

WSR 10-03-064
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed January 15, 2010, 2:54 p.m., effective February 15, 2010]

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

Purpose: The purpose of this proposed rule making is to make editorial and clarifying changes and to make them consistent with current laws and standards. The impact of the proposed rule is to make the rule clearer, easier to read, understand, and apply.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 388-76-10190; and amending WAC 388-76-10000, 388-76-10015, 388-76-10020, 388-76-10030, 388-76-10050, 388-76-10055, 388-76-10080, 388-76-10115, 388-76-10120, 388-76-10125, 388-76-10180, 388-76-10195, 388-76-10225, 388-76-10270, 388-76-10275, 388-76-10280, 388-76-10285, 388-76-10290, 388-76-10295, 388-76-10300, 388-76-10305, 388-76-10310, 388-76-10420, 388-76-10455, 388-76-10490, 388-76-10520, 388-76-10540, 388-76-10673, 388-76-10685, 388-76-10750, 388-76-10820, 388-76-10840, 388-76-10845, 388-76-10870, 388-76-10880, 388-76-10920, 388-76-10955, 388-76-10960, 388-76-10990, 388-76-10995, 388-76-11005, 388-76-11010, 388-76-11015, 388-76-11025, 388-76-11030, 388-76-11035, and 388-76-11040.

Statutory Authority for Adoption: RCW 70.128.040.

Adopted under notice filed as WSR 09-20-060 on October 2, 2009.

Changes Other than Editing from Proposed to Adopted Version: The changes, other than editing changes, follow:

Changes are shown with new language underlined and deleted text lined through.

NEW SECTION

WAC 388-76-10003 Department access. (1) The applicant must allow the department staff to inspect the entire premises including all of the home's all rooms, buildings,

grounds, and equipment and all pertinent records in the home during the initial licensing of the home.

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

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

WAC 388-76-10030 License capacity. (1) The adult family home capacity is more than one but not more than six; ~~this includes:~~ (a) The number of residents; which is the resident capacity; plus

(b) The number of related children or adults in the home who receives personal or special care services.

~~(2) The resident capacity number will be listed on the adult family home license and the home must ensure that the number of residents in the home does not exceed the resident capacity;~~

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

(a) Structural design of the house;

(b) Number and accessibility of bathrooms;

(c) Number and qualifications of staff;

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

(i) Related children and adults; and

(ii) Other household members;

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

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

~~(2) The resident capacity number will be listed on the adult family home license and the home must ensure that the number of residents in the home does not exceed the resident capacity.~~

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

WAC 388-76-10050 License—Relinquishment. (1) If an ~~The adult family home does not have any residents, it may must~~ relinquish, or surrender, its license ~~to the department:~~ (a) Within thirty days of the last resident leaving the home; at any time.

~~or (b) When the home moves all residents out of the home for purposes other than remodeling or construction; or (c) When there has been no evidence of residents in the home during the last two inspections.~~

(2) ~~The home may not be required to relinquish or surrender the license if circumstances such as a fire or flooding, result in the adult family home discharging residents because~~

~~the home is not habitable for an extended period. In this circumstance the adult family home must: (a) Inform the department that there are no residents in the home and where current residents have been relocated; (b) Tell the department approximately how long it will be before the home will be able to admit residents again; (c) Inform the department when the home has been approved by the building inspectors and the adult family home is ready to admit residents again; and (d) Not admit residents until the department has completed an inspection. must relinquish its license if it has not provided care and services to residents for twenty-four months.~~

(3) The department may revoke the adult family home license if: (a) ~~¶~~The home does not relinquish, or surrender, the adult family home license as required under subsection (2); and (b) There is no credible evidence that residents were cared for in the home during the period of time specified in subsection (2).

NEW SECTION

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

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

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

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

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

(3) The applicant or the applicant's spouse, domestic partner, or any partner, officer, director, managerial employee or majority owner of the applying entity:

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

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

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

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

(e) Has been ~~found~~ convicted of:

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

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

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

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

(f) Has been convicted of ~~§~~ sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;

(g) Has been convicted of criminal mistreatment;

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

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

(h) Has been the subject of a finding or conclusion by a court of law, or any comparable state or federal law, that the individual abused, neglected, financially exploited or abandoned a minor or vulnerable adult.

(h) Has been found to have abused, neglected, exploited, or abandoned a minor or vulnerable adult by 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 proceeding under Title 26 RCW, and vulnerable adult protection proceedings under chapter 74.34 RCW;

(i) Has a 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.

(j) Has a 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.

WAC 388-76-10180 Employment and other unsupervised access decisions ~~Certain criminal history—Prohibited.~~

The adult family home must not employ any person, directly or by contract, or accept as a volunteer or student any person who may have unsupervised access to residents, or allow a household member over the age of eleven unsupervised access to any resident if the person or background inquiry discloses that the person has ~~a history of:~~

(1) Any of the convictions, history, or findings, described below:

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

(b) Has been convicted of a crime in federal court or in any other state, and the department determines that the crime is equivalent to a crime under subsections (c), (d), (e), (f) or (g) below;

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

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

(e) Has been 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).

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

(g) Has been convicted of criminal mistreatment;

(h) Has been found to have abused, neglected, financially exploited, or abandoned a minor or vulnerable adult by 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 proceeding under Title 26 RCW, and vulnerable adult protection proceedings under chapter 74.34 RCW;

(i) Has a 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.

(j) Has a 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.

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

(2) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the adult family home. Any of the convictions, or findings described in WAC 388-76-10120(3).

NEW SECTION

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

(1) Obtain liability insurance upon licensure and maintain the Maintain liability insurance as required in WAC 388-76-10192 and 388-76-10193; and

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

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

(1) When one or more residents are in the home, enough staff are available in the home to meet the needs of each resident, except as provided in WAC 388-76-10200;

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

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

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

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

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

(3) Documented evidence of:

(a) Adequate therapy for active disease; or

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

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

(1) 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 388-76-10285 Tuberculosis—Two step skin testing. Unless the person meets the requirement for having no skin testing or only ~~a one step skin~~ test, the adult family home, ~~choosing to have do skin testing done~~ 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 test is not required for the IGRA blood test which is only a one-step test.~~

WAC 388-76-10290 Tuberculosis—Positive test result. When there is a positive result to tuberculosis skin or blood testing; the adult family home must:

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

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

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

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

(1) Has at least one means of exiting the floor where the bedroom is located; to the outdoors, without going through any room including the garage; and

- (2) Exiting from the bedroom does not require the use of:
- (a) Stairs;
 - (b) Elevators;
 - (c) Chairlift; or
 - (d) A platform lift.

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

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

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

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

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

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

(d) Has been convicted of:

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

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

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

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

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

(ef) Has been convicted of criminal mistreatment;

(g) Has been found in any final decision issued by a disciplining authority to have abused, neglected, financially exploited, or abandoned a minor or vulnerable adult by 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 proceeding under Title 26 RCW, and vulnerable adult protection proceedings under chapter 74.34 RCW;

(fh) Has a 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.

(i) Has a 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.

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

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

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

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

(1) Has been convicted of:

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

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

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

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

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

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

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

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

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

(9) Has been the subject of a sanction, corrective, or remedial action taken by federal, state, county, or municipal

officials or safety officials related to the care or treatment of children or vulnerable adults;

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

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

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

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

(14) Failed or refused to comply with:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The adult family home may submit a written statement for review.

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

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

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

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>General: We received a number of comments that the rule-making process was not followed and stakeholders were not involved.</p>	<p>The department used an open process and invited a number of interested parties to the stakeholder meeting. Three WSRCC members who attended the hearing also attended the stakeholder meeting. Draft WACs were sent to every one of the stakeholders originally invited as well as the three WSRCC members who attended. Those receiving the draft rules had several weeks to respond; no one did. All adult family homes and interested parties received letters with the CR-101 and CR-102 notice, along with proposed rules. In addition, the department sent all hearing attendees a letter describing the rule-making process, including the details of this particular rule-making process.</p>
<p>A number of comments were on the cost increases due to the liability insurance requirement and the rate decrease. One comment was on questioning how to provide basic care with the rate provided.</p>	<p>All comments related to cost and rates were forwarded to the division responsible for rate setting.</p>
<p>A comment was received that the state is allowing too many to become licensed without experience in geriatrics or business practices and that the state needs to reevaluate what is needed to become a provider.</p>	<p>No change was made. The department uses minimum licensing requirements to evaluate applicants who apply to become adult family home licensees. The legislature established those requirements in the licensing statute, chapter 70.128 RCW.</p>
<p>A number of examples were given about licensors incorrectly or too broadly interpreting rules. (Definition of capacity, staff, WAC 388-76-10420 and 388-76-10840)</p>	<p>The adult family home provider must address questions and concerns about licensor decisions with the designated field manager or regional administrator.</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.
WAC 388-76-10000 and 388-76-10030 Definition—Capacity. Several comments were that the department should not count children as part of the capacity.	No change was made. This is a current requirement. The licensing statute, chapter 70.128 RCW defines capacity as "...the maximum number of persons in need of personal or special care permitted in an adult family home at a given time. This number shall include related children or adults...".
WAC 388-76-10003, clarification is needed to show that the initial inspection is to cover all of the home, property, and records.	A change was made to clarify that on an initial inspection the entire premises could be inspected including buildings, grounds, equipment and records.
<p>WAC 388-76-10103, a number of comments received on the cost of liability insurance having a negative impact on resident care.</p> <p>A comment was also received that the department suggests that the cost of liability insurance is not going to impact the adult family homes.</p> <p>WAC 388-76-10103 and 388-76-10191, 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.</p>	<p>No change was made. All adult family homes that have a medicaid contract with the department are already required to have liability insurance, approximately eighty-four percent. Of the remaining approximately sixteen percent, some may have made the decision to have the insurance. Liability insurance for all provides equal protection for all residents who reside in adult family homes.</p> <p>The department stated that there was not a disproportionate cost for small businesses, but that there might be a cost to the homes that do not contract with the department and who may have elected not to have liability insurance.</p> <p>A change was made. This section was deleted and the department clarified that the adult family home must obtain liability insurance upon licensure.</p>
WAC 388-76-10115(b), concern was expressed about the department considering financial issues when considering whether or not to deny a license.	No change was made. This is a current requirement.
WAC 388-76-10120, 388-76-10180, 388-76-10955, 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 department's lists of crimes and negative actions.

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.
WAC 388-76-10275, 388-76-10280 and 388-76-10285, use of word step to describe one step test is confusing.	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 388-76-10290, should be using term person instead of individual and may not be reasonable for providers to evaluate for signs and symptoms.	A change was made in response to this comment replacing individual with person and clarifying that the provider needs to ensure that the person is evaluated.
WAC 388-76-10880, need clarification on exiting the bedroom.	A change was made in response to this comment by clarifying that it applies to exiting the floor on which the bedroom is located.
WAC 388-76-10960, subsection (24) is redundant.	A change was made to delete this section.
WAC 388-76-10990, letter should be clarified as notice since the department has other options than letters.	A clarifying change was made to replace the word "letter" with "notice."
<p>WAC 388-76-10195, concern was expressed that the department has not adequately address[ed] the needs of residents with disabilities.</p> <p>Comment that residents/clients do not always need 24/7 staffing.</p>	<p>No change was made. The legislature established RCW 70.128.210 and [70.128.]230 that required the development of specialty care trainings, including for the homes who care for persons with developmental disabilities. Adult family home providers and staff are required to take the training if there is a resident in the home with those needs.</p> <p>A change was made. A WAC section was revised to reflect that if the 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>
WAC 388-76-10020, comment that looking into personal finances is not appropriate.	No change was made. The department currently looks into financial affairs, business or personal, of any applicant.
WAC 388-76-10050, a number of comments were received expressing concern that providers would be required to give up their license even when they wanted to take a break, or could not get clients in time due to the economy or because a spouse got sick.	A change was made. While some of the concern was related to a current requirement, this section has been simplified and the time frame extended.
WAC 388-76-10064, requirement should continue to be for all providers and not allow for anyone to not take administrative class.	No change was made. The department has the discretion to consider not requiring the class when there is a change of ownership where the underlying structure of the ownership of the home has not changed.

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.
WAC 388-76-10845, should be within a valid expiration date or warranty date and not changed every six months.	No change was made. The proposed language requires the supply to be changed every six months, unless there is a longer expiration date on the supply.
WAC 388-76-10080, unclear on rationale for not allowing married or domestic partners to have separate licenses.	No change was made. This is a current requirement.
WAC 388-76-10115 (4)(f), should stay as a current requirement. Concern was expressed that repairs would be delayed since providers would need to await a background check on a contractor.	No change was made. This section only applies to "granting or denying a license."

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

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 388-76 WAC, Adult family homes (AFH). The purpose of this proposed rule making is to make editorial and clarifying changes and to make the rules consistent with current laws and standards.

Highlights of proposed changes:

- New sections on notice, liability insurance, management agreements, department authority, training requirements completed before application approved, qualifications of AFH personnel, personnel records.
- Repealing WAC 388-76-10190 Compliance with regulations—Required (duplicates another section).
- Clarified the definitions of physical abuse, adult family home, affiliated with an applicant, capacity, entity provider, entity representative, multiple facility provider, provider, and staff; added definitions for management agreement and manager.
- Clarified provider is ultimately responsible for the operation of the adult family home; financial obligations include personal and business obligations.
- Clarified determining factors in establishing the home's capacity.
- Extended the time frame for license relinquishment to twenty-four months; clarified that if AFH fails to relinquish their license, remedies may be imposed.
- Consolidated disqualifying crime lists in the chapter to make home and community services and RCS lists consistent.
- Clarified that license may be denied if department is not allowed access to all parts of the home as authorized in RCW 70.128.090.

- Added clarifying language regarding the AFH notifying the department's case management division when medicaid residents are discharged for more than twenty-four hours.
- Clarified tuberculosis testing requirements.
- Clarified the need for sufficient food, uncontaminated in both everyday and emergency food supplies; emergency drinking water treatment and storage clarified.
- Clarified practitioners administer medications and medication disposal for current residents and those that leave the home.
- Clarified the abuse and neglect reporting language from chapter 74.34 RCW.
- Clarified that residents' bedrooms must have closets; AFH must provide safe and usable outdoor space for residents.
- Clarified and simplified resident evacuation capabilities.
- Clarified notice requirements for accepting medicaid as a payment source; in the investigation findings what constitutes notice.

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

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

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

RCS understands that adult family homes can deduct the cost of liability insurance when filing taxes with the IRS. RCS does not believe that the proposed rules will result in any job losses or gains for adult family homes. The proposed rule amendments do not disproportionately 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 adult family homes may impose additional costs to those adult family homes that do not currently have a contract with DSHS.

DSHS uses input from internal and external stakeholders to determine cost impacts for the drafting of the rule.

In addition, the draft language was posted on the aging and disability services administration internet web site for anyone in the public to review and comment.

To date, the department has received and considered all written comments on the draft language.

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

- Reducing unnecessary confusion, citations, hearings and appeals;
- Reducing time and legal costs of appealing unclear rules;
- Reducing amount of technical support requests and dear provider letters mailed to providers for 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 amendments are clearer, and easier to read, understand and apply;
- Residents will ultimately benefit from the rule revision because providers will be able to better understand and follow the requirements; and
- By adding liability insurance requirements for the 14.5% of adult family homes who currently may not have liability coverage, consumer protection will be assured all residents in adult family homes.

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

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

Please contact Lisa N.H. Yanagida by e-mail at yanagn2@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 19, Amended 47, 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 19, Amended 47, Repealed 1.

Date Adopted: January 14, 2010.

Susan N. Dreyfus
Secretary

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

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

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

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

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

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

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

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

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

"Adult family home" means:

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

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

"Affiliated with an applicant" means any person listed on the application as a partner, officer, director, resident man-

ager, or majority owner of the applying entity, or is the spouse or domestic partner of the applicant.

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

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

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

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

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

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

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

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

"Developmental disability" means:

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

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

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

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

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

(i) Self-care;

(ii) Understanding and use of language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction; and

(vi) Capacity for independent living.

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

(1) On the premises; and

(2) Quickly and easily available to the caregiver.

"Domestic partners" means two adults who meet the requirements for a valid state registered domestic partnership

as established by RCW 26.60.030 and who have been issued a certificate of state registered domestic partnership.

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

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

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

"Home" means adult family home.

"Indirect supervision" means oversight by a person who:

(1) Has demonstrated competency in the basic training and specialty training if required; or

(2) Has been exempted from the basic training requirements; and

(3) Is quickly and easily available to the care giver, but not necessarily on-site.

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

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

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

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

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

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

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

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

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

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

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

"Neglect" means:

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

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

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

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

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

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

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

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

"Provider" means:

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

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

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

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

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

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

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

"Significant change" means:

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

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

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

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

"Staff" means any person who:

(1) Is employed or used by an adult family home, directly or by contract, ~~((by an adult family home; and~~ ~~(2))~~ to provide((s)) care and services to any resident.

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

"Unsupervised" means not in the presence of:

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

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

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

(1) Toilet rooms;

(2) Closets;

(3) Lockers;

(4) Wardrobes;

(5) Vestibules, and

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

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

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

(2) Hot tubs, spas;

(3) Fixed-in-place wading pools;

(4) Decorative water features;

(5) Ponds; or

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

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

"Vulnerable adult" includes a person:

- (1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself;
- (2) Found incapacitated under chapter 11.88 RCW;
- (3) Who has a developmental disability as defined under RCW 71A.10.020;
- (4) Admitted to any facility;
- (5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW;
- (6) Receiving services from an individual provider; or
- (7) With a functional disability who lives in his or her own home, who is directing and supervising a paid personal aide to perform a health care task as authorized by RCW 74.39.050.

NEW SECTION

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

NEW SECTION

WAC 388-76-10003 Department access. (1) The applicant must allow the department staff to inspect the entire premises including all of the home's rooms, buildings, grounds, and equipment and all pertinent records during the initial licensing of the home.

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

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

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

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

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

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

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

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

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

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

WAC 388-76-10030 License capacity. (1) The ~~((department will only issue an))~~ adult family home ~~((license for more than one but not more than six))~~ capacity includes:

(a) The number of residents which is the resident capacity; plus

(b) The number of related children or adults in the home who receives personal or special care services.

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

(a) Structural design of the house;

(b) Number and accessibility of bathrooms;

(c) Number and qualifications of staff;

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

(i) Related children and adults; and

(ii) Other household members;

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

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

(3) The resident capacity number will be listed on the adult family home license and the home must ensure that the number of residents in the home does not exceed the resident capacity.

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

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

WAC 388-76-10050 License—Relinquishment. (1) ~~((The))~~ If an adult family home ~~((must))~~ does not have any residents, it may relinquish ~~((the adult family home))~~ its license ~~((to the department))~~

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

(b) ~~When the home moves all residents out of the home for purposes other than remodeling or construction))~~ at any time.

