenticeships and post-secondary education. A skill center is operated by a host school district and governed by an administrative council in accordance with an interdistrict cooperative agreement, or as otherwise provided by legislation.

(2) An "interdistrict cooperative agreement" is a joint resolution by the board of directors of all participating school districts designating the host district as the legal applicant.

(3) The "host district" is a member of the skill center cooperative selected to be responsible for the planning, construction, administration, operation and fiscal services of the skill center. A single district forming a skill center is the host district.

(4) The "administrative council" serves as the governing body of the interdistrict cooperative and makes policy for the operation of the skill center. The administrative council is comprised of the superintendent of each member school district where skill center facilities are sited and the applicable college president participating in the cooperative agreement. In the case of a single school district forming an autonomous skill center, the school board of directors shall serve as the administrative council.

(5) The "skill center core campus" is the facility housing a majority of the skill center students enrolled. It is operated by the skill center. The cooperative shall manage and maintain the core campus.

(6) A "single school district skill center" is a single school district with an annual headcount enrollment at or

exceeding twelve thousand students in grades nine through twelve that offers skill center programs.

(7) An "emerging skill center" is a new core or branch skill center having an approved application still in the development phase, but not yet offering programs.

(8) A "skill center branch campus" is a common school or higher education facility which provides three or more programs at a location other than the skill center core campus. Each branch campus must be approved by the superintendent of public instruction.

(9) A "skill center satellite program" is a facility or site which provides less than three programs at a location other than the skill center core campus. Each satellite program must be approved by the superintendent of public instruction and shall only be hosted by a core campus. If the satellite program is housed in another skill center's service area, approval by both skill center administrative councils is required.

#### NEW SECTION

**WAC 392-600-020 Skill center interdistrict cooperative agreements.** An interdistrict cooperative agreement, as defined in WAC 392-600-010, shall include and set forth the following:

- (1) The administration of the school facility and of the program or services to be offered;
- (2) The estimated number of students to be served from each district;
- (3) The estimated amount of any operating costs of the program that are not funded from state or federal sources and the method of sharing the unfunded costs;
- (4) Financial terms by which each participating district will share in the cost of construction or modernization and operation of school facilities to comply with WAC 392-347-023;
- (5) Terms by which the skill center may be dissolved in accordance with the provisions for dissolution of skill centers as outlined in WAC 392-600-120;
- (6) Duration of the interdistrict cooperative agreement:
  - (a) The initial interdistrict cooperative agreement must be a minimum of ten years;
  - (b) The minimum period of operation prior to dissolution consideration must be in accordance with the provisions for dissolution of skill centers as outlined in WAC 392-600-120;
  - (c) The renewal or amendments to agreements shall be submitted for approval of the superintendent of public instruction, career and technical education.
- (7) Ownership of all capital equipment and skill center facilities;
- (8) Distribution of assets and liabilities or the payments to be made to the participating districts;
- (9) Relationship and governance structure of branch campuses, if applicable;
- (10) Responsibilities for services to be provided by participating school districts directly to the skill center. These shall include, but are not limited to:
  - (a) Transportation;
  - (b) Special education;
  - (c) Other noncore skill center needs of the student.

(11) Programs eligible for consideration and approval by OSPI shall be:

- (a) Voluntary student enrollment;
- (b) Tuition-free;
- (c) Necessary for the express purpose of:
  - (i) Providing educational programs not otherwise available;
  - (ii) Avoiding unnecessary duplications of specialized or unusually expensive programs and facilities.

#### NEW SECTION

**WAC 392-600-030 Administrative councils.** Skill center administrative councils shall:

- (1) Establish policies and procedures;
- (2) Be responsible for equipment replacement, facility maintenance, and ongoing operation of the skill center, including a branch campus/satellite program, to meet current industry and educational standards;
- (3) Offer programs that are approved by the superintendent of public instruction for career and technical education enhancement as defined in WAC 392-121-138, or provide basic support to students enrolled in skill center programs: Programs that are approved by the superintendent of public instruction for vocational enhancement shall provide a minimum of five hundred forty hours of instruction per year;
- (4) Skill center programs may be less than the equivalent of three consecutive fifty-minute periods if offered as an extension of the student's one whole full-time equivalent-funded school year;
- (5) Submit an application to the superintendent of public instruction, career and technical education, requesting approval to operate a satellite program eligible for skill center funding;
- (6) Select an official name to be submitted to the superintendent of public instruction, career and technical education, which will include the phrase "skill center" modified by the specific unique name given locally. The specific name given should be different than the name of any school district participating in the skill center cooperative;
- (7) Have three years from the date of approval to establish a financial plan, including the operation and capital funds which will contribute to the ongoing site, facility, equipment, and maintenance and operation of the skill center to be reviewed annually;
- (8) Serve the majority of student enrollment at its core campus.

Skill centers that serve or intend to serve less than a majority of students at the core campus must submit a waiver request to the superintendent of public instruction, career and technical education

#### NEW SECTION

**WAC 392-600-040 Skill center facilities and capital funding.** (1) A skill center administrative council, as defined in WAC 392-600-010, in need of core or branch facility investments may request state capital funding through the state capital budget process.

- (a) Existing skill center core and branch campuses requesting major capital project funding within the ten year

capital budget planning cycle shall submit a capital plan to the superintendent of public instruction, school facilities and organization, for their skill center facilities by December 1st of each odd-numbered year.

(b) Emerging skill center core or branch campuses in need of new or remodeled permanent housing as identified in the feasibility study or feasibility study waiver request, may initiate through their administrative council and host district a request to the superintendent of public instruction, school facilities and organization, for a capital plan for pre-design, design and subsequently for capital construction by May 1st of each year.

(c) The capital budget plan must identify a local contribution as provided in RCW 28A.245.030(3). The local contribution may be determined based on the total expected value of the project cost to include all phases of construction as proposed in the ten year plan. The local contribution must receive prior approval from the superintendent of public instruction, school facilities and organization, and may include the following:

- (i) Local project funding from cooperating districts;
- (ii) Fair market value of land as determined by a state certified general appraiser;
- (iii) In-kind labor for capital planning, design, construction or capital project management; and
- (iv) Other capital services provided by the cooperating districts.

(d) All capital plan submissions shall conform to the office of financial management's capital budget guidelines. Activities surrounding program development and operational oversight are not allowable capital expenditures.

(2) Minor works. A skill center administrative council may request state funding for core, branch or satellite facility minor works projects through the biennial capital budget.

Project requests shall be received by the superintendent of public instruction, school facilities and organization, by May 1st of each even-numbered year.

(3) All projects must conform to the office of financial management's capital budget guidelines.

(4) Ten year plan. The state superintendent or designee, in cooperation with the skill center directors and a representative of each emerging skill center, shall prepare a prioritized list of skill center capital projects to include major construction and minor works funding levels for the ten year plan required by RCW 28A.245.030(3).

#### NEW SECTION

**WAC 392-600-050 Enrollment.** A skill center core campus shall submit a plan to the superintendent of public instruction, career and technical education that demonstrates they will meet the following conditions within three years from the date programs begin.

(1) A skill center must serve a minimum of one hundred fifty full-time equivalent students in a minimum of three different programs. A district must partner with an established skill center as a branch campus until the proposed skill center reaches one hundred fifty full-time equivalent students; exemptions include existing skill centers as of the date of formal adoption of skill center rules;

(2) No more than seventy percent of full-time equivalent students served by the skill center consortium may be resident students of the host district, except for single school district skill centers;

(3) The skill center will enter a two year probation period if a skill center is not able to meet enrollment requirements as set forth in this section. During this period, the superintendent of public instruction, career and technical education, will provide guidance and assistance to the skill center to help meet the enrollment requirements. Skill centers unable to meet the enrollment requirements at the end of the two year probation period will begin dissolution procedures as described in WAC 392-600-120;

(4) Skill center academic courses not approved as skill center career and technical education courses shall only report as basic education enrollment;

(5) Exemptions may be granted by OSPI career and technical education for start-up and existing skill centers operating prior to the 2010-11 school year.

#### NEW SECTION

**WAC 392-600-060 Enrollment apportionment.** (1) A skill center shall only receive the enhanced skill center funding for its programs after the date on which program approval is issued by the superintendent of public instruction, career and technical education.

(2) The core or branch campus district hiring the instructional staff and providing skill center programs to the student shall report the monthly student enrollment to the superintendent of public instruction, school apportionment and financial services, for state funding purposes, unless otherwise provided for by the interlocal agreement.

(3) Satellite programs shall not provide a monthly count of students directly to the superintendent of public instruction, for apportionment purposes and shall not be direct funded.

(4) Exemptions may be granted by the superintendent of public instruction, career and technical education, for start-up and existing skill centers operating prior to the 2010-11 school year.

#### NEW SECTION

**WAC 392-600-070 Single school district skill centers.** (1) A single school district's board of directors shall be the skill center administrative council and shall operate in accordance with WAC 392-600-030.

(2) It shall have an advisory committee comprised of the district superintendent and representatives from business/industry reflective of the proposed programs.

#### NEW SECTION

**WAC 392-600-080 Skill center feasibility study procedures.** (1) Two or more school districts, through a joint resolution designating a lead district, may request funding to conduct a feasibility study for a skill center core or branch campus to the superintendent of public instruction, school facilities and organization. The lead district will be the primary contact for the superintendent of public instruction, and

will be responsible for disseminating information to member districts.

(2) In the case of branch campuses, the existing skill center host district and administrative council shall be the applicant or co-applicant.

(3) In addition:

(a) Feasibility study funding requests received before May 1st of each year will be submitted in OSPI's capital budget request.

(b) Two or more school districts, through a joint resolution, may request a waiver to the feasibility study requirement by demonstrating an existing skill center cooperative relationship and addressing the required elements of a feasibility study set forth by the superintendent of public instruction, school facilities and organization. Waivers may be granted by the state superintendent of public instruction.

(c) After legislative approval to fund the feasibility study, the superintendent of public instruction, school facilities and organization, shall issue a grant notification letter to the lead district for the appropriated funding to complete the feasibility study. The grant notification letter shall include the required elements of the study.

(d) The lead district shall return a completed feasibility study to the superintendent of public instruction, school facilities and organization, within one year from the grant notification letter.

(e) Participating school districts wanting to proceed with the creation of a skill center shall submit a written application to the superintendent of public instruction, school facilities and organization which shall include, but not be limited to, the interdistrict cooperative agreement requirements as prescribed in WAC 392-600-020. The application for the interdistrict cooperative shall be received within two school years of submitting the feasibility study.

(f) The superintendent of public instruction shall have final approval of the interdistrict cooperative agreement and the designation for the interdistrict cooperative to become an emerging skill center. The lead district shall receive a letter from the superintendent of public instruction regarding the outcome of the superintendent of public instruction review.

#### NEW SECTION

**WAC 392-600-090 Emerging skill centers.** Emerging skill centers, as defined in WAC 392-600-010, shall:

(1) Develop policies and procedures to ensure cooperation and avoid unnecessary duplication of programs within the skill center member districts.

(2) Follow the superintendent of public instruction, career and technical education, course approval application process.

(3) All career and technical education course offerings provided by the skill center must be submitted for approval by the skill center and not by the participating districts.

(4) Apply for a school entity code through the superintendent of public instruction, information technology.

All existing skill centers must meet the rules herein set forth by June 30, 2014.

#### NEW SECTION

**WAC 392-600-100 Branch campuses.** (1) The superintendent or designee from the branch campus shall serve on the core campus host district council.

(2) The branch campus shall:

(a) Receive interdistrict cooperative approval from the superintendent of public instruction as described in WAC 392-600-020;

(b) Have programs reviewed and approved by the core campus host district before submitting to the superintendent of public instruction, career and technical education.

(3) A skill center branch campus may submit a request to the superintendent of public instruction, career and technical education, to be considered as a skill center core campus if it meets the following standards:

(a) Develops interdistrict agreements that meet the standards in WAC 392-600-020;

(b) Meets or has a plan to meet the enrollment requirements in WAC 392-600-050;

(c) Provides a minimum of three approved instructional programs;

(d) Receives a written release from the core campus.

(4) A branch campus may not establish a branch campus or a satellite program.

#### NEW SECTION

**WAC 392-600-110 Satellite programs.** (1) Existing core skill centers may request approval through the superintendent of public instruction, career and technical education, for satellite programs. If a satellite program is located at a comprehensive high school, written approval from district career and technical education director and superintendent is required.

(2) A satellite program shall not report the monthly student enrollment directly to the superintendent of public instruction, apportionment financial services. State apportionment funding shall be paid only through the core campus host district.

(3) Program approvals will be submitted to the superintendent of public instruction, career and technical education, through the core campus.

(4) Interlocal agreements shall be developed as necessary with:

(a) School districts;

(b) Private or other entities.

#### NEW SECTION

**WAC 392-600-120 Dissolution of skill centers.** (1) A skill center administrative council, as defined in WAC 392-600-010, seeking to dissolve the operation of a skill center campus shall request prior approval from the superintendent of public instruction before dissolution and shall conform to the following:

(a) Skill centers receiving state funding for construction or major modernization shall not initiate procedures for the dissolution of the operation of a skill center prior to the end of the useful life of the facility or thirty years after the state

funded facility's construction completion date, whichever is less.

(b) Any skill center facilities which were constructed, or have received major modernization, with state funding shall revert to the school district in which the facility is physically located and shall be counted as instructional space in the district's inventory.

(c) Request for dissolution outside the terms of the inter-district cooperative agreement may be approved when, in the judgment of the superintendent of public instruction, there is substantiation of sufficient cause.

(2) Skill centers unable to meet enrollment requirements during the probationary period as described in WAC 392-600-060 shall enter into the skill center dissolution process. Within thirty days after conclusion of the probationary period the skill center administrative council shall submit in writing, for approval by the superintendent of public instruction, one of the following dissolution options:

(a) Partner with an existing skill center to become a branch campus or satellite program. The proposed core campus skill center administrative council must submit a resolution proposal for the new branch campus or satellite program.

(b) Remove skill center status and no longer qualify for enhanced skill center funding as described in WAC 392 121-465.

(c) Proceed with dissolution as outlined in the skill center interdistrict cooperative agreement.

### WSR 10-04-018

#### PERMANENT RULES

#### LIQUOR CONTROL BOARD

[Filed January 25, 2010, 12:13 p.m., effective February 25, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The proposed rules reflect current agency practices and more clearly provide direction to grocery store and specialty shop liquor licensees who want to offer internet sales and delivery to their customers.

Statutory Authority for Adoption: RCW 66.08.030.

Adopted under notice filed as WSR 09-24-115 on December 2, 2009.

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

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

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

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

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

Date Adopted: January 25, 2010.

Sharon Foster

Chairman

### Chapter 314-03 WAC

#### ALLOWED ACTIVITIES

#### NEW SECTION

**WAC 314-03-020 Consumer orders, internet sales, and delivery for grocery stores and beer and wine specialty shops.** A grocery store or beer and wine specialty shop licensee may accept orders for beer or wine from, and deliver beer or wine to, customers.

(1) **Resale.** Liquor shall not be for resale.

(2) **Stock location.** Liquor must come directly from a licensed retail location.

(3) **How to place an order.** Liquor may be ordered in person at a licensed location, by mail, telephone or internet, or by other similar methods.

(4) **Sales and payment.**

(a) Only a licensee or a licensee's direct employees may accept and process orders and payments. A contractor may not do so on behalf of a licensee, except for transmittal of payment through a third-party service. A third-party service may not solicit customer business on behalf of a licensee.

(b) All orders and payments shall be fully processed before liquor transfers ownership or, in the case of delivery, leaves a licensed premises.

(c) *Payment method.* Payment methods include, but are not limited to: Cash, credit or debit card, check or money order, electronic funds transfer, or an existing prepaid account. An existing prepaid account may not have a negative balance.

(d) *Internet.* To sell liquor via the internet, a new license applicant must request internet-sales privileges in his or her application. An existing licensee must notify the board prior to beginning internet sales. A corporate entity representing multiple stores may notify the board in a single letter on behalf of affiliated licensees, as long as the liquor license numbers of all licensee locations utilizing internet sales privileges are clearly identified.

(5) **Delivery location.** Delivery shall be made only to a residence or business that has an address recognized by the United States postal service; however, the board may grant an exception to this rule at its discretion. A residence includes a hotel room, a motel room, or other similar lodging that temporarily serves as a residence.

(6) **Hours of delivery.** Liquor may be delivered each day of the week between the hours of six a.m. and two a.m. Delivery must be fully completed by two a.m.

(7) **Age requirement.**

(a) Per chapter 66.44 RCW, any person under twenty-one years of age is prohibited from purchasing, delivering, or accepting delivery of liquor.

(b) A delivery person must verify the age of the person accepting delivery before handing over liquor.

(c) If no person twenty-one years of age or older is present to accept a liquor order at the time of delivery, the liquor shall be returned.

(8) **Intoxication.** Delivery of liquor is prohibited to any person who shows signs of intoxication.

(9) **Containers and packaging.**

(a) Individual units of liquor must be factory sealed in bottles, cans or other like packaging. Delivery of growlers, jugs or other similar, nonfactory-sealed containers is prohibited. Delivery of malt liquor in kegs or other containers capable of holding four gallons or more of liquid is allowed, provided that kegs or containers are factory sealed and that the keg sales requirements (see WAC 314-02-115) are met prior to delivery. For the purposes of this subsection, "factory sealed" means that a unit is in one hundred percent resalable condition, with all manufacturer's seals intact.

