

**WSR 10-10-079**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Aging and Disability Services Administration)

[Filed May 3, 2010, 9:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-04-112.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-101-3000 Definitions, 388-101-3050 Application for initial certification, 388-101-3220 Administrator responsibilities and training, and 388-101-3250 Background checks—Washington state.

The department is proposing new sections WAC 388-101-3245 Background check—General, 388-101-3253 National fingerprint background checks—Required, 388-101-3255 Background checks—Provisional hire—Pending results, 388-101-3258 Training requirements for staff hired before January 1, 2011, and 388-101-3302 Certified community residential services and supports—General training requirements.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on June 22, 2010, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 23, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on June 22, 2010.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by June 8, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsjl4@dshs.wa.gov](mailto:johnsjl4@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposed rule making is to implement chapters 74.39A and 18.88B RCW as codified from Initiative Measure No. 1029 and E2SHB 2284, chapter 361, Laws of 2007.

Highlights of proposed changes:

- Revisions to be consistent with the training requirements in chapter 388-112 WAC.
- Revisions to implement the fingerprint-based background check requirements effective January 1, 2012.
- Clarify requirements in the criminal history background check section.

Reasons Supporting Proposal: To have the rules comply with the statutes referenced above.

Statutory Authority for Adoption: Chapter 71A.12 RCW.

Statute Being Implemented: Chapter 71A.12 RCW.

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

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

Name of Agency Personnel Responsible for Drafting: John Gaskell, P.O. Box 45600, Olympia, WA 98513, (360) 725-3210; Implementation and Enforcement: Lori Melchiori, P.O. Box 45600, Olympia, WA 98513, (360) 725-2404.

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

Small Business Economic Impact Statement

**SUMMARY OF PROPOSED RULES:** The department of social and health services' residential care services (RCS) is proposing amendments to chapter 388-101 WAC, Certified community residential services and supports.

The purpose of this proposed rule making is to implement chapters 74.39A and 18.88B RCW as codified from Initiative Measure No. 1029 and E2SHB 2284, chapter 361, Laws of 2007.

Highlights of proposed changes:

- Revisions to be consistent with the training requirements in chapter 388-112 WAC.
- Revisions to implement the fingerprint-based background check requirements effective January 1, 2012.
- Clarify requirements in the criminal history background check section.

**SMALL BUSINESS ECONOMIC 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. This statute outlines information that must be included in a small business economic impact statement (SBEIS). Under RCW 19.85.025(3), preparation of a SBEIS is not required when the proposed rule adopts or incorporates by reference without material change Washington state statutes and for rules with content dictated by statute. A SBEIS is required when there is a disproportionate impact on small businesses.

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 proposed rule content is dictated by statute. Under RCW 74.39A.055, the statute states that the cost of these criminal background checks shall not be passed on to the workers or their employers. The long-term care worker training requirements are required by RCW 74.39A.073 and chapter 388-112 WAC. We are amending our rules to be consistent with the terminology and training requirements in chapter 388-112 WAC.

RCS does not believe that the proposed rules will result in any job losses or gains for certified community residential services providers. RCS concludes that 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 the legislature. As required by RCW 34.05.328 (1)(c), RCS has analyzed the probable costs and probable benefits of the proposed amendments, taking into account both the qualitative and quantitative benefits and costs.

**COSTS:**

- DSHS shared the draft language and draft small business economic statement and cost-benefit analysis (CBA) with interested parties who are on the RCS certified community residential services and supports mailing list.
- In addition, the draft language and draft small business economic statement and CBA was posted on the aging and disability services administration internet web site for anyone in the public to review and comment.
- DSHS' process is to use the input from internal and external stakeholders to determine cost impacts for the drafting of the rule.
- To date, only one comment was received about costs and it had to do with the cost savings statement in the draft SBEIS/CBA being confusing. As a result, the department has accepted this comment and removed the cost savings statement from the SBEIS/CBA.
- The statute states that the cost of the fingerprint checks will not be passed on to the individuals or the service provider.
- The long-term worker training requirements are required by RCW 74.39A.073 and chapter 388-112 WAC. We are amending our rules to be consistent with the terminology and training requirements in chapter 388-112.

**COST SAVINGS:** Although the proposed rules may not save providers or the department money, they do have other anticipated benefits.

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

- The amendments are consistent with current laws;
- The service provider will have more information to assist them in making hiring decisions; and
- Clients will ultimately benefit from a better trained workforce and potentially protected from staff with criminal histories.

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

These rules continue to implement state laws and regulations related to certified community residential service providers. RCS has complied with the appropriate sections of the Administrative Procedure Act and is prepared to proceed with the rule filing.

Please contact John Gaskell by e-mail at gaskejw@dshs.wa.gov or by phone at (360) 725-3210 if you have questions.

A copy of the statement may be obtained by contacting John Gaskell, Program Manager, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-3210, fax (360) 438-7903, e-mail gaskejw@dshs.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting John Gaskell, Program Manager, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-3210, fax (360) 438-7903, e-mail gaskejw@dshs.wa.gov.

April 27, 2010

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

**WAC 388-101-3000 Definitions. "Abandonment"** means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

**"Abuse"** means:

(1) The willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult;

(2) 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

(3) 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 it is consensual.

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

**"Associated with the applicant"** means any person listed on the application as a partner, officer, director, or

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

**"Case manager"** means the division of developmental disabilities case resource manager or social worker assigned to a client.

**"Certification"** means a process used by the department to determine if an applicant or service provider complies with the requirements of this chapter and is eligible to provide certified community residential services and support to clients.

**"Chaperone agreement"** means a plan or agreement that describes who will supervise a community protection program client when service provider staff is not present. This plan or agreement is negotiated with other agencies and individuals who support the client, including the client's legal representative and family.

**"Chemical restraint"** means the use of psychoactive medications for discipline or convenience and not prescribed to treat the client's medical symptoms.

**"Client"** means a person who has a developmental disability as defined in RCW 71A.10.020(3) and who also has been determined eligible to receive services by the division of developmental disabilities under chapter 71A.16 RCW. For purposes of informed consent and decision making requirements, the term "client" includes the client's legal representative to the extent of the representative's legal authority.

**"Client services"** means instruction and support services that service providers are responsible to provide as identified in the client's individual support plan.

**"Crisis diversion"** means temporary crisis residential services and supports provided to clients at risk of psychiatric hospitalization and authorized by the division of developmental disabilities.

**"Crisis diversion bed services"** means crisis diversion that is provided in a residence maintained by the service provider.

**"Crisis diversion support services"** means crisis diversion that is provided in the client's own home.

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

**"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 the vulnerable adult's profit or advantage.

**"Functional assessment"** means a comprehensive evaluation of a client's challenging behavior(s). This evaluation is the basis for developing a positive behavior support plan.

**"Group home"** means a residence that is licensed as either a boarding home or an adult family home by the department under chapters 388-78A or 388-76 WAC. Group homes provide community residential instruction, supports, and services to two or more clients who are unrelated to the provider.

**"Group training home"** means a certified nonprofit residential facility that provides full-time care, treatment, training, and maintenance for clients, as defined under RCW 71A.22.020(2).

**"Immediate"** or **"immediately"** means within twenty-four hours for purposes of reporting abandonment, abuse, neglect, or financial exploitation of a vulnerable adult.

**"Individual financial plan"** means a plan describing how a client's funds will be managed when the service provider is responsible for managing any or all of the client's funds.

**"Individual instruction and support plan"** means a plan developed by the service provider and the client. The individual instruction and support plan:

(1) Uses the information and assessed needs documented in the individual support plan to identify areas the client would like to develop;

(2) Includes client goals for instruction and support that will be formally documented during the year; and

(3) Must contain or refer to other applicable support or service information that describes how the client's health and welfare needs are to be met (e.g. individual financial plan, positive behavior support plan, cross system crisis plan, individual support plan, individual written plan, client-specific instructions).

**"Individual support plan"** means a document that authorizes and identifies the division of developmental disabilities paid services to meet a client's assessed needs.

**"Instruction"** means goal oriented teaching that is designed for acquiring and enhancing skills.

**"Instruction and support services staff"** means long-term care workers of the service provider whose primary job function is the provision of instruction and support services to clients. Instruction and support services staff shall also include employees of the contractor whose primary job function is the supervision of instruction and support services staff. In addition, both applicants, prior to initial certification, and administrators, prior to assuming duties, who may provide instruction and support services to clients shall be considered instruction and support services staff for the purposes of the applicable training requirements of chapter 388-112 WAC.

**"Legal representative"** means a person's legal guardian, a person's limited guardian when the subject matter is within the scope of the limited guardianship, a person's attorney at law, a person's attorney in fact, or any other person who is authorized by law to act for another person.

**"Managing client funds"** means that the service provider:

(1) Has signing authority for the client;

(2) Disperses the client's funds; or

(3) Limits the client's access to funds by not allowing funds to be spent.

**"Mechanical restraint"** means a device or object, which the client cannot remove, applied to the client's body that restricts his/her free movement.

**"Medication administration"** means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the body of the client by an individual legally authorized to do so.

**"Medication assistance"** means assistance with self administration of medication rendered by a nonpractitioner to a client receiving certified community residential services

and supports in accordance with chapter 69.41 RCW and chapter 246-888 WAC.

**"Medication service"** means any service provided by a certified community residential services and support provider related to medication administration or medication assistance provided through nurse delegation and medication assistance.

**"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.42.100.

**"Physical intervention"** means the use of a manual technique intended to interrupt or stop a behavior from occurring. This includes using physical restraint to release or escape from a dangerous or potentially dangerous situation.

**"Physical restraint"** means physically holding or restraining all or part of a client's body in a way that restricts the client's free movement. This does not include briefly holding, without undue force, a client in order to calm him/her, or holding a client's hand to escort the client safely from one area to another.

**"Psychoactive"** means possessing the ability to alter mood, anxiety level, behavior, cognitive processes, or mental tension, usually applied to pharmacological agents.

**"Psychoactive medications"** means medications prescribed to improve or stabilize mood, mental status or behavior. Psychoactive medications include anti-psychotics/neuroleptics, atypical antipsychotics, antidepressants, stimulants, sedatives/hypnotics, and antimania and antianxiety drugs.

**"Qualified professional"** means a person with at least three years' experience working with individuals with developmental disabilities and as required by RCW 71A.12.220 (12).

**"Restrictive procedure"** means any procedure that restricts a client's freedom of movement, restricts access to client property, requires a client to do something which he/she does not want to do, or removes something the client owns or has earned.

**"Risk assessment"** means an assessment done by a qualified professional and as required by RCW 71A.12.230.

**"Service provider"** means a person or entity certified by the department who delivers services and supports to meet a client's identified needs. The term includes the state operated living alternative (SOLA) program.

**"Support"** means assistance a service provider gives a client based on needs identified in the individual support plan.

**"Supported living"** means instruction, supports, and services provided by service providers to clients living in homes that are owned, rented, or leased by the client or their legal representative.

**"Treatment team"** means the program participant and the group of people responsible for the development, imple-

mentation, and monitoring of the person's individualized supports and services. This group may include, but is not limited to, the case manager, therapist, the service provider, employment/day program provider, and the person's legal representative and/or family, provided the person consents to the family member's involvement.