(2) The home must relinquish its license if it has not provided care and services to residents for twenty-four months.

~~((2))~~ (3) The department may revoke the adult family home license if ~~((the home does not))~~:

(a) ~~((Relinquish the adult family home license))~~ The home does not relinquish the license as required under subsection (2); ~~((or))~~ and

~~(b) ((Relinquish the adult family home license within the specified time frame)) There is no credible evidence that residents were cared for in the home during the period of time specified in subsection (2).~~

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

WAC 388-76-10055 Application—Generally. ~~((+))~~
The applicant must send an application to the department for:
~~((a))~~ (1) An initial adult family home license;
~~((b))~~ (2) A change of ownership of the adult family home; or
~~((c))~~ (3) A change of the adult family home location or address.

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

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

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

NEW SECTION

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

NEW SECTION

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

NEW SECTION

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

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

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

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

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

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

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

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

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

(2) Information in the application;

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

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

(b) Credit information.

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

(a) Applicant;

(b) Person affiliated with the applicant;

(c) Entity representative;

(d) Caregiver;

(e) An owner who:

(i) Exercised daily control over the operations; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Has been convicted of:

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

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

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

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

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

(g) Has been convicted of criminal mistreatment;

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

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

~~(g) Has been the subject of a finding or conclusion by a court of law, or any comparable state or federal law, that the individual abused, neglected, financially exploited or abandoned a minor or vulnerable adult)) by 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 proceeding under Title 26 RCW, and vulnerable adult protection proceedings under chapter 74.34 RCW;~~

(i) Has a 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.

(j) Has a 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.

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

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

(1) Has been convicted of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(14) Failed or refused to comply with:

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

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

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

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

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

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

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

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

(21) Has failed to meet personal financial obligations;

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

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

(24) The home is currently licensed:

(a) As a boarding home; or

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

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

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

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

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

NEW SECTION

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

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

(a) The provider;

(b) Entity Representative;

(c) Resident manager;

(d) Staff; and

(f) Caregivers.

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

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

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

(1) (~~A stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, final order issued by a disciplining authority or final decision by any federal or state agency or department, a court of law, or entered into a state registry or department or agency list with a finding of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW; or~~) Any of the convictions, history, or findings, described below:

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

(b) Has been convicted of a crime in federal court or in any other state, and the department determines that the crime is equivalent to a crime under subsections (c), (d), (e), (f), or (g) below;

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

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

(e) Has been 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).

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

(g) Has been convicted of criminal mistreatment;

(h) Has been found to have abused, neglected, financially exploited, or abandoned a minor or vulnerable adult by 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 proceeding under title 26, RCW, and vulnerable adult protection proceedings under chapter 74.34 RCW;

(i) Has a 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.

(j) Has a 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) ((Convicted of a crime against persons as defined under RCW 43.43.830 or 43.43.842)) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the adult family home.

NEW SECTION

WAC 388-76-10191 Liability insurance required.

The adult family home must:

(1) Obtain liability insurance upon licensure and maintain the insurance as required in WAC 388-76-10192 and 388-76-10193; and

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

NEW SECTION

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

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

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

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

(4) Minimum limits of:

(a) Each occurrence at five hundred thousand dollars; and

(b) General aggregate at one million dollars.

NEW SECTION

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

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

(2) Minimum limits of:

(a) Each occurrence at five hundred thousand dollars; and

(b) Aggregate at one million dollars.

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

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

(1) When one or more residents are in the home, enough staff ((is)) are available in the home to meet the needs of each resident ((if residents are in the home or not)), except as ((per)) provided in WAC 388-76-10200;

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

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

NEW SECTION

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

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

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

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

(b) Cardiopulmonary resuscitation;

(c) First aid; and

(d) HIV/AIDS training.

(3) Tuberculosis testing results.

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

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

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

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

- (i) ~~((According to))~~ As required by chapter 74.34 RCW;
- (ii) To the department by calling the complaint toll-free hotline number; and
- (iii) To the local law enforcement agency when required by RCW 74.34.035.

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

- (i) Any actual or potential event requiring any resident to be evacuated;
- (ii) Conditions that threaten the provider's or entity representative's ability to continue to provide care or services to each resident; and
- (iii) A missing resident.

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

- (a) The resident's family;
- (b) The resident's representative, if one exists;
- (c) The resident's ~~((physician))~~ health care provider;
- (d) Other appropriate professionals working with the resident;
- (e) Persons identified in the negotiated care plan; and
- (f) The resident's case manager if the resident is a department client.

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

- (a) The local public health officer; and
- (b) The department's complaint toll-free hotline number.

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

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

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

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

- ~~((1))~~ (a) Within forty-eight to seventy-two hours of the test; and
- ~~((2))~~ (b) By a trained professional; or
- (2) A blood test for tuberculosis called interferon-gamma release assay (IGRA).

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

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

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

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

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

- (1) A ~~((positive))~~ documented history of a negative result from ~~((the person's first skin test—A person who has a positive result from an initial first step test should not have a second test))~~ a previous two step test done no more than one to three weeks apart; or
- (2) A documented ~~((history of a))~~ negative result from ~~((previous two step testing; or~~
- ~~((3) A documented negative result from one step testing))~~ one skin or blood test in the previous twelve months.

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

WAC 388-76-10285 Tuberculosis—Two step skin testing. Unless the person meets the requirement for having no skin testing or only ~~((a))~~ one ~~((step skin))~~ test, the adult family home, 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 test is not required for the TB Gold Test which is only a one-step test)).~~

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

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

- (1) Ensure that the person has a chest X ray within seven days ~~((and))~~;
- (2) Ensure each resident or employee with a positive test result is evaluated for signs and symptoms of tuberculosis; and

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

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

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

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

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

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

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

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

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

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

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

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

- (1) Keep the records of ~~((tuberculosis))~~ tuberculin test results, reports of X-ray findings, and any physician or public health provider orders ~~((and waivers))~~ in the adult family home;
- (2) Make ~~((them))~~ the records readily available to the appropriate health authority and licensing agency; ~~((and))~~
- (3) Provide the employee a copy of his/her testing results; and

~~(4) ~~((Keep them))~~ Retain the records~~ for eighteen months after the date an employee either quits or is terminated.

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

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

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

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

WAC 388-76-10455 Medication—Administration. For residents assessed with requiring the administration of medications, the adult family home must ensure medication administration is:

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

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

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

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

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

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

(1) Inform each resident both orally and in writing in a language the resident understands of resident rights, including rights under chapter 70.129 RCW and all rules and regulations governing resident conduct and responsibilities during the stay in the home;

(2) Ask the resident to sign and date they received the information; and

(3) Provide a statement indicating whether the ((~~provider or entity representative~~)) adult family home will accept medicaid or other public funds as a source of payment for services.

NEW SECTION

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

(1) Clearly state the circumstances under which the adult family home provides care for medicaid eligible residents and for residents who become eligible for medicaid after admission;

(2) Be provided both orally and in writing in a language that the resident understands;

(3) Be provided to prospective residents, before they are admitted to the home;

(4) Be provided to any current residents who were admitted before this requirement took effect or who did not receive copies prior to admission;

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

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

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

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

(2) The disclosure must include:

(a) A statement of the amount of any admissions fees, deposits, prepaid charges, or minimum stay fees;

(b) The home's advance notice or transfer requirements; and

(c) The amount of the deposits, admission fees, prepaid charges, or minimum stay fees that will be refunded to the resident if the resident leaves the home.

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

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

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

(a) Must refund any deposit or charges already paid less the home's per diem rate for the days the resident actually resided, reserved or retained a bed in the home in spite of any minimum stay policy or discharge notice requirements; except that

(b) May keep an additional amount to cover its reasonable and actual expenses incurred as a result of a private-pay resident's move, not to exceed five days per diem charges; unless the resident has given advance notice in compliance with the admission agreement.

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

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

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

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

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

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

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

(2) Reports must be made to:

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

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

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

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

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

(2) Ensure window and door screens:

(a) Do not hinder emergency escape; and

(b) Prevent entrance of flies and other insects.

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

(4) Make separate bedrooms available for each sex;

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

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

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

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

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

(a) A clean, comfortable mattress;

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

(c) Clean sheets and pillow cases;

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

(e) Clean pillows.

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

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

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

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

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

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

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

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

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

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

(a) Heating;

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

(c) Hot and cold water;

(d) Electricity;

(e) Plumbing;

(f) Garbage disposal;

(g) Sewage;

(h) Cooking;

(i) Laundry;

(j) Artificial and natural light;

(k) Ventilation; and

(l) Any other feature of the home.

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

(a) Tubs;

(b) Showers; and

(c) Sinks.

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

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

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

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

(a) Rodents;

(b) Flies;

(c) Cockroaches, and

(d) Other vermin.

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

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

(a) Stairs;

(b) Elevator; ~~((or))~~

(c) ~~((Lift))~~ Chairlift; or

(d) Platform lift.

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

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

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

(1) Will last for a minimum of seventy-two hours for each resident and each household member; ~~((and))~~

(2) Meets the dietary needs of each resident, including any specific dietary restrictions any resident may have; and

(3) Is sufficient, safe, sanitary, and uncontaminated.

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

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

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

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

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

- (1) ~~((Level 1--))~~ Independent: resident is ~~((able to get out of the home safely and independently without mobility aids or any assistance from another individual))~~ physically and mentally capable of safely getting out of the home without the assistance of another individual or the use of mobility aids. The department will consider a resident independent if capable of getting out of the home after one verbal cue;
- (2) ~~((Level 2--))~~ Assistance required: resident is not physically ((and)) or mentally capable of ((traversing a normal pathway to safety with)) getting out of the house without assistance from another individual or mobility aids((, but unable to ascend or descend stairs without the physical assistance of another individual; and
- (3) Level 3—resident is unable to walk or transverse [traverse] a normal pathway to safety without the physical assistance of another individual).

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

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

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

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

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

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

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

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

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

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

- (a) Has a history of significant noncompliance with federal or state laws or regulations in the provision of care or services to children or vulnerable adults;
- (b) Has been convicted of a "crime against children or other persons" as defined in RCW 43.43.830, unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years has passed since conviction;
- (c) Has been convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in third degree and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years has passed since conviction;

(d) Has been convicted of:

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

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

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

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

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

(f) Has been convicted of criminal mistreatment;

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

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

that the conviction is equivalent to a conviction under subsection (3)(b) or (3)(e) above;

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

(g) Has been the subject of a finding or conclusion by a court of law that the individual abused, neglected, financially exploited, or abandoned a minor or vulnerable adult) by 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.

(h) Has a 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.

(i) Has a 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 protection services findings made before October, 2003.

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

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

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

(1) Has been convicted of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(14) Failed or refused to comply with:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Include in or with the application:

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

(ii) A copy of the contested department decision.

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

NEW SECTION

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

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

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

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

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

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

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

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

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

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

WAC 388-76-11010 Resident protection program—((Reporting)) Notice to others of preliminary finding. ~~((1))~~ In a manner consistent with confidentiality requirements concerning the resident, witnesses, and reporter, the department may provide notification of a preliminary finding to:

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

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

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

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

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

(6) The appropriate licensing agency.

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

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

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

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

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

(a) The individual's telephone number;

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

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

(d) The individual's signature.

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

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

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

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

(c) The administrative law judge:

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

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

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

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

(2) A final finding is permanent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MANAGEMENT AGREEMENTS

NEW SECTION

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

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

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

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

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

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

(5) The written management agreement must be submitted:

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

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

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

NEW SECTION

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

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

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

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

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

NEW SECTION

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

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

(2) Maintain and retain all records in accordance with this chapter;

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

(4) Require the manager to immediately send copies of inspections and notices of noncompliance to the adult family home;

(5) Require the adult family home's governing body, board of directors or similar authority to appoint the entity representative;

(6) Require the adult family home to participate in monthly oversight meetings and at minimum, quarterly on-site visits to the home;

(7) State that the adult family home is responsible for reviewing, acknowledging and signing all initial, change of ownership, and change of location license applications;

(8) State that the adult family home and manager will review the management agreement annually and notify the department of change according to applicable regulations;

(9) Acknowledge that the adult family home is the party ultimately responsible for complying with all applicable laws and rules;

(10) Require the adult family home to oversee and maintain ultimate responsibility for:

(a) All personnel issues relating to the operation of the home;

(b) The care, services, and safety of all residents; and

(c) Staffing plans, staff, volunteer and student orientation and training;

(11) State the manager will not represent itself or give the appearance it is the provider;

(12) State that a duly authorized manager may execute resident leases or agreements on behalf of the adult family home, however all such resident leases or agreements must be between the adult family home and the resident or the resident's representative.

NEW SECTION

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

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

NEW SECTION

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

- (a) Retain all fiduciary and custodial responsibility for funds that have been deposited with the adult family home by the resident;
- (b) Remain directly accountable to the residents and resident representatives for such funds; and
- (c) Ensure any party responsible for holding or managing resident's personal funds:
 - (i) Is bonded or obtains insurance in sufficient amounts to specifically cover losses of resident funds;
 - (ii) Provides proof of bond or insurance; and
 - (iii) Provides proof of payment of the bond or insurance premium.
- (2) If responsibilities for the day-to-day management of the resident funds are delegated to the manager, the manager must:
 - (a) Give the adult family home a monthly accounting of the residents' funds;
 - (b) Meet all legal requirements related to holding, and accounting for, resident funds; and
 - (c) Comply with all requirements under this chapter relating to residents rights and financial affairs.

NOTICENEW SECTION

WAC 388-76-11080 Notice—Service complete Service of the department notices is complete when:

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

NEW SECTION

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-76-10190	Adult family home—Compliance with regulations—Required.
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WSR 10-03-066**PERMANENT RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed January 15, 2010, 3:06 p.m., effective February 15, 2010]

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

Purpose: The department is amending and creating new sections to these rules to make editorial and clarifying changes, and to make the rules consistent with current laws and standards.

Citation of Existing Rules Affected by this Order: Amending WAC 388-78A-2060 Preadmission assessment, 388-78A-2300 Food and nutrition services, 388-78A-2440 Resident register, 388-78A-2470 Criminal history disclosure and background checks, 388-78A-2480 Tuberculosis—Testing—Required, 388-78A-2520 Administrator qualifications—General, 388-78A-2540 Administrator requirements, 388-78A-2590 Management agreements—General, 388-78A-2910 Applicable building codes, 388-78A-3030 Toilet rooms and bathrooms, 388-78A-3190 Denial, suspension, revocation, or nonrenewal of license statutorily required, 388-78A-3410 Resident protection program—Notice to the individual of preliminary finding, 388-78A-3420 Resident protection program—Notice to others of preliminary findings, 388-78A-3430 Resident protection program—Disputing a preliminary finding, 388-78A-3450 Resident protection program—Finalizing a preliminary finding, 388-78A-3460 Resident protection program—Appeal of initial order, 388-78A-3470 Resident protection program—Reporting final findings, and 388-78A-3480 Resident protection program—Disclosure of investigative and finding information; and new sections WAC 388-78A-2481 Tuberculosis—Testing method—Required, 388-78A-2482 Tuberculosis—No testing, 388-78A-2483 Tuberculosis—One test, 388-78A-2484 Tuberculosis—Two step skin testing, 388-78A-2485 Tuber-

culosis—Positive test result, 388-78A-2486 Tuberculosis—Negative test result, 388-78A-2487 Tuberculosis—Declining a skin test, 388-78A-2488 Tuberculosis—Reporting—Required, 388-78A-2489 Tuberculosis—Test records, 388-78A-2521 Certification of training, 388-78A-2522 Administrator qualifications—Prior to 2004, 388-78A-2523 Administrator qualifications—NH Administrator license, 388-78A-2524 Administrator qualifications—Certification of training, and three years experience, 388-78A-2525 Administrator qualifications—Associate degree, certification of training, and two years experience, 388-78A-2526 Administrator qualifications—Bachelor's degree, certification of training, and one year experience, 388-78A-2527 Administrator qualifications—Five years experience, 388-78A-2592 Management agreements—Licensee, 388-78A-2593 Management agreements—Terms of agreement, 388-78A-2594 Management agreements—Department review, 388-78A-2595 Management agreements—Resident funds, 388-78A-2665 Resident rights—Notice—Policy on accepting medicaid as a payment source, 388-78A-2732 Liability insurance required—Ongoing, 388-78A-2733 Liability insurance required—Commercial general liability insurance or business liability insurance coverage, 388-78A-2734 Liability insurance required—Professional liability insurance coverage, 388-78A-3390 Resident protection program—Individual defined, 388-78A-4000 Notice—Service complete, and 388-78A-4010 Notice—Proof of service.

Statutory Authority for Adoption: Chapter 18.20 RCW.

Adopted under notice filed as WSR 09-20-061 on October 2, 2009.

Changes Other than Editing from Proposed to Adopted Version: The changes, other than editing changes, follow in track changes below:

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

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

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

(2) The boarding home must:

~~((a))~~ ensure that any individual ~~((associated with the licensee or boarding home who may have unsupervised access to residents))~~ described in subsection (1) has had a background check ~~((of conviction records, pending charges and disciplinary board decisions))~~ completed within the past two years, and that the background check is repeated every two years ~~((thereafter, and that individual has not been:~~

~~((i))~~.

(3) The boarding home must not allow unsupervised access by any individual described in subsection (1), if the individual has been:

(a) Convicted of a "crime against children or other persons" as defined in RCW 43.43.830 ~~((or 43.43.842))~~, unless

the crime is simple assault, assault in the fourth degree, or prostitution and more than three years has passed since the last conviction;

~~((ii))~~ (b) Convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830 ~~((or 43.43.842))~~, unless the crime is theft in the third degree, and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years has passed since conviction;

~~((iii))~~ Found in any disciplinary board final decision to have abused a vulnerable adult as defined in RCW 43.43.830;

~~((iv))~~ The subject in a protective proceeding under chapter 74.34 RCW;

~~((v))~~ Convicted of criminal mistreatment; or

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

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

~~((3))~~ (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; or

(f) Convicted of a crime in federal court or in any other state, and the department determines that the crime is equivalent to a crime described in this subsection.

(4) The boarding home must not allow unsupervised access by any individual described in subsection (1), if the individual has:

(a) Been found to have abused, neglected, financially exploited or abandoned a minor or vulnerable adult by a court of law or a disciplining authority, including the department of health;

(b) A 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 finding made before December, 1998.

(c) A finding of abuse, neglect, 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.