(b) The outermost surface of a liquor package, delivered by a third party, must have language stating that:

(i) The package contains liquor;

(ii) The recipient must be twenty-one years of age or older; and

(iii) Delivery to intoxicated persons is prohibited.

(10) **Required information.**

(a) Records and files shall be retained at a licensed premises. Each delivery sales record shall include the following:

(i) Name of the purchaser;

(ii) Name of the person who accepts delivery;

(iii) Street addresses of the purchaser and the delivery location; and

(iv) Times and dates of purchase and delivery.

(b) A private carrier must obtain the signature of the person who receives liquor upon delivery.

(c) A sales record does not have to include the name of the delivery person, but it is encouraged.

(11) **Web site requirements.** When selling over the internet, all web site pages associated with the sale of liquor must display a licensee's registered trade name.

(12) **Accountability.** A licensee shall be accountable for all deliveries of liquor made on its behalf.

(13) **Violations.** The board may impose administrative enforcement action upon a licensee, or suspend or revoke a licensee's delivery privileges, or any combination thereof, should a licensee violate any condition, requirement or restriction.

**WSR 10-04-027**

**PERMANENT RULES**

**DEPARTMENT OF**

**VETERANS AFFAIRS**

[Filed January 26, 2010, 1:44 p.m., effective February 26, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This revision will provide clarification around filling the position of superintendent, in certain situations. Specifically it will:

- Clarify that the director may appoint an honorably discharged veteran to the position of superintendent in

training while he or she complete[s] an administrator in training program in order to become licensed.

- Clarify that the director will appoint an on-site, full-time interim superintendent who is licensed, but not necessarily a veteran, while the superintendent in training completes the administrator in training program or in other temporary situations.

Reasons Supporting Proposal: At times, the Washington department of veterans affairs (WDVA) experiences challenges in identifying candidates qualified to be appointed the position of superintendent in a state veterans home. WDVA seeks candidates who are both honorably discharged veterans and licensed nursing home administrators. This proposal will provide clarity around the director's ability to appoint a veteran candidate to the position of superintendent in training while he or she completes an administrator in training program, and appoint an interim superintendent, who may or may not be a veteran, during this time or in other temporary instances.

Citation of Existing Rules Affected by this Order: Amending WAC 484-10-010.

Statutory Authority for Adoption: RCW 43.60A.070.

Adopted under notice filed as WSR 09-23-091 on November 17, 2009.

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

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

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

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

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

Date Adopted: January 26, 2010.

Heidi Audette

Communications Director

AMENDATORY SECTION (Amending Order 7659, filed 7/28/77)

**WAC 484-10-010 State veterans institutions.** (1) The Washington soldiers home and colony, ~~((and))~~ the Washington veterans home, and the eastern Washington veterans home shall have, respectively, a chief executive officer to be called a superintendent. The superintendent shall be directly responsible to the director or designee, of the department of veterans affairs, and as such shall be an honorably discharged veteran.

(2) The superintendent shall be a licensed nursing home administrator in the state of Washington. In situations where a candidate is identified who is an honorably discharged veteran but not yet a licensed nursing home administrator in the state of Washington, the director may appoint the candidate

to the position of superintendent-in-training, providing time for the candidate to complete an administrator-in-training program, approved by the Washington state department of health, and pass the nursing home administrators licensing examination. The candidate is eligible for appointment to the position of superintendent once he or she becomes a licensed nursing home administrator. The director will ensure that the facility is directed by an interim on-site, full-time superintendent who is a licensed nursing home administrator and who may or may not be a veteran, while the candidate is in training, or whenever a suitable candidate is not available.

**WSR 10-04-029**

**PERMANENT RULES**

**DEPARTMENT OF AGRICULTURE**

[Filed January 26, 2010, 3:39 p.m., effective February 26, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The rule-making order amends chapter 16-302 WAC by reconfiguring the chart of grass seed standards for certification to align the correct standard to the corresponding species and adds a missing footnote.

Citation of Existing Rules Affected by this Order:  
Amending WAC 16-302-385.

Statutory Authority for Adoption: Chapter 15.49 RCW.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 09-21-112 on October 21, 2009.

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

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

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

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

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

Date Adopted: January 6, 2010.

Dan Newhouse  
Director

AMENDATORY SECTION (Amending WSR 06-15-139, filed 7/19/06, effective 8/19/06)

**WAC 16-302-385 Grass seed standards for certification.** The seed standards for grass shall be as follows:

**((SEED STANDARDS**

CROP AND TYPE OF REPRODUCTION AS PER WAC 16-302-330	MINIMUM % GERM (d)(n)		MINIMUM % PURE		MAXIMUM % INERT		MAXIMUM % WEEDS (b)		MAXIMUM % OTHER CROPS		MAXIMUM SEEDS OF OTHER CROP GRASS SPECIES			
	FNDT. REG.	FNDT. CERT.	FNDT. REG.	FNDT. CERT.	FNDT. REG.	FNDT. CERT.	FNDT. REG.	FNDT. CERT.	FNDT. REG.	FNDT. CERT.	SEEDS/LB.	SEEDS/LB.	CERT. %	
	(+)	(+)	(+)	(+)	(+)	(+)	(+)	(+)	(+)	(+)	(+)	(+)	(+)	
BLUEGRASS														
-Big (A)	70	70	90	90	10	10	.05	.3	.1	.5	45 /lb.	454 /lb.	.25	
-Canby (A)	70	70	90	90	10	10	.05	.3	.1	.5	45 /lb.	454 /lb.	.25	
-Kentucky (A)	80	80	97	97	3	3	.05	.3	.1	.5	45 /lb.	454 /lb.	.25	
-Canada, Upland (A)	80	80	96	92	4	8	.05	.3	.1	.5	45 /lb.	907 /lb.	.25	
BROMEGRASS														
-Smooth & Meadow (C)(C)	80	85	95	95	5	5	.05	.3 (e)	.1	.5	9 /lb.	91 /lb.	.25	
-Mountain & Sweet	85	85	95	95	5	5	.3	.3 (e)	.1	1.0	9 /lb.	91 /lb.	.25	
DEERTONGUE (C)	50	50	97	95	3	5	.50	.5 (e)	1.0	1.0	1%			
FESCUE														
-Tall & Meadow (C)	80	85	95	97	5	3	.03	.3 (e)	.1	.5	18 /lb.	91 /lb.	.25	
-Blue, Hard & Sheep (m) (C)	80	85	95	97	5	3	.03	.3 (e)	.1	.5	9 /lb.	45 /lb.	.25	
-Turf Type (o)														
-Reclamation/Range	80	85	95	92	5	8	.03	.3 (e)	.1	.5	9 /lb.	45 /lb.	.25	
-Type (C)	80	90	95	97	5	3	.03	.3 (e)	.1	.5	9 /lb.	45 /lb.	.25	
-Chewings Red, Idaho and other Fescue														
ORCHARDGRASS (C)	80	85	85	90	15	10	.03	.3 (e)	.1	.5	27 /lb.	91 /lb.	.25	
		80 for	penlate	& lantar										
RYEGRASS	85	90 (l)	96 (k)	97 (k)	4	3	.1	.3 (e)	.1	.5	9 /lb.	45 /lb.	.25	
-Pennfine (C)	80	85	96 (k)	97 (k)	4	3	.1	.3 (e)	.1	.5	9 /lb.	45 /lb.	.25	
TIMOTHY	80	85	97	97	3	3	.1	.3	.1	.5	9 /lb.	45 /lb.	.25	



CROP AND TYPE OF REPRODUCTION AS PER WAC 16-302-330	MINIMUM % GERM (d)(n)		MINIMUM % PURE		MAXIMUM % INERT		MAXIMUM % WEEDS (b)		MAXIMUM % OTHER CROPS		MAXIMUM SEEDS OF OTHER CROP GRASS SPECIES			
	FNDT.	CERT.	FNDT.	CERT.	FNDT.	CERT.	FNDT.	CERT.	FNDT.	CERT.	FNDT.	REG.	CERT.	
	REG.	CERT.	REG.	CERT.	REG.	CERT.	REG.	CERT.	(i) REG.	(a)	SEEDS/ LB.	SEEDS/ LB.	%	
WHEATGRASS (n)														
-Beardless (C)	80	85	90	90	10	10	.1	.3(e)	.1(e)	.5(e)	9/lb.	45/lb.	.25	
-Bluebunch (C)(C)	80	85	90	90	10	10	.1	.3(e)	.1(e)	.5(e)	9/lb.	45/lb.	.25	
-Intermediate, Tall (C)	80	85	95	95	5	5	.1	.3(e)	.1(e)	.5(e)	9/lb.	45/lb.	.25	
-Pubescent	80	85	95	95	5	5	.1	.3(e)	.1(e)	.5(e)	9/lb.	45/lb.	.25	
-Western, R/S														
-Streambank, Thickspike (C)	80	85	90	90	10	10	.1	.3(e)	.1(e)	.5(e)(p)	9/lb.	45/lb.	.25(p)	
-Slender (C)	80	85	90	95	10	5	.1	.3(e)	.1(e)	.5(e)	9/lb.	45/lb.	.25	
-Crested & Siberian	80	85	90	95	10	5	.1	.3(e)	.1(e)	.5(e)	9/lb.	45/lb.	.25	
INDIAN RICEGRASS (S)	80(j)	80(j)	95	90	5	10	.3	.5	.5	1.0	9/lb.	45/lb.	.25	
PUCCINELLIA (n)														
-distans (C)	80	80	90	95	5	5	.3	.5	.5	1.0	45/lb.	454/lb.	.25	
WILD RYE (n) (C)	80	80	90	90	10	10	.1	.3(e)	.1	.5	9/lb.	45/lb.	.25	
BENTGRASS (C)	85	85	98	98	2	2	.3	.4(f)(g)	.2	.6(h)				
REDTOP (C)	80	80	92	92	8	8	.3	.5(f)	.5	.2				
Ann:														
-CANARYGRASS (C)	85	85	99	99	1	1	.1	.3	1/lb.	3/lb.			-))	
-GREEN (n) (C)	80	80	80	80	20	20	.1	.3(e)	.1	.5	-	-		
-NEEDLEGRASS														
-SWITCHGRASS (C)	60	60	90	90	10	10	.5	1.5	.1	.25				

SEED STANDARDS

CROP AND TYPE OF REPRODUCTION AS PER WAC 16-302-330		MINIMUM % GERM (d)(n)		MINIMUM % PURE		MAXIMUM % INERT		MAXIMUM % WEEDS (b)		MAXIMUM % OTHER CROPS		MAXIMUM SEEDS OF OTHER CROP GRASS SPECIES			
		FNDT. REG.	CERT.	FNDT. REG.	CERT.	FNDT. REG.	CERT.	FNDT. REG.	CERT.	FNDT. (i) REG. (i)	CERT. (a)	FNDT. SEEDS/ LB.	REG. SEEDS/ LB.	CERT. %	
BLUEGRASS															
Big	(A)	70	70	90	90	10	10	.05	.3	.1	.5	45 /lb.	454 /lb.	.25	
Canby	(A)	70	70	90	90	10	10	.05	.3	.1	.5	45 /lb.	454 /lb.	.25	
Kentucky	(A)	80	80	97	97	3	3	.05	.3	.1	.5	45 /lb.	454 /lb.	.25	
Canada, Upland	(A)	80	80	96	92	4	8	.05	.3	.1	.5	45 /lb.	907 /lb.	.25	
BROMEGRASS															
Smooth & Meadow	(C)	80	85	95	95	5	5	.05	.3 (c)	.1	.5	9 /lb.	91 /lb.	.25	
Mountain & Sweet	(C)	85	85	95	95	5	5	.3	.3 (c)	.1	1.0	9 /lb.	91 /lb.	.25	
DEERTONGUE	(C)	50	50	97	95	3	5	.50	.5 (c)	1.0	1.0	1%			
FESCUE															
Tall & Meadow	(C)	80	85	95	97	5	3	.03	.3(c)	.1	.5	18 /lb.	91 /lb.	.25	
Blue, Hard & Sheep (m)															
Turf Type (o)	(C)	80	85	95	97	5	3	.03	.3 (c)	.1	.5	9 /lb.	45 /lb.	.25	
Reclamation/Range Type (o)		80	85	95	92	5	8	.03	.3 (c)	.1	.5	9 /lb.	45 /lb.	.25	
Chewings Red, Idaho and other Fescue	(C)	80	90	95	97	5	3	.03	.3(c)	.1	.5	9 /lb.	45 /lb.	.25	
ORCHARDGRASS	(C)	80	85	85	90	15	10	.03	.3 (c)	.1	.5	27 /lb.	91/lb.	.25	
			80 for penlate & latar												
RYEGRASS	(C)	85	90 (l)	96 (k)	97 (k)	4	3	.1	.3 (c)	.1	.5	9 /lb.	45 /lb.	.25	
Pennfine		80	85	96 (k)	97 (k)	4	3	.1	.3 (c)	.1	.5	9 /lb.	45 /lb.	.25	
TIMOTHY		80	85	97	97	3	3	.1	.3	.1	.5	9 /lb.	45 /lb.	.25	
WHEATGRASS (n)															
Beardless	(C)	80	85	90	90	10	10	.1	.3(c)	.1(e)	.5(e)	9 /lb.	45 /lb.	.25	
Bluebunch	(C)	80	85	90	90	10	10	.1	.3(c)	.1(e)	.5(e)	9 /lb.	45 /lb.	.25	
Intermediate, Tall Pubescent	(C)	80	85	95	95	5	5	.1	.3(c)	.1(e)	.5(e)	9 /lb.	45 /lb.	.25	
Western, R/S, Streambank, Thickspike	(C)	80	85	95	95	5	5	.1	.3 (c)	.1 (e)	.5 (e)	9 /lb.	45 /lb.	.25	
Slender Crested & Siberian	(S)	80	85	90	90	10	10	.1	.3(c)	.1(e)	.5(e)(p)	9 /lb.	45 /lb.	.25(p)	
	(C)	80	85	90	95	10	5	.1	.3(c)	.1(e)	.5(e)	9 /lb.	45 /lb.	.25	
INDIAN RICEGRASS	(S)	80 (j)	80 (j)	95	90	5	10	.3	.5	.5	1.0	9 /lb.	45 /lb.	.25	
PUCCINELLIA (n) distans	(C)	80	80	90	95	5	5	.3	.5	.5	1.0	45 /lb.	454 /lb.	.25	
WILD RYE (n)	(C)	80	80	90	90	10	10	.1	.3 (c)	.1	.5	9 /lb.	45 /lb.	.25	
BENTGRASS	(C)	85	85	98	98	2	2	.3	.4 (f) (g)	.2	.6 (h)				
REDTOP	(C)	80	80	92	92	8	8	.3	.5 (f)	.5	.2				
Ann. CANARYGRASS GREEN (n)	(C)	85	85	99	99	1	1	.1	.3	1/lb.	3/lb.				
NEEDLEGRASS	(C)	80	80	80	80	20	20	.1	.3 (c)	.1	.5	-	-	-	
SWITCHGRASS	(C)	60	60	90	90	10	10	.5	1.5	.1	.25				

The following (a) - ((e)) (p) are notes to the above table.

- (a) Not to exceed .25% other grass species for blue tag seed.
- (b) Grass seed must not contain more than 45/lb. for registered seed 91/lb. for certified seed, singly or collectively, of objectionable weed seeds. (See (f) of this subsection for certified bentgrass and redtop exemption.) Grass seed shall be free of the seed of prohibited noxious weeds.
- (c) A tolerance of 0.5% may be allowed for samples containing weedy bromus spp provided the total of all other weed seeds does not exceed 0.3%.
- (d) A standard tetrazolium (two hundred seed) test may be used in lieu of germination test. NOTE: State and federal seed laws require seed be labeled on a germination test.

- (e) A tolerance of 0.8% may be allowed in registered and certified wheatgrass containing small grain seed provided the total of all other crop seed does not exceed 0.1% for registered class and 0.5% for certified class.
- (f) Certified seed must not contain over 907 seeds per pound, singly or collectively, of the following weeds: Plantago spp., Big Mouse-ear Chickweed, Yarrow, Spotted Cat's Ear, and Dandelion.
- (g) A maximum of .50% weed seed may be allowed in certified bentgrass containing silver hairgrass provided the total of all other weed seed does not exceed .40%.
- (h) 1.50% other fine bentgrasses and .50% redtop may be allowed in certified bentgrass containing a minimum of 98.00% total bentgrass.
- (i) A crop exam is required for all registered and foundation class grass seeds.
- (j) Or 70% by Tz test.
- (k) Maximum other ryegrass allowed as determined by fluorescence test: Foundation 0.1%, registered 1%, certified 2% for annual and 3% for perennial containing a minimum of 97% total ryegrass. Acceptable fluorescence levels for specific varieties available upon request.
- (l) 85% minimum germination allowed on ryegrass varieties as designated by the breeder or variety owner. See list maintained by the seed program.
- (m) An ammonia test is required on hard, blue and sheep fescue to determine presence of other Fescue sp. Other fine-leaved fescue found in the ammonia test will be included with other crop not other grass species.
- (n) Total viability as allowed in WAC 16-302-170 can be substituted for germination percentage.
- (o) Turf type fescues 97% pure seed. Range/reclamation types 92% pure seed. Varietal designation of turf or range/reclamation types are to be made by the breeder or variety owner. If no designation is made, the variety will be considered a turf type.
- (p) 10% slender wheatgrass is allowed in the certified class of Critana, provided that the total of all other grass spp. does not exceed .25% and total other crop, including all other grass spp. does not exceed .50%.