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

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

(2) Found incapacitated under chapter 11.88 RCW; or

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

(4) Admitted to any facility; or

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

(6) Receiving services from an individual provider.

**"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, ((and)) or anguish.

~~("Written individual plan" means a plan developed for clients in the community protection program that includes:~~

~~(1) An assessment of the client's emotional and behavioral issues as related to community protection risks;~~

~~(2) Specific intervention strategies and techniques related to community protection risks;~~

~~(3) Specific restrictions and measures, including security precautions, both in home and out of home; and~~

~~(4) Signatures of the client's case manager and the client.)~~

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

**WAC 388-101-3050 Application for initial certification.** (1) To apply for initial certification an applicant must submit to the department:

(a) A letter of intent that includes:

(i) Contact information;

(ii) Geographical area of service; and

(iii) Type of service provided, including group home, supported living, community protection, or group training home.

(b) A completed and signed application on forms designated by the department;

(c) All attachments specified in the application and any other information the department may request including but not limited to:

(i) Administrator resumes;

(ii) Statements of financial stability;

(iii) Professional references;

(iv) Relevant experiences and qualifications of the individual or agency; ~~((and))~~

(v) On or after January 1, 2011, if the applicant may provide instruction and support services to a client or may supervise staff who provide instruction and support services to clients, a certificate of completion of the instruction and support services staff training required in chapter 388-112 WAC; and

(vi) Assurances the applicant will not discriminate against any client or employee.

(d) A copy of the license if applying for certification as a group home;

(e) The name of the administrator of the program; and

(f) ~~((Department criminal history background check on forms designated by the department for the))~~ The department background authorization form for:

(i) The applicant;

(ii) Anyone associated with the applicant; and

(iii) The individual or individuals designated to serve as administrator of the proposed program.

(2) The applicant must submit a revised application, if any information on the application changes before the initial certification is issued.

(3) The department will only process a completed application.

(4) Each person named in the application for initial certification is considered separately and jointly by the department.

(5) Based on the documentation received, the department will notify the applicant in writing regarding the department's certification decision.

(6) The applicant must comply with additional requirements identified in this chapter if intending to support community protection clients.

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

**WAC 388-101-3220 Administrator responsibilities and training.** (1) The service provider must ensure that the administrator delivers services to clients consistent with this chapter, and the department's residential services contract. This includes but is not limited to:

~~((1))~~ (a) Overseeing all aspects of staffing, such as recruitment, staff training, and performance reviews;

~~((2))~~ (b) Developing and maintaining policies and procedures that give staff direction to provide appropriate services and support as required by this chapter and the department contract; and

~~((3))~~ (c) Maintaining and securely storing client, personnel, and financial records.

(2) Before assuming duties, an administrator hired on or after January 1, 2011, must complete the instruction and support services staff training requirements under chapter 388-112 WAC if the administrator may provide instruction and support services to clients or may supervise instruction and support services staff.

#### NEW SECTION

##### **WAC 388-101-3245 Background check—General.**

(1) Background checks conducted by the department and required in this chapter include but are not limited to:

(a) Washington state background checks including:

(i) Department and department of health findings; and

(ii) Criminal background check information from the Washington state patrol and Washington state courts; and

(b) After January 1, 2012, a national fingerprint-based check in accordance with RCW 74.39A.055.

(2) Nothing in this chapter should be interpreted as requiring the employment of a person against the better judgment of the service provider.

AMENDATORY SECTION (Amending WSR 10-03-065, filed 1/15/10, effective 2/15/10)

**WAC 388-101-3250 Background checks—Washington state.** (1) Service providers must follow the background check requirements described in chapter 388-06 WAC and in this chapter. In the event of an inconsistency, this chapter applies. The service provider must also follow background check requirements under WAC 388-101-3253.

(2) The service provider must obtain background checks ~~((including, but not limited to background inquiries and criminal history disclosure))~~ from the department for all administrators, employees, volunteers, students, and subcontractors who may have unsupervised access to clients.

(3) The service provider must not allow the following persons to have unsupervised access to clients until the service provider receives the department's background check results ~~((from the department))~~, verifying that the person does not have any convictions, pending criminal charges, or findings described in WAC 388-101-3090:

(a) Administrators;

(b) Employees;

(c) Volunteers or students; and

(d) Subcontractors.

(4) If the background check results show that the individual has a conviction, pending criminal charge, or finding that is not disqualifying under WAC 388-101-3090, then the service provider must conduct a character, suitability, and competence review as described in WAC 388-06-0190.

~~((5))~~ ~~((Persons identified in subsection (2) of this section who have lived in Washington state less than three years or who are otherwise required to complete a fingerprint-based background check may be hired for a one hundred twenty-day provisional period when:~~

~~((a))~~ ~~The person is not disqualified based on the initial result of the background check from the department; and~~

~~((b))~~ ~~A fingerprint-based background check is pending.~~

~~((6))~~ ~~The service provider must ((notify)):~~

~~((a))~~ ~~Inform the person ((, within ten days)) of ((receiving)) the ((result, that he or she may request a copy)) results of the background check;~~

~~((b))~~ ~~Inform the person that they may request a copy in writing of the results of the background check. If requested, a copy of the background check results must be provided within ten working days of the request;~~

~~((c))~~ ~~Notify the department and appropriate licensing or certification agency of any person resigning or terminated as a result of having a conviction record.~~

~~((7))~~ (6) The service provider must renew the Washington state background check at least every thirty-six months and keep current ~~((department))~~ background ~~((checks))~~ check results for each administrator, employee, volunteer, student, or subcontractor of a service provider.

~~((8))~~ (7) Licensed boarding homes or adult family homes must adhere to the current regulations in this chapter and in the applicable licensing laws.

~~((9))~~ (8) Service providers must prevent unsupervised access to clients by any administrator, employee, subcontractor, student, or volunteer who has a disqualifying conviction, pending criminal charge, or finding described in WAC 388-101-3090.

~~((10) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the service provider.))~~

#### NEW SECTION

**WAC 388-101-3253 National fingerprint based background checks—Required.** In addition to background checks required under WAC 388-101-3250:

(1) After January 1, 2012, applicants for initial certification and applicants for change of ownership that are not current providers, must have a background check that includes a national fingerprint-based background check.

(2) The service provider must ensure that staff who provide instruction and support services to clients, and are hired on or after January 1, 2012, submit a background check that includes a national fingerprint based background check.

#### NEW SECTION

**WAC 388-101-3255 Background checks—Provisional hire—Pending results.** (1) Persons identified in WAC 388-101-3250(2) who are hired on or before January 1, 2012 and who have lived in Washington state less than three years, or who are otherwise required to complete a fingerprint-based background check, may be hired for a one hundred twenty-day provisional period when:

(a) The person is not disqualified based on the initial results of the background check from the department; and

(b) A national fingerprint-based background is pending.

(2) Persons identified in WAC 388-101-3250(2) who are hired after January 1, 2012, may be hired for a one hundred twenty-day provisional period when:

(a) The person is not disqualified based on the initial result of the background check from the department; and

(b) A national fingerprint-based background check is pending.

#### NEW SECTION

**WAC 388-101-3258 Training requirements for staff hired before January 1, 2011.** The service provider must ensure that staff hired before January 1, 2011 meet the training requirements defined in WAC 388-101-3260 through 388-101-3300.

#### NEW SECTION

**WAC 388-101-3302 Certified community residential services and supports—General training requirements.**

(1) On or after January 1, 2012, the following must meet the instruction and support services staff training requirements of chapter 388-112 WAC including orientation and safety, and basic:

(a) Applicants for initial certification and applicants for change of ownership that are not current providers, who may

provide instruction and support services to clients or who may supervise instruction and support services staff;

(b) Administrators, hired on or after the effective date, who may provide instruction and support services to clients or who may supervise instruction and support services staff; and

(c) Instruction and support services staff, hired on or after the effective date.

(2) Persons exempt from subsection (1) of this section include but are not limited to applicants, administrators, and staff who are registered nurses, licensed practical nurses, certified nursing assistants or persons who are in an approved certified nursing assistant program.

#### **WSR 10-10-119**

#### **PROPOSED RULES**

#### **DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed May 5, 2010, 9:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-04-114.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-78A-2450 Staff, 388-78A-2470 Criminal history disclosure and background checks, 388-78A-2490 Specialized training for developmental disabilities, 388-78A-2500 Specialized training for mental illness, 388-78A-2510 Specialized training for dementia, 388-78A-2550 Administrator training documentation, 388-78A-2750 Application process, and 388-78A-3190 Denial, suspension, revocation, or nonrenewal of license statutorily required.

The department is proposing new sections WAC 388-78A-2461 Background check—General, 388-78A-2462 Background check—Washington state—Who is required to have, 388-78A-2463 Background check—National fingerprint checks—Who is required to have, 388-78A-2464 Background check—Process, 388-78A-2465 Background check—Results, 388-78A-2466 Background check—Valid for two years, 388-78A-2467 Background check—Sharing by health care facilities, 388-78A-2468 Background check—Conditional hire-pending results, 388-78A-2469 Background check—disclosure statement, 388-78A-2471 Background check—Confidentiality—Use restricted—Retention, and 388-78A-2474 Training and home care aide certification.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson). A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094, on June 22, 2010, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 23, 2010.

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Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by June 8, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

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Purpose and reasons for the proposed changes:

- Revisions to be consistent with the training requirements in chapter 388-112 WAC.
- Revisions to implement the finger print-based check requirements effective January 1, 2012.
- Chunked and clarified the criminal history background check section to make it easier to read and understand.

Reasons Supporting Proposal:

- To have the rules comply with the statutes referenced above.

Statutory Authority for Adoption: RCW 18.20.090.

Statute Being Implemented: Chapter 18.20 RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Judy Johnson, P.O. Box 45600, Olympia, WA 98513, (360) 725-2591; Implementation and Enforcement: Lori Melchiori, P.O. Box 45600, Olympia, WA 98513, (360) 725-2404.

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

#### Small Business Economic Impact Statement

The residential care services division is adopting amendments to chapter 388-78A WAC as expressly required by Initiative Measure No. 1029, chapter 580, Laws of 2009, so that these rules are consistent with the training and certification and fingerprint background check requirements that are set forth in Initiative 1029 and in E2SHB 2284, chapter 361, Laws of 2007. Therefore, pursuant to RCW 19.85.025(3) and 34.05.310 (4)(e), a small business economic impact statement (SBEIS) is not required pursuant to chapter 19.85 RCW. Also, pursuant to RCW 34.05.328 (5)(b), an evaluation of the costs and benefits of adoption of the rule pursuant to RCW 34.05.328 is not required. Nevertheless, the following analysis is provided for informational purposes.

**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 this proposed rule making is to implement Initiative Measure No. 1029 and E2SHB 2284, chapter 361, Laws of 2007, as codified in chapters 74.39A and 18.88B RCW.