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

(a)) require each (~~(prospective employee, manager, volunteer, contractor and student associated with the licensee or boarding home who may have unsupervised access to residents to disclose)~~) individual described in subsection (1) to make disclosures, consistent with RCW 43.43.834(2)(~~5~~)). The disclosures must be in writing and signed by the individual under penalty of perjury. Each individual must disclose whether he or she:

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

- (A) All crimes against children or their persons;
- (B) All crimes relating to financial exploitation; and
- (C) All crimes relating to drugs;

(~~ii~~)) the crimes listed in subsection (3);

(b) Has had findings made against him or her in any civil adjudicative proceeding (~~(as defined in RCW 43.43.830)~~); or

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

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

- (i) To make the disclosures in writing;
- (ii) To swear under penalty of perjury that the contents of the disclosure are accurate; and
- (iii) To sign the disclosure statement.

(4)) (c) Has one or more convictions and one or more civil adjudicative proceeding findings.

(6) Prior to first starting his or her duties, for each individual described in subsection (1), the boarding home must take one or more of the (~~(following three)~~) actions (~~(for each prospective employee, manager, volunteer, contractor and student associated with the licensee or boarding home who may have unsupervised access to residents)~~) described in (a), (b) and (c):

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

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

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

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

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

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

(iv) Verbally informing the named individual of his/her individual background check results and offering to provide him or her a copy of the background check results within ten days of receipt.) background check central unit (BCCU), except the forms should be submitted to the aging and disability services administration with an initial license application;

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

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

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

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

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

(v) The boarding home has no reason to believe the individual has or may have a disqualifying conviction or finding as described in (~~(RCW 43.43.842)~~) subsections (3) and (4): or

(c) (~~(When using staff persons from a home health, hospice, or home care agency licensed under chapter 70.127 RCW, or a nursing pool registered under chapter 18.52C RCW, the boarding home must)~~) Establish, maintain and follow a written agreement with (~~(the agency or pool)~~) home health, hospice, or home care agencies licensed under chapter 70.127 RCW or nursing pools registered under chapter 18.52C RCW in order to ensure that the agency or pool staff meet the requirements of (~~(subsection (2) of this section are met for the agency or pool staff who may work in the boarding home)~~) subsections (3) and (4).

((~~5~~)) (7) The boarding home must verbally inform the named individual of his or her background check results from the department and offer to provide him or her a copy of the results within ten days of receipt.

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

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

(b) Used for employment purposes only;

(c) Not disclosed to (~~(any individual)~~) anyone except(~~(~~

(i)) to the individual (~~(named on the background check result;~~

(ii)) authorized state and federal employees(~~(~~

(iii)) the Washington state patrol auditor(~~(~~

(iv) As otherwise), or persons authorized (~~(in)~~) by chapter 43.43 RCW.

(d) Retained and available for department review(~~(~~

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

(ii) At least two years following termination of) employment or association with a facility and for at least two years after termination of the employment or association.

((~~6~~)) (9) The boarding home may conditionally hire an individual described in subsection (1), (~~(directly or by contract, an individual having unsupervised access to residents)~~) pending a background inquiry, provided that the boarding home:

(a) Obtains a criminal history background check authorization form from the individual (~~(prior to the individual beginning work)~~) before he or she is allowed unsupervised access to resident;

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

(c) Has received three positive references for the individual before he or she is allowed unsupervised access to residents.

~~((7))~~ (10) The department may require the boarding home or any (~~other~~) individual (~~(associated with the boarding home who has unsupervised access to residents)~~) described in subsection (1) to complete additional disclosure statements or background inquiries if the department has reason to believe that offenses specified (~~(under RCW 43.43.830)~~) in subsections (3) and (4) of this section have occurred since completion of the previous disclosure statement or background inquiry.

(11) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the boarding home.

(12) In addition to chapter 18.20 RCW, these rules are authorized by RCW 43.20A.710, 43.43.830 through 43.43.842 and 74.39A.050(8).

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

[Statutory Authority: Chapters 18.20 and 74.34 RCW. 09-01-052, § 388-78A-2470, filed 12/10/08, effective 1/10/09. Statutory Authority: RCW 18.20.090 and chapters 18.20 and 74.34 RCW. 08-05-099, § 388-78A-2470, filed 2/15/08, effective 3/17/08. Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-2470, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2470, filed 7/30/04, effective 9/1/04.]

NEW SECTION

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

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

NEW SECTION

WAC 388-78A-2484 Tuberculosis—Two step skin testing. Unless the staff person meets the requirement for having no skin testing or only a one ~~step skin~~ test, the boarding home choosing to do skin testing, must ensure that each staff 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 test is not required for the IGRA blood test, which is only a one step test.~~

NEW SECTION

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

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

NEW SECTION

~~**WAC 388-78A-2731 Liability insurance required—Application.** (1) The applicant must submit insurer executed evidence of liability insurance coverage with the application. (2) The coverage and evidence of coverage must comply with the requirements of WAC 388-78A-2733 and 388-78A-2734.~~

NEW SECTION

WAC 388-78A-2732 Liability insurance required—Ongoing. The boarding home must:

- (1) Obtain liability insurance upon licensure and ~~m~~ maintain liability the insurance as required in WAC 388-78A-2733 and 388-78A-2734; and
- (2) Have evidence of liability insurance coverage available if requested by the department.

NEW SECTION

WAC 388-78A-4000 Notice—Service complete. Service of the ~~The~~ department's notices is complete when:

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

The changes were made 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.
WAC 388-78A-2470 The section needs to be reorganized for clarity and ease of reading.	Changes were made to clarify this section.
WAC 388-78A-2483 - 388-78A-2484 Use of the word "step" to describe one step test is confusing.	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 388-78A-2485 The resident also needs to be evaluated if he or she has a positive test result.	A change was made [made] to clarify that both residents and staff need to be evaluated when there is a positive test result.
WAC 388-78A-2731 and 388-78A-2732 It may be a long time before an applicant receives a license and the applicant may not have enough information to get the liability insurance ahead of time.	A change was made to delete the section requiring the insurance with application and clarifying that the boarding home must obtain the insurance upon licensure.
WAC 388-78A-4000 The process of when the department's notice is complete needs clarification.	A change was made to clarify this section.

A final cost-benefit analysis is available by contacting Judy Johnson, P.O. Box 45600, Olympia, WA 98405-5600 [98504-5600], phone (360) 725-2591, fax (360) 438-7903, e-mail johnsjml@dshs.wa.gov.

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

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

Highlights of proposed changes:

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

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

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

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

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

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

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

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

COSTS:

- The liability insurance requirement for all boarding homes may impose additional costs to the small number of boarding homes that currently do not have insurance coverage.
- 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 written comments on the draft language and one comment on the cost impact of the proposed liability insurance requirement.

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

- Reducing unnecessary confusion, citations, hearing and appeals;
- Reducing time and legal costs of appealing unclear rules; and
- Reducing the 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 proposed rule amendments result in several benefits which include:

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

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

Please contact Judy Johnson by e-mail at johnsjm1@dshs.wa.gov or by telephone at (360) 725-2591 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 27, Amended 18, 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 27, Amended 18, Repealed 0.

Date Adopted: January 14, 2010.

Susan N. Dreyfus
Secretary

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

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

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

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

WAC 388-78A-2300 Food and nutrition services. (1)

The boarding home must:

- (a) Provide a minimum of three meals a day:
 - (i) At regular intervals;
 - (ii) With no more than fourteen hours between the evening meal and breakfast, unless the boarding home provides a nutritious snack after the evening meal and before breakfast.
- (b) Provide sufficient time and staff support for residents to consume meals;
- (c) Ensure all menus:
 - (i) Are written at least one week in advance and delivered to residents' rooms or posted where residents can see them, except as specified in (f) of this subsection;
 - (ii) Indicate the date, day of week, month and year;
 - (iii) Include all food and snacks served that contribute to nutritional requirements;
 - (iv) Are kept at least six months;
 - (v) Provide a variety of foods; and
 - (vi) Are not repeated for at least three weeks, except that breakfast menus in boarding homes that provide a variety of

daily choices of hot and cold foods are not required to have a minimum three-week cycle.

(d) Prepare food on-site, or provide food through a contract with a food service establishment located in the vicinity ~~((and))~~ that meets the requirements of chapter 246-215 WAC ~~((palatable, attractively served meals and nourishments that meet the current recommended dietary allowances established by the Food and Nutrition Board, National Research Council,))~~ Food Service;

(e) Serve nourishing, palatable and attractively served meals adjusted for:

(i) Age, gender and activities, unless medically contraindicated; and

(ii) Individual preferences to the extent reasonably possible.

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

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

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

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

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

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

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

(ii) Approved by a dietitian; and

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

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

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

(a) Modified or therapeutic diets;

(b) Nutritional concentrates or supplements.

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

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

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

~~(a) Authorized department staff;~~

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

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

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

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

(b) Full name;

(c) Date of birth;

(d) Date of moving out;

(e) Reason for moving out; and

(f) ~~((New address if known))~~ Location and address to which the resident was discharged.

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

(a) Authorized department staff;

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

(c) Representatives of the Washington state fire marshal when conducting fire safety inspections.

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

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

(a) Employees;

(b) Managers;

(c) Volunteers who are not residents;

(d) Contractors; and

(e) Students.

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

~~((a))~~ ensure that any individual (associated with the licensee or boarding home who may have unsupervised access to residents) described in subsection (1) has had a background check (of conviction records, pending charges and disciplinary board decisions) completed within the past two years, and that the background check is repeated every two years (thereafter, and that individual has not been:

~~((i))~~.

(3) The boarding home must not allow unsupervised access by any individual described in subsection (1), if the individual has been:

(a) Convicted of a "crime against children or other persons" as defined in RCW 43.43.830 ((or 43.43.842)), unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years has passed since the last conviction;

((i)) (b) Convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830 ((or 43.43.842)), unless the crime is theft in the third degree, and more than

three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years has passed since conviction;

~~((iii) Found in any disciplinary board final decision to have abused a vulnerable adult as defined in RCW 43.43.830;~~

~~(iv) The subject in a protective proceeding under chapter 74.34 RCW;~~

~~(v) Convicted of criminal mistreatment; or~~

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

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

~~(3)) (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; or~~

~~(f) Convicted of a crime in federal court or in any other state, and the department determines that the crime is equivalent to a crime described in this subsection.~~

~~(4) The boarding home must not allow unsupervised access by any individual described in subsection (1), if the individual has:~~

~~(a) Been found to have abused, neglected, financially exploited or abandoned a minor or vulnerable adult by a court of law or a disciplining authority, including the department of health;~~

~~(b) A 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 finding made before December, 1998.~~

~~(c) A finding of abuse, neglect, 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.~~

~~(5) Prior to first starting his or her duties, the boarding home must(=~~

~~(a)) require each ((prospective employee, manager, volunteer, contractor and student associated with the licensee or boarding home who may have unsupervised access to resi-~~

~~dents to disclose)) individual described in subsection (1) to make disclosures, consistent with RCW 43.43.834(2)((=). The disclosures must be in writing and signed by the individual under penalty of perjury. Each individual must disclose whether he or she:~~

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

~~(A) All crimes against children or their persons;~~

~~(B) All crimes relating to financial exploitation; and~~

~~(C) All crimes relating to drugs;~~

~~(ii)) the crimes listed in subsection (3);~~

~~(b) Has had findings made against him or her in any civil adjudicative proceeding ((as defined in RCW 43.43.830)); or ((iii) Has both convictions for (i) and findings made against him or her under (ii).~~

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

~~(i) To make the disclosures in writing;~~

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

~~(iii) To sign the disclosure statement.~~

~~(4)) (c) Has one or more convictions and one or more civil adjudicative proceeding findings.~~

~~(6) Prior to first starting his or her duties, for each individual described in subsection (1), the boarding home must take one or more of the ((following three)) actions ((for each prospective employee, manager, volunteer, contractor and student associated with the licensee or boarding home who may have unsupervised access to residents)) described in (a), (b) and (c):~~

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

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

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

~~(iii) Submitting)) by submitting all background check authorization forms to the department's(=~~

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

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

~~(iv) Verbally informing the named individual of his/her individual background check results and offering to provide him or her a copy of the background check results within ten days of receipt.)) background check central unit (BCCU), except the forms should be submitted to the aging and disability services administration with an initial license application;~~

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

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

~~(ii) The ((nursing home, boarding home or adult family home)) employer providing ((completed criminal back-~~

~~ground inquiry~~) the information ((for the individual)) is reasonably known to be the individual's most recent employer;

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

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

(v) The boarding home has no reason to believe the individual has or may have a disqualifying conviction or finding as described in ~~((RCW 43.43.842-))~~ subsections (3) and (4); or

(c) ~~((When using staff persons from a home health, hospice, or home care agency licensed under chapter 70.127 RCW, or a nursing pool registered under chapter 18.52C RCW, the boarding home must))~~ Establish, maintain and follow a written agreement with ((the agency or pool)) home health, hospice, or home care agencies licensed under chapter 70.127 RCW or nursing pools registered under chapter 18.52C RCW in order to ensure that the agency or pool staff meet the requirements of ((subsection (2) of this section are met for the agency or pool staff who may work in the boarding home)) subsections (3) and (4).

~~((5))~~ (7) The boarding home must verbally inform the named individual of his or her background check results from the department and offer to provide him or her a copy of the results within ten days of receipt.

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

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

(b) Used for employment purposes only;

(c) Not disclosed to ~~((any individual))~~ anyone except((= ~~(+))~~ to the individual ((named on the background check result;

~~((ii))~~ authorized state and federal employees((=

~~((iii))~~ the Washington state patrol auditor((= and

~~((iv) As otherwise)), or persons~~ authorized ((in)) by chapter 43.43 RCW.

(d) Retained and available for department review((=

~~(+))~~ during the individual's ((employment or association with a facility; and

~~((ii) At least two years following termination of))~~ employment or association with a facility and for at least two years after termination of the employment or association.

~~((6))~~ (9) The boarding home may conditionally hire an individual described in subsection (1), ((directly or by contract, an individual having unsupervised access to residents)) pending a background inquiry, provided that the boarding home:

(a) Obtains a criminal history background check authorization form from the individual ~~((prior to the individual beginning work))~~ before he or she is allowed unsupervised access to resident;

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

(c) Has received three positive references for the individual before he or she is allowed unsupervised access to residents.

~~((7))~~ (10) The department may require the boarding home or any ((other)) individual ((associated with the boarding home who has unsupervised access to residents)) described in subsection (1) to complete additional disclosure statements or background inquiries if the department has reason to believe that offenses specified ~~((under RCW 43.43-830))~~ in subsections (3) and (4) of this section have occurred since completion of the previous disclosure statement or background inquiry.

(11) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the boarding home.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(i) Tuberculin test results;~~

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

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

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

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

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

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

NEW SECTION

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

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

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

(b) By a trained professional; or

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

NEW SECTION

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

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

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

(3) Documented evidence of:

(a) Adequate therapy for active disease; or

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

NEW SECTION

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

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

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

NEW SECTION

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

NEW SECTION

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

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

(2) Ensure each resident or staff person with a positive test result is evaluated for signs and symptoms of tuberculosis; and

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

NEW SECTION

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

(1) After exposure to active tuberculosis;

(2) When tuberculosis symptoms are present; or

(3) For periodic testing as determined by the public health provider.

NEW SECTION

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

NEW SECTION

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

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

NEW SECTION

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

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

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

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

- (a) ~~At least twenty-one years old ((and who is));~~
- (b) ~~Not a resident((-and is)) of the boarding home; and~~
- (c) ~~Qualified to perform the administrator's duties specified in WAC 388-78A-2560.~~

(2) The licensee must only appoint as a boarding home administrator an individual who meets the requirements of at least one of the following ~~((qualifications listed in (a) through (f) of this subsection:~~

- (a) ~~The individual was actively employed as a boarding home administrator and met existing qualifications on September 1, 2004;~~
- (b) ~~The individual holds a current Washington state nursing home administrator license in good standing;~~
- (c) ~~Prior to assuming duties as a boarding home administrator, the individual has met the qualifications listed in both (e)(i) and (ii) of this subsection:~~
 - (i) ~~Obtained certification of completing a recognized administrator training course consisting of a minimum of~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(ii) Has one year paid experience:~~

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

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

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

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

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

~~(ii) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living)) sections in WAC 388-78A-2522 through 388-78A-2527.~~

NEW SECTION

WAC 388-78A-2521 Certification of training. As used in WAC 388-78A-2522 through 388-78A-2527, an individual obtains certification of training as follows. The individual has certification of completing a recognized administrator training course that consists of a minimum of twenty-four hours of instruction or equivalent online training, or certification of passing an administrator examination from or

endorsed by a department-recognized national accreditation health or personal care organization such as:

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

(2) The American college of health care administrators;

(3) The American health care association;

(4) The assisted living federation of America; or

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

NEW SECTION

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

NEW SECTION

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

NEW SECTION

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

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

(2) Has three years paid experience:

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

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

NEW SECTION

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

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

(2) Has two years paid experience:

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

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

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

NEW SECTION

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

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

(2) Has one year paid experience:

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

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

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

NEW SECTION

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

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

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

ognized social service agency for the provision of care to vulnerable adults, such as supported living.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- ~~(a) Initial application for a license;~~
- ~~(b) Retention of a manager following initial application;~~
- ~~(c) Change of managers; or~~
- ~~(d) Modification of existing management agreement))~~

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

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

- (a) Initial application for a license;
- (b) Retention of a manager following initial application;
- (c) Change of managers; and
- (d) Modification of existing management agreement.

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

(4) The written management agreement must be submitted:

- (a) Sixty days before:
 - (i) The initial licensure date;
 - (ii) The proposed change of ownership date; or
 - (iii) The effective date of the management agreement; or
- (b) Thirty days before the effective date of any amendment to an existing management agreement.

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

NEW SECTION

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

- (a) The daily operations and provisions of services in the boarding home (See 388-78A-2730 (1)(a));
- (b) Ensuring the boarding home is operated in a manner consistent with all laws and rules applicable to boarding homes (See 388-78A-2730 (1)(b));
- (c) Ensuring the manager acts in conformance with a department approved management agreement; and
- (d) Ensuring the manager does not represent itself as, or give the appearance that it is the licensee.

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

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

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

NEW SECTION

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

- (1) Describe the responsibilities of the licensee and manager, including items, services, and activities to be provided;
- (2) Require the licensee's governing body, board of directors, or similar authority to appoint the facility administrator;
- (3) Provide for the maintenance and retention of all records in accordance with this chapter and other applicable laws;
- (4) Allow unlimited access by the department to documentation and records according to applicable laws or regulations;
- (5) Require the manager to immediately send copies of inspections and notices of noncompliance to the licensee;
- (6) State that the licensee is responsible for reviewing, acknowledging and signing all boarding home initial and renewal license applications;
- (7) State that the manager and licensee will review the management agreement annually and notify the department of any change according to applicable regulations;
- (8) Acknowledge that the licensee is the party responsible for complying with all laws and rules applicable to boarding homes;
- (9) Require the licensee to maintain ultimate responsibility over personnel issues relating to the operation of the boarding home and care of the residents, including but not limited to, staffing plans, orientation and training;
- (10) State the manager will not represent itself, or give the appearance it is the licensee; and
- (11) State that a duly authorized manager may execute resident leases or agreements on behalf of the licensee, but all such resident leases or agreements must be between the licensee and the resident.