**WSR 10-04-035****PERMANENT RULES****SECRETARY OF STATE**

[Filed January 27, 2010, 10:42 a.m., effective February 27, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Updating references and creating consistency between state and federal standards.

Citation of Existing Rules Affected by this Order: Amending WAC 434-166-010, 434-166-030, 434-166-040, 434-166-050, 434-166-080, 434-166-110, 434-166-130, 434-166-220, 434-166-230, 434-166-250, 434-166-260, 434-166-270, 434-166-280, 434-166-290, 434-166-300, and 434-166-310.

Statutory Authority for Adoption: RCW 19.066.050 [19.166.050].

Adopted under notice filed as WSR 10-01-059 on December 10, 2009.

Changes Other than Editing from Proposed to Adopted Version: The adopted version has some editing changes and three substantive changes: Two definitions were removed from WAC 434-166-080, as they are already in statute; the time constraint in WAC 434-166-130(6) and the location requirement in WAC 434-166-250 (1)(e) were removed as not required by federal standards. These changes were made due to testimony at the public hearing.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 16, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 16, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 27, 2010.

Steve Excell

Assistant Secretary of State

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-05 issue of the Register.

**WSR 10-04-042****PERMANENT RULES****OFFICE OF****INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2009-14—Filed January 27, 2010, 3:43 p.m., effective February 27, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The existing Viatical Settlement Act, chapter 48.102 RCW, was repealed and replaced with the New Life Settlement Act, chapter 104, Laws of 2009. One of the purposes of the proposed rules is to amend the existing rules to reflect this change. The proposed rules also:

(1) Change the information required for the licensing of what are now life settlement providers and brokers,

(2) Establish the financial responsibility required of life settlement providers in order to be licensed,

(3) Set out the annual statement filing requirement for life settlement provider,

(4) Set forth the requirement for the filing of life settlement contracts and disclosure forms by life settlement providers and brokers,

(5) Establish the minimum level of compensation to be paid to terminally or chronically ill owners of life insurance policies when selling their policies to life settlement providers, and

(6) Provide the disclosure form and verification of coverage form to be used by life insurers and life settlement providers and brokers.

Citation of Existing Rules Affected by this Order: Amending WAC 284-97-010, 284-97-015, 284-97-020, 284-97-030, 284-97-040, and 284-97-050.

Statutory Authority for Adoption: RCW 48.02.060, 48.102.011, 48.102.046, 48.102.100, and 48.102.170.

Other Authority: RCW 48.102.021, 48.102.041, and 48.102.080.

Adopted under notice filed as WSR 09-22-082 on November 3, 2009.

Changes Other than Editing from Proposed to Adopted Version:

- WAC 284-97-020 (2)(h) was amended to require the applicant to submit with its application for license a list of all business licenses issued by the federal and any state government to the applicant, rather than to submit a list of all business licenses from any level of government to which the applicant and its officers, partners, trustees, members of a limited liability company, and members (if an association) have applied.
- WAC 284-97-020 (2)(i) was amended to delete "formal or informal."
- WAC 284-97-020 (2)(l) was amended to delete "and any applicable state securities regulator."
- WAC 284-97-020 (2)(m) was amended to add "in connection with the applicant's life settlement business:"
- WAC 284-97-020 (3)(b) was moved from this section to WAC 284-97-025 as new subsection WAC 284-97-025(5) and ", to the extent reasonably applicable," was added.
- In WAC 284-97-040 the spelling of "recision" was corrected to "rescission" throughout.
- "The rescission provision shall appear on the first page of the contract." in WAC 284-97-040(4) was deleted.

The disclosure form set forth in WAC 284-97-910 was amended:

To provide alternative explanations as to when the form is being sent by expanding the phrase to: "[requesting a surrender of your life insurance policy, requesting accelerated death benefits under your life insurance policy, or letting your life insurance policy lapse\*]" and adding the \*footnote that the life insurance company should choose the appropriate phrase; and

To add the following to the description of a Life Settlement, "for an amount that, under Washington law must be greater than the cash surrender value or accelerated death benefit under your policy."

A final cost-benefit analysis is available by contacting Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7036, fax (360) 586-3109, e-mail jimt@oic.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 5, Amended 6, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 5, Amended 6, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 5, Amended 6, Repealed 0.

Date Adopted: January 12, 2010.

Mike Kreidler  
Insurance Commissioner

## Chapter 284-97 WAC

### ~~((VIATICAL))~~ LIFE SETTLEMENT REGULATION

AMENDATORY SECTION (Amending Order R 95-2, filed 10/20/95, effective 11/20/95)

**WAC 284-97-010 Purpose~~(s)~~ and scope~~(, and effective date)~~.** (1) The purpose of this chapter is to effectuate chapter 48.102 RCW, by establishing minimum standards and disclosure requirements to be met by ~~((viatical))~~ life settlement providers and ~~((viatical))~~ life settlement brokers with respect to ~~((viatical))~~ life settlement contracts advertised, solicited, or issued for delivery in this state, and licensing requirements for ~~((viatical))~~ life settlement providers and ~~((viatical))~~ life settlement brokers.

(2) ~~((Except as otherwise specifically provided, this chapter applies to every viatical settlement provider or viatical settlement broker as defined in RCW 48.102.005, that transacts viatical settlement business in this state on or after July 23, 1995. This chapter also applies to every viatical settlement contract executed between a viator and a viatical settlement provider in this state on or after July 23, 1995.~~

~~(3))~~ This regulation is not exclusive, and acts or omissions, whether or not specific in this chapter, may also be violations of other sections of the insurance code or other regulations promulgated thereunder.

AMENDATORY SECTION (Amending Order R 95-2, filed 10/20/95, effective 11/20/95)

**WAC 284-97-015 Definitions.** For purposes of this chapter:

(1) "Domestic life settlement provider" means a provider as defined in RCW 48.102.006(19) who if:

(a) A natural person either resides or has their principal place of business in this state, or both; or

(b) A legal entity that either has their principal place of business in this state, or is incorporated in or otherwise formed under the laws of the state of Washington, or both.

(2) "NAIC" means the National Association of Insurance Commissioners.

(3) "Nonresident or foreign life settlement provider" means a provider as defined in RCW 48.102.006(19) who if:

(a) A natural person does not either reside or have their principal place of business in this state, or both; or

(b) A legal entity who does not either have their principal place of business in this state, or is not incorporated in or otherwise formed under the laws of the state of Washington, or both.

(4) "SERFF" means the System for Electronic Rate and Form Filing. SERFF is a proprietary NAIC computer-based

application that allows filers to create and submit rate, rule, and form filings electronically to the commissioner.

(5) "Solicitation" means, for example; proposing, negotiating, signing, or doing any act in furtherance of making or proposing to make a ~~((viatical))~~ life settlement contract. Solicitation specifically includes advertising by mail, use of the print or electronic media, telephone, or any other method of presenting, distributing, issuing, circulating, or permitting to be issued or circulated any information or material in connection with a ~~((viatical))~~ life settlement contract.

~~((2)) "Viatical settlement contract" has the meaning set forth at RCW 48.102.005(3). The commissioner finds that the purchase of a life insurance policy or certificate is outside the scope of this chapter if the viatical settlement contract is entered into between the viator and a close friend or relative.))~~

AMENDATORY SECTION (Amending Order R 95-2, filed 10/20/95, effective 11/20/95)

**WAC 284-97-020 Licensing requirements for ~~((viatical))~~ life settlement providers.** (1) ~~((Beginning July 23, 1995, no individual, partnership, corporation, or other entity may act as a viatical settlement provider, or enter into or solicit a viatical settlement contract in this state unless it has first obtained a license from the commissioner.~~

~~(2) An initial application for licensing as a viatical settlement provider, or a subsequent application for reinstatement of a viatical settlement provider's license if the license has lapsed for more than three months, shall be accompanied by a licensing fee in the amount of two hundred fifty dollars. The annual renewal fee shall be twenty five dollars, due and payable on or before July 1 of each year.~~

~~(3)) The application form and instructions for obtaining a license as a life settlement provider are on the commissioner's web site at [www.insurance.wa.gov](http://www.insurance.wa.gov).~~

(2) The application for a license as a ~~((viatical))~~ life settlement provider shall furnish all of the applicable following information~~(, on a form prescribed by the commissioner):~~

(a) The name of the applicant, its address, and organizational structure.

(b) Copies of its organizational documents, including but not limited to its: Articles of incorporation and any amendments thereto, certificate of incorporation and any amendments thereto, bylaws and any amendments thereto, partnership agreement and any amendments thereto, ~~((and))~~ articles of association and any amendments thereto, certificate of formation of a limited liability company and any amendments thereto, and limited liability company agreement and any amendments thereto.

(c) The identity of all: Stockholders holding ten percent or more of the voting securities; investors holding a ten percent or greater interest; partners; corporate officers; trustees; if an association, all of the members; all of the members of a limited liability company; and parent and affiliate entities, together with a chart showing the relationship of the applicant to any parent, affiliated or subsidiary entities.

(d) A list of all stockholders holding ten percent or more of the voting securities, investors holding a ten percent or

greater interest, partners, and officers of any parent or affiliate entities.

(e) Biographical affidavits of all its officers, directors, investors holding a ten percent or greater interest, partners, members of a limited liability company, and members (if an association).

(f) For domestic ~~((viatical))~~ life settlement providers, fingerprint cards of all its officers, directors, trustees, investors holding a ten percent or greater interest, partners, members of a limited liability company, and members (if an association).

(g) A list of states in which the ~~((viatical))~~ life settlement provider is licensed on the date of application, a copy of each effective license, and a list of the states in which it is or was doing business.

(h) A list of all business licenses from the federal and any ((level of)) state government, ((for)) which has been issued to the applicant, ((its officers, partners, trustees, and members (if an association), have applied,)) together with a certificate of incorporation from the Washington secretary of state, and a statement showing the current status of any such licenses, such as whether it has been revoked or suspended.

(i) A report stating whether any ~~((formal or informal))~~ regulatory action, by any level of state or federal government, is pending or has been taken against the applicant or its officers, directors, trustees, investors holding a ten percent or greater interest, partners, members of a limited liability company, or members (if an association).

(j) A report stating whether any criminal action or civil action has been taken, or is pending, against the applicant or its officers, directors, trustees, investors holding a ten percent or greater interest, partners, members of a limited liability company, or members (if an association).

(k) A copy of its most recent financial and operating reports, audited and unaudited.

(l) Copies of documents filed with the federal Securities and Exchange Commission ~~((and any applicable state securities regulator)).~~

(m) A detailed plan of operations for the applicant's business, including but not limited to information regarding or identification of the following items in connection with the applicant's life settlement business:

(i) Escrow accounts and banks;

(ii) Advertising, brokerage, or distribution system to be used;

(iii) Marketing techniques to be used;

(iv) Marketing training program; and

(v) Contract offering and servicing facilities.

(n) For a nonresident provider, an appointment of the commissioner to receive service of process and a designation of the person to whom the commissioner shall forward legal process.

(o) A copy of the applicant's antifraud plan that meets the requirements of RCW 48.102.140.

(p) Such other information as the commissioner may reasonably require.

~~((4)) (3) To qualify for authority to transact business as a ~~((viatical))~~ life settlement provider(-) the applicant must possess unimpaired capital, and thereafter maintain unim-~~

paired capital, in the amount of not less than one hundred fifty thousand dollars.

~~((5) Each viatical settlement provider holding a license in this state shall annually, on or before March 1 of each year, file with the commissioner an annual statement for the preceding calendar year. The annual statement shall be on a form prescribed by the commissioner.~~

~~(6) The commissioner may issue a temporary viatical settlement provider's license, that will expire no later than December 31, 1995, upon receipt and review of the application required in subsection (3) of this section. After reviewing the application, the commissioner may issue the viatical settlement provider's license, refuse to issue such license, or revoke the temporary viatical settlement provider's license.))~~

#### NEW SECTION

**WAC 284-97-025 Annual reporting requirements for life settlement providers.** (1) Every licensed life settlement provider must file with the commissioner an annual statement on or before March 1st for the immediately preceding calendar year ending December 31st. For good cause shown, the commissioner may grant an extension of time to file if the request for extension is received by the commissioner more than five business days prior to March 1st.

(2) The annual statement forms and instructions are on the commissioner's web site at [www.insurance.wa.gov](http://www.insurance.wa.gov).

(3) In addition to any other requirements, for any policy settled within five years of policy issuance, the annual statement shall specify the total number, aggregate face amount, and life settlement proceeds of policies settled during the immediately preceding calendar year, together with a breakdown of the information by policy issue year.

(4) Annual statements filed by a life settlement provider with the commissioner must be filed in electronic form. Electronic form shall mean in pdf format and according to the instructions on the commissioner's web site.

(5) As a demonstration of financial responsibility, life settlement providers must comply with WAC 284-07-100 through 284-07-230, except WAC 284-07-100 (5), (6), and (7), to the extent reasonably applicable, and the applicant shall not be required to file any report, letter, or other document required by WAC 284-07-100 through 284-07-230 with the National Association of Insurance Commissioners (NAIC).

AMENDATORY SECTION (Amending Order R 95-2, filed 10/20/95, effective 11/20/95)

**WAC 284-97-030 Licensing ((requirements for viatical)) life settlement brokers.** ~~((On and after July 23, 1995, no person may act as a viatical settlement broker, or solicit, negotiate, or enter into viatical settlement contracts in this state, unless licensed as a viatical settlement broker by the commissioner. A viatical settlement broker shall be qualified as a life insurance agent and appointed as a viatical settlement broker by each viatical settlement provider represented.~~

~~(1) Each applicant for a viatical settlement broker's license shall:~~

~~(a) Complete an application form furnished by the commissioner. The form shall be accompanied by a license fee in~~

~~the amount of one hundred dollars. Applicants shall answer inquiries concerning their identity, provide fingerprint cards, and supply information about personal and business history and experience.~~

~~(b) A viatical settlement broker shall be appointed by each viatical settlement provider he or she represents. An appointment request form and the appointment fee in the amount of twenty dollars shall be submitted with the application for licensing.~~

~~(c) Applicants for a firm or corporate license shall provide copies of articles of incorporation, partnership agreements, or other indicia of current legal status, as appropriate.~~

~~(d) Every individual who acts as a viatical settlement broker on behalf of a firm or corporation shall be licensed and affiliated with the entity represented prior to solicitation or negotiation of a viatical settlement contract. Each request by a firm or corporation for an affiliation certificate shall be accompanied by a twenty-dollar filing fee.~~

~~(e) Applicants for a viatical settlement broker's license shall provide satisfactory evidence that no disciplinary action has resulted in the suspension or revocation of any federal or state license.~~

~~(f) Prior to application for a resident viatical settlement broker's license, an applicant shall pass the life insurance agent's examination in this state, but need not be licensed as a life insurance agent.~~

~~(g) Nonresident applicants may be licensed as viatical settlement brokers. Each nonresident applicant shall provide satisfactory proof that he or she has successfully passed a life insurance agent's examination in a state within the two-year period immediately preceding the date of the application, or that he or she holds a valid license as a life insurance agent or viatical settlement broker in his or her state of residence. In addition, the nonresident applicant shall certify that no disciplinary action has resulted in suspension or revocation of any federal or state license. Applicants for a nonresident viatical settlement broker's license shall designate and authorize the commissioner as his or her agent for service of process and shall specify the person to whom the commissioner shall forward legal process.~~

~~(2) A person applying for a viatical settlement broker's license who is transacting viatical settlement business on the effective date of this chapter, may apply to the commissioner for a temporary resident or nonresident viatical settlement broker's license. A temporary license may be issued by the commissioner if the person is otherwise eligible for such license but has not taken and passed a life insurance agent's examination in a state. The temporary license issued by the commissioner shall expire no later than December 31, 1995. After review of the application, the commissioner may issue the viatical settlement broker's license, refuse to issue such license, or revoke the temporary viatical settlement broker's license.~~

~~(3) A viatical settlement broker's license is renewable every two years, upon payment of a renewal fee in the amount of one hundred dollars. A viatical settlement broker's license expires on the licensee's month and day of birth plus one year from the date the license is first issued, if an individual, or two years from the issue date in the case of a firm or corporation. Failure to pay the renewal fee by the renewal~~

date will automatically terminate the authority conferred by the license.

(4) Appointments of a viatical settlement broker expire on July 1 following their issue dates and every two years thereafter, unless previously cancelled or revoked.

(5) Affiliations expire on the renewal date for the licensed firm or corporation to which they apply, and expire every two years thereafter, unless previously cancelled or revoked.) The application form and instructions for obtaining a license as a life settlement broker are on the commissioner's web site at [www.insurance.wa.gov](http://www.insurance.wa.gov).

#### NEW SECTION

**WAC 284-97-035 Prompt reply to the commissioner required.** Every licensed life settlement provider and broker licensed under chapter 48.102 RCW, must promptly reply in writing to an inquiry of the commissioner relative to the business of life settlements. A timely response is one that is received by the commissioner within fifteen business days from receipt of the inquiry. Failure to make a complete and timely response constitutes a violation of this section.