Highlights of proposed changes:

- Revisions to be consistent with the terminology and training requirements in proposed chapter 388-112 WAC, which is required by chapters 74.39A and 18.88B RCW.
- Revisions to implement the fingerprint-based background check requirements in accordance with RCW 74.39A.055, which will be effective January 1, 2012.
- Clarify the following sections: Staff, criminal history and background checks, specialized training, and application process.
- Make the criminal history background check section easier to read and understand by breaking down the requirements into smaller sections.

#### SMALL BUSINESS ECONOMIC 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. This statute outlines information that must be included in a SBEIS. Under RCW 19.85.025(3), preparation of a SBEIS is not required when a proposed rule adopts or incorporates by reference without material change Washington state statutes and for rules with content dictated by statute. A SBEIS is required when there is a disproportionate impact on small businesses.

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."

Since RCS is adopting these proposed rules in order to be consistent with state law (RCW 74.39A.055 and chapters 74.39A and 18.88B RCW), a SBEIS is not required under RCW 34.05.310(4). The RCS rules are also being adopted in order to be consistent with proposed amendments to chapters 388-71 and 388-112 WAC, which are being adopted by DSHS's home and community services division (HCS). RCS has reviewed and taken into consideration the SBEIS and cost-benefit analysis (CBA) submitted by HCS for its proposed amendments. The RCS rules require boarding homes to comply with the training requirements in chapter 388-112 WAC.

RCS has analyzed its proposed rules and has concluded that the content of the proposed rules is required by state law. The long-term worker training requirements are required by RCW 74.39A.073 and chapter 388-112 WAC. RCS is amending its rules to be consistent with the terminology and training requirements in chapter 388-112 WAC. Although some providers may decide to bear any increased training costs, the rules do not require the provider to do so.

The proposed rules require fingerprint-based background checks in accordance with RCW 74.39A.055, which prohibits the department from passing the costs of these checks to the workers or their employers.

RCS has provided stakeholders opportunities to give input on costs for the proposed rules. Stakeholders were sent e-mails requesting this information and drafts were posted on the internet. To date, RCS has not received comments about costs for these proposed rules.

RCS has not received any information indicating that the proposed rules will result in any job losses or gains for boarding homes. However, RCS has reviewed the comments received by HCS and is aware that HCS has concluded that the proposed rule amendments disproportionately impact small businesses more than larger businesses. Further, RCS understands that HCS has plans to mitigate those costs.

**EVALUATION OF PROBABLE COSTS AND PROBABLE BENEFITS:** RCS has determined that some of the proposed rules are "significant legislative rules" as defined by legislature. However, under RCW 34.05.328 (5)(b), an evaluation of the costs and benefits of adoption of the rule pursuant to RCW 34.06.328 [34.05.328] is not required because the content of the rules is explicitly and specifically dictated by statute. RCS provides the following probable costs and probable benefits as background information.

**COSTS:**

- DSHS shared the draft language and draft small business economic statement and CBA with interested parties and stakeholder group.
- In addition, the draft language and draft small business economic statement and CBA was posted on the aging and disability services administration internet web site for anyone in the public to review and comment.
- DSHS' process is to use the input from internal and external stakeholders to determine cost impacts for the drafting of the rule.
- To date, no comments have been received about costs for these proposed rules.
- The statute states that the cost of the fingerprint checks will not be passed on to the individual or the boarding home.
- The long-term care worker training requirements are required by RCW 74.39A.073 and chapter 388-112 WAC. RCS is amending its rules to be consistent with the terminology and training requirements in chapter 388-112 WAC.
- The training cost could be borne by either the provider or staff person. The rules do not require the cost to be borne by the provider.

**COST SAVINGS:**

- Although the proposed rules may not save providers or the department money, they do have other anticipated benefits.

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

- The amendments are consistent with current laws;
- Boarding home providers will have more information to assist them in making hiring decisions;
- Residents will ultimately benefit from a more trained workforce and potentially protected from staff with criminal histories; and
- Boarding home providers will have clearer background check rules to follow as a result of breaking down the requirements into smaller sections.

**CONCLUSION:** If a CBA had been required, RCS would conclude that the benefits of the proposed amendments exceed the probable cost.

These rules are required 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 judy.johnson@dshs.wa.gov or by phone at (360) 725-2591 if you have questions.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Judy Johnson, Boarding Home Program Manager, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2591, fax (360) 438-7903, e-mail johnsjm1@dshs.wa.gov.

April 30, 2010

Katherine I. Vasquez  
Rules Coordinator

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

**WAC 388-78A-2450 Staff.** (1) Each boarding home must provide sufficient, trained staff persons to:

- (a) Furnish the services and care needed by each resident consistent with his or her negotiated service agreement;
- (b) Maintain the boarding home free of safety hazards; and

(c) Implement fire and disaster plans.

(2) The boarding home must:

- (a) Develop and maintain written job descriptions for the administrator and each staff position and provide each staff person with a copy of his or her job description before or upon the start of employment;

(b) Verify staff persons' work references prior to hiring;

(c) Verify prior to hiring that staff persons have the required licenses, certification, registrations, or other credentials for the position, and that such licenses, certifications, registrations, and credentials are current and in good standing;

(d) Document and retain for twelve weeks, weekly staffing schedules, as planned and worked;

(e) Ensure all resident care and services are provided only by staff persons who have the training, credentials, experience and other qualifications necessary to provide the care and services;

(f) Ensure at least one caregiver, who is eighteen years of age or older and has current cardiopulmonary resuscitation and first-aid cards, is present and available to assist residents at all times:

(i) When one or more residents are present on the boarding home premises; and

(ii) During boarding home activities off of the boarding home premises.



(g) Ensure caregiver provides on-site supervision of any resident voluntarily providing services for the boarding home;

(h) Provide staff orientation and appropriate training for expected duties, including:

(i) Organization of boarding home;

(ii) Physical boarding home layout;

(iii) Specific duties and responsibilities;

(iv) How to report resident abuse and neglect consistent with chapter 74.34 RCW and boarding home policies and procedures;

(v) Policies, procedures, and equipment necessary to perform duties;

(vi) Needs and service preferences identified in the negotiated service agreements of residents with whom the staff persons will be working; and

(vii) Resident rights, including without limitation, those specified in chapter 70.129 RCW.

(i) Develop and implement a process to ensure caregivers:

(i) Acquire the necessary information from the preadmission assessment, on-going assessment and negotiated service agreement relevant to providing services to each resident with whom the caregiver works;

(ii) Are informed of changes in the negotiated service agreement of each resident with whom the caregiver works; and

(iii) Are given an opportunity to provide information to responsible staff regarding the resident when assessments and negotiated service agreements are updated for each resident with whom the caregiver works.

(j) Ensure all caregivers have access to resident records relevant to effectively providing care and services to the resident.

(3) The boarding home must:

(a) ~~((Ensure that staff persons meet the training requirements specified in chapter 388-112 WAC;~~

~~((b)))~~ Protect all residents by ensuring any staff person suspected or accused of abuse, neglect, financial exploitation, or abandonment does not have access to any resident until the boarding home investigates and takes action to ensure resident safety;

~~((e)))~~ (b) Not interfere with the investigation of a complaint, coerce a resident or staff person regarding cooperating with a complaint investigation, or conceal or destroy evidence of alleged improprieties occurring within the boarding home;

~~((d)))~~ (c) Prohibit staff persons from being directly employed by a resident or a resident's family during the hours the staff person is working for the boarding home;

~~((e)))~~ (d) Maintain the following documentation on the boarding home premises, during employment, and at least two years following termination of employment:

(i) Staff ~~((orientation and))~~ training or certification 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) Home care aide certification as required by this chapter and chapter 246-980 WAC;

~~((C))~~ (C) Cardiopulmonary resuscitation;

~~((D))~~ (D) First aid; and

~~((E))~~ (E) HIV/AIDS training.

(ii) ~~((Criminal history))~~ Disclosure statements and background checks as required in WAC ((388-78A-2470)) 388-78A-2461 through 388-78A-2471; and

(iii) Documentation of contacting work references and professional licensing and certification boards as required by subsection ~~((4))~~ (2) of this section.

(4) The boarding home is not required to keep on the boarding home premises, staff records that are unrelated to staff performance of duties. Such records include, but are not limited to, pay records, and health and insurance benefits for staff.

#### NEW SECTION

##### **WAC 388-78A-2461 Background check—General.**

Background checks conducted by the department and required in this chapter include but are not limited to:

(1) Washington state background checks including:

(a) Department and department of health findings;

(b) Criminal background check information from the Washington state patrol and the Washington state courts;

(2) After January 1, 2012, a national fingerprint-based check in accordance with RCW 74.39A.055.

(3) Nothing in this chapter should be interpreted as requiring the employment of a person against the better judgment of the boarding home.

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

#### NEW SECTION

##### **WAC 388-78A-2462 Background check—Washington state—Who is required to have.**

(1) Applicants, as defined in WAC 388-78A-2740, are required to have a Washington state background check before licensure.

(2) The boarding home must ensure the following have Washington state background checks:

(a) Caregivers, including volunteers who are not residents, and students who may have unsupervised access to residents;

(b) Administrators;

(c) Licensee;

(d) Staff persons;

(e) Managers; and

(f) Contractors.

#### NEW SECTION

##### **WAC 388-78A-2463 Background check—National fingerprint checks—Who is required to have.**

(1) After January 1, 2012, applicants for a boarding home license must have a background check that includes a national fingerprint-based background check.

(2) The boarding home must ensure that all caregivers hired after January 1, 2012 have a background check that includes a national fingerprint-based background check.

#### NEW SECTION

##### **WAC 388-78A-2464 Background check—Process.**

(1) Before the boarding home employs, directly or by contract, an administrator, staff person or caregiver, or accepts as a caregiver, any volunteer who is not a resident, or student, the home must:

(a) Require the person to complete a DSHS background authorization form; and

(b) Send the completed form to the department's background check central unit (BCCU), including any additional documentation and information requested by the department.

(2) For purposes of this section, the administrator is presumed to provide direct care.

#### NEW SECTION

##### **WAC 388-78A-2465 Background check—Results.**

(1) The boarding home must not allow the persons listed in WAC 388-78A-2462(2) to have unsupervised access to residents until the boarding home receives background check results from the department verifying that the person does not have any convictions, or findings described in WAC 388-78A-2470.

(2) If the background check results show that the person has a conviction or finding that is not disqualifying under WAC 388-78A-2470, then the boarding home must determine whether the person has the character, suitability and competence to work with vulnerable adults in long-term care.

(3) The boarding home must:

(a) Inform the person of the results of the background check;

(b) Inform the person that they may request a copy of the results of the background check. If requested, a copy of the background check results must be provided within ten days of the request; and

(c) Notify the department and appropriate licensing or certification agency of any person resigning or terminated as a result of having a conviction record.

#### NEW SECTION

**WAC 388-78A-2466 Background check—Valid for two years.** A Washington state background check is valid for two years from the initial date it is conducted. The boarding home must ensure:

(1) A new DSHS background authorization form is submitted to BCCU every two years for individuals listed in WAC 388-78A-2462; and

(2) There is a valid Washington state background check for all individuals listed in WAC 388-78A-2462.