NEW SECTION

WAC 388-78A-2594 Management agreements—Department review. Upon receipt of a proposed management agreement, the department may require:

- (1) The proposed or current licensee or manager to provide additional information or clarification;
- (2) Any changes necessary to:
 - (a) Bring the management agreement into compliance with this chapter; and
 - (b) Ensure that the licensee has not been relieved of the responsibility for the daily operations of the facility.
- (3) The licensee to participate in monthly meetings and quarterly on-site visits to the boarding home.

NEW SECTION

WAC 388-78A-2595 Management agreements—Resident funds. (1) If the management agreement delegates day-

to-day management of resident funds to the manager, the licensee:

(a) Retains all fiduciary and custodial responsibility for funds that have been deposited with the boarding home by the resident;

(b) Is directly accountable to the residents for such funds; and

(c) Must ensure any party responsible for holding or managing residents' personal funds is bonded or obtains insurance in sufficient amounts to specifically cover losses of resident funds; and provides proof of bond or insurance.

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

(a) Provide the licensee with a monthly accounting of the resident funds; and

(b) Meet all legal requirements related to holding, and accounting for, resident funds.

NEW SECTION

WAC 388-78A-2665 Resident rights—Notice—Policy on accepting medicaid as a payment source. The boarding home must fully disclose the facility's policy on accepting medicaid payments. The policy must:

(1) Clearly state the circumstances under which the boarding home provides care for medicaid eligible residents and for residents who become eligible for medicaid after admission;

(2) Be provided both orally and in writing in a language that the resident understands;

(3) Be provided to prospective residents, before they are admitted to the home;

(4) Be provided to any current residents who were admitted before this requirement took effect or who did not receive copies prior to admission;

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

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

NEW SECTION

WAC 388-78A-2732 Liability insurance required—Ongoing. The boarding home must:

(1) Obtain liability insurance upon licensure and maintain the insurance as required in WAC 388-78A-2733 and 388-78A-2734; and

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

NEW SECTION

WAC 388-78A-2733 Liability insurance required—Commercial general liability insurance or business liability insurance coverage. The boarding home must have commercial general liability insurance or business liability insurance that includes:

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

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

(3) Coverage for premises, operations, independent contractor, products-completed operations, 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 388-78A-2734 Liability insurance required—Professional liability insurance coverage. The boarding home must have professional liability insurance or error and omissions insurance if the boarding home licensee has a professional license, or employs professionally licensed staff. The insurance must include:

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

(2) Minimum limits of:

(a) Each occurrence at one million dollars; and

(b) Aggregate at two million dollars.

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

WAC 388-78A-2910 Applicable building codes. (1) Newly licensed boarding homes and new construction in existing boarding homes must meet the requirements of all the current state and local building and zoning codes and applicable sections of this chapter.

(2) Existing licensed boarding homes must continue to meet the building codes in force at the time of their (~~initial licensing~~) plan approval by construction review services, except that the boarding home may be required to meet current building code requirements if the construction poses a risk to the health and safety of residents.

(3) The boarding home must ensure that construction is completed in compliance with the final construction review services approved documents. Compliance with these standards and regulations does not relieve the boarding home of the need to comply with applicable state and local building and zoning codes.

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

WAC 388-78A-3030 Toilet rooms and bathrooms. (1) The boarding home must provide private or common-use toilet rooms and bathrooms to meet the needs of each resident.

(2) The boarding home must provide each toilet room and bathroom with:

(a) Water resistant, smooth, low gloss, nonslip and easily cleanable materials;

(b) Washable walls to the height of splash or spray;

(c) Grab bars installed and located to minimize accidental falls including one or more grab bars at each:

(i) Bathing fixture; and

(ii) Toilet.

(d) Plumbing fixtures designed for easy use and cleaning and kept in good repair; and

(e) Adequate ventilation to the outside of the boarding home. For boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, must provide mechanical ventilation to the outside.

(3) The boarding home must provide each toilet room with a:

- (a) Toilet with a clean, nonabsorbent seat free of cracks;
- (b) Handwashing sink in or adjacent to the toilet room.

For boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the handwashing sink must be in the toilet room or in an adjacent private area that is not part of a common use area of the boarding home; and

(c) Suitable mirror with adequate lighting for general illumination.

(4) For boarding homes approved for construction or initially licensed after August 1, 1994, the boarding home must provide a toilet and handwashing sink in, or adjoining, each bathroom.

(5) When providing common-use toilet rooms and bathrooms, the boarding home must provide toilets and handwashing sinks for residents in the ratios of one toilet and one handwashing sink for every eight residents (~~or fraction as listed in the following table:~~). For example: one toilet and one handwashing sink for one to eight residents, two for nine to sixteen residents, three for seventeen to twenty-four residents, and so on, who do not have access to a private toilet room.

(Number of Residents)	Number of Toilets*	Number of Handwashing Sinks
1-8	1	1
9-16	2	2
17-24	3	3
25-32	4	4
33-40	5	5
41-48	6	6
49-56	7	7
57-64	8	8
65-72	9	9
73-80	10	10
81-88	11	11
89-96	12	12
97-104	13	13
105-112	14	14
113-120	15	15
121-128	16	16
129-136	17	17
137-144	18	18
145-152	19	19
153-160	20	20

(Number of Residents)	Number of Toilets*	Number of Handwashing Sinks
161-168	21	21
169-176	22	22
177-184	23	23

((*) When two or more toilets are contained in a single bathroom, they are counted as one toilet.

(6) When providing common-use toilet rooms and bathrooms, the boarding home must provide bathing fixtures for residents in the ratio of one bathing fixture for every twelve residents (~~or fraction thereof as listed in the following table:~~). For example: one bathing fixture for one to twelve residents, two for twelve to twenty-four residents, three for twenty-five to thirty-six residents, and so on, who do not have access to a private toilet room.

(Number of Residents)	Number of Bathing Fixtures
1-12	1
13-24	2
25-36	3
37-48	4
49-60	5
61-72	6
73-84	7
85-96	8
97-108	9
109-120	10
121-132	11
133-144	12
145-160	13
161-172	14
173-184	15
185-196	16

(7) When providing common-use toilet rooms and bathrooms, the boarding home must:

- (a) Designate toilet rooms containing more than one toilet for use by men or women;
- (b) Designate bathrooms containing more than one bathing fixture for use by men or women;
- (c) Equip each toilet room and bathroom designed for use by, or used by, more than one person at a time, in a manner to ensure visual privacy for each person using the room. The boarding home is not required to provide additional privacy features in private bathrooms with a single toilet and a single bathing fixture located within a private apartment;
- (d) Provide a handwashing sink with soap and single use or disposable towels, blower or equivalent hand-drying device in each toilet room, except that single-use or disposable towels or blowers are not required in toilet rooms or bathrooms that are located within a private apartment;
- (e) Provide reasonable access to bathrooms and toilet rooms for each resident by:

- (i) Locating a toilet room on the same floor or level as the sleeping room of the resident served;
 - (ii) Locating a bathroom on the same floor or level, or adjacent floor or level, as the sleeping room of the resident served;
 - (iii) Providing access without passage through any kitchen, pantry, food preparation, food storage, or dishwashing area, or from one bedroom through another bedroom; and
 - (f) Provide and ensure toilet paper is available at each common-use toilet.
- (8) In boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the boarding home must ensure twenty-five percent of all the bathing fixtures in the boarding home are roll-in type showers that have:
- (a) One-half inch or less threshold that may be a collapsible rubber water barrier;
 - (b) A minimum size of thirty-six inches by forty-eight inches; and
 - (c) Single lever faucets located within thirty-six inches of the seat so the faucets are within reach of persons seated in the shower.

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

WAC 388-78A-3190 Denial, suspension, revocation, or nonrenewal of license statutorily required. (1) The department must deny, suspend, revoke, or refuse to renew a boarding home license if any person described in subsection (2) of this section who ~~((has))~~ may have unsupervised access to residents ~~(, is:~~

- ~~(a) Convicted of a crime against children or other persons or crimes relating to financial exploitation as defined under RCW 43.43.830 or 43.43.842; or~~
- ~~(b) Found by a court in a protection proceeding or in a civil damages lawsuit under chapter 74.34 RCW to have abused, neglected, abandoned or exploited a vulnerable adult; or~~
- ~~(c) Found in any dependency action under chapter 13.34 RCW to have sexually assaulted, neglected, exploited, or physically abused any minor; or~~
- ~~(d) Found by a court in a domestic relations proceeding under Title 26 RCW to have sexually abused, exploited, or physically abused any minor; or~~
- ~~(e) Found in any final decision issued by a disciplinary board to have sexually or physically abused or neglected or exploited any minor or any vulnerable adult, or has a stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority, a court of law, or entered into a state registry finding him or her guilty of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW))~~ has a conviction or finding described in WAC 388-78A-2470 (3) and (4).

- (2) This section applies to any boarding home:
- (a) Applicant;
 - (b) Partner, officer or director;
 - (c) Manager or managerial employee; or
 - (d) Owner of five percent or more of the applicant:

- (i) Who is involved in the operation of the boarding home; or
- ~~(ii) ((Who may have direct access to the boarding home residents; or~~
- ~~((iii)))~~ Who controls or supervises the provision of care or services to the boarding home residents; or
- ~~((iv)))~~ (iii) Who exercises control over daily operations.

NEW SECTION

WAC 388-78A-3390 Resident protection program—Individual defined. As used in WAC 388-78A-3400 through 388-78A-3480, the term "individual" means anyone used by the boarding home to provide services to residents who is alleged to have abandoned, abused, neglected, or financially exploited a resident. "Individual" includes, but is not limited to employees, contractors, and volunteers.

AMENDATORY SECTION (Amending WSR 08-05-099, filed 2/15/08, effective 3/17/08)

WAC 388-78A-3410 Resident protection program—Notice to the individual of preliminary finding. (1) ~~((The department will notify the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident in writing within ten working days of making a preliminary finding of abandonment, abuse, neglect, exploitation, or financial exploitation of a resident. The written notice:~~

- ~~(a) Will not include the identities of the alleged victim, reporter and witnesses; and~~
- ~~(b) Will include the necessary information for the individual to ask for an administrative hearing to challenge the preliminary finding.~~
- ~~(2) The department must make a reasonable, good faith effort to find the last known address of the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident.~~
- ~~(3) The department may extend the time frame for notification beyond ten working days for good cause.~~
- ~~(4) The department will serve notice of the preliminary finding as provided in chapter 388-02 WAC))~~ The department will serve notice of the preliminary finding as provided in WAC 388-78A-4000.
- (2) The department may establish proof of service as provided in WAC 388-78A-4010.

AMENDATORY SECTION (Amending WSR 08-05-099, filed 2/15/08, effective 3/17/08)

WAC 388-78A-3420 ((Reporting)) Resident protection program—Notice to others of preliminary findings. ~~((1) In a manner))~~ Consistent with confidentiality requirements concerning the resident, witnesses, and reporter, the department may provide notification of a preliminary finding to:

- ~~((a)))~~ (1) Other divisions within the department;
- ~~((b)))~~ (2) The agency ~~((or))~~ program ~~((identified under RCW 74.34.068 with which the individual alleged to have abandoned, abused, neglected, exploited, or financially~~

~~exploited a resident is associated as an employee), or employer where the incident occurred;~~

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 08-05-099, filed 2/15/08, effective 3/17/08)

WAC 388-78A-3430 Resident protection program—Disputing a preliminary finding. (1) The individual ~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident))~~ may request an administrative hearing to challenge a preliminary finding made by the department.

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

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

(4) The written request for a hearing must include:

(a) The individual's full legal name, current mailing address and the telephone number;

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

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

(d) The individual's signature.

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

WAC 388-78A-3450 Resident protection program—Finalizing a preliminary finding. (1) A preliminary finding becomes a final finding when:

(a) The department notifies the individual ~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident))~~ there is a preliminary finding ~~((pursuant to))~~ under WAC 388-78A-3410; and

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

(c) The administrative law judge:

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

(ii) Dismisses the appeal for failure to comply with time limits under WAC 388-78A-3430; or

(iii) Issues an initial order upholding the finding and the individual ~~((alleged to have abandoned, abused, neglected,~~

~~exploited, or financially exploited a resident))~~ fails to appeal the initial order to the department's board of appeals.

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

(2) A final finding is permanent.

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

~~((4) The department may remove a single finding of neglect from its records based upon a written petition by the individual found to have neglected a resident provided that at least one calendar year must have passed between the date a request was made to remove the finding of neglect and the date the final finding was finalized and recorded. If the department denies the petition, its decision may not be appealed.))~~

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

WAC 388-78A-3460 Resident protection program—Appeal of ((administrative law judge's)) initial order. (1) If the individual ~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident))~~ or the department disagrees with the administrative law judge's decision, either party may challenge this decision by filing a petition for review with the department's board of appeals under chapter 34.05 RCW, Administrative Procedure Act, and chapter 388-02 WAC.

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

AMENDATORY SECTION (Amending WSR 08-05-099, filed 2/15/08, effective 3/17/08)

WAC 388-78A-3470 Resident protection program—Reporting final findings. The department will report a final finding of abandonment, abuse, neglect, exploitation and financial exploitation within ten working days to the following:

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

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

(3) The employer or program that is currently associated with the individual against whom the final finding was made, if known;

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

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

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

AMENDATORY SECTION (Amending WSR 08-05-099, filed 2/15/08, effective 3/17/08)

WAC 388-78A-3480 Resident protection program—Disclosure of investigative and finding information. (1) Confidential information about residents and mandated reporters received from the department may only be used by the individual (~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident))~~) to challenge findings through the appeal process. It may only be shared with persons who are involved in the appeal.

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

GENERAL NOTICE REQUIREMENT

NEW SECTION

WAC 388-78A-4000 Notice—Service complete. Service of the department notices is complete when:

- (1) Personal service is made;
- (2) The notice is addressed to the individual or facility 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 388-78A-4010 Notice—Proof of service. The department may establish proof of service by any of the following:

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

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

AMENDATORY SECTION (Amending WSR 92-10-023, filed 4/29/92, effective 5/30/92)

WAC 434-166-010 Authority. These rules are adopted under the authority of chapter 19.166 RCW (~~((19.166.040 and 19.166.060))~~) to provide for the administration of the International Student Exchange Agency Registration Act, hereafter referred to as the "act." These regulations shall be considered a supplement to and not a replacement for the act.

AMENDATORY SECTION (Amending WSR 00-21-086, filed 10/17/00, effective 11/17/00)

WAC 434-166-030 Official address, telephone number of the office of the secretary of state, international student exchange (~~(division))~~ program. The address to be used for delivery and receipt of mail, information, registration applications, amendments, fees, and other material required by the act is:

Office of the Secretary of State
International Student Exchange (~~(Division~~
~~801 Capitol Way S)) Program
P.O. Box 40234
Olympia WA 98504-0234~~

The telephone number to be used for inquiries relating to this act and to be disclosed by the organization as required by RCW 19.166.070, is: ~~((360) 753-7120))~~ 360-725-0377.

AMENDATORY SECTION (Amending WSR 92-10-023, filed 4/29/92, effective 5/30/92)

WAC 434-166-040 Office hours. Customary hours of operation of the International Student Exchange ~~((Division))~~ Program are 8:00 a.m. to ~~((4:30))~~ 5:00 p.m., Monday through Friday, except holidays. Registration documents received after ~~((4:00))~~ 4:30 p.m. will not be processed until the next day.

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

AMENDATORY SECTION (Amending WSR 92-10-023, filed 4/29/92, effective 5/30/92)

WAC 434-166-050 Public records. Except as provided by RCW ~~((42.17.310))~~ 42.56.230, all documents relating to the International Student Exchange ~~((Division))~~ Program are public record and are available for public inspection and copying pursuant to rules of procedure, chapter 434-12A WAC.

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

AMENDATORY SECTION (Amending WSR 92-10-023, filed 4/29/92, effective 5/30/92)

WAC 434-166-080 Definitions. Terms defined in RCW 19.166.020 shall apply in these regulations. In addition, the following definitions shall be applicable when used in these regulations:

(1) "Secretary" means the secretary of state or an employee of the secretary acting under the authority of the secretary.

(2) "Act" means the International Student Exchange Agency Registration Act, chapter 128, Laws of 1991 and Title 19 RCW.

~~((3))~~ "International student exchange visitor placement organization" or "organization" means any organization which arranges for the placement of two or more international student exchange visitors in the state of Washington during any consecutive five year period.

(4) "International student exchange visitor" or "student" means any foreign national who:

(a) Is eighteen years of age or under, or up to the age of twenty-one; and

(b) Is engaged in full-time participation in a prescribed course of study in this state conducted by any secondary public institution of learning; and

(c) Has been selected to participate in an exchange visitor program sponsored by an international student exchange visitor placement organization; and

~~((d))~~ Enters the state of Washington with a nonimmigrant visa.)

~~((5))~~ (3) "Responsible officer" means the officer or employee of the international student placement organization

who has primary authority for supervising placements in the state of Washington.

~~((6))~~ (4) "Responsible officer address" means the physical location of the responsible officer.

~~((7))~~ (5) "Immediate family" means the parent(s) or legal guardian(s) of an international student exchange visitor.

~~((8))~~ (6) "Nonimmigrant visa" means a visa category used by nonresident aliens whose primary purpose for visiting the United States is to study full time at an approved institution.

~~((9))~~ (7) "Host family" means the family residing in the state of Washington that the international student exchange visitor resides with during his or her period of academic study.

~~((10))~~ ("USIA" shall mean United States Information Agency.

(11) "USIA regulations" means regulations promulgated by the United States Information Agency (USIA) governing exchange visitor programs designated by them.

~~((12))~~ "USIA designation letter" means the letter from USIA showing acceptance into its' program.)

~~((13))~~ (8) "CSIET" means the Council on Standards for International Educational Travel.

~~((14))~~ (9) "CSIET standards" means standards published by CSIET and used by the CSIET to evaluate the operations of international student exchange visitor placement organizations.

~~((15))~~ (10) "CSIET's approval for listing letter" means the letter from CSIET showing that the placement organization meets the standards set by the CSIET and has been accepted for the current listing.

~~((16))~~ (11) "High school" means any secondary public institution of learning in the state of Washington.

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.

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.

AMENDATORY SECTION (Amending WSR 92-10-023, filed 4/29/92, effective 5/30/92)

WAC 434-166-110 Health and accident insurance.