AMENDATORY SECTION (Amending Order R 95-2, filed 10/20/95, effective 11/20/95)

**WAC 284-97-040 Contract and ~~(rate)~~ form filing requirements for ~~(viatical)~~ life settlement providers and ~~(viatical)~~ life settlement brokers.** ~~(Beginning September 1, 1995,)~~ All ~~(viatical)~~ life settlement contracts ~~(shall)~~ as defined in RCW 48.102.006(12) and disclosure forms required by RCW 48.102.080 must be filed with and be approved by the commissioner prior to use in this state. No other forms shall be filed with the commissioner.

(1)(a) Life settlement providers must file with the commissioner:

(i) Their life settlement contract form completed in John Doe fashion; and

(ii) The disclosure form required by RCW 48.102.080

(b) The life settlement contract form and disclosure form must be submitted as separate documents.

(c) Life settlement providers shall not file any other forms with the commissioner.

(d) Life settlement providers must submit the life settlement contract and disclosure forms filing through SERFF.

The SERFF filing instructions are in the *SERFF Industry Manual* on the SERFF web site at [www.serff.com](http://www.serff.com) and the Washington state SERFF Life and Disability Rate and Form Filing General Instructions on the commissioner's web site at [www.insurance.wa.gov](http://www.insurance.wa.gov).

(2)(a) Life settlement brokers must file with the commissioner:

(i) The disclosure form required by RCW 48.102.080(1); and

(ii) The disclosure form required by RCW 48.102.080

(3) (b) These two disclosure forms must be submitted as separate documents.

(c) Life settlement brokers shall not file any other forms with the commissioner.

(d) Life settlement brokers must submit their disclosure form filings only in paper format.

(3)(a) Every ~~(viatical)~~ life settlement contract shall be in writing, in a type size of no less than ten points, shall be identified by a form number in the lower left-hand corner of the first page, and include the terms under which the ~~(viatical)~~ life settlement provider will pay compensation (called by whatever name) to the ~~(viator)~~ owner in exchange for the assignment, transfer, sole devise, or bequest of the death benefit or assignment of ownership of the life insurance policy or certificate to the ~~(viatical)~~ life settlement provider ~~(or viatical settlement broker)~~.

(b) Every ~~(viatical)~~ life settlement contract shall provide for payment to the ~~(viator)~~ owner in a lump sum and shall be voidable at the option of the ~~(viator)~~ owner if the agreed value is not paid in full within ~~(thirty)~~ fifteen days of the date the ~~(viatical)~~ life settlement contract is executed by ~~(both the viator and the viatical settlement provider)~~ all parties thereto.

(c) Every ~~(viatical)~~ life settlement contract shall provide for transfer of the entire life insurance policy: Provided, however, That if agreed to in writing by both the insurer and the ~~(viator)~~ owner, a stated dollar value which is less than the full face amount of the life insurance policy (less any outstanding loans) may be transferred if:

(i) The ~~(viatical)~~ life settlement provider obtains a bond in favor of all beneficiaries of the policy other than the ~~(viatical)~~ life settlement provider in an amount sufficient to guarantee the payment of all premium for the balance of the premium-paying period as calculated on the effective date of the life insurance policy; or

(ii) Another arrangement acceptable to the commissioner is made which guarantees that the insurance policy will remain in full force and effect for the protection of beneficiaries designated by the ~~(viator)~~ owner (other than the ~~(viatical)~~ life settlement provider) until the death of the insured.

~~((2))~~ (4) The ~~(viatical)~~ life settlement contract shall provide for ~~(rescission)~~ rescission no less favorable to the ~~(viator)~~ owner than as set forth in RCW ~~((48.102.040 (3) and (4))~~ 48.102.110(9). ~~((The rescission provision shall appear on the first page of the contract.))~~ It shall provide that if the insured dies during the period of time allowed for ~~(rescission)~~ rescission, the contract ~~((will be terminated effective the date of application and the parties are returned to their original positions))~~ is considered rescinded subject to repayment by the owner or the owner's estate of all proceeds and any premiums, loans, and loan interest to the life settlement provider. The contract shall provide a method for giving notice of ~~(rescission)~~ rescission. If notice of ~~(rescission)~~ rescission is given by mail, it shall be deemed given when deposited in the United States mail, first class postage prepaid.

~~((3))~~(a) Each form of viatical settlement contract filed with the commissioner shall include all of the following:

(i) A viatical settlement contract, completed in John Doe fashion;

(ii) A copy of a viator's application, completed in John Doe fashion;

~~(iii) A copy of an "Insurance Commissioner's Worksheet" as described in WAC 284-97-050(3), completed in John Doe fashion;~~

~~(iv) A copy of any written disclosure material that will be provided to a viator as required by RCW 48.102.035; this written disclosure shall set forth the name, address, and telephone number of the viatical settlement provider; and~~

~~(v) A copy of the pricing memorandum;~~

~~(b) That portion of the disclosure notice warning of possible tax consequences and possible effects on eligibility for public funds shall be prominently displayed;~~

~~(c) The disclosure notice shall state that before entering into a viatical settlement contract, the viator should consult with his or her life insurance agent or life insurer to determine whether accelerated benefits are available.~~

~~(d) The disclosure notice shall contain the definition of accelerated benefits set forth in WAC 284-23-620(1) in its entirety;~~

~~(4)) (5) The ((viatical)) life settlement contract shall specify any effect entering into the contract will have upon the continued availability of supplemental benefits or riders that are or may be attached to the life insurance policy that is the subject of the ((viatical)) life settlement contract, including assigning the responsibility for the continued payment of premiums. The benefits and riders considered shall include, but need not be limited to, the following:~~

~~(a) Guaranteed insurability options;~~

~~(b) Accidental death benefits, or accidental death and dismemberment benefits;~~

~~(c) Disability income or loss of income protection;~~

~~(d) Waiver of premium or monthly deduction waiver; and~~

~~(e) Family, spousal, or children's riders or benefits.~~

~~((5)) (6) No ((viatical)) life settlement contract may contain any limitation or restriction on the use of the proceeds by the ((viator)) owner.~~

AMENDATORY SECTION (Amending Order R 95-2, filed 10/20/95, effective 11/20/95)

**WAC 284-97-050 Standards for evaluating reasonability of compensation.** In order to assure that benefits offered to ~~((a viator))~~ an owner who is terminally or chronically ill are reasonable in relation to the rate, fee, or other compensation that is charged, any payout shall be no less than the greater of the amounts defined in subsections (1) and (2) of this section.

(1) Payouts shall be no less than the following percentage of the expected death benefit under the insurance policy, net of loans. The following are minimum standards and shall not be presumed to be proof of fairness as to any specific transaction.

(a) If the insured's life expectancy is less than ~~((twelve))~~ six months, then the percentage of the expected death benefit under the insurance policy, net of loans, to be received by the ~~((viator))~~ owner shall be no less than ~~((seventy-five))~~ eighty percent.

(b) If the insured's life expectancy is at least ~~((twelve))~~ six months, but less than ~~((twenty-four))~~ twelve months, then the percentage of the expected death benefit under the insur-

ance policy, net of loans, to be received by the ~~((viator))~~ owner shall be no less than ~~((sixty-five))~~ seventy percent.

(c) If the insured's life expectancy is at least ~~((twenty-four))~~ twelve months, but less than ~~((thirty-six))~~ eighteen months, then the percentage of the expected death benefit under the insurance policy, net of loans, to be received by the ~~((viator))~~ owner shall be no less than ~~((fifty))~~ sixty-five percent.

(d) If the insured's life expectancy is at least ~~((thirty-six))~~ eighteen months, but less than twenty-five months, then the percentage of the expected death benefit under the insurance policy, net of loans, to be received by the ~~((viator))~~ owner, shall be no less than ~~((thirty))~~ sixty percent.

(2) Payouts shall be no less than the ~~((expected death benefit))~~ greater of the cash surrender value or accelerated death benefit under the insurance policy ~~((, net of loans, reduced by the sum of the amounts described in (a), (b), and (c) of this subsection)).~~

~~((a) The viatical settlement provider may retain the amounts it would be required to pay to the insurer to keep the policy in force during the period of time ending concurrently with the insured's life expectancy.~~

~~(b) The viatical settlement provider may retain an allowance of fifteen percent of the expected death benefit, net of loans, to provide for a risk charge and for its expenses and profit.~~

~~(c) The viatical settlement provider may retain an allowance for the time value of money. The interest rate to be used is fifteen percent per annum, compounded monthly. The calculation shall be performed on the basis that the viatical settlement provider pays the present value of the expected death benefit under the insurance policy, net of loans, reduced by the amounts defined in (a) and (b) of this subsection. The payment to the viator shall reflect an interest adjustment for the period of time beginning when the viator is paid and ending concurrently with the insured's life expectancy.~~

(3) The viatical settlement provider shall maintain for each viator, a document bearing the title, "Insurance Commissioner's Worksheet" for ten years after the death of the insured, or rescission of the contract. The viatical settlement contract shall provide that the viator may at any time obtain upon request, without charge, a copy of the "Insurance Commissioner's Worksheet," the purpose of which is to assure that benefits comply with this section. This provision shall appear on the same page or page following the first occurrence of the statement of the amount to be paid to the viator. In addition to identifying the insured, the "Insurance Commissioner's Worksheet" shall be dated and shall include the text shown in items (a) through (j) of this subsection.

~~(a) Line one shall state, "(1) Life expectancy (measured from the date the viator is paid) is n = \_\_\_\_\_ months."~~

~~(b) Line two shall state, "(2) Death benefit proceeds expected from insurer is \$\_\_\_\_\_."~~

~~(c) Line three shall state, "(3) Amount expected to be paid by company to insurer is \$\_\_\_\_\_." The viatical settlement provider may substitute its name for the word "company."~~

~~(d) Line four shall state, "(4) Allowance for risk, expenses and profit, 15% of (2), is \$\_\_\_\_\_."~~

~~(e) Line five shall state, "(5) Interest rate is 15%."~~



(f) Line six shall state, "(6) Line (2), net of allowance for interest, is (2)/1.0125<sup>a</sup> = \$\_\_\_\_\_."

(g) Line seven shall state, "(7) Line (6), less (3) and less (4), is \$\_\_\_\_\_."

(h) Line eight shall state, "(8) Minimum percentage, 75%, 65%, 50%, or 30%, of (2) is \$\_\_\_\_\_."

(i) Line nine shall state, "(9) Minimum amount required by the commissioner, the greater of (7) or (8), is \$\_\_\_\_\_."

(j) Line ten shall state, "(10) Amount to be paid by company, no less than (9), is \$\_\_\_\_\_." The viatical settlement provider may substitute its name for the word "company."

(4) The viatical settlement provider shall enclose with the submission of a viatical settlement contract form, and with the submission of a rate revision, for approval prior to use in this state, a pricing memorandum providing a description of the method and assumptions used in determining the value to be paid viators. At the time of submission of a pricing memorandum or at the time of submission of any subsequent supporting documentation, the viatical settlement provider may request the commissioner to withhold that material from public inspection in order to preserve trade secrets or prevent unfair competition, in accordance with RCW 48.02.120(3). Each page covered by such request shall be clearly marked "confidentiality requested." The memorandum shall include a description, which may use reasonable ranges, of the following:

(a) The procedure used to determine the insured's life expectancy including medical evaluation and use of health care professionals in such evaluation;

(b) The portion of the discount (difference between the death benefit of the life insurance policy or certificate and viatical settlement provider payment) due to market value interest rate (current worth of money) and how this interest rate is determined;

(c) The portion of the discount due to agent or broker compensation paid by the viatical settlement provider;

(d) The portion of the discount that is the viatical settlement provider's operation costs in connection with viatical settlements, including acquisition and maintenance cost and risk charge;

(e) The portion of the discount due to other overhead costs and profit margin;

(f) The effect, if any, that policy loans, surrender charges, and the net cash surrender value in the insurance plan have on the pricing determination;

(g) How provision is made in the settlement determination for future insurance plan premiums, dividends or excess amounts, if any; and

(h) What provision, if any, is made in the settlement determination for supplemental insurance benefits or riders.))

#### NEW SECTION

**WAC 284-97-900 Savings clause.** Amendments to WAC 284-97-010 through 284-97-050 effective on or after July 26, 2009, do not affect any rights acquired or liabilities or obligations incurred under WAC 284-97-010 through 284-97-050 that existed prior to July 26, 2009, nor affects any proceedings instituted under those sections.

#### NEW SECTION

**WAC 284-97-910 Insurance company disclosure form.** RCW 48.102.100 requires that insurers provide a notice to owners of individual life insurance policies at certain times. The following is the only document approved by the commissioner to give this notice.

Important information about your life insurance policy  
from the State of Washington Office of the Insurance Commissioner

**Life insurance is a critical part of a broader financial plan. There are many options available, and you have the right to shop around and seek advice from different financial advisers in order to find the options best suited to your needs.**

You are encouraged to consider the following possible alternatives to [requesting a surrender of your life insurance policy, requesting accelerated death benefits under your life insurance policy, or letting your life insurance policy lapse\*]. These alternatives include, but are not limited to:

- **Accelerated Death Benefit:** Your policy may provide an early or accelerated discounted benefit payment if you have a terminal or chronic illness.
- **Cash Surrender:** Your policy may have a cash surrender value your life insurer would pay you if you cancel it.
- **Gift:** You may be able to gift your policy to your beneficiary, who would then assume responsibility for paying premiums.
- **Life Settlement:** You may be able to sell your life insurance policy to a third party for an amount that, under Washington law must be greater than the cash surrender value or accelerated death benefits under your policy. You pay no further premium. The third party becomes the policyholder and receives the benefit upon the insured's death.
- **Maintain Your Policy:** You may be able to maintain your life insurance policy in force by paying the premiums directly or using your current policy values to pay the premiums.
- **Policy Changes:** You may be able to reduce or eliminate future premium payments by obtaining a paid-up policy, by reducing optional coverages, or through other options available from your life insurer.
- **Policy Loan:** You may be able to take out a loan from your life insurance company using the cash value of your policy as collateral. Loan proceeds can be used to pay the premiums or for other purposes.

Important information about your life insurance policy  
from the State of Washington Office of the Insurance Commissioner

- **Third-Party Loan:** You may be able to get a loan from another party to pay your policy's premiums. In return, the lender may require an assignment of a portion or all of the policy's death benefits.

These options may or may not be available depending on your circumstances and the terms of your life insurance policy. Please see your policy or contact your life insurance company, financial advisor, agent or broker to determine your particular options.

If you're a Washington state resident and have questions about life insurance and your rights, contact the Office of the Insurance Commissioner at 1-800-562-6900, or go to [www.insurance.wa.gov](http://www.insurance.wa.gov). Ask questions if you don't understand your policy. Here's a list of commonly used terms:

**Accelerated death benefit:** A benefit allowing terminally ill or chronically ill life insurance policyholders to receive cash advances of all or part of the expected death benefit. The accelerated death benefit can be used for health care treatments or any other purpose.

**Cash surrender value:** This term is also called "cash value," "surrender value," and "policyholder's equity." The amount of cash due to a policyholder who requests the insurance company cancel their life insurance policy before it matures or death occurs.

**Expected death benefit:** The face amount of the policy, less any policy loan amounts, that the insurance company is expected to pay the beneficiaries named in the life insurance policy upon the death of the insured.

**Lapse:** Refers to a life insurance policy ending or expiring when a policyholder stops making premium payments.

**Life settlement:** Refers to a contract in which the policyholder sells his or her life insurance policy to a third party for a one-time cash payment which is greater than the cash surrender value, but less than the death benefit of the policy. A life settlement includes a viatical settlement, defined below.

**Policy loan:** A loan issued by an insurance company using the cash value of a person's life insurance policy as collateral.

**Viatical settlement:** An arrangement in which someone with a terminal illness sells his or her life insurance policy at an amount less than the death benefit. The ill person receives cash, and the buyer receives the full amount of the death benefit. This death benefit is payable once the former policyholder dies.

*This brochure is for informational purposes only and does not constitute an endorsement of any of the options described above.*

- \* A life insurance company should choose among these three phrases to state the appropriate phrase that fits the situation of the particular policy owner to whom the notice is being sent.

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

**WAC 284-97-920 Verification of coverage for life insurance policies form.** RCW 48.102.110(2) provides that the request for verification of coverage must be made on a form approved by the commissioner. The following is the only verification of coverage form approved by the commissioner.

**VERIFICATION OF COVERAGE FOR LIFE INSURANCE POLICIES**

**SUBMITTED TO:** \_\_\_\_\_ **NAIC#** \_\_\_\_\_  
Name of Insurance Company

**POLICY NUMBER:** \_\_\_\_\_

**SUBMITTED FROM:** \_\_\_\_\_  
Name of Life Settlement Broker/Provider

**ADDRESS:** \_\_\_\_\_

**TELEPHONE NUMBER:** \_\_\_\_\_

**CONTACT:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_

IF INFORMATION IS CORRECT, INSURER REPRESENTATIVE MAY PLACE A CHECKMARK IN THE BOX. OTHERWISE PROVIDE CORRECTED INFORMATION THROUGHOUT THIS FORM. AN ASTERISK INDICATES INFORMATION THE LIFE SETTLEMENT PROVIDER/BROKER MUST PROVIDE.