#### NEW SECTION

**WAC 388-78A-2467 Background check—Sharing by health care facilities.** In accordance with RCW 43.43.832 a health care facility may share Washington state background

check results with other health care facilities under certain circumstances. Results of the national fingerprint checks may not be shared. For the purposes of this section health care facility means a nursing home licensed under chapter 18.51 RCW, a boarding home license under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW.

(1) The health care facility may, upon request from another health care facility, share completed Washington state background check results only if:

(a) The health care facility sharing the background check information is reasonably known to be the person's most recent employer;

(b) No more than twelve months has elapsed between the date the individual was last employed at a licensed health care facility and the date of the individual's current employment application;

(c) The background check is no more than two years old; and

(d) The boarding home has no reason to believe the individual has or may have a disqualifying conviction or finding as described in WAC 388-78A-2470.

(2) The boarding home may also establish, maintain and follow a written agreement with 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 WAC 388-78A-2470.

#### NEW SECTION

**WAC 388-78A-2468 Background check—Conditional hire—Pending results.** The boarding home may conditionally hire an individual described in WAC 388-78A-2462, directly or by contract, pending the result of a background check, provided that the boarding home:

(1) Submits the background authorization form for the individual to the department no later than one business day after the individual starts working;

(2) Requires the individual to sign a disclosure statement, and the individual denies having been convicted of a disqualifying crime or have a disqualifying finding under WAC 388-78A-2470;

(3) Has received three positive references for the individual;

(4) Does not allow the individual to have unsupervised access to any resident;

(5) Ensures direct supervision of the individual, as defined in RCW 18.20.270; and

(6) Ensures that the person is competent, and receives the necessary training to perform assigned tasks.

#### NEW SECTION

**WAC 388-78A-2469 Background check—Disclosure statement.** (1) Prior to first starting his or her duties, the boarding home must require each individual described in WAC 388-78A-2462 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.

(2) The department may require the boarding home or any individual described in WAC 388-78A-2462 to complete additional disclosure statements or background authorization forms if the department has reason to believe that offenses specified in WAC 388-78A-2470 have occurred since completion of the previous disclosure statement or background check.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

**WAC 388-78A-2470 (~~Criminal history disclosure and~~) Background (~~checks~~) check—Employment-disqualifying information.** ~~((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 ensure that any individual described in subsection (1) has had a background check completed within the past two years, and that the background check is repeated every two years.~~

~~((3)) Until the boarding home receives a successful background check result, the boarding home must not ((allow unsupervised access by any individual described in subsection (1)) use or employ anyone, directly or by contract, who is listed in WAC 388-78A-2462, if the individual has been:~~

~~((a)) (1) 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 the last conviction;~~

~~((b)) (2) Convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830, 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;~~

~~((c)) (3) Convicted of:~~

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

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

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

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

~~((e)) (4) Convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;~~

~~((f)) (5) Convicted of criminal mistreatment; or~~

~~((g)) (6) 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.~~

~~((h)) (7) The boarding home must not allow unsupervised access by any individual described in ((subsection (1))) WAC 388-78A-2462, 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 require each 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 any crime, including the crimes listed in subsection (3);~~

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

~~(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 actions described in (a), (b) and (c):~~

~~(a) Initiate a background check by submitting all background check authorization forms to the department's 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 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 employer providing the information is reasonably known to be the individual's most recent employer;~~

~~(iii) No more than twelve months has elapsed between the date the individual was last employed and the date of the individual's current application;~~

~~(iv) The background 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 subsections (3) and (4); or~~

~~(e) Establish, maintain and follow a written agreement with 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 subsections (3) and (4).~~

~~(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 are:~~

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

~~(b) Used for employment purposes only;~~

~~(c) Not disclosed to anyone except to the individual, authorized state and federal employees, the Washington state patrol auditor, or persons authorized by chapter 43.43 RCW.~~

~~(d) Retained and available for department review during the individual's employment or association with a facility and for at least two years after termination of the employment or association.~~

~~(9) The boarding home may conditionally hire an individual described in subsection (1), pending a background inquiry, provided that the boarding home:~~

~~(a) Obtains a criminal history background check authorization form from the individual 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 starts working; and~~

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

~~(10) The department may require the boarding home or any individual described in subsection (1) to complete additional disclosure statements or background inquiries if the department has reason to believe that offenses specified 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.)~~

#### NEW SECTION

**WAC 388-78A-2471 Background check—Confidentiality—Use restricted—Retention.** The boarding home must ensure that all disclosure statements, background autho-

rization forms, background check results and related information are:

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

(2) Used for employment purposes only;

(3) Not disclosed to anyone except to the individual, authorized state and federal employees, the Washington state patrol auditor, persons or health care facilities authorized by chapter 43.43 RCW; and

(4) Retained and available for department review during the individual's employment or association with a facility and for at least two years after termination of the employment or association.

#### NEW SECTION

**WAC 388-78A-2474 Training and home care aide certification.** (1) Staff persons hired before January 1, 2011 must meet training requirements in effect on the date hired, including requirements in chapter 388-112 WAC.

(2) All boarding home administrators, or their designees, and caregivers hired on or after January 1, 2011 must meet the long-term care worker training requirements of chapter 388-112 WAC, including but not limited to:

(a) Orientation and safety;

(b) Basic;

(c) Specialty for dementia, mental illness and /or developmental disabilities when serving residents with any of those special needs as a primary diagnosis;

(d) Cardiopulmonary resuscitation and first aid; and

(e) Continuing education.

(3) All persons listed in subsection (2) of this section, must obtain home-care aide certification as required by chapter 246-980 WAC.

(4) Persons exempt from subsection (2) and (3) of this section include but are not limited to:

(a) Boarding home administrators and caregivers who are registered nurses, licensed practical nurses, certified nursing assistants, or persons who are in an approved certified nursing assistant program; and

(b) Boarding home administrators with a current nursing home administrator license.

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

**WAC 388-78A-2490 Specialized training for developmental disabilities.** ~~((1))~~ The boarding home must ~~((provide caregivers with))~~ ensure completion of specialized training, consistent with chapter 388-112 WAC, to serve residents with developmental disabilities, whenever at least one of the residents in the boarding home has a developmental disability as defined in WAC 388-823-0040, that is the resident's primary special need.

~~((2))~~ Nothing in this section is intended to require additional specialty training beyond that required by WAC 388-112-0115.)

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

**WAC 388-78A-2500 Specialized training for mental illness.** ~~((+))~~ The boarding home must ~~((provide caregivers with))~~ ensure completion of specialized training, consistent with chapter 388-112 WAC, to serve residents with mental illness, whenever at least one of the residents in the boarding home has a mental illness that is the resident's primary special need and is a person who has been diagnosed with or treated for an Axis I or Axis II diagnosis, as described in the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision*, and:

~~((a))~~ (1) Who has received the diagnosis or treatment within the previous two years; and

~~((b))~~ (2) Whose diagnosis was made by, or treatment provided by, one of the following:

~~((i))~~ (a) A licensed physician;

~~((ii))~~ (b) A mental health professional;

~~((iii))~~ (c) A psychiatric advanced registered nurse practitioner; or

~~((iv))~~ (d) A licensed psychologist.

~~((2) Nothing in this section is intended to require additional specialty training beyond that required by WAC 388-112-0115.)~~

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

**WAC 388-78A-2510 Specialized training for dementia.** ~~((+))~~ The boarding home must ~~((provide caregivers with))~~ ensure completion of specialized training, consistent with chapter 388-112 WAC, to serve residents with dementia, whenever at least one of the residents in the boarding home has a dementia that is the resident's primary special need and has symptoms consistent with dementia as assessed per WAC 388-78A-2090(7).

~~((2) Nothing in this section is intended to require additional specialty training beyond that required by WAC 388-112-0115.)~~

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

**WAC 388-78A-2550 Administrator training documentation.** The boarding home must maintain for department review, documentation of the administrator completing:

(1) Training required ~~((per))~~ by chapter 388-112 WAC ~~((; Long term care services training));~~

(2) Department training in an overview of Washington state statutes and administrative rules related to the operation of a boarding home;

(3) As applicable, certification from a department-recognized national accreditation health or personal care organization; and

(4) As applicable, the qualifying administrator-training program.

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

**WAC 388-78A-2750 Application process.** To apply for a boarding home license, a person must:

(1) Submit to the department a complete license application on forms designated by the department at least ninety days prior to the proposed effective date of the license;

(2) Submit all relevant attachments specified in the application;

(3) Submit ~~((criminal history))~~ department background ~~((requests))~~ authorization forms as required in WAC ~~((388-78A-2470))~~ 388-78A-2462 and 388-78A-2463;

(4) Sign the application;

(5) Submit the license fee as specified in WAC 388-78A-3230;

(6) Submit verification that construction plans have been approved by construction review services;

(7) Submit a revised application before the license is issued if any information has changed since the initial license application was submitted;

(8) Submit a revised application containing current information about the proposed licensee or any other persons named in the application, if a license application is pending for more than one year; and

(9) If the licensee's agent prepares an application on the licensee's behalf, the licensee must review, sign and attest to the accuracy of the information contained in the application.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

**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 may have unsupervised access to residents 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 controls or supervises the provision of care or services to the boarding home residents; or

(iii) Who exercises control over daily operations.

## WSR 10-10-120

### PROPOSED RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Aging and Disability Services)

[Filed May 5, 2010, 9:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-04-113.

**Title of Rule and Other Identifying Information:** The department intends to amend WAC 388-76-10000 Definitions, 388-76-10160 Criminal history background check—Required, 388-76-10165 Criminal history background check—Valid for two years, 388-76-10170 Criminal history background check—Information—Confidentiality—Use restricted, 388-76-10174 Background checks—Disclosure of information—Sharing of criminal background information by health care facilities, 388-76-10175 Employment—Conditional—Pending results, 388-76-10180 Employment and other unsupervised access decisions, 388-76-10130 Qualifications—Provider, entity representative and resident manager, and 388-76-10135 Qualifications—Caregiver.

The department intends to repeal WAC 388-76-10155 Unsupervised access to vulnerable adults—Prohibited and 388-76-10173 Disclosure of employee information—Employer immunity—Rebuttable presumption.

The department intends to add new sections WAC 388-76-10161 Background check—Washington state—Who is required to have, 388-76-10162 Background check—National fingerprint checks—Who is required to have, 388-76-10163 Background check—Process, 388-76-10164 Background check—Results, and 388-76-10146 Qualifications—Training and home care aide certification.

**Hearing Location(s):** Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on June 22, 2010, at 10:00 a.m.

**Date of Intended Adoption:** Not earlier than June 23, 2010.

**Submit Written Comments to:** DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on June 22, 2010.

**Assistance for Persons with Disabilities:** Contact Jennisha Johnson, DSHS rules consultant, by June 8, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

**Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:** The department is amending these rules and adding new sections to implement chapters 74.39A and 18.88B RCW as codified from Initiative Measure No. 1029 and E2SHB 2284, chapter 361, Laws of 2007.

**Highlights of proposed changes:**

- Editorial and housekeeping changes in the following sections: Definitions, background checks, employment, and qualifications.
- To be consistent with chapter 361, Laws of 2007, E2SHB 2284.
- Clarifies what is included in a Washington state background check.
- Clarifies when a national fingerprint-based background check is required.
- Clarifies the background check process.