(1) Each organization shall ensure that every student participating in the exchange program has health and accident insurance from the time of departure from home to the time the student returns to his or her home country. Minimum acceptable insurance is:

(a) Medical and accident coverage of fifty thousand dollars per illness or accident;

(b) Preparation and transportation of remains to the student's home country (minimum of ~~((five))~~ seven thousand five hundred dollars) in the event of death. Coverage may be provided in one of the following ways:

(i) By the student;

(ii) By the organization.

(2) The organization is responsible for providing each student, each student's immediate family and the host family detailed printed information regarding the terms and limits of

insurance coverage and procedures for filing a claim (including forms wherever possible).

(3) The organization shall maintain in its files proof of health and accident insurance.

AMENDATORY SECTION (Amending WSR 92-10-023, filed 4/29/92, effective 5/30/92)

WAC 434-166-130 Selection of host family. (1) The organization is responsible for making all arrangements for the placement of each student with a host family whose home is located in a place convenient to the educational institution in which the student is to be enrolled.

(2) The organization shall make every effort to assure the maximum degree of compatibility between the family and the student, including, wherever possible, the presence in the family of a teenage student.

(3) The organization's representative shall visit the home of, and personally interview, each host family before a student is assigned to such family including verifying that each member of the host family eighteen years of age and older has undergone a criminal background check.

(4) The organization shall ensure that its representative selects only those homes which reflect the high quality expected of the International Student Exchange Agency Program.

(5) A written record shall be made of this visit and interview by the representative, a copy of which shall be maintained by the organization.

(6) Selection of host families and assignment of students shall be made prior to the student's departure from his or her home country. ((as far in advance of the student's arrival as possible, but in no event less than three weeks prior to departure from the student's home.))

(7) No organization shall bring a student into the United States without written acceptance from the host family.

(8) The host family shall be advised in writing of the name, age, educational status, other background information, and anticipated arrival time of the assigned student.

(9) The student's immediate family shall be advised in writing of the name, address, family composition, and other background information concerning the host family at the earliest possible time, to permit the exchange of correspondence between the respective families in advance of the student's arrival.

(10) Copies of these notifications shall be maintained in its files by the organization.

AMENDATORY SECTION (Amending WSR 92-10-023, filed 4/29/92, effective 5/30/92)

WAC 434-166-220 Change of responsible officer and/or responsible officer address. An organization may change its responsible officer or responsible officer address by delivering to the secretary, within thirty days of the change, a statement of change form prescribed by the secretary that sets forth:

(1) The name of the organization;

(2) If the current officer address is to be changed, the street address of the current officer and the street address of

the new officer address in accordance with WAC 434-166-210;

(3) If the current responsible officer is to be changed, the name of the current responsible officer and the name of the new responsible officer; and

(4) The new officer's written consent accepting the responsibility of the responsible officer.

AMENDATORY SECTION (Amending WSR 92-10-023, filed 4/29/92, effective 5/30/92)

WAC 434-166-230 Resignation of responsible officer. (1) A responsible officer may resign by signing and delivering to the secretary of state for filing a statement of resignation. The statement must also include a statement that the responsible officer address is also discontinued.

(2) After filing the statement the secretary of state shall mail a copy of the filed statement and a statement of change form to the organization at its organizational address.

(3) The organization shall appoint a new responsible officer and responsible officer address within thirty days of notification.

AMENDATORY SECTION (Amending WSR 92-10-023, filed 4/29/92, effective 5/30/92)

WAC 434-166-250 Individual located in state of Washington. (1) The organization shall maintain an in-state telephone number as required by RCW 19.166.070. This telephone number shall be registered to an individual residing in the state of Washington, which may be:

- (a) An employee for the organization; or
- (b) An officer for the organization; or
- (c) A volunteer for the organization.

(2) The organization shall ~~((insure))~~ ensure that this individual has:

- (a) A listing of all placements of students by the organization and the location of each in the state of Washington;
- (b) Knowledge of emergency procedures;
- (c) Twenty-four-hour contact with the organization for emergencies;
- (d) Knowledge and capability to assist and advise the students in their relationship with the organization;

(3) Each individual maintaining the in-state telephone number for the organization shall sign a written agreement with the organization((-)), a copy of which shall be submitted to the secretary with the registration application.

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.

AMENDATORY SECTION (Amending WSR 96-10-052, filed 4/29/96, effective 5/30/96)

WAC 434-166-260 Requirement to register. Each organization operating in Washington is required to register with the secretary, if two or more students are placed in Washington public high schools within a five year period. Registration is due in the office of the secretary during the

enrollment period of March 1st through June 15th preceding the beginning of the next school year.

~~((Organizations governed by chapter 19.166 RCW and also registered as a nonprofit corporation under Title 24 RCW shall renew both registrations concurrently in the enrollment period specified in this section.))~~

The secretary shall provide, annually, a list of all international student exchange agencies registered as of June 15th to the superintendent of public instruction on or before August 5th of the same year. Subsequent lists may be provided at a later date.

AMENDATORY SECTION (Amending WSR 92-10-023, filed 4/29/92, effective 5/30/92)

WAC 434-166-270 Transaction of business or conducting affairs. No organization that is a foreign corporation ~~((or)),~~ limited partnership, or limited liability company defined in RCW 23B.01.400~~((or))~~(13), 24.03.005(2), 24.06.005(2)~~((and))~~, 25.10.010(4), and 25.15.005(3) will be registered under this program unless and until the organization complies with foreign corporation ~~((or)),~~ limited partnership, or limited liability company registration requirements.

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.

AMENDATORY SECTION (Amending WSR 96-10-052, filed 4/29/96, effective 5/30/96)

WAC 434-166-280 Application for registration. (1) Any organization meeting the requirements set forth in chapters 19.166 RCW and 434-166 WAC shall register with the secretary of state. Such registration shall be made on a form prescribed by the secretary of state and filed with the secretary's office.

(2) The applicant must also provide evidence that they have met the established standards as an international student exchange visitor placement organization, by:

(a) Submitting a copy of the ~~((USIA's))~~ U.S. Department of State's Designation Letter showing current registration; or

(b) Submitting a copy of the CSJET's Approval for Listing Letter showing current registration; or

(c) Submitting a notarized statement, on a form prescribed by the secretary of state, declaring that the organization has met all standards and obligations as required by chapters 19.166 RCW and 434-166 WAC.

(3) Registrations filed during the enrollment period specified in WAC 434-166-260 are valid until June 15th of the next year. All other registrations expire June 15th of the next enrollment period.

AMENDATORY SECTION (Amending WSR 99-16-066, filed 8/2/99, effective 9/2/99)

WAC 434-166-290 Application for ~~((re)registration))~~ renewal. (1) Prior to the expiration of the registration period, organizations may seek ~~((re)registration))~~ renewal within the enrollment period specified in WAC 434-166-260 by com-

pleting the registration requirements as set forth in RCW 19.166.040 and WAC 434-166-280.

(2) The secretary may mail a ~~((re)registration))~~ renewal form to the responsible officer/responsible officer address within forty-five days prior to the registration expiration.

(3) Failure of the secretary to notify the organization of ~~((re)registration))~~ renewal does not relieve the organization's obligation for filing ~~((its' re)registration))~~ its renewal documents.

(4) Applications to ~~((re)register))~~ renew must be filed by the due date specified by RCW 19.166.040; no extensions will be granted by the secretary.

AMENDATORY SECTION (Amending WSR 92-10-023, filed 4/29/92, effective 5/30/92)

WAC 434-166-300 Fees. (1) Organizations required to register or ~~((re)register))~~ renew under RCW 19.166.030 and chapter 434-166 WAC shall pay a fee of fifty dollars per application.

(2) A notification of change of information required under RCW 19.166.050 shall be accepted without fee.

AMENDATORY SECTION (Amending WSR 99-16-066, filed 8/2/99, effective 9/2/99)

WAC 434-166-310 Termination. Registrations of organizations shall be terminated when any of the following circumstances set forth occur:

(1) Voluntary termination. An organization may voluntarily terminate its registration by notifying the secretary of such intent. The organization's registration shall terminate upon such notification.

(2) Failure to apply for ~~((re)registration))~~ renewal. Failure to apply for ~~((re)registration))~~ renewal will result in the automatic termination of the organization's registration. If so terminated, the former organization must apply for a new registration.

(3) Loss of license, permit or accreditation. An organization's registration shall automatically terminate in the event that the organization fails to remain in compliance with local, state statute and regulations, federal, or professional requirements necessary to carry out the activities for which it was registered.

(4) Ownership change. An organization's registration shall automatically terminate in the event of a change of structure of the organization.

(5) Failure to notify. An organization's registration shall automatically terminate in the event the organization fails to notify the secretary within thirty days of any changes in their registration documents within thirty days, as required by RCW 19.166.040(3).

WSR 10-05-016
PERMANENT RULES
BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS

[Filed February 4, 2010, 3:25 p.m., effective March 7, 2010]

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

Purpose: To make the language regarding board meetings more generic. After the hearing was held regarding the language filed with WSR 09-12-049, the board determined that the proposed language was confusing and rewrote the language so that it is easier to read and understand.

Citation of Existing Rules Affected by this Order: Amending chapter 196-09 WAC.

Statutory Authority for Adoption: RCW 18.43.035.

Adopted under notice filed as WSR 09-21-096 on October 20, 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 1, 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 7, 2010.

George A. Twiss
Executive Director

AMENDATORY SECTION (Amending WSR 04-04-001, filed 1/21/04, effective 2/21/04)

~~**WAC 196-09-120 Meetings and officers.** ((The Washington state board of registration for professional engineers and land surveyors shall hold its regular public meeting annually in June. Special public meetings may be held at such times and places as the board may deem necessary. Public notice of all public meetings shall be issued as required by the Open Public Meetings Act, chapter 42.30 RCW.)) All meetings of the board are held in accordance with the Open Public Meetings Act, chapter 42.30 RCW. The Washington state board of registration for professional engineers and land surveyors shall hold its annual meeting in the third week of June each year. All other meetings of the board are held at such times and places as the board may deem necessary.~~

~~At the ((regular)) annual meeting the board shall elect a chair and vice-chair to hold office for one year commencing July 9. ((The executive director of the board shall serve as secretary. A vacancy in any office shall be filled for the remainder of the term by special election at the next special public meeting.)) Any resignation from the position of chair shall be filled for the remainder of the term by the vice-chair.~~

WSR 10-05-017
PERMANENT RULES
BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS

[Filed February 4, 2010, 3:35 p.m., effective March 7, 2010]

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

Purpose: The original definition of direct supervision was broad-based, and the board determined that a more specific definition was needed to guide the licensees in their business practices. After the hearing was held regarding the language filed with WSR 09-12-050, the board determined that a sentence that was deleted out of the existing rule language needed to be put back into the proposed rule language.

Citation of Existing Rules Affected by this Order: Amending chapter 196-25 WAC.

Statutory Authority for Adoption: RCW 18.43.035.

Adopted under notice filed as WSR 09-21-097 on October 20, 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 1, 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 7, 2010.

George A. Twiss
Executive Director

AMENDATORY SECTION (Amending WSR 06-22-033, filed 10/25/06, effective 11/25/06)

WAC 196-25-070 Providing direct supervision. ~~**Direct supervision** ((is a combination of activities))~~ **means the actions** by which a licensee maintains control over those decisions that are the basis for the findings, conclusions, ~~((analysis))~~ analyses, rationale, details, and judgments ~~((that are embodied in the development and))~~ required for the preparation of engineering or land surveying plans, specifications, plats, reports, and related activities. **Direct supervision** requires providing personal direction, oversight, inspection, observation and supervision of the work being certified.

~~((Communications between the licensee and those persons who are performing the work))~~ These actions may include, but are not limited to((use of any of the following ways)): Direct face-to-face communications; written communications; U.S. mail; electronic mail; facsimiles; telecommunications, or other current technology~~((Provided, That the licensee retains, maintains, and asserts continuing control and judgement))~~. Contractual or employment relations must

be in place between the licensee and unlicensed preparer to qualify as direct supervision. Mentoring is not direct supervision. Drawing or other document review after preparation without involvement in the design and development process as described above cannot be accepted as direct supervision.

WSR 10-05-018
PERMANENT RULES
COUNTY ROAD
ADMINISTRATION BOARD

[Filed February 4, 2010, 3:47 p.m., effective March 7, 2010]

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

Purpose: Setting a maximum RATA contribution to each NE Region county for 2R projects.

Citation of Existing Rules Affected by this Order: Amending WAC 136-161-080.

Statutory Authority for Adoption: Chapter 36.78 RCW.

Adopted under notice filed as WSR 09-23-095 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 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 21, 2010.

Jay P. Weber
Executive Director

AMENDATORY SECTION (Amending WSR 08-16-042, filed 7/29/08, effective 8/29/08)

WAC 136-161-080 Limitations on allocations of RATA funds to counties. For any project program period, no county shall receive a RATA fund allocation greater than the following maximum project RATA contribution, or percentage of the forecasted regional apportionment amount:

(1) PSR: No maximum project RATA contribution; 40% limit on percentage of the forecasted regional apportionment amount;

(2) NWR: No maximum project RATA contribution; twenty percent limit on percentage of the forecasted regional apportionment amount;

(3) NER: No maximum project RATA contribution; maximum RATA contribution to each county for 2R projects is seven hundred fifty thousand dollars; twelve and one-half

percent limit on percentage of the forecasted regional apportionment amount;

(4) SWR: No maximum project RATA contribution; fifteen percent limit on percentage of the forecasted regional apportionment amount;

(5) SER: No maximum project RATA contribution; percentage varies by county as follows:

(a) Asotin County	ten percent
(b) Benton County	fourteen percent
(c) Columbia County	eleven percent
(d) Franklin County	thirteen percent
(e) Garfield County	ten percent
(f) Kittitas County	thirteen percent
(g) Klickitat County	fourteen percent
(h) Walla Walla County	fourteen percent
(i) Yakima County	twenty percent

WSR 10-05-019
PERMANENT RULES
COUNTY ROAD
ADMINISTRATION BOARD

[Filed February 4, 2010, 3:48 p.m., effective March 7, 2010]

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

Purpose: Changing percentages in categories 2, 3 and 4 for project prioritization of RAP projects in the northeast region. Adding paragraph for proposed 2R project points distribution.

Citation of Existing Rules Affected by this Order: Amending WAC 136-161-080 [136-130-050].

Statutory Authority for Adoption: Chapter 36.78 RCW.

Adopted under notice filed as WSR 09-23-096 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 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 21, 2010.

Jay P. Weber
Executive Director

AMENDATORY SECTION (Amending WSR 01-05-009, filed 2/8/01, effective 3/11/01)

WAC 136-130-050 Project prioritization in northeast region (NER). Each county in the NER may submit projects requesting RATA funds not to exceed twenty-five percent of the forecasted NER biennial apportionment. Each project shall be rated in accordance with the NER RAP rating procedures. The NER biennial apportionment shall be divided into the following categories at the percentages shown, provided sufficient projects are submitted for prioritization in each category:

- Category 1 - Ten percent for bridge projects where RATA funds are used as a match for federal bridge ~~((replacement))~~ funds;
- Category 2 - ~~((Forty-five))~~ Thirty percent for reconstruction of rural collectors and arterials; ~~((and))~~
- Category 3 - ~~((Forty-five))~~ Thirty percent for resurfacing, restoration, rehabilitation (3R) type projects on rural collectors and arterials; and
- Category 4 - Thirty percent for resurfacing and restoration (2R) type projects on rural collectors and arterials.

In the event that no projects or an insufficient number of projects are submitted in any of the above categories to utilize the RATA funds set aside for the category, all remaining funds in that category or categories shall be divided among the remaining categories as the county road administration board deems appropriate. The intent is to divide all available funds into categories having a sufficient number of submitted projects to fully utilize the funds available at each allocation during the biennium.

Bridge projects may be submitted requesting RATA funds under one of the following conditions:

(1) Bridges must be approved for federal bridge ~~((replacement))~~ funding and RATA funds shall be used only as a match for such federal funding. Bridges will be ranked for RATA funding using the WSDOT priority list and may be added to the NER Category 1 priority array at any time during the biennium upon approval of the bridge for federal bridge ~~((replacement))~~ funding.

(2) A stand-alone bridge project may be submitted as an ordinary reconstruction or 3R RAP project provided that its priority rating has been computed by the bridge rating method in the NER RAP rating procedures. Such projects shall not be considered for funding from the bridge reserve described above.

(3) A RAP project may include a bridge when the cost of the bridge does not exceed twenty percent of the total project cost.

NER RAP rating points for reconstruction projects, 3R projects or ~~((non-federal))~~ nonfederal bridge ~~((replacement))~~ projects shall be assigned on the basis of one hundred points for a condition rating and fifty points for a service rating. The priority rating equals the sum of two and one half times the product of the service rating to the 1.25 power and the common logarithm of the number obtained by dividing one hundred by the condition rating. A total of ten points representing

local significance may be added to one project included in each county's biennial combined bridge, 3R and reconstruction submittal. A total of up to ten points representing missing links definition may also be added to one project included in each county's biennial combined bridge, 3R and reconstruction submittal. ~~((Prioritization of NER projects shall be on the basis of total NER RAP rating points shown on the appropriate project worksheet and the prospectus form of the project application.))~~

NER RAP rating points for 2R projects shall be assigned on the basis of five points for traffic volume, five points for traffic accidents, fifty points for structure, ten points for geometry, and fifteen points for roadside safety. A total of fifteen points representing local significance may be added to one 2R project included in each county's biennial submittal.

Prioritization of NER projects shall be on the basis of total NER RAP rating points shown on the appropriate project worksheet and the prospectus form of the project application.

WSR 10-05-029

PERMANENT RULES

DEPARTMENT OF HEALTH

(Medical Quality Assurance Commission)

[Filed February 9, 2010, 9:52 a.m., effective February 11, 2010]

Effective Date of Rule: February 11, 2010.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The earlier effective date is necessary due to the impact to the public's access to health care, RCW 34.05.380 (3)(c).

Purpose: WAC 246-919-396 Physicians and 246-918-075 Physician assistants, these rules provide for a background check temporary practice permit to be issued to an applicant for a physician or physician assistant license while a fingerprint-based national background check is completed. The permanent rules will replace the emergency rules adopted October 13, 2009.

Statutory Authority for Adoption: RCW 18.130.064 and 18.130.075.

Adopted under notice filed as WSR 09-24-113 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 2, 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 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 2, Amended 0, Repealed 0.

Date Adopted: February 9, 2010.

Maryella E. Jansen
Executive Director

NEW SECTION

WAC 246-918-075 Background check—Temporary practice permit. The medical quality assurance commission (MQAC) conducts background checks on applicants to assure safe patient care. Completion of a national criminal background check may require additional time. The MQAC may issue a temporary practice permit when the applicant has met all other licensure requirements, except the national criminal background check requirement. The applicant must not be subject to denial of a license or issuance of a conditional license under this chapter.