**POLICY OWNER'S AND INSURED'S INFORMATION**

	This column to be completed by Life Settlement Broker/Provider	This column to be used by Insurance Company
<b>Owner's Name</b>	*	
<b>Address</b>	*	
<b>City, state, ZIP code</b>	*	
<b>Tax ID or Social Security number</b>	*	
<b>Insured's name</b>	*	
<b>Insured's date of birth</b>	*	
<b>Second insured's name (if applicable)</b>	*	
<b>Second insured's date of birth (if applicable)</b>	*	
<b>I hereby consent by my signature below to release information requested by this form by the insurance company to the life settlement broker/provider.</b>		
<b>Signature of owner</b>		<b>Date signed</b>

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**IS THE POLICY IN FORCE?**

**YES**

**NO**

*IF NO, SIGN, AND DATE ON PAGE 4 AND RETURN TO THE LIFE SETTLEMENT BROKER OR PROVIDER THAT SUBMITTED THE VERIFICATION OF COVERAGE.*

**POLICY TYPE, RIDERS AND OPTIONS:**

**\*TERM**

**WHOLE LIFE**

**UNIVERSAL LIFE**

**VARIABLE LIFE**

If a question is not applicable to the type of policy, write N/A in the column.

	This column to be completed by Life Settlement Broker/Provider	This column to be used by Insurance Company
<b>Original issue date</b>	*	
<b>Maturity date of policy</b>		
<b>State of issue</b>	*	
<b>Does the policy have an irrevocable beneficiary?</b>	*	
<b>Is the policy currently assigned?</b>	*	
<b>Was the policy ever converted or reinstated?</b>		
<b>Is the policy in the contestability period?</b>	*	
<b>Is the policy in the suicide period?</b>	*	
<b>Please list all riders and indicate if any are in the contestable or suicide period.</b>	*	

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**POLICY VALUES**

	This column to be completed by Life Settlement Broker/Provider	This column to be used by Insurance Company
<b>Policy values as of (insert date)</b>		
<b>Current face amount of policy</b>	*	
<b>Amount of accumulated dividends</b>		

**POLICY VALUES**

	This column to be completed by Life Settlement Broker/Provider	This column to be used by Insurance Company
<b>Current face amount of riders</b>		
<b>Amount of any outstanding loans</b>	*	
<b>Amount of outstanding interest on policy loans</b>		
<b>Current net death benefit</b>	*	
<b>Current account value</b>	*	
<b>Current cash surrender value</b>	*	
<b>Is policy participating?</b>	*	
<b>If yes, what is the current dividend option?</b>		

**PREMIUM INFORMATION**

	This column to be completed by Life Settlement Broker/Provider	This column to be used by Insurance Company
<b>Current payment mode</b>	*	
<b>Current modal premium</b>	*	
<b>Date last premium paid</b>	*	
<b>Date next premium due</b>	*	
<b>Current monthly cost of insurance as of (insert date)</b>		
<b>Date of last cost of insurance deduction</b>		
<b>TO BE COMPLETED BY LIFE SETTLEMENT BROKER/PROVIDER</b>		
The information submitted for verification by the life settlement broker/provider is correct and accurate to the best of my knowledge and has been obtained through the policy owner and/or insured.		
Signature	Printed name	

**TO BE COMPLETED BY INSURANCE COMPANY**

The information provided by verification by the insurance company is correct and accurate to the best of my knowledge as of \_\_\_\_\_(date).

Insurance company: \_\_\_\_\_ NAIC # \_\_\_\_\_

Printed name: \_\_\_\_\_ Title: \_\_\_\_\_

Telephone number: \_\_\_\_\_ Fax number: \_\_\_\_\_

Signature: \_\_\_\_\_

*Please provide information about where the forms listed below should be submitted for processing.*

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City, State, ZIP: \_\_\_\_\_

Overnight Address: \_\_\_\_\_

City, State, ZIP: \_\_\_\_\_

Telephone number: \_\_\_\_\_ Fax number: \_\_\_\_\_

## FORMS REQUEST

Please provide the forms checked below:

- Absolute Assignment/Change of Ownership/Life Assignment
- Change of Beneficiary
- Release of Irrevocable Beneficiary (if applicable)
- Waiver of Premium Claim Form
- Disability Waiver of Premium Approval Letter
- Release of Assignment
- Change of Death Benefit Option Form (if UL)
- Allocation Change Form (if Variable)
- Annual Report
- Current In Force Illustration

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**WSR 10-04-045**  
**PERMANENT RULES**  
**SECRETARY OF STATE**

[Filed January 28, 2010, 7:56 a.m., effective February 28, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Updating state classification codes to match federal classification codes, and referencing copy fees.

Citation of Existing Rules Affected by this Order:  
Amending WAC 434-12-005 and 434-12-015.

Statutory Authority for Adoption: RCW 19.77.090, 19.77.115.

Adopted under notice filed as WSR 10-01-060 on December 10, 2009.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 2, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 28, 2010.

Steve Excell  
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

**WAC 434-12-005 Trademark filing—Fees—Office hours—Location.** (1) Trademarks are filed with the corporations division of the secretary of state. ((Please refer to chap-

~~ter 434-112-WAC for corporations division office hours, location, filing procedures and telephone numbers.))~~

(2) Filing and other fees for trademarks are set forth in WAC 434-112-080 through 434-112-090.

(3) Photocopy fees for trademarks are per WAC 434-12A-100.

(4) Certified copies of trademarks are ten dollars for each certification plus the photocopy fee.

AMENDATORY SECTION (Amending WSR 04-05-041, filed 2/12/04, effective 3/14/04)

**WAC 434-12-015 Classification of goods and services.** (1) The corporations division adopts the following table for classification of goods and services:

**Goods**

1. Chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins; unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances; adhesives used in industry.

2. Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colorants; mordants; raw natural resins; metals in foil and powder form for painters, decorators, printers and artists.

3. Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices.

4. Industrial oils and greases; lubricants; dust absorbing, wetting and binding compositions; fuels (including motor spirit) and illuminants; candles, wicks.

5. Pharmaceutical, veterinary, and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides.

6. Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for

railway tracks; nonelectric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes; ores.

7. Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agricultural implements other than hand-operated; incubators for eggs.

8. Hand tools and implements (hand-operated); cutlery; side arms; razors.

9. Scientific, nautical, surveying, electric, photographic, cinematographic, optical, weighing, measuring, signaling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire extinguishing apparatus.

10. Surgical, medical, dental, and veterinary apparatus and instruments, artificial limbs, eyes, and teeth; orthopedic articles; suture materials.

11. Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply, and sanitary purposes.

12. Vehicles; apparatus for locomotion by land, air, or water.

13. Firearms; ammunition and projectiles; explosives; fireworks.

14. Precious metals and their alloys and goods in precious metals or coated therewith, not included in other classes; jewelry, precious stones; horological and chronometric instruments.

15. Musical instruments.

16. Paper, cardboard and goods made from these materials, not included in other classes; printed matter; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); playing cards; printers' type; printing blocks.

17. Rubber, gutta-percha, gum, asbestos, mica and goods made from these materials and not included in other classes; plastics in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, not of metal.

18. Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and traveling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery.

19. Building materials (nonmetallic); nonmetallic rigid pipes for building; asphalt, pitch and bitumen; nonmetallic transportable buildings; monuments, not of metal.

20. Furniture, mirrors, picture frames; goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics.

21. Household or kitchen utensils and containers (not of precious metal or coated therewith); combs and sponges; brushes (except paint brushes); brush making materials; articles for cleaning purposes; steel wool; unworked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes.

22. Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes); padding and stuffing materials (except of rubber or plastics); raw fibrous textile materials.

23. Yarns and threads, for textile use.

24. Textiles and textile goods, not included in other classes; beds and table covers.

25. Clothing, footwear, headgear.

26. Lace and embroidery, ribbons and braid; buttons, hooks and eyes, pins and needles; artificial flowers.

27. Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings (nontextile).

28. Games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees.

29. Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs, milk and milk products; edible oils and fats.

30. Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking powder; salt, mustard; vinegar, sauces (condiments); spices; ice.

31. Agricultural, horticultural and forestry products and grains not included in other classes; live animals; fresh fruits and vegetables; seeds, natural plants and flowers; foodstuffs for animals; malt.

32. Beers; mineral and aerated waters and other nonalcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.

33. Alcoholic beverages (except beers).

34. Tobacco; smokers' articles; matches.

#### Services

35. Advertising; business management; business administration; office functions.

36. Insurance; financial affairs; monetary affairs; real estate affairs.

37. Building construction(=) and repair; installation services.

38. Telecommunications.

39. Transport; packaging and storage of goods; travel arrangement.

40. Treatment of materials.

41. Education and entertainment; providing of training; entertainment; sporting and cultural activities.

42. Computer and scientific; scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; legal services.

43. Hotels and restaurants; services for providing food and drink; temporary accommodations.

44. Medical, beauty and agricultural; medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry services.

45. Personal and legal; personal and social services rendered by others to meet the needs of individuals; security services for the protection of property and individuals.

(2) This table is adopted from the schedule for classification of goods and services published by the United States Patent and Trademark Office.

### WSR 10-04-046

#### PERMANENT RULES

#### SECRETARY OF STATE

[Filed January 28, 2010, 7:57 a.m., effective February 28, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To state fees, outline procedures, and set forth guidelines for implementation of the Uniform Limited Partnership Act of 2009, chapter 25.10 RCW, including establishing a new entity, the limited liability limited partnership.

Citation of Existing Rules Affected by this Order: Repealing WAC 434-55-015 and 434-55-070; and amending WAC 434-55-010, 434-55-016, 434-55-040, 434-55-050, 434-55-060, 434-55-065, 434-55-066, and 434-55-080.

Statutory Authority for Adoption: RCW 25.10.171, 25.10.916, 43.07.120.

Adopted under notice filed as WSR 10-01-076 on December 15, 2009.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 5, Amended 8, Repealed 2.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 5, Amended 8, Repealed 2; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 28, 2010.

Steve Excell  
Assistant Secretary of State

AMENDATORY SECTION (Amending Order 87-04, filed 8/6/87)

**WAC 434-55-010 Purpose and authority.** These regulations are adopted pursuant to ~~((RCW 25.10.600—25.10.610 and chapter 55, Laws of 1987))~~ chapter 188, Laws of 2009, to implement a centralized system for limited partnership filings at the office of the secretary of state.

AMENDATORY SECTION (Amending WSR 94-19-003, filed 9/8/94, effective 10/9/94)

**WAC 434-55-016 Office hours.** (1) Normal business hours of the corporations division are 8:00 a.m. to 5:00 p.m., Monday through Friday except holidays. ~~((Over the counter service is available to provide same day service for individuals requests brought in before 4:30 p.m. and telephone service is available from 8:00 a.m. to 5:00 p.m.))~~

(2) Documents, including substitute service-of-process on the secretary of state, delivered after ~~((normal working hours))~~ 5:00 p.m. will be deemed to be received on the next working day. The secretary assumes no responsibility for any form of delivery other than that received personally by an employee of the office of the secretary of state.

(3) Certain expedited ~~((or))~~ and over-the-counter services are subject to the special service fees established ~~((elsewhere))~~ in ~~((these regulations))~~ WAC 434-112-080 through 434-112-090.

AMENDATORY SECTION (Amending WSR 94-19-003, filed 9/8/94, effective 10/9/94)

**WAC 434-55-040 ~~((Original signature required.))~~ Document filing standards.** ~~((1) At any time that the statute requires a limited partnership document filing with the secretary of state to be in duplicate form, the secretary of state will accept the following:~~

(a) ~~Two original copies, each with original signatures; or~~

(b) ~~One original with original signatures and a true and correct photocopy thereof.~~

~~In the case of duplicate originals submitted with only one original and one copy thereof, the secretary of state will retain as its official file copy the certificate or document with original signatures and will return to the limited partnership for its records the document version bearing copied signatures. If the entity provides only the original copy, the division may charge a photocopy fee to make an exact copy.~~

~~(2)) All documents presented to the secretary of state for filing under the Limited Partnership Act shall be of no larger size than standard legal paper (8-1/2 x 14). The materials shall be submitted in form and quality which is suitable for future microfilming or digital reproduction ((by a similar photographic process)). The secretary of state will not accept documents for filing which are ((not typed, or with)) illegible ((text)).~~

AMENDATORY SECTION (Amending Order 82-7, filed 10/6/82)

**WAC 434-55-050 Statement of name reservation ~~((or registration))~~.** A name for a limited partnership may be reserved by filing an application ~~((therefor))~~ and paying the applicable fee per WAC 434-112-085. The applicant may use the secretary of state's regular form for reservation of name, or may submit a written request. A written request must identify the name ~~((desired, the fact that it is requested for a limited partnership, the entity for which the name is))~~ to be reserved~~((;))~~ and which of the following subsections apply:

(1) A person intending to organize a limited partnership under this chapter and to adopt the name:

(2) A limited partnership or a foreign limited partnership authorized to transact business in this state intending to adopt the name;

(3) A foreign limited partnership intending to obtain a certificate of authority to transact business in this state and adopt the name;

(4) A person intending to organize a foreign limited partnership and intending to have it obtain a certificate of authority to transact business in this state and adopt the name;

(5) A foreign limited partnership formed under the name;  
or

(6) A foreign limited partnership formed under a name that does not comply with RCW 25.10.061 (2) or (3), but the name reserved under RCW 25.10.071 (1)(f) may differ from the foreign limited partnership's name only to the extent necessary to comply with RCW 25.10.061 (2) and (3). The request must also include the name of the agent making the request and ((his/its)) street and mailing address, and must be signed by the agent, partner or other authorized representative of the limited partnership.

In view of the increasing competition for business names, persons making name reservation requests are advised to submit ((up to)) three prioritized names per request. The secretary of state will review the names requested in order of priority indicated and will reserve the available name of highest priority. If no name reservation can be accepted, the reservation fee is returned to the requestor.

#### NEW SECTION

**WAC 434-55-052 Transfer of name reservation.** A person who has reserved a name may transfer that name by filing with the applicable fee from WAC 434-112-085 a notice of transfer that includes the reserved name to be transferred, and the name and street and mailing address of the person transferring the reserved name as well as the person to which reservation is to be transferred. It must also include which of the following subsections apply:

(1) A person intending to organize a limited partnership under this chapter and to adopt the name;

(2) A limited partnership or a foreign limited partnership authorized to transact business in this state intending to adopt the name;

(3) A foreign limited partnership intending to obtain a certificate of authority to transact business in this state and adopt the name;

(4) A person intending to organize a foreign limited partnership and intending to have it obtain a certificate of authority to transact business in this state and adopt the name;

(5) A foreign limited partnership formed under the name;

or  
(6) A foreign limited partnership formed under a name that does not comply with RCW 25.10.061 (2) or (3), but the name reserved under RCW 25.10.071 (1)(f) may differ from the foreign limited partnership's name only to the extent necessary to comply with RCW 25.10.061 (2) and (3).

#### NEW SECTION

**WAC 434-55-056 Filing a certificate of limited partnership—Designation as a limited liability limited part-**

**nership.** In order for a limited partnership to form, a certificate of limited partnership must be delivered to the secretary of state for filing that includes:

(1) Name of limited partnership that complies with section 108, chapter 188, Laws of 2009.

(2) Street and mailing address of initial designated office in Washington.

(3) Name and street and mailing address of the initial agent for service of process.

(4) Name and street and mailing address of each general partner of the limited partnership.

(5) A statement whether it is a limited liability limited partnership.

(6) Additional information is required by Article 11, chapter 188, Laws of 2009.

#### NEW SECTION

**WAC 434-55-057 Electronic filing.** See WAC 434-112-065 through 434-112-075.

#### NEW SECTION

**WAC 434-55-058 Filing an annual report.** As of January 1, 2010, all limited partnerships registered in the secretary of state's office are required to file an annual report with the appropriate fee, each year, in the month they formed. The annual report will include:

(1) Name of domestic or foreign limited partnership;

(2) Street and mailing address of designated office;

(3) Name and street and mailing address of its agent;

(4) In the case of a domestic limited partnership, the street and mailing address of its principal office;

(5) In the case of a foreign limited partnership, the state or other jurisdiction under whose law the foreign limited partnership is formed and any alternate name adopted under chapter 188, Laws of 2009; and

(6) If a filed annual report contains an address of a designated office or the name or address of an agent that differs from the information shown in the records of the secretary immediately before the filing, the differing information in the annual report is considered a statement of change.

#### NEW SECTION

**WAC 434-55-059 Filing a statement of change.** A limited partnership or foreign limited partnership may change its registered office or registered agent by delivering to the secretary of state for filing, with the appropriate fee per WAC 434-112-085, a statement of change that includes:

(1) Name of the limited partnership or foreign limited partnership;

(2) The street and mailing address of its current designated office;

(3) If the current designated office is to be changed, the street and mailing address of the new designated office;

(4) The name and street and mailing address of its current agent for service of process; and

(5) If the current agent for service of process or an address of the agent is to be changed, the new information.



AMENDATORY SECTION (Amending WSR 99-12-008, filed 5/20/99, effective 6/20/99)

**WAC 434-55-060 Document filing fees—Limited partnerships.** ((The following fees are due and must be submitted concurrently with the limited partnership documents presented to the secretary of state for filing under the Washington Uniform Limited Partnership Act:

(1) Filing of a certificate of limited partnership for a domestic limited partnership: One hundred seventy-five dollars.