- Clarifies what the adult family home must do after receiving background check results.
- Clarifies rules around sharing of background check results.
- Clarifies rules for conditional employment.
- Clarifies who must be certified as a home care aide.

**Reasons Supporting Proposal:** To have the rules comply with the statutes referenced above.

**Statutory Authority for Adoption:** RCW 70.128.040.

**Statute Being Implemented:** Chapter 70.128 RCW.

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

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

**Name of Agency Personnel Responsible for Drafting:** Mike Tornquist, P.O. Box 45600, Olympia, WA 98513, (360) 725-3204; **Implementation and Enforcement:** Lori Melchiori, P.O. Box 45600, Olympia, WA 98513, (360) 725-2404.

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

#### Small Business Economic Impact Statement

The residential care services division is adopting amendments to chapter 388-76 WAC as expressly required by Initiative Measure No. 1029, chapter 580, Laws of 2009, so that these rules are consistent with the training and certification and fingerprint background check requirements that are set forth in Initiative 1029 and in E2SHB 2284, chapter 361, Laws of 2007. Therefore, pursuant to RCW 19.85.025(3) and 34.05.310 (4)(e), a small business economic impact statement (SBEIS) is not required pursuant to chapter 19.85 RCW. Also, pursuant to RCW 34.05.328 (5)(b), an evaluation of the costs and benefits of adoption of the rule pursuant to RCW 34.05.328 is not required. Nevertheless, the following analysis is provided for informational purposes.

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

The purpose of this proposed rule making is to implement Initiative Measure No. 1029 and E2SHB 2284, chapter 361, Laws of 2007, as codified in chapters 74.39A and 18.88B RCW.

**Highlights of proposed changes:**

- Revisions to be consistent with the terminology and training requirements in proposed chapter 388-112 WAC, which is required by chapters 74.39A and 18.88B RCW.
- Revisions to implement the fingerprint-based background check requirements in accordance with RCW 74.39A.055, which will be effective January 1, 2012.
- Clarify the definitions and criminal history background check sections.

**SMALL BUSINESS ECONOMIC 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. This statute outlines

information that must be included in a SBEIS. Under RCW 19.85.025(3), preparation of a SBEIS is not required when proposed rule adopts or incorporates by reference without material change Washington state statutes and for rules with content dictated by statute. A SBEIS is required when there is a disproportionate impact on small businesses.

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."

Since RCS is adopting these proposed rules in order to be consistent with state law (RCW 74.39A.055, and chapters 74.39A and 18.88B RCW), a SBEIS is not required under RCW 34.05.310(4). The RCS rules are also being adopted in order to be consistent with proposed amendments to chapters 388-71 and 388-112 WAC, which are being adopted by DSHS's home and community services division (HCS). RCS has reviewed and taken into consideration the SBEIS and cost-benefit analysis (CBA) submitted by HCS for its proposed amendments. The RCS rules require adult family homes to comply with the training requirements in chapter 388-112 WAC.

RCS has analyzed its proposed rules and has concluded that the content of the proposed rules is required by the state law. The long-term care worker training requirements are required by RCW 74.39A.073 and chapter 388-112 WAC. RCS is amending its rules to be consistent with the terminology and training requirements in chapter 388-112 WAC. Although some providers may decide to bear any increased training costs, the rules do not require the provider to do so. The proposed rules require fingerprint-based background checks in accordance with RCW 74.39A.055, which prohibits the department from passing the costs of these checks to the workers or their employers.

RCS has provided stakeholders several opportunities to give input on costs for the proposed rules. Stakeholders were asked at a meeting, sent e-mails requesting this information and drafts were posted on the internet. To date, RCS has not received comments about costs for these proposed rules.

In response to its request for input from stakeholders, the department has received general comments about the current background check rules. Providers are concerned that the current processing time for the background checks is increasing costs, because newly hired staff must not have unsupervised access to residents until their background check results have been received. RCS received one comment from a provider who was concerned that processing time will increase when the fingerprint background check requirement goes into effect. The proposed rules on fingerprint background checks will not go into effect until January 1, 2012. It is impossible to definitively determine how long it will take the department to process background checks. The department has proposed solutions that are expected to be implemented before the effective date of the fingerprint background check rules.

RCS has not received any information indicating that the proposed rules will result in any job losses or gains for adult family homes. However, RCS has reviewed comments received by HCS and is aware that HCS has concluded that the proposed rule amendments disproportionately impact

small businesses more than larger businesses. Further, RCS understands that HCS has plans to mitigate those costs.

**EVALUATION OF PROBABLE COSTS AND PROBABLE BENEFITS:** RCS has determined that some of the proposed rules are "significant legislative rules" as defined by legislature. However, under RCW 34.05.328 (5)(b), an evaluation of the costs and benefits of adoption of the rule pursuant to RCW 34.05.328 is not required because the content of the rules is explicitly and specifically dictated by statute. RCS provides the following probable costs and probable benefits as background information.

**COSTS:**

- DSHS shared the draft language and draft small business economic statement and CBA with interested parties and stakeholder group.
- In addition, the draft language and draft small business economic statement and CBA was posted on the aging and disability services administration internet web site for anyone in the public to review and comment.
- DSHS' process is to use the input from internal and external stakeholders to determine cost impacts for the drafting of the rule.
- To date, no comments have been received about costs for these proposed rules. The department has received general comments about the current length of time it is taking to process background checks and that this was costing them money to provide direct supervision to newly hired staff.
- The statute states that the cost of the fingerprint checks will not be passed on to the individuals or the adult family home. The long-term care worker training requirements are required by RCW 74.39A.073 and chapter 388-112 WAC. We are amending our rules to be consistent with the terminology and training requirements in chapter 388-112 WAC.
- The training cost could be borne by either the provider or the staff person. The rules do not require the cost to be borne by the provider.

**COST SAVINGS:** Although the proposed rules may not save providers money, they do have other anticipated benefits.

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

- The amendments are consistent with current laws;
- Adult family home providers will have more information to assist them in making hiring decisions; and
- Residents will ultimately benefit from a more trained workforce and potentially protected from staff with criminal histories.

**CONCLUSION:** If a CBA had been required, RCS would conclude that the benefits of the proposed amendments exceed the probable cost.

These rules are required 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 Mike Tornquist by e-mail at [tornqmj@dshs.wa.gov](mailto:tornqmj@dshs.wa.gov) or by phone at (360) 725-3204 if you have questions.

A copy of the statement may be obtained by contacting Mike Tornquist, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-3204, fax (360) 438-7903, e-mail [tornqmj@dshs.wa.gov](mailto:tornqmj@dshs.wa.gov).

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Mike Tornquist, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-3204, fax (360) 438-7903, e-mail [tornqmj@dshs.wa.gov](mailto:tornqmj@dshs.wa.gov).

April 28, 2010  
Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

**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 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 a licensed operator, resident manager, or caregiver, who resides in the home.

(2) As used in this chapter, the term "entity" includes corporations, partnerships and limited liability companies, and the term "adult family home" includes the person or entity that is licensed to operate an adult family home.

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

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

**"Capacity"** means the maximum number of persons in need of personal or special care who are permitted to reside in an adult family home at a given time. 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.

**"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 a provider who is or will be 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 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)) 9A.42.100.

**"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 who is licensed 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.

**"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 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, to provide 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.

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

**WAC 388-76-10130 Qualifications—Provider, entity representative and resident manager.** The adult family home must ensure that the provider, entity representative and resident manager have the following minimum qualifications:

(1) Be twenty-one years of age or older;

(2) Have a United States high school diploma or general education development certificate, or any English translated government document of the following:

(a) Successful completion of government approved public or private school education in a foreign country that includes an annual average of one thousand hours of instruction a year for twelve years, or no less than twelve thousand hours of instruction;

(b) Graduation from a foreign college, foreign university, or United States community college with a two-year diploma, such as an Associate's degree;

(c) Admission to, or completion of course work at a foreign or United States college or university for which credit was awarded;

(d) Graduation from a foreign or United States college or university, including award of a Bachelor's degree;

(e) Admission to, or completion of postgraduate course work at, a United States college or university for which credits were awarded, including award of a Master's degree; or

(f) Successful passage of the United States board examination for registered nursing, or any professional medical occupation for which college or university education was required.

(3) ~~(Meet)~~ Complete the ~~((department's))~~ training requirements ~~((of))~~ that were in effect on the date they were hired, including the requirements described in chapter 388-112 WAC;

(4) Have good moral and responsible character and reputation;

(5) Be literate in the English language, or meet alternative requirements by assuring that a person is on staff and available at the home who is:

(a) Able to communicate or make provisions for communicating with the resident in his or her primary language; and

(b) Capable of understanding and speaking English well enough to be able to respond appropriately to emergency situations and be able to read, understand and implement resident negotiated care plans.

(6) Be able to carry out the management and administrative requirements of chapters 70.128, 70.129 and 74.34 RCW, this chapter and other applicable laws and regulations;

(7) Have completed at least three hundred and twenty hours of successful direct care experience obtained after age eighteen to vulnerable adults in a licensed or contracted setting before operating or managing a home;

(8) Have no criminal convictions listed in RCW 43.43.-830 or 43.43.842 or state or federal findings of abandonment, abuse, neglect or financial exploitation;

(9) Obtain and keep valid cardiopulmonary resuscitation (CPR) and first-aid card or certificate as required in chapter 388-112 WAC; and

(10) Have tuberculosis screening to establish tuberculosis status per this chapter.

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

**WAC 388-76-10135 Qualifications—Caregiver.** The adult family home must ensure each caregiver has the following minimum qualifications:

(1) Be eighteen years of age or older;

(2) Have a clear understanding of the caregiver job responsibilities and knowledge of each resident's negotiated care plan to provide care specific to the needs of each resident;

(3) Have basic communication skills to:

(a) Be able to communicate or make provisions to communicate with the resident in his or her primary language;

(b) Understand and speak English well enough to:

(i) Respond appropriately to emergency situations; and

(ii) Read, understand and implement resident negotiated care plans.

(4) ~~(Meet)~~ Complete the ~~(department's)~~ training requirements ~~(of)~~ that were in effect on the date they were hired including requirements described in chapter 388-112 WAC;

(5) Have no criminal convictions listed in RCW 43.43.-830 or 43.43.842 or state or federal findings of abandonment, abuse, neglect or financial exploitation;

(6) Have a current valid first-aid and cardiopulmonary resuscitation (CPR) card or certificate as required in chapter 388-112 WAC; and

(7) Have tuberculosis screening to establish tuberculosis status per this chapter.

#### NEW SECTION

**WAC 388-76-10146 Qualifications—Training and home care aide certification.** (1) All adult family home caregivers, entity representatives, and resident managers hired on or after January 1, 2011, must meet the long-term care worker training requirements of chapter 388-112 WAC, including but not limited to:

(a) Orientation and safety;

(b) Basic;

(c) Specialty for dementia, mental illness and/or developmental disabilities when serving residents with any of those special needs as primary diagnosis;

(d) Cardiopulmonary resuscitation and first aid; and

(e) Continuing education.

(2) All persons listed in subsection (1) of this section, must obtain home-care aide certification as required by chapter 246-980 WAC.