(1) If there are no violations identified in the Washington criminal background check and the applicant meets all other licensure conditions, including receipt by the department of health of a completed Federal Bureau of Investigation (FBI) fingerprint card, the MQAC may issue a temporary practice permit allowing time to complete the national criminal background check requirements.

The MQAC will issue a temporary practice permit that is valid for six months. A one time extension of six months will be granted if the national background check report has not been received by the MQAC.

(2) The temporary practice permit allows the applicant to work in the state of Washington as a physician assistant during the time period specified on the permit. The temporary practice permit is a license to practice medicine as a physician assistant.

(3) The MQAC issues a license after it receives the national background check report if the report is negative and the applicant otherwise meets the requirements for a license.

(4) The temporary practice permit is no longer valid after the license is issued or action is taken on the application because of the background check.

NEW SECTION

WAC 246-919-396 Background check—Temporary practice permit. The medical quality assurance commission (MQAC) conducts background checks on applicants to assure safe patient care. Completion of a national criminal background check may require additional time. The MQAC may issue a temporary practice permit when the applicant has met all other licensure requirements, except the national criminal background check requirement. The applicant must not be subject to denial of a license or issuance of a conditional license under this chapter.

(1) If there are no violations identified in the Washington criminal background check and the applicant meets all other licensure conditions, including receipt by the department of health of a completed Federal Bureau of Investigation (FBI) fingerprint card, the MQAC may issue a temporary practice permit allowing time to complete the national criminal background check requirements.

The MQAC will issue a temporary practice permit that is valid for six months. A one time extension of six months will

be granted if the national background check report has not been received by the MQAC.

(2) The temporary practice permit allows the applicant to work in the state of Washington as a physician during the time period specified on the permit. The temporary practice permit is a license to practice medicine.

(3) The MQAC issues a license after it receives the national background check report if the report is negative and the applicant otherwise meets the requirements for a license.

(4) The temporary practice permit is no longer valid after the license is issued or action is taken on the application because of the background check.

WSR 10-05-033
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed February 9, 2010, 10:02 a.m., effective March 12, 2010]

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

Purpose: The amendment corrects a WAC reference found in WAC 246-329-120 (3)(e). The current rule incorrectly references WAC 246-100-206 (6)(b). The correct reference should be WAC 246-100-202 (1)(e) for the requirements of administering prophylactic treatments to newborns.

Citation of Existing Rules Affected by this Order: Amending WAC 246-329-120 (3)(e).

Statutory Authority for Adoption: RCW 18.46.060.

Adopted under notice filed as WSR 09-22-084 on November 3, 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 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: February 9, 2010.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 07-07-075, filed 3/16/07, effective 4/16/07)

WAC 246-329-120 Birth center policies and procedures. The purpose of this section is to ensure the birth center is able to provide safe and appropriate care to the clients of the birth center.

(1) An applicant or licensee must establish and implement policy and procedures which include, but are not limited to:

(a) Definition of a low-risk maternal client who is eligible for birth services offered by the birth center.

(b) Definition of a client who is ineligible for birth services at the birth center.

(c) Identification and transfer of clients who, during the course of pregnancy, are determined to be ineligible.

(d) Identification and transfer of clients who, during the course of labor or recovery, are determined to be ineligible for continued care in the birth center.

(e) Written plans for consultation, referral and transfer of care for maternal client and newborn. Written plans for emergency transfer and transport of a newborn to a newborn nursery or neonatal intensive care nursery, and emergency transfer and transport of a maternal client to an appropriate obstetrical department, patient care area, or hospital where appropriate care is available.

(f) Transfer and discharge of neonates to minimize risk of newborn abduction.

(g) Protocol for medications and laboratory testing during labor and recovery if the birth center plans to deliver HIV positive clients.

(h) Rapid HIV testing using the opt out approach for women who have undocumented HIV test results when presenting to the birth center in labor.

(i) Protocol for electronic fetal heart monitoring or intermittent auscultation to monitor fetal status during labor.

(j) Protocol for the provision of MMR vaccine to nonimmune postpartum women.

(k) Protocol for the provision of anti D immune globulin to postpartum women who are unsensitized D-Negative and who deliver a D positive or Du positive infant.

(2) The applicant or licensee shall assure that transfer of care shall be available twenty-four hours per day to an appropriate obstetrical department, patient care area, or hospital where appropriate care is available.

(3) Clients shall receive and sign written informed consent which shall be obtained prior to the onset of labor and shall include, but is not limited to:

(a) Evidence of an explanation by personnel of the birth services offered, limitation of services, and potential risks;

(b) Explanation of the definition of low-risk maternal client;

(c) Explanation of a client who is ineligible for childbirth center services;

(d) Explanation of the birth center policies and procedures for consultation, referral, transfer of care and emergency transfer and transport;

(e) Explanation of prophylactic treatment of the eyes of the newborn (~~in accordance with WAC 246-100-206 (6)(b))~~). The prophylactic treatment is administered to the newborn according to WAC 246-100-202 (1)(e);

(f) Explanation of screening of newborns under chapter 70.83 RCW and chapter 246-650 WAC; and

(g) Explanation of why rapid HIV testing is available if documentation of an HIV test during prenatal care is not available;

(h) Explanation of the need for prophylactic administration of RhIG (immune globulin) within seventy-two hours of delivery for an Rh negative mother whose newborn(s) are Rh positive.

(4) The birth center shall provide or assure:

(a) Education of clients, family and support persons in childbirth and newborn care.

(b) Plans for immediate and long-term follow-up of clients after discharge from the birth center.

(c) Registration of birth and reporting of complications and anomalies, including sentinel birth defect reporting under chapter 70.58 RCW.

(d) Prophylactic treatment of the eyes of the newborn in accordance with WAC 246-100-206 (5)(b).

(e) Collection of a newborn screening blood specimen, or signed refusal, and submission to the department's newborn screening program under the requirements of WAC 246-650-020.

(f) Rapid HIV testing when documentation of an HIV test during prenatal care is not available, unless the client refuses to give consent and the refusal is documented.

(g) For HIV positive women, the antiretroviral medications during delivery and perform or arrange appropriate lab tests.

(h) Intrapartum intravenous antibiotics for Group B Strep positive women per the CDC protocol.

(i) For Hepatitis B positive women, HBIG and Hepatitis B immunization for the newborn.

(j) Infection control to housekeeping; cleaning, sterilization, sanitization, and storage of supplies and equipment, and health of personnel and clients.

(k) Actions to take when personnel, volunteers, contractors, or patients or clients exhibit or report symptoms of a communicable disease in an infectious stage in accordance with chapter 246-100 WAC, Communicable and certain other diseases and chapter 246-101 WAC, Notifiable conditions.

(l) Authorization and administration of medications, legend drugs and devices per appropriate health profession rules.

(m) Actions to address patient or client communication needs.

(n) Reporting of patient/client abuse and neglect according to chapter 74.34 RCW.

(o) Emergency care of client.

(p) Actions to be taken upon death of a client.

(q) Plans for service delivery when natural or man-made emergencies occur that prevent normal clinical operation.

(r) Waived laboratory tests, if applicable, including the procurement of a medical test site waiver under chapter 246-338 WAC.

WSR 10-05-046

PERMANENT RULES

HEALTH CARE AUTHORITY

(Community Health Services)

[Order 09-04—Filed February 10, 2010, 11:36 a.m., effective March 13, 2010]

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

Purpose: To add tribal governments to the rules governing eligibility and administration of the community health service grants.

Citation of Existing Rules Affected by this Order:
Amending WAC 182-20-100 and 182-20-160.

Statutory Authority for Adoption: RCW 41.05.160, 41.05.220, 41.05.230.

Adopted under notice filed as WSR 10-02-072 on January 5, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 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 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: February 10, 2010.

Jason Siems
Rules Coordinator

AMENDATORY SECTION (Amending Order 00-06, filed 2/7/01, effective 3/10/01)

WAC 182-20-100 Administration. The authority shall contract with community health clinics to provide primary health care in the state of Washington by:

(1) Developing criteria for the selection of community health clinics to receive funding;

(2) Establishing statewide standards governing the granting of awards and assistance to community health clinics;

(3) Disbursing funds appropriated for community health clinics only to those clinics meeting the criteria in WAC 182-20-160;

(4) Distributing available state funds to community health clinics ~~((according to the following priority in the order listed)), including:~~

(a) ~~((First, to))~~ Community health clinics that are private, nonprofit corporations classified exempt under Internal Revenue Service Rule 501 (c)(3) and governed by a board of directors including representatives from the populations served;

(b) ~~((Second, to))~~ Local health jurisdictions with an organized primary health clinic or division;

(c) ~~((Third, to))~~ Private nonprofit or public hospitals with an organized primary health clinic or department; and

(d) Tribal governments.

(5) Reviewing records and conducting on-site visits of contractors or applicants as necessary to assure compliance with these rules; and

(6) Withholding funding from a contractor or applicant until such time as satisfactory evidence of corrective action is received and approved by the authority, if the authority determines:

(a) Noncompliance with applicable state law or rule; or

(b) Noncompliance with the contract; or

(c) Failure to provide such records and data required by the authority to establish compliance with section 214(3), chapter 19, Laws of 1989 1st ex. sess., this chapter, and the contract; or

(d) The contractor or applicant provided inaccurate information in the application.

AMENDATORY SECTION (Amending Order 00-06, filed 2/7/01, effective 3/10/01)

WAC 182-20-160 Eligibility. Applicants shall:

(1) Demonstrate private, nonprofit, tax exempt status incorporated in Washington state or public agency status under the jurisdiction of a local or county government;

(2) Receive other funds from at least one of the following sources:

(a) Section 329 of the Public Health Services Act;

(b) Section 330 of the Public Health Services Act;

(c) Community development block grant funds;

(d) Title V Urban Indian Health Service funds; ~~((or))~~

(e) Tribal governments; or

(f) Other public or private funds providing the clinic demonstrates:

(i) Fifty-one percent of total clinic population are low income;

(ii) Fifty-one percent or greater of funds come from sources other than programs under WAC 182-20-160;

(3) Operate as a community health clinic providing primary health care for at least eighteen months prior to applying for funding;

(4) Provide primary health care services with:

(a) Twenty-four-hour coverage of the clinic including provision or arrangement for medical and/or dental services after clinic hours;

(b) Direct clinical services provided by one or more of the following:

(i) Physician licensed under chapters 18.57 and 18.71 RCW;

(ii) Physician's assistant licensed under chapters 18.71A and 18.57A RCW;

(iii) Advanced registered nurse practitioner under chapter 18.79 RCW;

(iv) Dentist under chapter 18.32 RCW;

(v) Dental hygienist under chapter 18.29 RCW;

(c) Provision or arrangement for services as follows:

(i) Preventive health services on-site or elsewhere including:

(A) Eye and ear examinations for children;

(B) Perinatal services;

(C) Well-child services; and

(D) Family planning services;

(ii) Diagnostic and treatment services of physicians and where feasible a physician's assistant and/or advanced registered nurse practitioner, on-site;

(iii) Services of a dental professional licensed under Title 18 RCW on-site or elsewhere;

(iv) Diagnostic laboratory and radiological services on-site or elsewhere;

(v) Emergency medical services on-site or elsewhere;

- (vi) Arrangements for transportation services;
 - (vii) Preventive dental services on-site or elsewhere; and
 - (viii) Pharmaceutical services, as appropriate, on-site or elsewhere;
- (5) Demonstrate eligibility to receive and receipt of reimbursement from:
- (a) Public insurance programs; and
 - (b) Public assistant programs, where feasible and possible;
- (6) Have established for at least eighteen months an operating sliding scale fee schedule for adjustment of charges, based upon the individual's ability to pay for low-income individuals;
- (7) Provide health care regardless of the individual's ability to pay; and
- (8) Establish policies and procedures reflecting sensitivity to cultural and linguistic differences of individuals served and provide sufficient staff with the ability to communicate with the individuals.

WSR 10-05-050**PERMANENT RULES****DEPARTMENT OF LICENSING**

[Filed February 11, 2010, 7:46 a.m., effective March 14, 2010]

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

Purpose: Exempt common carriers from the hulk hauler licensing requirements when transporting demolished vehicles for hire between vehicle wreckers and/or scrap processors.

Citation of Existing Rules Affected by this Order: Amending WAC 308-65-010 and 308-65-130.

Statutory Authority for Adoption: RCW 46.79.080.

Adopted under notice filed as WSR 09-23-080 on November 16, 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 2, 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 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: February 11, 2010.

Walt Fahrer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 93-08-076, filed 4/6/93, effective 5/7/93)

WAC 308-65-010 Definitions—General. Common carrier. Common carrier means any person who undertakes to transport property for the general public by motor vehicle for compensation as outlined in chapter 81.80 RCW. For the purposes of this chapter, common carriers licensed under the provisions of chapter 81.80 RCW are exempt from the hulk hauler licensing requirements when transporting demolished vehicles for hire between vehicle wreckers and/or scrap processors licensed by the state or country in which they operate, and the ownership interest in the vehicles is transferred directly between the vehicle wreckers and/or scrap processors.

Deals in vehicles. For the purposes of this chapter, deals in vehicles means to obtain an ownership interest in a vehicle for the purpose of transporting and/or selling the vehicle to a licensed vehicle wrecker or scrap processor by obtaining ownership as set forth in WAC 308-65-080.

Demolish. To demolish means ~~((the))~~ to completely destroy a vehicle, vehicle salvage, and all parts by rendering ((of vehicle salvage into)) it completely unusable except for recyclable ((metals)) material, for example, by means of a hydraulic crusher, hydraulic baler and shears or a shredder operated by a licensed scrap processor.

Hulk hauler. Any person who deals in vehicles for the sole purpose of transporting and/or selling them to a licensed vehicle wrecker or scrap processor in substantially the same form in which they are obtained.

AMENDATORY SECTION (Amending WSR 00-13-020, filed 6/12/00, effective 7/13/00)

WAC 308-65-130 Scrap processor—Procedures for acquiring vehicles for demolition. On what ownership documents may I acquire vehicles? Supporting acquisition. A scrap processor may acquire vehicles for demolition if the transferor can furnish ownership documents, in the form of a certificate of title properly endorsed, from a state issuing a title, or a certificate of registration and notarized bill of sale from a jurisdiction issuing a registration certificate only or other approved ownership documents as follows:

- (1) Affidavit of lost or stolen title and release of interest from the owner.
- (2) Affidavit of sale of a junk vehicle from the landowner who has complied with RCW 46.55.230.
- (3) Bills of sale pursuant to WAC 308-63-020 for vehicles from nontitle jurisdictions, for vehicles that have had their titles surrendered to a state after having been declared a total loss, and for vehicles of the type to which titles are not issued.
- (4) Affidavit of sale from a registered tow truck operator.
- (5) A court order.
- (6) Invoice or bill of sale from wrecker.
- (7) Scrap processors may acquire vehicle salvage from out-of-state provided that the out-of-state salvage company submits an affidavit certifying its rightful and true possession of the vehicles or parts contained in the bulk shipment and that he/she has complied with all statutes, rules and regula-

tions relating to such vehicles in the state or province of origin.

(8) Vehicle parts may be acquired by use of an invoice or bill of sale which describes the part and identifies the seller by name and address.

Common carriers transporting vehicles for hire between vehicle wreckers and/or scrap processors licensed by the state or country in which they operate must provide ownership documents as outlined in WAC 308-65-080, or an affidavit of certification for the load that includes the origin and destination of the load and lists each vehicle on the load by VIN number, year, make, and model. The certification must be signed by the shipper under the penalty of perjury indicating the load of demolished vehicles has been processed in accordance with all statutes, rules and regulations relating to such vehicles in the state or province of origin, and meet the criteria listed in this chapter.

WSR 10-05-059
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed February 11, 2010, 2:11 p.m., effective March 14, 2010]

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

Purpose: This rule amendment creates a permit to be issued in conjunction with Washington pink shrimp trawl licenses. The permit, to be issued annually and at no cost to fishers, would describe conditions to be met to participate in the Washington ocean shrimp trawl fishery, including the condition that vessels participate in federal and/or state groundfish observer programs. Without observer coverage, information about bycatch cannot be collected. In data-poor situations, management must be more conservative to address the uncertainty than might otherwise be necessary had adequate information been available.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-050 Ocean pink shrimp trawl fishery—Coastal waters.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 09-23-117 on November 18, 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 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: February 5, 2010.

Miranda Wecker, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 03-30, filed 2/18/03, effective 3/21/03)

WAC 220-52-050 Ocean pink shrimp trawl fishery—Coastal waters. It is unlawful to fish for, possess or deliver ocean pink shrimp taken for commercial purposes from the waters of the Exclusive Economic Zone, except as provided for in this section:

Area

~~(1) ((Ocean pink shrimp fishery:~~

~~(a)) It is unlawful to fish for ocean pink shrimp within the territorial boundaries of the state. A violation of this subsection is punishable under RCW 77.15.550. Violation of commercial fishing area or time—Penalty.~~

Season

~~(2) It is unlawful to fish for, take, or possess on board a fishing vessel, pink shrimp, except during the following time: The open season for trawl gear is April 1 through October 31 of each year. A violation of this subsection is punishable under RCW 77.15.550. Violation of commercial fishing area or time—Penalty.~~

~~((b) The following gear is prohibited:))~~

Gear

~~(3) It is unlawful to fish with or possess pink shrimp taken with shrimp trawl gear having a net mesh size greater than two inches in the intermediate or codend, except for net mesh used in ((fish-excluder devices-)) by-catch reduction devices defined under subsection (4) of this section. However, it is lawful to have net mesh larger than two inches in the wings or body of the trawl.~~

~~((e)) (4) It is unlawful to fish with trawl gear for pink shrimp for commercial purposes unless an approved by-catch reduction device is used in each net. Approved by-catch reduction((s)) devices ((are)) include:~~

~~((f)) (a) A Soft Panel By-catch Reduction Device, which uses a mesh panel to guide fish out of an escape hole. An approved soft-panel must meet the following criteria:~~

~~((A)) (i) The panel must completely cover some portion of the net in cross-section, meaning it must extend completely across the full opening of the net in one continuous piece. The panel must be securely fastened to the net around the entire perimeter, such that a 110 mm diameter sphere cannot pass beyond the panel into the terminal end of the codend;~~

~~((B)) (ii) The panel meshes must be constructed of netting material with individual meshes no larger than 5.5 inches, measured between opposing knots, and must be constructed of a single panel of continuous netting, without zip-pers or other devices designed to allow disabling of the panel such that large fish can pass back into the codend;~~

~~((C)) (iii) The escape hole must, when spread open, expose a hole of at least 100 square inches; and~~

~~((D))~~ (iv) The escape hole must be forward of the mesh panel and must begin within four meshes of the furthest aft point of attachment of the mesh panel to the net(~~(;)~~).