(2) Filing an application for registration of a foreign limited partnership: One hundred seventy-five dollars.

(3) Dissolution or cancellation by judicial decree: No charge.

(4) Filing of a certificate of cancellation for a domestic or foreign limited partnership: No charge.

(5) Filing of a certificate of amendment for a domestic or foreign limited partnership: Twenty-five dollars.

(6) Filing a certificate of restatement: Thirty dollars.

(7) Filing an application to reserve or transfer a limited partnership name: Ten dollars.

(8) Application for reinstatement: One hundred dollars plus all delinquent fees and a twenty-five percent penalty computed on total amount.

(9) Articles of merger: Twenty dollars for each listed company.

(10) Agent's consent to act as agent or agent's resignation if appointed without consent: No charge.

(11) Filing any other statement or report required by the Limited Partnership Act: Ten dollars.

(12) For certified copies of any document the fee is five dollars plus a photocopy fee of twenty cents for each additional page.

(13) For certificates of existence the fee is ten dollars per certificate.

(14) For photocopies fees are as follows:

(a) Certificate of limited partnership, five dollars;

(b) Any single document, other than a certificate of limited partnership, one dollar plus twenty cents for each additional page;

(c) Surcharge for files exceeding one hundred pages of copy, thirteen dollars for each fifty page increment (number of pages determined by weight of copies).

(15) Service of process on the office of the secretary of state as agent of a limited partnership: Fifty dollars.)) See WAC 434-112-085 and 434-112-090.

AMENDATORY SECTION (Amending WSR 99-12-008, filed 5/20/99, effective 6/20/99)

**WAC 434-55-065 In-person or expedited ((counter)) service—Special fees.** ((1) The corporations division counter is open to in-person requests from 8:00 a.m. to 4:00 p.m. each business day. Staff provides expedited, same-day processing of corporate documents or requests received prior to 3:30 p.m. on that day. These services are available for the following transactions:

(a) Charter document review and filing;

(b) Name reservation review and filing;

(c) Document certification;

(d) Document copying and status certificates;

(e) Status change filings;

(f) Service of process;

(g) International student exchange agency registration.

(2) The fee for same-day service is ten dollars for single or multiple transactions within each new or existing limited partnership file or each new or existing limited liability partnership file. In addition, a regulatory fee for each transaction may apply.

(3) There is no expedited fee for the following transactions:

(a) Reinstatements;

(b) In-person inspection or review of limited partnership files or other public documents located in the corporations division office;

(c) Documents left at the counter for processing with mail-in documents received the same day; or

(d) A search for nonactive limited partnership files less than twenty years old.

(4)(a) If staff cannot complete the expedited service request before the end of the same day, the transaction will be completed first on the following business day.

(b) Emergency services needed outside regular business hours requiring employee overtime are one hundred fifty dollars per hour plus regulatory or statutory fees due for the form of the filing. When the division receives an emergency request, staff notifies the customer of the service fee and any other reasonable conditions set by the director. The customer must agree to pay the fees before emergency services are provided.

(5) Over the counter service hours may be shortened under extraordinary circumstances. Separate service requests by one person may be limited to those relating to three corporations per day. Documents submitted by courier services or document-handling companies may receive twenty-four-hour service. A customer may make alternate arrangements with the director prior to bringing or sending in documents, if a sudden, unexpected situation occurs during the business day.

Under special circumstances, the filing party may petition the secretary in writing to request a waiver of emergency or penalty fees.)) See WAC 434-112-080 and 434-112-090.

AMENDATORY SECTION (Amending WSR 94-19-003, filed 9/8/94, effective 10/9/94)

**WAC 434-55-066 Miscellaneous charges—Special service fees.** ((Dishonored checks. If a person, corporation or other submitting entity has attempted to pay any fee due to the secretary of state by means of a check, and the check is dishonored by the financial institution when presented, the secretary of state will impose a twenty-five dollar penalty, payable to the secretary of state.

In the event a valid replacement check and dishonor charge is not received in the office of the secretary of state within the time prescribed by its accounting division, the transaction covered by the dishonored check will be cancelled and all other late filing fees and penalties will be instituted.)) See WAC 434-112-085 and 434-112-090.

AMENDATORY SECTION (Amending WSR 94-19-003, filed 9/8/94, effective 10/9/94)

**WAC 434-55-080 Registered office address—Requirements.** The name and street address of a registered office is required. A post office box address may be used in ~~((conjunction with))~~ addition to a registered geographic office address ~~((when:~~

~~(1) The United States Postal Service cannot or will not deliver to the street address; and~~

~~(2) The post office box address is in the same Washington city or town as the registered office address; and~~

~~(3) The agent notifies the office of the secretary of state and the corporation of any changes in either the street address or the post office box address)).~~

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-55-015	Official address and telephone number.
WAC 434-55-070	Telephone services.

#### **WSR 10-04-057**

#### **PERMANENT RULES**

#### **SECRETARY OF STATE**

[Filed January 29, 2010, 10:16 a.m., effective March 1, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To change the renewal period for certification authorities from one year to two without changing fees.

Citation of Existing Rules Affected by this Order: Amending WAC 434-180-130 and 434-180-205.

Statutory Authority for Adoption: RCW 19.34.101, 19.34.500.

Adopted under notice filed as WSR 10-01-061 on December 10, 2009.

Changes Other than Editing from Proposed to Adopted Version: Editing changes were made to state the purpose more clearly.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 2, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 29, 2010.

Steve Excell

Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 98-16-031, filed 7/29/98, effective 8/29/98)

**WAC 434-180-130 Fees.** Fees for services performed by the secretary of state are established in the following amounts:

(1) For application for a license as a certification authority:

(a) For the applicant's first year doing business as a licensed certification authority in this state: One thousand four hundred dollars;

(b) For the applicant's subsequent biennial renewal doing business as a licensed certification authority in this state: Two thousand eight hundred dollars ~~((second year doing business as a licensed certification authority in this state: One thousand eight hundred dollars; and~~

~~(c) For the applicant's third or subsequent year and for each subsequent biennial renewal doing business as a licensed certification authority in this state: Two thousand eight hundred dollars)).~~

(2) For recognition as a repository, in addition to the license issuance or renewal fee paid pursuant to this section:

(a) For the applicant's first year doing business as a recognized repository in this state: One thousand four hundred dollars;

(b) For the applicant's subsequent biennial renewal doing business as a recognized repository in this state: Two thousand eight hundred dollars ~~((second year doing business as a recognized repository in this state: One thousand eight hundred dollars; and~~

~~(c) For the applicant's third or subsequent year and for each subsequent biennial renewal doing business as a recognized repository in this state: Two thousand eight hundred dollars)).~~

(3) For recognition of a foreign license: One-half of the otherwise applicable fee as set forth under subsection (1) or (2) of this section.

(4) For qualification of operative personnel:

(a) For administering and scoring the examination required by WAC 434-180-215(3), fifty dollars per individual; and

(b) For qualifying operative personnel pursuant to WAC 434-180-215 and 434-180-220, other than (or in addition to) administering and scoring the examination, twenty-five dollars per individual.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

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

AMENDATORY SECTION (Amending WSR 97-24-053, filed 11/26/97, effective 12/27/97)

**WAC 434-180-205 Issuance of license or renewal.**

The secretary shall, within a reasonable time, issue or renew a license as a certification authority if the applicant has:

- (1) Submitted all documentation required by WAC 434-180-200 and 434-180-210; and
- (2) The secretary has determined that the applicant meets all requirements for licensure.
- (3) Issuance (~~(or renewal)~~) of a license shall be valid for a period of one year. (~~(Renewal of a license shall be valid for a period of two years.)~~) Failure to receive a notice of the need to renew a license is an insufficient reason for failing to file the required application for renewal.

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

**WSR 10-04-058**

**PERMANENT RULES**

**PUBLIC DISCLOSURE COMMISSION**

[Filed January 29, 2010, 10:38 a.m., effective March 1, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 390-19-020 Electronic filing—Mandatory filing, procedures for electronic filing of campaign finance disclosure forms. The rule amendment to WAC 390-19-020 on electronic filing is to allow for the option of electronic filing of PDC forms C-1 Registration statement for candidates and C-1pc Registration statement for political committees.

Citation of Existing Rules Affected by this Order: Amending WAC 390-19-020 Electronic filing—Mandatory filing.

Statutory Authority for Adoption: RCW 42.17.370(1).

Adopted under notice filed as WSR 10-01-144 on December 21, 2009.

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

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

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

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

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

Date Adopted: January 28, 2010.

Douglas J. Ellis  
Assistant Director

AMENDATORY SECTION (Amending WSR 09-02-021, filed 12/30/08, effective 1/30/09)

**WAC 390-19-020 Electronic filing—Mandatory filing.** (1) RCW 42.17.3691 mandates that persons satisfying the qualifying criteria in that section file all contribution and expenditure reports by electronic means.

(2) Persons filing by electronic means shall register with the PDC and receive a filer identification number and password. Filers must have a current C-1 Candidate Registration Statement or a C-1pc Committee Registration Statement (~~(with)~~) and an original signature on file with the PDC prior to receiving a filer identification number. (~~(Forms C-1 and C-1pc may not be filed electronically.)~~)

(3) A filer subject to RCW 42.17.3691 shall file all PDC C-3 and C-4 reports and all appropriate schedules electronically in compliance with subsection (5) of this section.

(4) Any filer required to file electronically, but who files on paper, is in violation of RCW 42.17.3691 and may be subject to enforcement action unless the filer is a candidate who has sought and been granted an exception from electronic filing under WAC 390-19-050.

(5) A filer subject to electronic filing shall file reports using one of the following:

(a) The ORCA software (Online Reporting of Campaign Activity) provided free-of-charge by the PDC; or

(b) (~~(Software that creates electronic files that conform to the Political Disclosure Standard Electronic Reporting Format provided by the PDC; or~~

(~~e~~)) Any other electronic filing application provided or approved by the PDC.

**WSR 10-04-067**

**PERMANENT RULES**

**DEPARTMENT OF HEALTH**

(Board of Optometry)

[Filed January 29, 2010, 4:54 p.m., effective March 1, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 246-851-110 Course presumed to qualify for credit, optometry continuing education. The rule corrects the reference from the Washington Association of Optometric Physicians to that organization's current name, the Optometric Physicians of Washington.

Citation of Existing Rules Affected by this Order: Amending WAC 246-851-110 Courses presumed to qualify for credit.

Statutory Authority for Adoption: RCW 18.54.070.

Adopted under notice filed as WSR 09-23-058 on November 12, 2009.

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

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

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

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

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

Date Adopted: January 29, 2010.

Michael D. Van Brocklin, O.D.  
Chair, Board of Optometry

**AMENDATORY SECTION** (Amending WSR 97-12-088, filed 6/4/97, effective 7/5/97)

**WAC 246-851-110 Courses presumed to qualify for credit.** Courses offered by the following organizations are presumed to qualify as continuing education courses without specific prior approval of the board. However, the board reserves the right to not accept credits if the board determines that a course did not provide appropriate information or training.

- (1) The American Optometric Association.
- (2) Any college or school of optometry whose scholastic standards are deemed sufficient by the board under RCW 18.53.060(2).
- (3) The ~~(Washington Association of)~~ Optometric Physicians of Washington.
- (4) Any state optometric association which is recognized by the licensing authority of its state as a qualified professional association or educational organization.
- (5) The state optometry board.
- (6) The optometry licensing authority of any other state.
- (7) The American Academy of Optometry.
- (8) The Optometric Extension Program.
- (9) The College of Optometrists in Vision Development.
- (10) The National Eye Research Foundation.
- (11) Regional congresses of any of the organizations listed in subsections (1) through (10) of this section.
- (12) The Council on Post-Graduate Education of the American Optometric Association.
- (13) The Council on Optometric Practitioner Education (C.O.P.E.).

## WSR 10-04-072

### PERMANENT RULES

#### EASTERN WASHINGTON UNIVERSITY

[Filed February 1, 2010, 11:59 a.m., effective March 4, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The proposal clarifies chapter 172-139 WAC by adding a purpose statement and updating language to reflect current organizational structure and practices. These changes are necessary to reflect current organizational titles and business practices, and to clarify the scope of the rule.

Citation of Existing Rules Affected by this Order: Amending chapter 172-139 WAC.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

Adopted under notice filed as WSR 10-01-148 on December 22, 2009.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 4, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 1, Amended 4, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 29, 2010.

Trent Lutey  
University Policy Administrator

## Chapter 172-139 WAC

### Commercial activities

#### NEW SECTION

**WAC 172-139-005 Purpose.** This chapter establishes standards for the conduct of commercial activities on Eastern Washington University property by external persons or organizations. This includes property and facilities that are owned, operated, or otherwise controlled by Eastern Washington University.

**AMENDATORY SECTION** (Amending WSR 92-21-043, filed 10/16/92, effective 11/16/92)

**WAC 172-139-010 Commercial activities.** Eastern Washington University facilities shall not be used for commercial solicitation, advertising, or promotional activities except when the activities clearly serve educational objectives. ~~(;)~~ Examples of acceptable activities include (ing but not limited to) the display of books of interest to the academic community, ((~~or~~)) the display or demonstration of technical or research equipment, or ((and when the)) other commercial activities that relate to educational objectives. In all cases, such commercial activities must be ((and are)) conducted under the sponsorship or at the request of a university department or of a ((the executive)) vice-president or authorized designee. Approved((: Provided, That)) commercial activities shall not interfere with or operate to the detriment of the conduct of university affairs or the free flow of pedestrian or vehicular traffic.

**AMENDATORY SECTION** (Amending WSR 92-21-043, filed 10/16/92, effective 11/16/92)

**WAC 172-139-020 Commercial activities in the Pence Union Building.** Exceptions to WAC 172-139-010

are granted for the Pence Union Building (PUB) subject to the following provisions:

~~(1)(- Provided, That)~~ Any commercial ~~((the))~~ activity conducted under this section shall ~~((does))~~ not duplicate services provided by the university.

~~(2) Vendors, organizations, or individuals must obtain~~ ~~((and prior))~~ approval ~~((is obtained))~~ from the director of the student union building prior to conducting any commercial activity ~~((auxiliary services))~~.

~~(3) The University shall charge~~ ~~((V))~~ vendors ~~((are assessed charges))~~ for use of ~~((the))~~ PUB facilities.

AMENDATORY SECTION (Amending WSR 92-21-043, filed 10/16/92, effective 11/16/92)

**WAC 172-139-030 Handbills.** (1) No person shall place in or on any vehicle parked on the university campus, any handbill, except as provided in subsection ~~(3)((2)(e))~~ of this section.

(2) For the purposes of this chapter, the following definition applies: A "handbill" is any printed or written matter, sample, or device which:

(a) Advertises for sale any merchandise, product, service, or commodity; or

(b) Directs attention, either directly or indirectly, to any business or mercantile or commercial establishment, or other activity, for the purpose of promoting an interest in sales or use; or

(c) Directs attention to or advertises any meeting, theatrical performance, exhibition, or event of any kind, for which an admission fee is charged for the purpose of private gain or profit. ~~((- Provided, That t))~~

~~(3) The terms of this~~ ~~((clause))~~ section shall not apply to a university-sponsored activity for which the handbills have been approved for such distribution by the ~~((director of student))~~ Associate Vice President for ~~((a))~~ Auxiliary and Business ~~((s))~~ Services ~~((in the Pence Union Building))~~.

AMENDATORY SECTION (Amending WSR 92-21-043, filed 10/16/92, effective 11/16/92)

**WAC 172-139-040 Penalties for violations of commercial activities regulations.** (1) Any violation of this chapter by a student of Eastern Washington University is a violation of the student conduct code, WAC 172-121-~~200~~ ~~((0-040))~~.

(2) Nonstudents violating this chapter may be referred to civil authorities for appropriate prosecutions, including violations of the laws of criminal trespass and/or litter control.

**WSR 10-04-076**

**PERMANENT RULES**

**DEPARTMENT OF LICENSING**

[Filed February 1, 2010, 2:41 p.m., effective March 4, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This proposal will create a supplemental course for applicants without enough education to reach the

required one hundred twenty hours of classroom training in the board approved fundamentals.

Statutory Authority for Adoption: RCW 18.280.050(1).

Other Authority: RCW 18.280.(6) [18.280.060].

Adopted under notice filed as WSR 09-20-046 on September 30, 2009.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 25 [1], Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 25 [1], Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 1, 2010.

Walt Fahrer

Rules Coordinator

**Chapter 308-408B WAC**

**EDUCATION—HOME INSPECTOR**  
**COURSE APPROVAL**

**~~((HOME INSPECTOR COURSE APPROVAL))~~**

NEW SECTION

**WAC 308-408B-130 Fundamentals supplemental course.** Washington state applicants not seeking reciprocity who lack the required one hundred twenty hours of home inspection classroom education, but have completed a minimum of eighty hours of department approved classroom instruction can apply to the department for consideration of an approved forty hour supplemental course.

The applicant must provide a copy of their certificate(s) of completion, course outline that includes hours spent on each topic, and proof of testing. The supplemental course and the applicant's previous classroom instruction must meet or exceed the current board approved fundamentals curriculum.

Applicants who have taken home inspection courses must provide proof that they had successfully completed the course not earlier than June 12, 2006.

This rule is effective until June 1, 2010.