(3) All adult family home applicants on or after January 1, 2011, must meet the long-term care worker training requirements of chapter 388-112 WAC and obtain home-care aide certification as required by chapter 246-980 WAC before licensure.

(4) Persons exempt from long-term care worker training and certification requirements include but are not limited to adult family home applicants, caregivers, entity representatives, and resident managers who are registered nurses, licensed practical nurses, certified nursing assistants or persons who are in an approved certified nursing assistant program.

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

**WAC 388-76-10160 ~~((Criminal history))~~ Background check—~~((Required))~~ General.** ~~((To assist in determining the character, suitability, and competence of a potential employee and before the adult family home employs, directly or by contract, a resident manager, entity representative or caregiver, or accepts as a caregiver any volunteer or student, or allows a household member over the age of eleven unsupervised access to residents, the home must))~~ Background checks conducted by the department and required in this chapter include but are not limited to:

(1) ~~((Require the person to complete the residential care services background inquiry form which includes))~~ Washington state background checks including:

(a) ~~((A disclosure statement))~~ Department and department of health findings; and

(b) ~~((A statement authorizing the home, the department, and the Washington state patrol to conduct a background inquiry))~~ Criminal background check information from the Washington state patrol and the Washington state courts.

(2) ~~((Verbally inform the person:~~

(a) That he or she may ask for a copy of the background inquiry result; and

(b) Of the inquiry result within ten days of receiving the result)) After January 1, 2012, a national fingerprint-based check in accordance with RCW 74.39A.055.

(3) ~~((Send the information to the department and any additional documentation and information as requested by the department to satisfy the requirements of this section; and))~~ Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the adult family home.

(4) ~~((Notify the appropriate licensing or certification agency of any person resigning or terminated as a result of having a conviction record))~~ In addition to chapter 70.128 RCW, these rules are authorized by RCW 43.20A.710, RCW 43.43.830 through 43.43.842 and RCW 74.39A.050(8).

NEW SECTION

**WAC 388-76-10161 Background check—Washington state—Who is required to have.** (1) An adult family home applicant and anyone affiliated with an applicant must have a Washington state background check before licensure.

(2) The adult family home must ensure the following individuals employed directly or by contract, have Washington state background checks:

- (a) Caregivers, including volunteers and students who may have unsupervised access to residents;
- (b) Entity representatives;
- (c) Resident managers; and
- (d) All household members over the age of eleven who may have unsupervised access to residents.

NEW SECTION

**WAC 388-76-10162 Background check—National fingerprint checks—Who is required to have.** (1) An adult family home applicant and anyone affiliated with an applicant, after January 1, 2012 must have a background check that includes a national fingerprint-based background check.

(2) The adult family home must ensure that all caregivers, entity representatives and resident managers hired after January 1, 2012 have a background check that includes a national fingerprint-based background check.

NEW SECTION

**WAC 388-76-10163 Background check—Process.** Before the adult family home employs, directly or by contract, a resident manager, entity representative or caregiver, or accepts as a caregiver any volunteer or student, or allows a household member over the age of eleven unsupervised access to residents, the home must:

- (1) Require the person to complete a DSHS background authorization form; and
- (2) Send the completed form to the department's background check central unit (BCCU), including any additional documentation and information requested by the department.

NEW SECTION

**WAC 388-76-10164 Background check—Results.** (1) The adult family home must not allow persons listed in WAC 388-76-10161(2) to have unsupervised access to residents until the adult family home receives background check results from the department verifying that the person does not have convictions, or findings described in WAC 388-76-10180.

(2) If the background check results show that the person has a conviction or finding that is not disqualifying under WAC 388-76-10180, then the adult family home must determine whether the person has the character, suitability and competence to work with vulnerable adults in long-term care.

(3) The adult family home must:

- (a) Inform the person of the results of the background check;
- (b) Inform the person that they may request a copy of the results of the background check. If requested, a copy of the

background check results must be provided within ten days of the request; and

(c) Notify the department and the appropriate licensing or certification agency of any person resigning or terminated as a result of having a conviction record.

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

**WAC 388-76-10165 ~~((Criminal history))~~ Background check—Valid for two years. ~~((+))~~ A Washington state background ~~((inquiry result))~~ check is valid for two years from the initial date it is conducted~~((;))~~. The adult family home must ensure:**

(1) A new DSHS background authorization form is submitted to the BCCU every two years for individuals listed in WAC 388-76-10161;

(2) ~~((The adult family home must have))~~ There is a valid ~~((criminal history))~~ Washington state background check for all ~~((persons in the home who may have unsupervised access to any resident; and~~

~~((3) The home must submit, receive and keep the results of the check every two years))~~ individuals listed in WAC 388-76-10161.

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

**WAC 388-76-10170 ~~((Criminal history))~~ Background check—~~((Information—))~~Confidentiality—Use restricted—Retention.** The adult family home must establish and implement procedures that ensure all background authorization forms, background check results, related information, and all copies are:

(1) ~~((Establish and implement procedures that ensure:~~

~~((a) All disclosure statements, background inquiry applications, responses, related information, and all copies are))~~ Kept in a confidential and secure manner;

~~((b) All background inquiry results and disclosure statements are))~~ (2) Used for employment purposes only;

~~((c) Background inquiry results and disclosure statements are))~~ (3) Not disclosed to any person except:

~~((+))~~ (a) The person about whom the home made the disclosure or background ~~((inquiry))~~ check;

~~((+))~~ (b) Licensed facilities, an employer of an authorized program, or an in-home services agency employer identified in WAC ~~((388-76-10173))~~ 388-76-10174;

~~((+))~~ (c) Authorized state and federal employees; and

~~((+))~~ (d) The Washington state patrol auditor.

~~((2) Keep a record of inquiry results for eighteen months))~~ (4) Kept for two years after the date an employee either quits or is terminated.

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

**WAC 388-76-10174 Background check~~((s))~~—Disclosure of information—Sharing of ~~((criminal))~~ background information by health care facilities.** In accordance with RCW 43.43.832 a health care facility may share ~~((criminal))~~ Washington state background ~~((information))~~ check results

with other health care facilities under certain circumstances. Results of the national fingerprint-based background check may not be shared. For the purposes of this section health care facility means 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.

(1) A health care facility may, upon request from another health care facility, share ~~((copies of))~~ completed ~~((criminal))~~ Washington state background ((inquiry information))

~~((2))~~ A health care facility may share completed criminal background inquiry information)) check results only if:

(a) The health care facility sharing the ~~((criminal))~~ background ~~((inquiry))~~ check information is reasonably known to be the person's most recent employer;

(b) No more than twelve months has elapsed ~~((from))~~ between the date the person was last employed at a licensed health care facility ~~((to))~~ and the date of ~~((their))~~ the person's current employment application; and

(c) The ~~((criminal))~~ background ~~((information))~~ check is no more than two years old.

~~((3))~~ (2) If ((criminal)) background ((inquiry)) check information is shared, the health care facility employing the subject of the ((inquiry)) check must require the applicant to sign a disclosure statement indicating that there has been no conviction or finding as described in ((RCW 43.43.842)) WAC 388-76-10180 since the completion date of the most recent ((criminal)) background ((inquiry)) check.

~~((4))~~ (3) Any health care facility that knows or has reason to believe that an applicant has or may have a disqualifying conviction or finding as described in ((RCW 43.43.842)) WAC 388-76-10180, after the completion date of their most recent ((criminal)) background ((inquiry)) check:

(a) Cannot rely on the applicant's previous employer's ~~((criminal))~~ background ~~((inquiry))~~ check information; and

(b) Must request a new ~~((criminal))~~ background ~~((inquiry pursuant to RCW 43.43.830 through 43.43.842))~~ check as required by this chapter.

~~((5))~~ (4) Health care facilities that share ((criminal)) background ((inquiry)) check information shall be immune from any claim of defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of this information in accordance with this section.

~~((6))~~ (5) Health care facilities must send and receive the ((criminal)) background ((inquiry)) check information in a manner that reasonably protects the subject's rights to privacy and confidentiality.

(6) In accordance with RCW 74.39A.210, a home that discloses information about a former or current employee to certain types of prospective employers is presumed to act in good faith and is immune from civil and criminal liability for such disclosure or its consequences.

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

**WAC 388-76-10175 Background check employment—Conditional hire—Pending results.** An adult family home may conditionally employ a person directly or by

contract, pending the result of a background ((inquiry)) check, provided the home:

~~((1))~~ (1) ((Asks)) Requests the background check no later than one business day after conditional employment:

~~((2))~~ (2) Requires the individual ((if they have)) to sign a disclosure statement and the individual denies having been convicted of a disqualifying crime ((listed under RCW 43.43.830 or 43.43.842 and the individual denies they have a conviction);

~~((2))~~ (2) Requests the background inquiry within seventy two hours of the conditional employment)) or a disqualifying finding under WAC 388-76-10180;

~~((3))~~ (3) Does not allow((;)) the ((conditionally hired person;)) individual to have unsupervised access to any resident ((with-out));

~~((4))~~ (4) Ensures direct supervision of the individual as defined in WAC 388-76-10000; and

~~((4))~~ (5) Ensures the individual is competent and receives the necessary training to perform assigned tasks and meets the staff training requirements ((in)) under chapter 388-112 WAC.

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

**WAC 388-76-10180 Background check—Employment—~~and other unsupervised access decisions~~—Disqualifying information.** Until the adult family home receives a successful background check result, the adult family home must not use or employ ((any person)) anyone, 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)) who is listed in WAC 388-76-10161 if the individual has:

(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.

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

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

- WAC 388-76-10155      Unsupervised access to vulnerable adults—Prohibited.
- WAC 388-76-10173      Disclosure of employee information—Employer immunity—Rebuttable presumption.

**WSR 10-11-005  
PROPOSED RULES  
SPOKANE REGIONAL  
CLEAN AIR AGENCY**

[Filed May 6, 2010, 1:58 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: SRCAA Regulation I, Article IX, Section 9.02—Definitions, SRCAA Regulation I, Article IX, Section 9.03—Asbestos Survey Requirements, SRCAA Regulation I, Article IX, Sec-

tion 9.04—Notification Requirements, SRCAA Regulation I, Article IX, Section 9.06—Procedures for Asbestos Projects, SRCAA Regulation I, Article IX, Section 9.08—Alternate Means of Compliance, SRCAA Regulation I, Article IX, Section 9.09—Disposal of Asbestos-Containing Waste Material, and SRCAA Regulation I, Article X, Section 10.09—Asbestos Project and Demolition Notification Waiting Period and Fees.

Hearing Location(s): Spokane Regional Clean Air Agency, 3104 East Augusta Avenue, Spokane, WA 99207, on August 5, 2010, at 9:30 a.m.

Date of Intended Adoption: August 5, 2010.

Submit Written Comments to: Matt Holmquist, 3104 East Augusta Avenue, Spokane, WA 99207, e-mail mholmquist@spokanecleanair.org, fax (509) 477-6828, by 4:30 p.m. on July 6, 2010.