~~((H))~~ (b) A Nordmore Grate By-catch Reduction Device, which uses a rigid panel of narrowly spaced vertical bars to guide fish out of an escape hole in front of the panel, generally in the top of the net. An approved Nordmore grate must meet the following criteria:

~~((A))~~ (i) The exterior circumference of the rigid panel must fit completely within the interior circumference of the trawl net, such that there is no space between the panel and the net that will allow a 110 mm sphere to pass beyond the panel, into the terminal area of the codend;

~~((B))~~ (ii) None of the openings between the vertical bars in the rigid panel may exceed two inches in width;

~~((C))~~ (iii) The escape hole must, when spread open, expose a hole of at least 100 square inches; and

~~((D))~~ (iv) The escape hole must be forward of the rigid panel and must begin within four meshes of the furthest aft point of attachment of the rigid panel to the net.

~~((d))~~ All by-catch reduction devices and codends used for trawl fishing for pink shrimp must be readily accessible and made available for inspection at the request of an authorized agent of the state. No trawl gear may be removed)) (5) It is unlawful to remove trawl gear from the vessel prior to offloading of shrimp.

~~((e))~~ (6) It is unlawful to modify by-catch reduction devices in any way that interferes with their ability to allow fish to escape from the trawl, except for the purpose of testing the by-catch reduction device to measure shrimp loss. Authorized testing of by-catch reduction devices must meet the following criteria:

~~((H))~~ (a) Testing is allowed by special permit only, consistent with the terms and conditions of the permit; and

~~((H))~~ (b) For vessels fishing two nets simultaneously (double-rigged boats), only one net may contain a disabled by-catch reduction device, and the other net must be fishing a fully functional by-catch reduction device as described in ~~((e) of this))~~ subsection (4) of this section.

~~((f))~~ Minimum number of shrimp per pound:)) (7) A violation of subsections (4) through (6) of this section is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(8) It is unlawful to land or deliver pink shrimp to an original receiver that exceeds the following count per pound restriction: The count per pound must average no more than 160 shrimp per pound for a minimum of two samples, increasing at a rate of one sample per one thousand pounds landed or in possession, up to a maximum requirement of twenty samples. Such samples shall consist(~~(s))~~ of at least one pound (~~(øf))~~ each of whole, unbroken shrimp taken at random from throughout the individual load landed or in possession. This landing restriction shall apply only to loads of 3,000 pounds of shrimp or more. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

Incidental catch

~~((g))~~ Incidental catch finfish:)) (9) It is unlawful to take salmon incidental to any shrimp trawl fishery.

(10) It is unlawful to retain any bottomfish species taken incidental to any shrimp trawl fishery, except as provided for in WAC 220-44-050.

~~((h))~~ Incidental catch shellfish:

(i) It is unlawful to retain any species of shellfish except that it is lawful to retain up to 50 pounds round weight of other shrimp species taken incidentally in the ocean pink shrimp fishery, or octopus or squid.

(ii) It is unlawful to fish for ocean pink shrimp within the territorial boundaries of the state.

~~((i))~~ (11) It is unlawful to retain any species of shellfish, except that it is permissible to:

(a) Retain up to 50 pounds round weight of other shrimp species taken incidentally in the ocean pink shrimp fishery; and

(b) Retain octopus or squid.

(12) A violation of subsections (9) through (11) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

License

(13) An ocean pink shrimp delivery license is ~~((the license))~~ required to operate the gear provided for in this section, and it allows the operator to retain shrimp taken in the waters of the Exclusive Economic Zone.

~~((2))~~ Fisheries for shrimp species other than ocean pink shrimp or ocean spot shrimp: Species other than ocean pink shrimp and ocean spot shrimp may only be taken incidentally to the ocean pink shrimp and ocean spot shrimp fisheries:)) A violation of this subsection is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

Permit

(14) It is unlawful to fish for, retain, land, or deliver shrimp taken with trawl gear without a valid shrimp trawl fishery permit.

(15) It is unlawful to take, retain, land, or deliver any shrimp or groundfish taken with trawl gear without complying with all provisions of a shrimp trawl fishery permit.

(16) A violation of subsection (14) or (15) of this section is punishable under RCW 77.15.750.

WSR 10-05-063

PERMANENT RULES

HORSE RACING COMMISSION

[Filed February 12, 2010, 10:23 a.m., effective March 15, 2010]

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

Purpose: To adopt a new section, WAC 260-16-063, to clarify the definition of a race meet for the purpose of when an association is required to withhold percentages of the mutual handle for calculating the Washington bred owners and breeders awards.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 10-02-070 on January 4, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 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 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 11, 2010.

Douglas L. Moore
Deputy Secretary

NEW SECTION

WAC 260-16-063 Washington-bred owners' bonus and breeder awards. Consistent with the applicable laws in chapter 67.16 RCW and the applicable rules in Title 260 WAC, the Washington-bred owners' bonus and breeder awards will be retained, collected, and distributed as follows:

(1) Washington-bred owner's bonus. A Class 1 racing association will withhold and pay daily to the commission one percent of the gross receipts of all in-state parimutuel machines, including approved satellite locations during the period of its authorized live race meet.

(2) Washington-bred breeder's award. A Class 1 racing association may withhold, in addition to the amounts authorized to be retained in RCW 67.16.170, for each authorized day of racing an additional six percent of the daily gross receipts of all in-state parimutuel machines from exotic wagers at its race meet and approved satellite locations. If a Class 1 racing association does retain an additional six percent of the daily gross receipts of all in-state parimutuel machines from exotic wagers at its race meet, the Class 1 racing association must provide one-sixth of the additional six percent for Washington-bred breeder awards. At the end of its authorized live race meet, a Class 1 racing association must pay to the commission the one-sixth of the additional six percent retained from exotic wagers for Washington-bred breeder's awards.

(3) The race meet will mean the period beginning the first day of live racing and concluding on the last day of live racing, and will include wagering on live races conducted on the grounds of the Class 1 racing association and simulcast wagering conducted during the period of the race meet. It will include wagering on simulcast races conducted during the live race meet, whether or not live racing is being conducted.

(4) The race meet will not include any wagering conducted at a Class 1 racing association or its approved satellite locations beginning the day after the last day of live racing and continuing until the day before the first day of live racing the following race season.

(5) Moneys received by the commission for Washington-bred owner's bonus and breeder's awards shall be deposited in the Washington-bred owner's bonus fund and breeder's award fund account in the custody of the state treasurer. The commission shall distribute the Washington-bred owner's bonus and breeder's awards as provided in WAC 260-16-065.

WSR 10-05-064

PERMANENT RULES

HORSE RACING COMMISSION

[Filed February 12, 2010, 10:25 a.m., effective March 15, 2010]

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

Purpose: To amend WAC 260-24-580 to require all assistant starters, or anyone appointed by the official starter to assist with handling horses in the starting gate to wear safety vests.

Citation of Existing Rules Affected by this Order: Amending WAC 260-24-580.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 10-02-035 on December 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 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 1, 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 11, 2010.

Douglas L. Moore
Deputy Secretary

AMENDATORY SECTION (Amending WSR 09-03-008, filed 1/8/09, effective 2/8/09)

WAC 260-24-580 Starter and assistant starters. (1) The starter is responsible for the following duties:

(a) Approve all horses which have never started to ensure that the horse is familiar with, and capable of, breaking from the starting gate.

(b) Ensure all participants have an equal opportunity to a fair start;

(c) Supervise the assistant starters;

(d) Provide a sufficient number of assistant starters for each race;

(e) Assign the starting gate stall positions to assistant starters and notify the assistant starters of their respective

stall positions, or assign a foreman to act in his behalf, before post time for each race;

(f) Assess and make recommendations to the board of stewards on the ability of each person applying for an initial jockey license in breaking from the gate and working a horse in the company of other horses;

(g) Load horses into the gate in any order necessary to ensure a safe and fair start;

(h) Recommend to the stewards horses that should be scratched because a horse at the starting gate is refusing to load or is unruly.

(2) The starter will place and remove horses on the starter's list for poor or unruly behavior in the starting gate. Horses placed on the starter's list will be refused entry until the horse has been satisfactorily schooled in the starting gate. Schooling will be under the direct supervision of the starter or his designee.

(3) The starter has complete authority over the starting gate, the starting of horses, and the authority to give orders, which are not in conflict with these rules.

(4) The starter will appoint all assistant starters. Assistant starters must first demonstrate they are adequately trained to safely handle horses in the starting gate. In emergencies the starter may appoint qualified individuals to act as substitute assistant starters.

All assistant starters, and anyone appointed by the starter to act as a substitute assistant starter, must wear a securely fastened safety vest, which meets the shock-absorbing protection required in WAC 260-12-180(2).

(5) Assistant starters may not:

(a) Handle or take charge of any horse in the starting gate without the expressed permission of the starter;

(b) Impede the start of a race;

(c) Strike a horse with a whip;

(d) Use a device, unless approved by the stewards, to assist in the loading of a horse into the starting gate;

(e) Slap, boot or otherwise dispatch a horse from the starting gate;

(f) Strike or use abusive language to a jockey; or

(g) Accept or solicit any gratuity or payment other than his/her regular salary, directly or indirectly, for services in starting a race.

(6) The starter and assistant starters will report all unauthorized activities to the stewards.

WSR 10-05-065

PERMANENT RULES

HORSE RACING COMMISSION

[Filed February 12, 2010, 10:36 a.m., effective March 15, 2010]

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

Purpose: To repeal sections of chapter 260-08 WAC that address public records and adopt new chapter 260-09 WAC, this incorporates the Washington state recommended model rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 260-08-620, 260-08-630, 260-08-650, and 260-08-660.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 10-02-039 on December 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 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 8, Amended 0, Repealed 4.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 8, Amended 0, Repealed 4.

Number of Sections Adopted Using Negotiated Rule Making: New 8, Amended 0, Repealed 4; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 11, 2010.

Douglas L. Moore
Deputy Secretary

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 260-08-620	Requests for public records.
WAC 260-08-630	Copying fees.
WAC 260-08-650	Review of denials of public records.
WAC 260-08-660	Protection of public records.

Chapter 260-09 WAC

PUBLIC RECORDS

NEW SECTION

WAC 260-09-010 Authority and purpose. (1) The purpose of these rules is to establish the procedures the commission will follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the commission and establish processes for both requestors and the commission staff that are designed to best assist members of the public in obtaining such access.

(2) The purpose of the chapter is to also provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. These rules will be interpreted in favor of disclosure. In carrying out its responsibilities, the commission will be guided by the provisions of the public records law of the state of Washington.

NEW SECTION

WAC 260-09-020 Agency description—Contact information—Public records officer. (1) The commission is responsible for licensing, regulating and supervising all horse racing meets in the state where the parimutuel system is used. The commission also approves and regulates satellite locations and simulcasting, and licenses and regulates advance deposit wagering. The commission's central office is located at 6326 Martin Way, Suite 209, Olympia, WA 98516-5578. The commission has field offices at Emerald Downs in Auburn, WA, and nonprofit meets while in operation.

(2) Any person wishing to request access to public records of the commission, or seeking assistance in making such a request should contact the public records officer of the commission. Information is also available at the commission's web site at www.whrc.wa.gov.

(3) The public records officer will oversee compliance with accessing public records the act but another commission staff member may process the request. Therefore, these rules will refer to the public records officer "or designee." The public records officer or designee will provide the "fullest assistance" to requestors; create and maintain for use by the public and commission employees an index to public records of the commission; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the commission.

NEW SECTION

WAC 260-09-030 Availability of public records. (1) Hours for inspection of records. Public records are available for inspection and copying during normal business hours of the commission. Records must be inspected at the offices of the commission.

(2) Organization of records. The commission will take reasonable actions to protect records from damage and disorganization. A requestor may not take records from commission offices without the permission of the public records officer or designee. A variety of records is available on the commission web site at www.whrc.wa.gov. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(3) Making a request for public records.

(a) Any person wishing to inspect or copy public records of the commission should make the request in writing, fax, or e-mail addressed to the public records officer and include the following information:

- (i) Name of requestor;
- (ii) Address of requestor;
- (iii) Other contact information, including telephone number and any e-mail address;
- (iv) Identification of the public records adequate for the public records officer or designee to locate the records; and
- (v) The date and time of day of the request.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the

records or a deposit. Standard photocopies will be provided at fifteen cents per page.

(c) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.

NEW SECTION

WAC 260-09-040 Processing of public records requests—General. (1) Acknowledging receipt of request. Within five business days of receipt of the request, the public records officer will do one or more of the following:

- (a) Make the records available for inspection or copying;
- (b) If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;
- (c) Provide a reasonable estimate of when records will be available; or
- (d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone. The public records officer or designee may revise the estimate of when records will be available; or
- (e) Deny the request.

(2) Consequences of failure to respond. If the commission does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer to determine the reason for the failure to respond.

(3) Protecting rights of others. In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(4) Records exempt from disclosure. Some records are exempt from disclosure, in whole or in part. If the commission believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(5) Inspection of records.

(a) Consistent with other demands, the commission will promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes the agency to copy.

(b) The requestor must claim or review the assembled records within thirty days of the commission notification to him or her that the records are available for inspection or copying. The agency will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the commission may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(6) Providing copies of records. After inspection is complete, the public records officer or designee will make the requested copies or arrange for copying.

(7) Providing records in installments. When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(8) Completion of inspection. When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the commission has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(9) Closing withdrawn or abandoned request. When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the commission has closed the request.

(10) Later discovered documents. If, after the commission has informed the requestor that it has provided all available records, the commission becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

NEW SECTION

WAC 260-09-050 Processing of public records requests—Electronic records. (1) The process for requesting electronic public records is the same as for requesting paper public records.

(2) When a requestor requests records in an electronic format, the public records officer will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the agency and is generally commercially available, or in a format that is reasonably translatable from the format in which the agency keeps the record.

NEW SECTION

WAC 260-09-060 Exemptions. (1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by the commission for inspection and copying: Chapter 10.97 RCW.

(2) The commission is prohibited by statute from disclosing lists of individuals for commercial purposes.

NEW SECTION

WAC 260-09-070 Costs of providing copies of public records. (1) There is no fee for inspecting public records. A requestor may obtain standard black and white photocopies for fifteen cents per page. (There is no charge for photocopies of twenty pages or less.)

Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The commission will not charge sales tax when it makes copies of public records.

(2) Costs for electronic records. The cost of electronic copies of records shall be one dollar for information on a CD-ROM. There will be no charge for e-mailing electronic records to a requestor, unless another cost applies such as a scanning fee.

(3) Costs of mailing. The commission may also charge actual costs of mailing, including the cost of the shipping container.

(4) Payment. Payment may be made by cash, check, or money order to the Washington horse racing commission.

NEW SECTION

WAC 260-09-080 Review of denials of public records. (1) Any person who objects to the initial denial or partial denial of a records request may petition in writing (including e-mail) to the public records officer for a review of that decision. The petition will include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) Consideration of petition for review. The public records officer will promptly provide the petition and any other relevant information to the executive secretary of the commission. The executive secretary will immediately consider the petition and either affirm or reverse the denial within two business days following the commission's receipt of the petition, or within such other time as commission and the requestor mutually agree to.

(3) Review by the attorney general's office. If the commission denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office

to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) Judicial review. Any person may obtain court review of denials of public records requests at the conclusion of two business days after the initial denial regardless of any internal administrative appeal.

WSR 10-05-079

**PERMANENT RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed February 15, 2010, 12:31 p.m., effective March 18, 2010]

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

Purpose: The health and recovery services administration (HRSA) is revising WAC 388-546-5500 Modifications of privately owned vehicles, because it no longer covers modifications of privately owned vehicles. This amendment is required to implement cost savings initiatives effective July 1, 2009, and to be in compliance with the department's federal state plan assurances. This permanent rule replaces the emergency rule currently in place under WSR 09-22-036.

Citation of Existing Rules Affected by this Order: Amending WAC 388-546-5500.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: 42 C.F.R. Part 440.

Adopted under notice filed as WSR 10-01-164 on December 22, 2009.

A final cost-benefit analysis is available by contacting Walter Neal, DSHS/HRSA, P.O. Box 45531, Olympia, WA 98504-5531, phone (360) 725-1703, fax (360) 586-9727, e-mail nealw@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 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: February 15, 2010.

Susan N. Dreyfus
Secretary

AMENDATORY SECTION (Amending WSR 01-06-029, filed 3/2/01, effective 4/2/01)

WAC 388-546-5500 Modifications of privately owned vehicles-Noncovered. (1) ~~((MAA may cover and~~

~~reimburse the purchase of vehicle driving controls, a vehicle wheelchair lift conversion, or the purchase or repair of a vehicle wheelchair lift, when:~~

~~(a) The requested item is necessary for the client's transportation to medically necessary MAA covered services; and~~

~~(b) The client owns a vehicle that MAA determines is suitable for modification; and~~

~~(c) Medical transportation provided under WAC 388-546-5000 through 388-546-5400 cannot meet the client's need for transportation to and from medically necessary covered services at a lower total cost to the department (including anticipated costs); and~~

~~(d) Prior approval from MAA is obtained))~~ The department does not cover the purchase or repair of equipment for privately owned vehicles or modifications of privately owned vehicles under the nonemergency transportation program.

~~(2) ((Any vehicle driving controls, vehicle wheelchair lift conversion or vehicle wheelchair lift purchased by MAA under this section becomes the property of the client on whose behalf the purchase is made. MAA assumes no continuing liability associated with the ownership or use of the device.~~

~~(3) MAA limits the purchase of vehicle driving control(s), vehicle wheelchair lift conversion or vehicle wheelchair lift to one purchase per client. If a device purchased under this section becomes inoperable due to wear or breakage and the cost of repair is more than the cost of replacement, MAA will consider an additional purchase under this section as long as the criteria in subsection (1) of this section are met.~~

~~(4) MAA must remain the payer of last resort under this section.~~

~~(5) MAA does not cover the purchase of any new or used vehicle under this section or under this chapter))~~ The purchase or repair of equipment for privately owned vehicles or modifications of privately owned vehicles is not a healthcare service. Exception to rule (ETR) as described in WAC 388-501-0160 is not available for this nonhealthcare service.

WSR 10-05-109

**PERMANENT RULES
DEPARTMENT OF**

LABOR AND INDUSTRIES

[Filed February 17, 2010, 9:52 a.m., effective April 1, 2010]

Effective Date of Rule: April 1, 2010.

Purpose: The following amendments will bring together operations that are so compatible that there is no basis for keeping them separate as they are now.

WAC 296-17A-4002-00 and 296-17A-4002-01, dairy products manufacturing - repeal these classifications.

WAC 296-17A-3902, food products manufacturing - creating a new subclassification (3902-28) to cover those businesses currently reporting in classifications WAC 296-17A-4001-00 and 296-17A-4002-01.

Citation of Existing Rules Affected by this Order: Repealing WAC 296-17A-4002; and amending WAC 296-17A-3902.