**WSR 10-04-089**  
**PERMANENT RULES**  
**CRIMINAL JUSTICE**  
**TRAINING COMMISSION**

[Filed February 2, 2010, 12:53 p.m., effective March 5, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Simple grammar changes and addition of new definition (corporate officer) missing from prior versions.

Citation of Existing Rules Affected by this Order: Amending 5 [WAC 139-30-005, 139-30-010, 139-30-015, 139-30-020, and 139-30-025].

Statutory Authority for Adoption: RCW 43.101.080.

Adopted under notice filed as WSR 09-24-015 on November 23, 2009.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, Repealed 0.

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

Date Adopted: February 2, 2010 [2010].

Sonja Hirsch  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 92-02-040, filed 12/24/91, effective 1/24/92)

**WAC 139-30-005 Firearms certification—Definitions.** (1) Words and terms used in WAC 139-30-005 through 139-30-025 shall have the same meaning as under chapter 18.170 RCW, unless otherwise clearly provided in these rules, or the context in which they are used in these rules clearly indicates that they be given some other meaning.

(2) "Principal owner" means the sole owner of a private security guard company.

(3) "Principal partner" means a partner who exercises operational control over a private security guard company.

(4) "Corporate officer" means a designee with operational and administrative control at a private security guard company.

(5) "Department" means Washington state department of licensing.

(~~(5)~~) (6) "Commission" means Washington state criminal justice training commission.

AMENDATORY SECTION (Amending WSR 92-02-040, filed 12/24/91, effective 1/24/92)

**WAC 139-30-010 Firearms certification—Licensing requirement.** (1) Any licensed private security guard desir-

ing to be licensed as an armed private security guard by the department shall, as a precondition of being licensed as an armed private security guard, obtain a firearms (~~(certificate)~~) certification from the commission.

(2) An application for armed private security guard license must be submitted to the department within ninety days following issuance of a firearms (~~(certificate)~~) certification by the commission. If application is not submitted within that time period, the firearms (~~(certificate)~~) certification will be deemed lapsed by the commission and shall not serve as the basis for an armed private security guard license.

AMENDATORY SECTION (Amending WSR 08-08-017, filed 3/19/08, effective 4/19/08)

**WAC 139-30-015 Firearms certification—Application.** (1) Any application for firearms certification shall:

(a) Be filed with the commission on a form provided by the commission;

(b) Be signed by the principal owner, principal partner, or a (~~(principal)~~) corporate officer(;) of the licensed private security company employing the applicant;

(c) Establish through required documentation or otherwise that applicant:

(i) Is at least twenty-one years of age; and

(ii) Possesses a valid and current private security guard license.

(d) Be accompanied by payment of a processing fee as set by the commission.

(2) After receipt and review of an application, the commission will provide written notification within ten business days to the requesting company regarding applicant's eligibility to obtain and possess a firearms (~~(certificate)~~) certification.

(3) An armed private security guard must be qualified by a firearms instructor certified by the commission(;) and provide the commission with proof of the initial qualification for each firearm that he/she is authorized to use in the performance of his/her duties. All firearms carried by armed private security guards in the performance of their duties must be owned or leased by the employer.

(4) It shall be the responsibility of the employer to insure that the armed private (~~(detective)~~) security guard demonstrates proficiency standards on an annual basis with each firearm that he/she is certified to use. Proficiency standards shall be set by the commission.

AMENDATORY SECTION (Amending WSR 92-02-040, filed 12/24/91, effective 1/24/92)

**WAC 139-30-020 Firearms certification—Requirements.** (1) A firearms (~~(certificate)~~) certification will be issued to any eligible applicant who has satisfactorily completed an approved program of at least eight hours of instruction and testing prescribed by the commission for this purpose and conducted by a certified firearms instructor. Such program shall include:

(a) Classroom instruction which, through established learning objectives, addresses:

(i) Legal issues regarding the use of deadly force;

(ii) Decision making regarding the use of deadly force;

- (iii) Safe firearms handling; and
- (iv) Basic tactics in the use of deadly force.

(b) A written examination based upon the aforementioned learning objectives;

(c) A skills test wherein the applicant is required to demonstrate satisfactory proficiency in safe firearms handling; and

(d) A range qualification course wherein an applicant is required to demonstrate requisite proficiency with the specific firearm provided to the applicant by the applicant's employing company.

(2) A firearms ~~((certificate))~~ certification shall be issued in the name of each successful applicant and forwarded to the respective employing company.

**AMENDATORY SECTION** (Amending WSR 03-02-007, filed 12/20/02, effective 1/20/03)

**WAC 139-30-025 Firearms certification—Expiration and renewal.** (1) Any firearms ~~((certificate))~~ certification issued by the commission shall expire on the expiration date of any armed private security guard license issued by the department.

(2) By renewing the armed private security ~~((officer))~~ guard license with the department, the principal partner ~~((or)),~~ principal owner, or corporate officer for the private security guard company is making declaration that the armed private security guard has met the requirements for annual proficiency with the firearms for which he/she is certified.

(3) Proof of annual proficiency must be kept in the employee's file within the private security company.

#### WSR 10-04-090

#### PERMANENT RULES

#### CRIMINAL JUSTICE

#### TRAINING COMMISSION

[Filed February 2, 2010, 12:56 p.m., effective March 5, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Simple grammar changes and addition of new definition (corporate officer) missing from prior versions.

Title changed from "Firearms certification—private detectives" to "**Firearms certification—Private investigators.**"

Citation of Existing Rules Affected by this Order: Amending 5 [WAC 139-35-005, 139-35-010, 139-35-015, 139-35-020, and 139-35-025].

Statutory Authority for Adoption: RCW 43.101.080.

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Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, Repealed 0.

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Date Adopted: February 2, 2010 [2010].

Sonja Hirsch  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 03-02-008, filed 12/20/02, effective 1/20/03)

**WAC 139-35-005 Firearms certification—Definitions.** (1) Words and terms used in WAC 139-35-005 through 139-35-025 shall have the same meaning as under chapter 18.165 RCW, unless otherwise clearly provided in these rules, or the context in which they are used in these rules clearly indicates that they be given some other meaning.

(2) "Principal owner" means the sole owner of a private investigator agency.

(3) "Principal partner" means a partner who exercises operational control over a private investigator agency.

(4) "Corporate officer" means a designee who exercises operational and administrative control over a private investigator agency.

(5) "Department" means Washington state department of licensing.

~~((§))~~ (6) "Commission" means Washington state criminal justice training commission.

**AMENDATORY SECTION** (Amending WSR 03-02-007, filed 12/20/02, effective 1/20/03)

**WAC 139-35-010 Firearms certification—Licensing requirement.** (1) Any licensed private investigator desiring to be licensed as an armed private investigator by the department shall, as a precondition of being licensed as an armed private investigator, obtain a firearms ~~((certificate))~~ certification from the commission.

(2) An application for armed license must be submitted to the department within ninety days following issuance of a firearms ~~((certificate))~~ certification by the commission. If application is not submitted within that time period, the firearms ~~((certificate))~~ certification will be deemed lapsed by the commission and shall not serve as the basis for an armed license.

**AMENDATORY SECTION** (Amending WSR 08-08-018, filed 3/19/08, effective 4/19/08)

**WAC 139-35-015 Firearms certification—Application.** (1) Any application for firearms certification shall:

(a) Be filed with the commission on a form provided by the commission;

(b) Be signed by the principal owner, principal partner, ~~((principal))~~ or corporate officer ~~((or designated agent))~~ of the licensed private ~~((detective))~~ investigator agency employing the applicant;

(c) Establish through required documentation or otherwise that applicant:

(i) Is at least twenty-one years of age; and

(ii) Possesses a valid and current private ~~((detective))~~ investigator license, if applicable.

(d) Be accompanied by payment of a processing fee as set by the commission.

(2) After receipt and review of an application, the commission will provide written notification within ten business days to the requesting agency regarding applicant's eligibility to obtain and possess a firearms ~~((certificate))~~ certification.

(3) An armed private ~~((detective))~~ investigator must be qualified by a firearms instructor certified by the commission and provide the commission with proof of the initial qualification for each firearm that he/she is authorized to use in the performance of his/her duties.

(4) It shall be the responsibility of the employer to insure that the armed private ~~((detective))~~ investigator demonstrates proficiency standards on an annual basis with each firearm that he/she is certified to use. Proficiency standards shall be set by the commission.

AMENDATORY SECTION (Amending WSR 92-02-041, filed 12/24/91, effective 1/24/92)

**WAC 139-35-020 Firearms certification—Requirements.** (1) A firearms ~~((certificate))~~ certification will be issued to any eligible applicant who has satisfactorily completed an approved program of at least eight hours of instruction and testing prescribed by the commission for this purpose and conducted by a certified firearms instructor. Such program shall include:

(a) Classroom instruction which, through established learning objectives, addresses:

(i) Legal issues regarding the use of deadly force;

(ii) Decision making regarding the use of deadly force;

(iii) Safe firearms handling; and

(iv) Basic tactics in the use of deadly force.

(b) A written examination based upon the aforementioned learning objectives;

(c) A skills test wherein the applicant is required to demonstrate satisfactory proficiency in safe firearms handling; and

(d) A range qualification course wherein an applicant is required to demonstrate requisite proficiency with the specific firearm provided ~~((to applicant))~~ by the applicant or by the applicant's employing agency.

(2) A firearms ~~((certificate))~~ certification shall be issued in the name of each successful applicant and forwarded to the respective employing agency, principal owner, principal partner, or corporate officer.

AMENDATORY SECTION (Amending WSR 03-02-007, filed 12/20/02, effective 1/20/03)

**WAC 139-35-025 Firearms certification—Expiration and renewal.** (1) Any firearms ~~((certificate))~~ certification issued by the commission shall expire on the expiration date of any armed private ~~((detective))~~ investigator license issued by the department.

(2) By renewing the armed private investigator license with the department, the corporate officer, the principal partner, or principal owner for the private ~~((detective))~~ investigator company is making declaration that the armed private investigator has met the requirements for annual proficiency with the firearms for which he/she is certified.

(3) Proof of annual proficiency must be kept in the employee's file within the private investigator company.

**WSR 10-04-092**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed February 2, 2010, 1:54 p.m., effective March 15, 2010]

Effective Date of Rule: March 15, 2010.

Purpose: This rule making updated the current industrial welfare rules, which were adopted in 1974 and have not been reviewed by the department. The rules repealed and deleted outdated requirements; removed duplicative provisions; established rules consistent with current statutory requirements; specified the information for certain requirements; created cross references, and updated definitions and terms for consistency and clarity.

Citation of Existing Rules Affected by this Order: Amending WAC 296-126-001 Applicability, 296-126-002 Definitions, 296-126-010 Minimum wages—Adults, 296-126-030 Adjustments for overpayments, 296-126-040 Statements furnished, 296-126-050 Employment records, 296-126-080 Posting of order, 296-126-090 Hours and 296-126-130 Variance; and repealing WAC 296-126-060 Minor work permits and 296-126-096 Lifting.

Statutory Authority for Adoption: Chapter 49.12 RCW.

Other Authority: Chapter 49.12 RCW.

Adopted under notice filed as WSR 09-22-099 on November 4, 2009.

Changes Other than Editing from Proposed to Adopted Version: The following amendments were made to the proposed rules:

- WAC 296-126-002 (1)(a)(i), amended date to May 20, 2003.
- WAC 296-126-002 (1)(a)(ii), amended date to May 20, 2003.
- WAC 296-126-002 (2)(b), deleted "commissioned."
- WAC 296-126-040, deleted "The statement shall include the total of all actual hours worked, with regular and overtime hours shown separately, and all rate or rates of pay whether paid on hourly, salary, commission, piece rate or combination thereof or other basis during the pay period."
- WAC 296-126-040(3), deleted "transmitted" and added "furnished or made available."

A final cost-benefit analysis is available by contacting Sally Elliott, P.O. Box 44400, Olympia, WA 98504-4400, phone (360) 902-6411, fax (360) 902-5292, e-mail [yous235@lni.wa.gov](mailto:yous235@lni.wa.gov).

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 10, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 10, Repealed 2.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 10, Repealed 2.

Date Adopted: February 2, 2010.

Judy Schurke  
Director

AMENDATORY SECTION (Amending Order 74-9, filed 3/13/74, effective 4/15/74)

**WAC 296-126-001 Applicability.** (~~These standards, adopted pursuant to the authority of chapter 49.12 RCW as amended by chapter 16, Laws of 1973 2nd ex. sess., shall apply to any person employed in any industry or occupation within the state of Washington, unless:~~

~~(1) Exempted by the provisions of chapter 49.12 RCW (newspaper vendors or carriers, domestic or casual labor in or about private residences, agricultural labor as defined in RCW 50.04.150, as now or hereafter amended, and sheltered workshops, are all exempt from these provisions);~~

~~(2) Otherwise exempted in rules and regulations adopted by the industrial welfare committee of the state of Washington;~~

~~(3) Exempted by a variance issued under the provisions in WAC 296-126-130;~~

~~(4) Such person is an employee of the state or any political subdivision, or municipal corporation to the extent that these rules conflict with any statute, rule or regulation adopted under the authority of the appropriate legislative body.)~~ (1) These rules apply to employers and employees in the state as defined in RCW 49.12.005 (3) and (4).

(2) These rules do not apply to:

(a) Newspaper vendors or carriers;

(b) Domestic or casual labor in or about private residences;

(c) Agricultural labor as defined in RCW 50.04.150; or

(d) Sheltered workshops.

**Note 1:** Public employers and employees should review RCW 49.12.005 (3)(a) and (b) and WAC 296-126-002(2) to determine applicability.

**Note 2:** For a variance from the rules under this chapter, see WAC 296-126-130.

AMENDATORY SECTION (Amending Order 76-15, filed 5/17/76)

**WAC 296-126-002 Definitions.** (1) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages

in any business, industry, profession, or activity in this state and employs one or more employees, unless exempted by chapter 49.12 RCW or these rules. For purposes of these rules, the state or its political subdivisions, municipal corporations, or quasi-municipal corporations (collectively called "public employers") are considered to be "employers" and subject to these rules in the following manner:

(a) Before May 20, 2003, public employers are not subject to these rules unless the rules address:

(i) Sick leave and care of family members under RCW 49.12.265 through 49.12.295.

(ii) Parental leave under RCW 49.12.350 through 49.12.370.

(iii) Compensation for required employee uniforms under RCW 49.12.450.

(iv) Employers' duties towards volunteer firefighters and reserve officers under RCW 49.12.460.

(b) On or after May 20, 2003, public employers are subject to these rules only if these rules do not conflict with the following:

(i) Any state statute or rule.

(ii) Any local resolution, ordinance, or rule adopted before April 1, 2003.

(2) "Employee" means an employee who is employed in the business of his employer whether by way of manual labor or otherwise. (~~This definition is not intended, for purposes of these regulations, to~~) "Employee" does not include:

(a) Any individual registered as a volunteer with a state or federal volunteer program or any person who performs any assigned or authorized duties for an educational, religious, governmental or nonprofit charitable corporation by choice and receives no payment other than reimbursement for actual expenses necessarily incurred in order to perform such volunteer services;

(b) Any individual employed in a bona fide executive, administrative or professional capacity or in the capacity of ((commissioned)) outside salesperson; ((nor is it intended to include))

(c) Independent contractors where said individuals control the manner of doing the work and the means by which the result is to be accomplished.

(3) "Employ" means to engage, suffer or permit to work.

(4) "Adult" means any person ((of either sex,)) eighteen years of age or older.

(5) "Minor" means any person ((of either sex,)) under eighteen years of age.

(6) "Student learner" means a person enrolled in a bona fide vocational training program accredited by a national or regional accrediting agency recognized by the United States Office of Education, or authorized and approved by the Washington state commission for vocational education, who may be employed part time in a definitely organized plan of instruction.

(7) "Learner" means a worker whose total experience in an authorized learner occupation is less than the period of time allowed as a learning period for that occupation in a learner certificate issued by the director pursuant to regulations of the department of labor and industries.

(8) "Hours worked" shall be considered to mean all hours during which the employee is authorized or required by

the employer to be on duty on the employer's premises or at a prescribed work place.

(9) "Conditions of labor" shall mean and include the conditions of rest and meal periods for employees including provisions for personal privacy, practices, methods and means by or through which labor or services are performed by employees and includes bona fide physical qualifications in employment, but shall not include conditions of labor otherwise governed by statutes and rules and regulations relating to industrial safety and health administered by the department.

(10) (~~"Committee" shall mean the industrial welfare committee as provided by law. The committee's secretary is the supervisor of employment standards in care of the Department of Labor and Industries, General Administration Building, Olympia, Washington 98504.~~) "Department" means the department of labor and industries.

(11) "Director" means the director of the department of labor and industries or the director's designated representative.