Statutory Authority for Adoption: RCW 51.16.035, 51.16.100.

Adopted under notice filed as WSR 10-01-172 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 0, Amended 1, Repealed 1.

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

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

Date Adopted: February 17, 2010.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3902 Classification 3902.

3902-00 Fruit and vegetable: Cannery and freezer operations

Applies to establishments engaged in fruit and vegetable canning or freezing operations for wholesale customers. Operations contemplated by this classification include the receipt of fruit and vegetables directly from growers or dealers, preparing produce for canning by removing foreign materials such as leaves or weeds, washing, sterilizing, grading, peeling, slicing, coring, blanching, scalding and pre-cooking, premeasuring, mixing them in a hopper with sugar or other ingredients, and further processing into canned or frozen products. Pea vining, when performed by employees of a cannery, is also included in this classification.

This classification excludes establishments engaged in evaporating, preserving or dehydrating fruits and vegetables which are to be reported separately in classification 3902-01; establishments engaged in manufacturing fruit juice, cider, jam or jelly which are to be reported separately in classification 3902-02; establishments engaged in packing *fresh* vegetables and fruits which are to be reported separately in classification 2104; and pea vining when done by employees of farm operations or farm labor contractors which is to be reported separately in the applicable farm classification.

3902-01 Fruit and vegetable: Evaporating, preserving or dehydrating

Applies to establishments engaged in evaporating, preserving, or dehydrating fruits and vegetables for wholesale customers. Operations contemplated by this classification include the receipt of fruit and vegetables directly from growers or dealers, washing, peeling, cooking, pressing fruits and vegetables by machine, adding preservatives and congeal-

ants, pasteurizing, then dehydrating, drying, or evaporating to remove the moisture which preserves the fruits and vegetables and leaves only the dry, solid portion. Finished products are packaged in cans, plastic bags, or boxes for shipping.

This classification excludes establishments engaged in canning or freezing of fruits and vegetables which are to be reported separately in classification 3902-00; establishments engaged in manufacturing fruit juice, cider, jam or jelly which are to be reported separately in classification 3902-02; establishments engaged in packing fresh vegetables and fruits which are to be reported separately in classification 2104; and farm operations which are to be reported separately in the applicable farm classification.

3902-02 Fruit syrup or juice, cider, jam or jelly: Manufacturing

Applies to establishments engaged in the manufacture of fruit syrup, juice, cider, jam, or jelly. Operations contemplated by this classification include the receipt of fruit directly from growers or dealers, washing, peeling, and cooking the fruit, extracting juice and separating seeds from pulp with fruit presses or separators, adding sugars, congealants and preservatives, pasteurizing, blending juices to produce a variety of flavors, and further processing to produce bottled, canned, or concentrate products.

This classification excludes establishments engaged in canning or freezing of fruits and vegetables which are to be reported separately in classification 3902-00; establishments engaged in evaporating, preserving or dehydrating fruits and vegetables which are to be reported separately in classification 3902-01; and farm operations which are to be reported separately in the applicable farm classification.

3902-11 Chocolate, cocoa, corn products: Manufacturing

Applies to establishments engaged in the manufacture of cocoa or chocolate such as Dutch or sweet chocolate or of corn products such as, but not limited to, tortillas. Operations contemplated by this classification include receipt of corn and cocoa beans from growers or dealers, processing operations, testing, packaging and shipping. Foreign matter is removed from the cocoa beans and they are sorted, divided, cleaned, and roasted in ovens. Shells are cracked, usually by machines, and the beans examined to ensure quality. Depending on the products being manufactured, beans may be pasteurized, ground, further dried, mixed with chocolate liquor, sugar, powdered milk, cocoa butter, or potassium solutions to make into finished products. Depending on the corn product being made, ingredients are pressed, kneaded, cut, shaped or flattened, and baked or cooked.

This classification excludes establishments engaged in the manufacture of crackers, potato chips, ravioli, tamale, and pasta, or chocolate candy and confections which are to be reported separately in classification 3906, and farm operations which are to be reported separately in the applicable farm classification.

3902-12 Baking powder, dextrine, glucose and starch: Manufacturing

Applies to establishments engaged in the manufacture of baking powder, dextrine, glucose and starch. Operations contemplated by this classification include the receipt of vegeta-

bles and grains, such as, but not limited to, potatoes, corn, and wheat from growers or dealers, processing operations, testing, storing finished products in storage tanks, packaging into drums or cans, and shipping. Vegetables or grains are cleaned, sorted, and foreign matter removed. They are dumped onto conveyors and transported to grinding machines where they are ground into a starch paste. Water may be added to make liquid starch or starch milk or dryers may remove excess moisture. Starch blends may be made from raw starch suspensions using chemical solutions. Shakers remove bran, gluten or other particles from the starch suspension. Dextrine is made by further mixing the starch with dextrine paste, adding chemicals, cooking and stirring until the starch is converted to dextrine. Baking powder is made by mixing baking soda, starch, and an acid compound such as cream of tartar.

This classification excludes establishments engaged in the manufacture of food sundries not covered by another classification which are to be reported separately in classification 3902-14 and farm operations which are to be reported separately in the applicable farm classification.

3902-13 Nut shelling, egg breaking, coconut shredding and peanut handling

Applies to establishments engaged in nut shelling, egg breaking, coconut shredding, and peanut handling. Nuts are received from suppliers in bulk and placed into machinery which cracks shells and separates broken shells from the nut meat. Another machine sorts whole nut meats from those that are chipped, broken, or contaminated. At each machine, nuts are examined for rejects, and foreign matter is removed with a vacuum hose or by hand. They may be chopped, sliced, or left whole, then poured from the machines into sacks or containers. The meats of certain nuts, such as almonds, may be ground into meal, then canned for shipment. This classification also includes the grading and polishing of nuts, and shredding of coconuts. Egg breaking machines break eggs and separate the yolk from the white. They are observed for color, quantity, and clarity; inferior yolks or whites are discarded prior to being automatically dropped onto separator trays with individual cups. Eggs may then be mixed with water, pasteurized or dried prior to packaging.

This classification excludes establishments engaged in the manufacture of oils which are to be reported separately in classification 3902-27 and establishments engaged in the manufacture of food sundries which are to be reported separately in classification 3902-14.

3902-14 Food sundries, N.O.C.: Manufacturing or processing

Applies to establishments engaged in the manufacture of a variety of miscellaneous food products not covered by another classification (N.O.C.). Products include, but are not limited to, imitation crab, spices, peanut butter, condiments, salsa, salad dressings, mayonnaise, soups, tofu, instant potatoes, salads and certain ready-to-eat dishes that are usually sold to wholesale distributors. This classification also applies to the grinding and roasting of coffee beans. Operations contemplated by this classification include the receipt of raw ingredients from growers or dealers, processing operations, testing, quality control, laboratory operations, packaging and

shipping. Individual processes, which vary depending on the product being manufactured, include, but are not limited to, cleaning, dividing, grinding, mixing, blending with other ingredients, cooking, cooling, dividing again into desired portions, and packaging. The products are packaged in plastic bags, bottles, or cans, usually by machine. Some products require vacuum sealing, pasteurizing, or freezing.

This classification excludes establishments engaged in the manufacture of crackers, potato chips, ravioli, tamale, pasta, cough drops, confectionery, and chewing gum which are to be reported separately in classification 3906 and farm operations which are to be reported separately in the applicable farm classification.

3902-15 Pickles and sauerkraut: Manufacturing

Applies to establishments engaged in the manufacture of pickles and sauerkraut. Operations contemplated by this classification include the receipt of produce from growers or dealers, processing operations, testing, laboratory operations, packaging and shipping. Produce, such as cucumbers and cabbage, is cleaned, cut, chopped and placed in barrels, vats, or tanks of brine (a mixture of salt, sugar, spices, vinegar) until cured. At the end of curing period, product may be packed into glass jars, plastic bags, or cans. This classification also applies to the pickling of fruits or vegetables such as, but not limited to, tomatoes, peppers, and asparagus.

This classification excludes establishments engaged in canning or freezing of fruits and vegetables which are to be reported separately in classification 3902-00; establishments engaged in evaporating, preserving or dehydrating fruits and vegetables which are to be reported separately in classification 3902-01; establishments engaged in packing fresh vegetables and fruits which are to be reported separately in classification 2104; and farm operations which are to be reported separately in the applicable farm classification.

3902-17 Pet food: Manufacturing

Applies to establishments engaged in the manufacture of frozen or canned pet foods. Operations contemplated by this classification include the receipt of raw ingredients, processing operations, packaging and shipping. After bones and foreign matter are removed, raw ingredients are cleaned and ground. Depending on the product, various ingredients such as, but not limited to, animal meat and fat, fish by-products, cornmeal, soybean meal, ground wheat, rice, poultry, yeast, whey, salt, acids, chemicals, minerals, vitamins, water, or oil are mixed in large vats either by machine or by hand. Mixture is frozen or baked, dried, and packed into cans.

This classification excludes establishments engaged in the manufacture of dry pet food using a milling process which is to be reported separately in classification 2101 and farm operations which are to be reported separately in the applicable farm classification.

3902-24 Breakfast food: Manufacturing

Applies to establishments engaged in the manufacture of breakfast foods such as cereals or breakfast bars. Operations contemplated by this classification include the receipt of ingredients, processing operations, quality control, laboratory operations, packaging, and shipping. Flour, meal, or milled grains such as, but not limited to, corn, oats, barley, wheat, and nuts are mixed with other ingredients, formed into

a dough, rolled out and extruded into flakes or other shapes. Pressure cylinders may be used to expand or puff whole grains. Cereals may be sifted through screens to check for size, color, and uniformity or otherwise tested for quality, then baked or dried in bulk prior to packaging.

This classification excludes establishments engaged in the manufacture of wholesale bakery goods which are to be reported separately in classification 3906; establishments engaged in milling or grinding operations which are to be reported separately in classification 2101; and farm operations which are to be reported separately in the applicable farm classification.

3902-26 Poultry canning and canneries, N.O.C.

Applies to establishments engaged in canning poultry or canning operations not covered by another classification (N.O.C.). Operations contemplated by this classification include the receipt of poultry or other products, processing operations, quality control, laboratory operations, packaging, and shipping. The process includes, but is not limited to, washing, cutting or chopping, and cooking poultry or other foods items. Preservatives or flavorings may be added before product is sealed in cans or jars.

This classification excludes establishments engaged in canning or freezing fruits or vegetables which are to be reported separately in classification 3902-00 and establishments engaged in canning or dehydrating meat products which are to be reported separately in classification 4301.

3902-27 Vegetable oil or butter substitutes: Manufacturing

Applies to establishments engaged in the manufacture of salad or vegetable oils, shortening, margarine or other butter substitutes. Operations contemplated by this classification include the receipt of seeds or beans from growers or through dealers, processing operations, quality control, laboratory operations, packaging and shipping. To make oils, soybeans, cottonseeds, safflower seeds, or shelled corn is cracked, ground, milled, steam cooked, and pressed to extract the oil. Depending on the product being made, other ingredients such as water, milk, powdered milk or salt may be blended with the oil, then heated, filtered, and filled into cans or bottles. To make shortening or butter substitutes, flavoring, catalytic agents, and chemicals are added to harden the oils; some products are kneaded to spread the coloring uniformly; then they are packaged in cans, plastic containers, or wrapped in plastic or foil. Machinery includes, but is not limited to, grinders, screens, presses, extractors, dryers, and conveyors.

This classification excludes establishments engaged in the manufacture of "real" butter which are to be reported separately in classification ((4002)) 3902-28 and farm operations which are to be reported separately in the applicable farm classification.

3902-28 Dairy products: Bottling or manufacturing

Applies to establishments engaged in the bottling or manufacture of dairy products such as, but not limited to, bottled liquid or dried products derived from milk, butter, natural or processed cheeses, prepared products such as custard, dips or spread, whipped toppings, ice cream, ice cream mixes, and sherbet. Raw milk is received from suppliers and may go through heat treating, pasteurizing, cooling, and sep-

arators which adjust fat content by skimming the milk or adding cream, then pumping into vessels or vats. Additives, preservatives, flavorings, enzymes, or lactic acid may be added depending on the product being made. Further processing to manufacture cheese and other prepared dairy foods may include, but not be limited to, mixing, draining, pressing, spray drying, aging, cutting, and shredding. Product may be bottled or otherwise packaged for shipment.

This classification excludes establishments primarily engaged in the manufacture of dairy-based salad dressings which are to be reported separately in classification 3902-14 and dairy cattle farming operations which are to be reported separately in classification 7301.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-17A-4002 Classification 4002.

WSR 10-05-116

PERMANENT RULES

TRANSPORTATION COMMISSION

[Filed February 17, 2010, 10:37 a.m., effective March 20, 2010]

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

Purpose: Based upon legislative action moving the route jurisdiction program from the transportation improvement board to the transportation commission, existing administrative rules for this program were transferred to the commission. These rules provide guidelines for applying the statutory criteria in administering the program. Route jurisdiction transfers add, delete, or make other changes to the state highway system.

This proposal makes technical, nonsubstantive changes to the rules, eliminating redundant language that duplicated statutory provisions, clarifying how an entity requests a route jurisdiction transfer, and consolidating WAC sections related to the notice, hearing and comment process to improve the flow and clarity of the rules.

Citation of Existing Rules Affected by this Order: Repealing chapters 468-700 and 468-705 WAC.

Statutory Authority for Adoption: RCW 47.01.425.

Adopted under notice filed as WSR 10-01-102 on December 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 8, Amended 0, Repealed 15.

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 8, Amended 0, Repealed 15.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 8, Amended 0, Repealed 15.

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 17, 2010.

Reema Griffith
Executive Director

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 468-700-010	Purpose and authority.
WAC 468-700-100	Definitions.
WAC 468-700-150	Criteria for rural highway routes.
WAC 468-700-200	Criteria for urban highway routes.
WAC 468-700-250	Interpretation and application of criteria to specific routes.
WAC 468-700-300	Administration costs.
WAC 468-700-350	Board review of route jurisdiction transfer requests.
WAC 468-700-400	Reports to legislative transportation committee.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 468-705-010	Contents of request for jurisdiction transfer.
WAC 468-705-050	Annual cutoff date for jurisdiction transfer requests.
WAC 468-705-100	Additional public testimony for consideration of jurisdiction transfer requests.
WAC 468-705-150	Notice of solicitation for public testimony.
WAC 468-705-200	Notice of preliminary finding.
WAC 468-705-250	Comment period.
WAC 468-705-300	Notice of final finding.
WAC 468-705-350	Contents of report to legislative transportation committee.

Chapter 468-710 WAC

ROUTE JURISDICTION TRANSFER RULES, REGULATIONS AND REQUIREMENTS

NEW SECTION

WAC 468-710-010 Purpose and authority. RCW 47.01.425 provides that the transportation commission shall receive and review letters of request from cities, counties, or the department of transportation requesting any addition or deletion from the state highway system. The commission shall use the criteria established in RCW 47.17.001 to evaluate these requests and to adopt administrative rules.

NEW SECTION

WAC 468-710-020 Definitions. For purposes of implementing the requirements of RCW 47.01.425 and 47.17.001, relative to the transportation commission, the following definitions shall apply:

Commission - When commission is used in this chapter, it refers to the transportation commission.

Connecting link - Connecting links should provide system continuity, including needed alternate routing of regionally oriented through-traffic or access to major regional-based public facilities or traffic generators. Generally, links bypass the central business district and/or the central city and form loops and beltways.

Connection to places - Places may be considered connected if they are within approximately two miles of a state highway.

Corridor - A corridor may vary depending on the characteristics of a region and the use of the facilities. The corridor limits used by the commission to analyze a state highway route will be as described by the metropolitan planning organization (MPO) or regional transportation planning organization (RTPO) for the area where the route is located.

Parallel highway route - Parallel route consideration is used to analyze alternative routes within the same corridor. Outside a corridor, a route should be considered a viable highway route if it meets the other criteria in this chapter.

Population equivalency of one thousand or more - To determine the equivalent population of a recreation area, refer to the WSDOT publication, "*Guidelines for Amending Urban Boundaries, Functional Classifications, and Federal-Aid Systems.*"

Rural highway route - A rural highway route is the portion of a route that lies outside a federal urban area boundary.

Urban highway route - An urban highway route is the portion of a route that is within a federal urban area boundary.

NEW SECTION

WAC 468-710-030 Criteria for rural and urban highway routes. In considering whether to make additions, deletions, or other changes to the state highway system, the legislature is guided by criteria in RCW 47.17.001. Counties, cities, the department of transportation and the commission will use these same criteria to assess the merits of any proposed changes to the state highway system.

NEW SECTION

WAC 468-710-040 Requesting a route jurisdiction transfer. The agency initiating a route jurisdiction transfer request shall do so by submitting a written request to the commission utilizing the criteria specified in RCW 47.17.001. This written request shall be signed by the head of the requesting agency.

NEW SECTION

WAC 468-710-050 Annual cutoff date for jurisdiction transfer requests. Prior to February 1, yearly, cities, counties or the department of transportation shall submit a letter of request for jurisdiction transfer to the commission. The written request shall be in conformance with the procedures established in this chapter.

NEW SECTION

WAC 468-710-060 Additional public testimony for consideration of jurisdiction transfer requests. (1) At the discretion of the commission, and in addition to a regularly scheduled commission meeting, public testimony may be solicited relative to a specific jurisdiction transfer request. The commission will record public testimony and develop summary minutes of the meeting.

(2) If public testimony is solicited, the commission will provide written notice to each agency involved in the transfer, legislators whose districts are impacted by the proposed route transfer and any others who have specifically requested in writing to be provided notice.

NEW SECTION

WAC 468-710-070 Review and comment period. (1) The commission shall prepare a preliminary finding for all jurisdiction transfer requests and provide written notice of the preliminary finding to the interested parties indicated in WAC 468-710-060(2) for review and comment.

(2) For preliminary findings, the commission will provide thirty calendar days from the date the notice is mailed for interested parties to provide written comments on the preliminary finding. The individuals giving comment must provide their name and address and the comments must address the criteria specified in RCW 47.17.001.

NEW SECTION

WAC 468-710-080 Notice and report of final finding. (1) Following the thirty calendar-day comment period, the commission will prepare a report of final finding and recommendation for submittal to the senate and house transportation committees. The commission will consider any comments or additional information and provide written notice of the final finding to the interested parties indicated in WAC 468-710-060(2).

(2) The contents of the report should include:

- (a) Name of agency submitting the request for transfer;
- (b) Route being considered for transfer;
- (c) A map;

(d) Comparison against the criteria specified in RCW 47.17.001;

(e) Findings;

(f) recommendation; and

(g) Supplemental information, such as:

(i) Summary minutes of meetings;

(ii) Comments received;

(iii) Response to comments; and

(iv) Other appropriate information.