AMENDATORY SECTION (Amending Order 74-9, filed 3/13/74, effective 4/15/74)

~~WAC 296-126-010 ((Minimum wages—Adults.))~~  
~~**Exceptions to minimum wage rate—Special certificates.**~~  
~~((Except where a higher minimum wage is required by Washington state or federal law,~~

~~(1) Every employer shall pay to each of his or her adult employees wages at a rate of not less than one dollar and eighty cents per hour, and effective January 1, 1975, not less than two dollars per hour, whether computed on an hourly commission, piecework or other basis, except as may be otherwise provided by law or regulation.~~

~~(2) These provisions shall not apply to outside commissioned salespersons; or to trainees, learners, student learners, apprentices or handicapped persons for whom special certificates or special permits have been issued as set forth in RCW 49.12.110. These special rates shall be computed as follows: Learners—85% of the applicable minimum wage; student learner—75% of the applicable minimum rate; handicapped—at a rate designed to reflect adequately the individual's earning capacity.))~~ (1) The director may issue a special certificate to an employer authorizing the employer to pay the following employees at a wage rate that is less than the applicable minimum wage rate:

(a) An employee who is physically or mentally handicapped to such a degree that he or she is unable to obtain employment in the competitive labor market;

(b) A trainee or learner not subject to the jurisdiction of the Washington state apprenticeship and training council under chapter 49.04 RCW; or

(c) A student learner.

(2) The director shall fix the reduced minimum wage and issue a special certificate only where the director determines that an employer has applied for it in good faith.

(3) The director shall fix the duration of the validity of the certificate.

## NEW SECTION

**WAC 296-126-015 Wage rates under special certificates.** Employers shall compute the wage rates under special certificates as follows:

(1) Physically and mentally handicapped employees: At a rate designed to adequately reflect the employees' earning capacity.

(2) Learners: At eighty-five percent of the applicable minimum wage rate.

(3) Student-learner: At seventy-five percent of the applicable minimum wage rate.

**Note:** See chapter 49.46 RCW and chapter 296-128 WAC for minimum wage laws.

AMENDATORY SECTION (Amending WSR 05-24-019, filed 11/29/05, effective 1/1/06)

**WAC 296-126-030 Adjustments for overpayments.**

(1) An overpayment occurs when an employer pays an employee for:

(a) More than the agreed-upon wage rate; or

(b) More than the hours actually worked.

(2) Recouping the overpayment may reduce the employee's gross wages below the state minimum wage.

(3) An employer cannot recover an overpayment when the disputed amount concerns the quality of work.

(4) An employer can recover an overpayment from an employee's paycheck provided the overpayment was infrequent and inadvertent. Infrequent means rarely, not occurring regularly, or not showing a pattern. Inadvertent means an error that was accidental, unintentional, or not deliberately done. The burden of proving the inadvertent error rests with the employer who made the error. The employer has ninety days from the initial overpayment to detect and implement a plan with the employee to collect the overpayment. If the overpayment is not detected within the ninety-day period, the employer cannot adjust an employee's current or future wages to recoup the overpayment. Recouping of overpayments is limited to the ninety-day detection period.

(5) In the case of employees covered by an unexpired collective bargaining agreement that expires on or after January 1, 2006, in which overpayments are included in the terms of the collective bargaining agreement, the effective date of this rule shall be the later of:

(a) The first day following expiration of the collective bargaining agreement; or

(b) The effective date of the revised collective bargaining agreement.

Helpful information:

The following are examples of when overpayments may or may not be allowed:

Example 1. Allowed. Overpayment of agreed wage rate: An employee was paid an agreed rate of ten dollars per hour but received a paycheck at the rate of eleven dollars per hour. The employer provided documentation of the overpayment to the affected employee and adjusted the employee's next paycheck for the amount overpaid in the previous pay period.

Example 2. Allowed. Overpayment for hours worked: An employee worked seventy-two hours in the pay period, but the employee was paid for eighty hours for that period.

The employer provided documentation of the overpayment to the affected employee and adjusted the employee's next paycheck for the eight hours overpaid in the previous pay period.

Example 3. Not allowed. Overpayment not detected within ninety days of first occurrence: An employer agreed to pay an employee ten dollars per hour, but when the first check was received, the amount paid was paid at eleven dollars per hour. The employee may or may not have brought it to the attention of the employer. Six months later the employer detected the overpayments and adjusted the employee's wages in the next paycheck for the entire amount of the overpayment. This is not an allowable adjustment because it was not detected within ninety days from the first occurrence.

(6) The employer must provide advance written notice to the employee before any adjustment is made. The notice must include the terms under which the overpayment will be recouped. For example: One adjustment or a series of adjustments.

(7) The employer must provide documentation of the overpayment to the affected employee or employees.

(8) The employer must identify and record all wage ~~((deductions))~~ adjustments openly and clearly in employee payroll records.

(9) Regardless of the provisions of this section, if appropriate, employers retain the right of private legal action to recover an overpayment from an employee.

(10) This regulation does not apply to public employers. See chapter 49.48 RCW, Wages—Payment—Collection.

AMENDATORY SECTION (Amending Order 74-9, filed 3/13/74, effective 4/15/74)

**WAC 296-126-040 Statements furnished.** (1) Every employer shall furnish to each employee at the time of payment of wages an itemized statement showing the pay basis (i.e., hours or days worked), rate or rates of pay, gross wages and all deductions ~~((therefrom))~~ for that pay period.

(2) An itemized pay statement means a separate written statement from the paycheck issued to employees on each payday. Pay periods shall be identified on the pay statement by month, day, year, and payment date.

(3) The pay statement may be furnished or made available electronically provided each employee has access to receive and copy it on the payday. If an employee cannot receive an electronic pay statement at work or at home on the established payday, the employer must provide a written pay statement to the employee on the payday.

AMENDATORY SECTION (Amending Order 89-16, filed 10/24/89, effective 11/24/89)

**WAC 296-126-050 Employment records.** (1) Every employer shall keep for at least three years a record of the name, address, and occupation of each employee, dates of employment, rate or rates of pay, amount paid each pay period to each such employee and the hours worked.

(2) Every employer shall make the record described in subsection (1) available to the employee, upon request, at any reasonable time.

~~(3) ((Every employer shall, upon written request by the employee, furnish within ten working days of the request to each employee who is discharged a signed written statement, setting forth the reasons for such discharge and the effective date thereof.))~~ Every employer shall, within ten business days of receiving a written request by a former employee, furnish a signed written statement stating the reasons for and effective date of discharge.

**Note:** Additional recordkeeping requirements for employers are stated in WAC 296-128-010 through 296-128-030 (rules regarding recordkeeping for employers subject to the Minimum Wage Act, chapter 49.46 RCW) and WAC 296-131-017 (rule regarding recordkeeping for agricultural employers).

AMENDATORY SECTION (Amending Order 74-9, filed 3/13/74, effective 4/15/74)

**WAC 296-126-080 Posting of order.** The employer shall keep posted a current copy of these regulations in a form provided by the department, titled "Your Rights as a Worker in Washington State." The poster shall be positioned in a readily accessible location and within plain view in each work site where an employee or employees are employed.

AMENDATORY SECTION (Amending Order 76-15, filed 5/17/76)

**WAC 296-126-090 Hours.** Any employee who feels the number of hours or other matters relating to overtime employment are detrimental to the health, safety or welfare of the employee may request the department of labor and industries to make an investigation following which the department will issue findings and conclusions. Whenever the circumstances are found to be detrimental to the health, safety or welfare of the employee, the ~~((industrial welfare committee))~~ department may adopt additional or revised employment standards.

AMENDATORY SECTION (Amending Order 74-9, filed 3/13/74, effective 4/15/74)

**WAC 296-126-130 Variance.** (1) ~~((Upon written application from an employer, a variance from any standard herein may be granted by the industrial welfare committee for good cause shown as authorized by section 8, chapter 16, Laws of 1973 2nd ex. sess. The employer shall give notice to the employees or their representative so that they may submit their written views to the committee on any variance request.))~~ An employer may seek a variance from the rules under this chapter by submitting a written application to the director. The application must contain the following:

(a) Reason(s) for the variance request; and  
(b) Evidence that the employer provided to the employees or to their representatives the following:

(i) The intent to submit a variance.  
(ii) A copy of the requested variance.  
(iii) The director's address or phone number or other contact information.

(2) The ~~((committee))~~ director may ~~((afford))~~ allow the ~~((applicant))~~ employer and any involved employee, or their

representatives, the opportunity for oral presentation whenever circumstances of the particular application warrant such additional procedure.

~~(3) ((Temporary variance valid for not more than thirty calendar days may be issued by the committee for good cause where immediate action is necessary and warranted pending further review by the committee.))~~ After reviewing the application, the director shall grant the variance if the director determines that there is good cause for the variance from the rules under this chapter.

(4) "Good cause" (~~shall~~) means, but is not (~~be~~) limited to, those situations (~~in which the employer finds that his circumstance warrants an alternative procedure and where he is able to demonstrate to the committee that such alternative would~~) where the employer can justify the variance and can prove that the variance does not have a harmful effect on the health, safety, and welfare of the employees involved.

(5) The variance order shall state the following:

(a) The conditions the employer must maintain; and

(b) The practices, means, methods, operations, standards and processes which the employer must adopt under the variance.

(6) The director may revoke or terminate the variance order at any time after giving the employer at least thirty days' notice before revoking or terminating the order.

(7) The director may issue a temporary variance valid for no more than thirty calendar days when the employer demonstrates good cause and where immediate action is necessary pending further review by the director. An employer need not meet the requirement in subsection (1)(b) of this section in order to be granted a temporary variance.

(8) Employers do not require a variance in the following cases:

(a) Employers in construction trades with collective bargaining agreements negotiated under the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq. These employers may vary from the meal and rest period rules, WAC 296-126-092, provided the agreement specifically requires meal and rest periods and prescribes requirements concerning those meal and rest periods; and

(b) Public employers that have entered into collective bargaining agreements, labor/management agreements, or other mutually agreed to employment agreements that specifically vary from or supersede, in part or in total, the rules regarding meal and rest periods.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-126-060	Minor work permits.
WAC 296-126-096	Lifting.

#### WSR 10-04-100 PERMANENT RULES BOARD OF

#### PILOTAGE COMMISSIONERS

[Filed February 3, 2010, 8:39 a.m., effective March 6, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To extend the time period during which a pilot trainee has to finish the initial evaluation period of his/her training program in order to complete the specified local knowledge examinations.

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

Statutory Authority for Adoption: Chapter 88.16 RCW. Adopted under notice filed as WSR 09-24-114 on December 2, 2009.

Changes Other than Editing from Proposed to Adopted Version: The length of the initial evaluation period was proposed to be extended from six to eleven months. Eleven months was changed to eight months.

The board's authority to establish a different time frame includes all trainees, on stipend and not on stipend; not just those on stipend as proposed.

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

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

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

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

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

Date Adopted: January 14, 2010.

Peggy Larson  
Administrator

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

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

(1) Notification. Pilot applicants on the list waiting to enter the training program shall provide the board with a current address to be used for notification for entry into the training program. Such address shall be a place at which mail is delivered. In addition, a pilot applicant may provide the board with other means of contact such as a phone number, fax number, and/or an e-mail address. The mailing address will, however, be considered the primary means of notification by the board. It will be the responsibility of the pilot applicant to ensure that the board has a current mailing address at all times. If a pilot applicant cannot personally

receive mail at the address provided to the board for any period of time, another person may be designated in writing with a notarized copy to the board as having power of attorney specifically to act in the pilot applicant's behalf regarding such notice. If notice sent to the address provided by the pilot applicant is returned after three attempts to deliver, that pilot applicant will be skipped and the next pilot applicant on the list will be contacted for entry into the training program. A person so skipped will remain next on the list. A pilot applicant or his/her designated attorney in fact shall respond within fifteen calendar days of receipt of notification to accept, refuse, or request a delayed entry into the training program.

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

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

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

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

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

(5) Initial evaluation.

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

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

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

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

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

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

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

be successfully passed before the expiration date of the initial evaluation; and

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

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

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

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

(~~know~~) knowledge examinations must be successfully passed before the expiration date of the training program. The local knowledge required of a pilot trainee and the local knowledge examination(s) may include the following subjects as they pertain to the pilotage district for which the pilot trainee seeks a license:

- (a) Area geography;
- (b) Waterway configurations including channel depths, widths and other characteristics;
- (c) Hydrology and hydraulics of large ships in shallow water and narrow channels;
- (d) Tides and currents;
- (e) Winds and weather;
- (f) Local aids to navigation;
- (g) Bottom composition;
- (h) Local docks, berths and other marine facilities including length, least depths and other characteristics;
- (i) Mooring line procedures;
- (j) Local traffic operations e.g., fishing, recreational, dredging, military and regattas;
- (k) Vessel traffic system;
- (l) Marine VHF usage and phraseology, including bridge-to-bridge communications regulations;
- (m) Air draft and keel clearances;
- (n) Submerged cable and pipeline areas;
- (o) Overhead cable areas and clearances;
- (p) Bridge transit knowledge - signals, channel width, regulations, and closed periods;
- (q) Lock characteristics, rules and regulations;
- (r) Commonly used anchorage areas;
- (s) Danger zone and restricted area regulations;
- (t) Regulated navigation areas;
- (u) Naval operation area regulations;
- (v) Local ship assist and escort tug characteristics;
- (w) Tanker escort rules - state and federal;
- (x) Use of anchors and knowledge of ground tackle;
- (y) Applicable federal and state marine and environmental safety law requirements;
- (z) Marine security and safety zone concerns;
- (aa) Harbor safety plan and harbor regulations;
- (bb) Chapters 88.16 RCW and 363-116 WAC, and other relevant state and federal regulations in effect on the date the examination notice is published pursuant to WAC 363-116-076; and
- (cc) Courses in degrees true and distances in nautical miles and tenths of miles between points of land, navigational buoys and fixed geographical reference points, and the distance off points of land for such courses as determined by parallel indexing along pilotage routes.

(8) Length.

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

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

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

(10) Stipend.

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) Trainee evaluation committee. There is hereby created a trainee evaluation committee to which members shall be appointed by the board. The committee shall include at a minimum: Three active licensed Washington state pilots,

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

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

(13) Evaluation. When a pilot trainee pilots a vessel under the supervision of another pilot, the supervising pilot shall, to the extent possible, communicate with and give guidance to the pilot trainee in an effort to make the trip a valuable learning experience. After each such trip, the supervising pilot shall complete a form provided by the board evaluating the pilot trainee's performance. Evaluation forms prepared by licensed pilots who are not training pilots shall be used by the trainee evaluation committee and the board for assessing a pilot trainee's progress, providing guidance to the pilot trainee and for making alterations to the training program. All evaluation forms shall be delivered or mailed by the supervising pilot to the board. They shall not be given to the pilot trainee. The supervising pilot may show the contents of the form to the pilot trainee, but the pilot trainee has no right to see the form until it is filed with the board. The trainee evaluation committee shall review these evaluation forms from time to time and the chairperson of the trainee evaluation committee shall report the progress of all pilot trainees at each meeting of the board. If it deems it necessary, the trainee evaluation committee may recommend, and the board may make, changes from time to time in the training program requirements applicable to a pilot trainee, including the length of the training program.

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

- (a) Failure to maintain the minimum federal license required by RCW 88.16.090;
- (b) Conviction of an offense involving drugs or involving the personal consumption of alcohol;
- (c) Failure to devote full time to training in the Puget Sound pilotage district if receiving a stipend;
- (d) The pilot trainee is not physically fit to pilot;

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

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

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

(h) Inadequate performance on training trips; or

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

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

(a) Successfully complete the requirements set forth in the training program;

(b) Possess a valid first class pilotage endorsement without tonnage or other restrictions on his/her United States government license to pilot in all of the waters of the pilotage district in which the pilot applicant seeks a license; and

(c) Successfully complete any local knowledge examination(s) required by the board and specified in the training program.

## WSR 10-04-111

### PERMANENT RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed February 3, 2010, 11:07 a.m., effective March 6, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is amending WAC 388-478-0015 Need standards for cash assistance, in order to revise basic need standards for cash assistance based on the 2009 forecast. RCW 74.04.770 requires the department of social and health services to annually establish consolidated standards of need.

Citation of Existing Rules Affected by this Order: Amending WAC 388-478-0015.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, and 74.08.090.

Adopted under notice filed as WSR 09-24-014 on November 23, 2009.

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

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

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

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

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



Date Adopted: January 28, 2010.

Don Goldsby, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 08-24-070, filed 12/1/08, effective 1/1/09)

**WAC 388-478-0015 Need standards for cash assistance.** The need standards for cash assistance units are:

(1) For assistance units with obligation to pay shelter costs:

Assistance Unit Size	Need Standard
1	\$ <del>((1,131))</del> <u>1,159</u>
2	<del>((1,431))</del> <u>1,467</u>
3	<del>((1,767))</del> <u>1,811</u>
4	<del>((2,085))</del> <u>2,137</u>
5	<del>((2,403))</del> <u>2,462</u>
6	<del>((2,721))</del> <u>2,788</u>
7	<del>((3,145))</del> <u>3,223</u>
8	<del>((3,480))</del> <u>3,567</u>
9	<del>((3,816))</del> <u>3,911</u>
10 or more	<del>((4,152))</del> <u>4,255</u>

(2) For assistance units with shelter provided at no cost:

Assistance Unit Size	Need Standard
1	\$ <del>((600))</del> <u>603</u>
2	<del>((759))</del> <u>762</u>
3	<del>((937))</del> <u>941</u>
4	<del>((1,106))</del> <u>1,111</u>
5	<del>((1,275))</del> <u>1,280</u>
6	<del>((1,444))</del> <u>1,450</u>
7	<del>((1,669))</del> <u>1,676</u>
8	<del>((1,847))</del> <u>1,854</u>
9	<del>((2,025))</del> <u>2,033</u>
10 or more	<del>((2,203))</del> <u>2,212</u>