Assistance for Persons with Disabilities: Contact Barbara Nelson by 4:30 p.m. on July 30, 2010, (509) 477-4727.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarify that asbestos surveys need to identify the location of asbestos-containing material within a structure, on a structure, from a structure, or otherwise associated with the project; clarify that a copy of the asbestos survey must be provided to Spokane regional clean air agency (SRCAA), if requested; remove reference to faxed notifications and corresponding prepayment accounts since owners and contractors can file notifications on-line and pay with a credit card; clarify that the fee waiver for demolition by structural fire training also applies when the notification lists both asbestos removal and demolition; add a provision which allows owners or contractors to file annual notifications; add a provision which allows notifications to be amended after the asbestos removal completion date on record; revise the regulation so that one person doesn't have to have multiple credentials to prepare an alternate work plan when standard asbestos removal methods can't be used; when extenuating circumstances exist, allow the agency to accept emergency notifications one working day after the emergency work commenced; change "shall" to "may" regarding the board amending the fee schedule to more accurately recover program costs; and include an additional incremental fee for incrementally larger abatement projects. The anticipated effect is industry-wide uniformity in how asbestos is identified, removed, and disposed of.

Reasons Supporting Proposal: Asbestos is a known human carcinogen. The goal is to prevent and minimize asbestos fiber release in order to protect public health.

Statutory Authority for Adoption: RCW 70.94.141(1), 70.94.380(2).

Statute Being Implemented: Chapter 70.94 RCW and 42 U.S.C. 7401 et seq., 42 U.S.C. 7412.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: SRCAA is responsible for implementing federal laws regarding the renovation and demolition of buildings that may contain asbestos. Because there is no known safe level of exposure to asbestos and because each exposure to asbestos increases a person's risk of acquiring asbestos

related diseases, SRCAA administers an asbestos program under Regulation I, Article IX and Section 10.09 as a reasonable approach to controlling asbestos emissions primarily resulting from asbestos projects, renovation projects, and demolition activities.

Name of Proponent: SRCAA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Matt Holmquist, SRCAA, 3104 East Augusta Avenue, Spokane, WA 99207, (509) 477-4727.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This is a local clean air agency rule and as such, chapter 19.85 RCW does not apply.

A cost-benefit analysis is not required under RCW 34.05.328. This is a local agency rule and pursuant to RCW 70.94.141(1); RCW 34.05.328 does not apply to this rule.

May 6, 2010

Matt Holmquist  
Compliance Administrator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-12 issue of the Register.

**WSR 10-11-014**  
**PROPOSED RULES**  
**SECRETARY OF STATE**

[Filed May 7, 2010, 9:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-07-042.

Title of Rule and Other Identifying Information: Charities program fees.

Hearing Location(s): Office of the Secretary of State, Dolliver Building, 2nd Floor Conference Room, 801 Capitol Way South, Olympia, WA 98504, on June 22, 2010, at 2:00 p.m.

Date of Intended Adoption: June 25, 2010.

Submit Written Comments to: Rebecca Sherrell, P.O. Box 40234, Olympia, WA 98504-0234, e-mail rebecca.sherrell@sos.wa.gov, fax (360) 664-4250, by June 22, 2010.

Assistance for Persons with Disabilities: Contact Sharon Baker by June 21, 2010, TTY (800) 422-8683.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To update existing rules to match state law.

Reasons Supporting Proposal: Implementing new law from 2010 legislative session, 2SHB 2576.

Statutory Authority for Adoption: RCW 43.07.125.

Statute Being Implemented: Chapter 19.09 RCW.

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

Name of Proponent: Division of corporations, office of the secretary of state, governmental.

Name of Agency Personnel Responsible for Drafting: Pamela Floyd, 801 Capitol Way South, Olympia, WA 98504, (360) 725-0310; Implementation: Rebecca Sherrell, 801 Capitol Way South, Olympia, WA 98504, (360) 725-0310; and Enforcement: Jeff Even, Office of Attorney General,

1125 Washington Street S.E., Olympia, WA 98504-40100 [98504-0100], (360) 586-0728.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules implement costs set in statute.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are adopting, by reference without material change, Washington state statutes and are not required to do a cost-benefit analysis per RCW 34.05.328 (5)(b)(iii).

May 7, 2010

Steve Excell

Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

**WAC 434-120-145 Fees.** (1) Original registration: Entities registering as charitable organizations (~~(shall)~~) must pay a fee of (~~(twenty)~~) sixty dollars for the first year of registration.

(2) Annual renewal: Organizations (~~(shall)~~) must pay a renewal fee of (~~(ten)~~) forty dollars.

(3) Information changes: Organizations filing changes of information described in WAC 434-120-105(~~(shall pay a fee of ten dollars for each submittal of change(s))~~) will file at no charge.

(4) Photocopy fees: For copy of a charitable organization registration form or letter, including the finance and solicitation reports, the fee is five dollars.

(5) (~~Expedited service fees: For in-person service at the counter, or on-line filings, the fee is twenty dollars for one or more transactions in each charitable organization file requested.~~) The fee for expedited service is twenty dollars for single on-line transactions within each new or existing charity's program file. The fee for expedited service of paper documents (in-person, mail or fax) is fifty dollars for single or multiple transactions within each new or existing charity's program file. In addition, the filing fee for each transaction will apply.

(6) For service of process on a registered charity, commercial fund-raiser, or charitable trust, the fee is fifty dollars.

AMENDATORY SECTION (Amending WSR 09-22-056, filed 10/30/09, effective 11/30/09)

**WAC 434-120-160 Fees for late registration.** (1) A charitable organization that fails to renew its registration by its renewal date (~~(shall)~~) must pay a late fee of fifty dollars. The charitable organization (~~(shall)~~) must pay an additional fifty dollar late fee for each year, including the current year, that it was not registered under this act, but was required to do so. If the registration has lapsed for a period of more than two years, the entity (~~(shall)~~) must provide solicitation information for the previous two years, and (~~(shall)~~) must reregister as a new charitable organization.

(2) The fees for late registration (~~(shall be)~~) are in addition to the filing fees under WAC 434-120-145, and any other remedies that may be imposed by law, including penalties for soliciting without being registered.

(3) The charitable organization may ask the secretary to waive fees for late registration. The request must include a description of the circumstances that justify a waiver of the late fees. Under special circumstances the secretary may waive fees for late registration that are imposed by these regulations.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

**WAC 434-120-250 Fees.** All commercial fund-raisers ~~((shall))~~ must pay an original registration fee at the time of filing and an annual renewal fee.

(1) The fee for original registration in this state is ~~((two hundred fifty))~~ three hundred dollars.

(2) The annual renewal fee is ~~((one hundred seventy-five))~~ two hundred twenty-five dollars.

(3) ~~((The))~~ There is no fee for filing changes in any information previously filed under RCW 19.09.079, and WAC 434-120-215 ~~((or for filing a contract is ten dollars)).~~

(4) The fee for filing a contract under RCW 19.09.097 and WAC 434-120-240 is twenty dollars.

(5) The late fee is fifty dollars for failing to renew registration by the due date. The commercial fund-raiser ~~((shall))~~ must pay an additional late fee of one hundred dollars for each year that it was required to register under this act and failed to do so, including the current year. If the registration has lapsed for more than two years, the entity ~~((shall))~~ must provide solicitation information for the previous two years and ~~((shall))~~ must register as a new commercial fund-raiser under RCW 19.09.079, in addition to paying any late fees due under this section.

Any commercial fund-raiser failing to renew registration and conducting business may be subject to other penalties and remedies that may be imposed by law, including penalties for soliciting without being registered. These penalties are cumulative.

~~((5))~~ The fee for expedited in-person service, and on-line filings, is twenty dollars for any and all transactions within one commercial fund-raiser file, in addition to regular fee for the transaction.) (6) The fee for expedited service is twenty dollars for a single on-line transaction within one commercial fund-raiser file. The fee for expedited service of paper documents (in-person or fax) is fifty dollars for single or multiple transactions within one commercial fund-raiser file. In addition, the filing fee for each transaction will apply.

~~((6))~~ (7) The photocopy fee is ten dollars for copies of the annual registration form or letter.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

**WAC 434-120-330 Annual fees.** (1) Charitable trusts filing initial or renewal registrations ~~((shall))~~ must pay a fee of twenty-five dollars.

(2) ~~((For all expedited in-person service, or on-line filing, the fee is twenty dollars for one or more transactions within one charitable trust file, in addition to the regular fee for the transaction.))~~ The fee for expedited service is twenty dollars for a single on-line transaction within one charitable trust file. The fee for expedited service of paper documents

(in-person or fax) is fifty dollars for single or multiple transactions within one charitable trust file. In addition, the filing fee for each transaction will apply.

(3) For a photocopy of an Internal Revenue Service Form 990EZ the fee is five dollars and for a copy of Form 990 or 990-PF the fee is ten dollars with a surcharge for forms exceeding 100 pages of copy, which is thirteen dollars for each fifty page increment.

(4) For a photocopy of a charitable trust registration form, the fee is five dollars.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

**WAC 434-120-345 Late registration fees.** (1) A charitable trust that fails to renew its registration at the time its renewal is due, ~~((shall))~~ must pay a late fee of fifty dollars when the reregistration is made. The trust ~~((shall))~~ must pay an additional fifty-dollar late fee for each year, including the current year, it was not registered under this act. If the registration has lapsed for a period of more than two years, the entity ~~((shall))~~ must register as a new trust and pay any late fees, which ~~((shall be))~~ are cumulative.

(2) The fees for late registration ~~((shall be))~~ are in addition to any other filing fees or remedies that may be imposed by law, including penalties for not being registered.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

**WAC 434-120-355 Change in status, notification.** A charitable trust ~~((shall))~~ must notify the charities program in writing of a change in trust instrument, trustee, principal officer, tax status, fiscal year, or any other information filed under RCW 11.110.060 or WAC 434-120-310 within four months after the change at no charge. ~~((Organizations filing changes of information described in RCW 11.110.060 or WAC 434-120-310 shall pay a fee of ten dollars for each submittal of change.))~~

**WSR 10-11-016**  
**PROPOSED RULES**  
**PARKS AND RECREATION**  
**COMMISSION**

[Filed May 7, 2010, 1:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-19-134.

Title of Rule and Other Identifying Information: The agency has completed a review of chapter 352-28 WAC, Protection and conservation of state park natural resources, and intends to amend this chapter to facilitate future natural resources sales (WAC 352-28-020) and lend further clarification/consistency to existing WAC language (WAC 352-28-005 - 352-28-020).

Hearing Location(s): Water and Conservation Center, Walla Walla Community College, 500 Tausick Way, Walla Walla, WA 99362, on June 24, 2010, at 9:00 a.m.



Date of Intended Adoption: June 24, 2010.

Submit Written Comments to: Robert Fimbel, Chief, Resource Stewardship, Washington State Parks, Headquarters Stewardship, 1111 Israel Road S.W., Olympia, WA 98504, phone (360) 902-8592, fax (360) 902-8517, e-mail robert.fimbel@parks.wa.gov. Submit comments by June 10, 2010.

Assistance for Persons with Disabilities: Contact Pauli Larson by June 10, 2010, TTY (360) 664-3133 or (360) 902-8505.

**Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:** The Washington state parks and recreation commission has determined the need to amend chapter 352-28 WAC following an agency study on issues related to the sale, leasing or management of its lands and natural resources materials. The commission intends to remove specific procedural language relating to natural resources sales from the WAC, and to replace them with procedures adopted through specific commission action items. These procedures will then be added to the agency's lands manual, which currently contains sales-related language based on previous commission procedural actions. This will ensure that all natural resources-related sale guidelines reside in a single agency document.

**Reasons Supporting Proposal:** The entire chapter was reviewed for clarity and consistency of business practices with an emphasis on qualifications, procedures, and general provisions pertaining to the sale of, or leasing of lands containing tree, plant or fungi resources from commission owned or managed lands. Evolution in resource stewardship, the emergence of new technologies, and the agency's desire to complete sale transactions efficiently (including having a single lands manual for all natural resources sales), suggests that procedures relating to the sale of natural resources are better placed in agency procedures than WAC.

**Statutory Authority for Adoption:** RCW 79A.05.035, 79A.05.070, 79A.05.075, and 79A.05.165.

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

**Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters:** The agency supports these revisions.

**Name of Proponent:** Washington state parks and recreation commission, governmental.

**Name of Agency Personnel Responsible for Drafting and Implementation:** Rob Fimbel, State Park Headquarters, P.O. Box 42650, Tumwater, WA 98504-2650, (360) 902-8592; and Enforcement: Robert Ingram, State Park Headquarters, P.O. Box 42650, Tumwater, WA 98504-2650, (360) 902-8615.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This chapter of administrative rule does not regulate or have economic impact through regulations on small business. There are no compliance costs to small business as a result of the modifications to these rules.

A cost-benefit analysis is not required under RCW 34.05.328. Significant legislative rule-making requirements are not imposed on the state parks and recreation commis-

sion, nor has the commission voluntarily applied those requirements.

May 7, 2010

Jim French  
Chief of Policy Research  
and Program Development

**AMENDATORY SECTION** (Amending WSR 08-05-009, filed 2/7/08, effective 3/9/08)

**WAC 352-28-005 Definitions.** When used in this chapter the following words and phrases shall have the meanings designated in this section unless a different meaning is expressly provided or unless the context clearly indicates otherwise.

(1) "Catastrophic forest event" means a natural or accidental devastation of major proportions that results in drastic alteration of the natural environment by, but not limited to, wind, fire, insect infestation, forest disease, flooding, or landslide.

(2) "Commission" means the Washington state parks and recreation commission.

(3) "Conservation" means the professional management of the agency's natural resources to ensure their long-term presence, function and enjoyment by the public.

(4) "Director" means the director of the Washington state parks and recreation commission.

(5) "Endangered species" means each plant, fungus and lichen species identified as endangered on the list of such species prepared by the department of natural resources Washington natural heritage program and each wildlife species identified as endangered by the Washington department of fish and wildlife in WAC 232-12-014.

(6) "Natural resource(s)" includes biological organisms, their processes, dead or organic matter, soils, and geologic materials.

(7) "Resource conservation plan" means a plan that advances the stewardship of that resource. The plan may address, although not be limited to, resource conservation, protection, restoration or mitigation.

(8) "Sensitive species" means each plant, fungus and lichen species identified as sensitive on the list of such species prepared by the department of natural resources Washington natural heritage program and each wildlife species identified as sensitive on the list of such species prepared by the Washington department of fish and wildlife.

~~((7))~~ (9) "Threatened species" means each plant, fungus and lichen species identified as threatened on the list of such species prepared by the department of natural resources Washington natural heritage program and each wildlife species identified as threatened on the list of such species prepared by the Washington department of fish and wildlife.

**AMENDATORY SECTION** (Amending WSR 08-05-009, filed 2/7/08, effective 3/9/08)

**WAC 352-28-010 Cutting, collection and removal of natural resources.** (1) Trees may be cut and removed subject to the following limitations:

(a) **Significant trees:** Significant trees means living and dead standing trees > 10 inches in diameter at breast height (4.5 feet above the ground). Except in emergencies and when feasible, significant trees in any area under the jurisdiction and/or management of the commission shall be removed only after they have been evaluated, rated, appraised and marked by a professional forester, certified arborist, or staff member trained in agency-approved tree risk rating and abatement techniques. In addition, except where deemed an emergency tree, or in the event of wildfire, weather, or other natural emergencies, significant trees can be cut or removed only after compliance with (d) of this subsection and subsection (4) of this section, agency review through the tree activity worksheet process and upon the written approval of the director or the designee of the director.

(b) **Emergency trees:** Emergency trees means any tree that has already failed (cracked, tipped, diseased, ~~((failed))~~ or standing dead) or ~~((it))~~ that poses an imminent threat, based on the judgment of a professional forester, certified arborist, or staff member trained in tree risk rating and abatement techniques approved by the agency, and which due to its location, poses an imminent threat to a target. Imminent means likely to occur at any moment, and target means a structure, facility, or person that has the potential to be hit or impacted by a falling tree or tree part. The park manager or designee trained in tree risk rating and abatement techniques as prescribed by the agency forester or arboriculture manager is authorized to immediately close the target area, and where the target cannot be relocated, cut or remove the emergency tree.

(c) **Worksheet:** The cutting or removal of any significant trees in landscapes classified recreation, heritage, or resource recreation by the commission shall, except in the case of emergency trees ~~((as defined in (b) of this subsection))~~, occur only after agency review through the tree activity worksheet process and the written approval of the director or ~~((the))~~ designee ~~((of the director))~~.

(d) **Consultation:** The cutting or removal of any significant trees in a natural area, natural forest area or natural area preserve shall, except ~~((in emergencies as defined in (b) of this subsection))~~ in the case of emergency trees, be approved only by the director or designee and only after consultation with the Washington department of fish and wildlife and the department of natural resources Washington natural heritage program, the preparation of a ~~((mitigation))~~ resource conservation plan for affected natural resources, and a public hearing on each such proposed cutting or removal conducted in the county/counties in which the cutting or removal is to take place as determined by the director. Prior notice of a hearing shall be published in a newspaper of general circulation in such county or by an alternative method prescribed by the commission deemed to yield equal or better public notice. Any person who requests notification of such proposed cutting or removal shall be sent prior notice of a hearing. A summary of the testimony presented at a hearing or received in writing shall be presented to the director.

~~((e) The cutting and/or removal of significant and emergency trees shall be done by park personnel, unless the personnel lack necessary expertise or resources. Trees identified as emergencies will be scheduled for immediate treatment. All emergency and significant trees requiring treatment,~~

~~when feasible and justifiable, should be considered for pruning, crown reduction, target relocation, or similar practices in an effort to avoid tree cutting or removal. If trees are cut or removed by a contractor, park personnel shall provide on-site supervision to ensure that work and safety standards are met to prevent harm or damage to persons, trees, nontree vegetation, soils, organic matter and other park resources. When feasible, equipment shall be kept on existing roads and parking areas. Areas damaged during cutting or removal shall be restored.))~~

(2) ~~((Nontimber))~~ **Native plants, fungi, and dead organic matter:** The cutting or removal of ~~((any native plant, fungi, or dead organic matter))~~ natural resources, other than trees or those specified in WAC 352-32-350, 352-28-030 and 352-28-040, will only occur as a part of a resource conservation plan approved by the director or ~~((the))~~ designee ~~((of the director))~~.

(3) **Protected species:** Natural resources may be cut and/or removed from areas supporting protected species, or for the purposes of enhancing habitat for protected species, under the following conditions:

(a) The cutting or removal of ~~((trees, other plants, fungi, or dead organic matter))~~ natural resources in any area known to be inhabited by endangered, threatened, or sensitive species shall, except in emergencies as defined in subsection (1)(b) of this section, follow requirements of the department of fish and wildlife and of the department of natural resources Washington natural heritage program and be approved only by the director or designee after consultation with those agencies, and the preparation of a mitigation plan for affected species.

(b) The cutting or removal of ~~((trees, other plants, fungi, or dead organic matter))~~ natural resources to enhance the habitat of a sensitive, threatened, or endangered species as defined in WAC 352-28-005 ~~((5) through (7))~~, on lands managed by the commission or on other state lands, will only occur as a part of an interagency agreement or resource conservation plan that involves consultation with the Washington department of fish and wildlife, department of natural resources Washington natural heritage program, and as appropriate, other agencies and groups with expertise with these species, and is approved by the director or ~~((the))~~ designee ~~((of the director))~~.

(4) **Land classification (chapter 352-16 WAC) criteria:** Natural resources may be cut and/or removed from the areas listed below for the following reasons only:

(a) Natural area preserves:

(i) Maintenance or construction of service roads, boundary fences, or trails, or modification of conditions only as may be required, and only where ~~((absolutely))~~ necessary, to meet park management goals and mitigated in a resource conservation plan that involves consultation with the department of natural resources Washington natural heritage program, and as appropriate other agencies and is approved by the director or the designee of the director.

(ii) Maintain or restore a native plant community, species population, or ecological process as specified in a natural area preserve management plan prepared in consultation with the department of natural resources Washington natural heritage program.

(iii) Correction of conditions hazardous to persons, properties, and/or facilities on or adjacent to park land.

(iv) Control of diseases and insect infestations where adjacent lands are severely jeopardized or where a drastic alteration of the natural environment is expected to occur, after consultation with the department of natural resources Washington natural heritage program and other agencies and groups with expertise in ecosystem health as deemed appropriate by the director.

(v) Prevent the deterioration or loss of or facilitate the restoration of historical/cultural resources.

(vi) Maintenance or construction of fire lanes for abatement of fires.

(vii) Collection of specimens as specified in WAC 352-28-040, including consultation with the department of natural resources Washington natural heritage program.

(b) Natural areas and natural forest areas:

(i) Maintenance or construction of boundary fences, trails, trail structures, trail head facilities, interpretive sites, utility easements, or service roads only as may be required, and only where absolutely necessary to meet park management goals and mitigated in a resource conservation plan that involves consultation with the department of natural resources Washington natural heritage program, and as appropriate other agencies and is approved by the director or the designee of the director.

(ii) Maintain or restore a native plant community, species population, or ecological process as specified in a natural resource conservation plan prepared in consultation with the department of natural resources Washington natural heritage program, and as appropriate other agencies.

(iii) Correction of conditions hazardous to persons, properties, and/or facilities on or adjacent to park land.

(iv) Control of diseases and insect infestations where adjacent lands are severely jeopardized or where a drastic alteration of the natural environment is expected to occur, after consultation with the department of natural resources Washington natural heritage program and other agencies and groups with expertise in ecosystem health as deemed appropriate by the director or the designee of the director.

(v) Prevent the deterioration or loss of or facilitate the restoration of historical/cultural resources.

(vi) Maintenance or construction of ~~((service roads))~~ fire lanes for abatement of fires.

(vii) Collection of edibles as specified in WAC 352-28-030 or specimens as specified in WAC 352-28-040.

(c) Recreation areas, resource recreation areas, and heritage areas:

(i) Area clearing necessary for park maintenance, and/or park development projects for day use and overnight recreation facilities, road and utility easements, and administrative facilities.

(ii) Correction of conditions hazardous to persons, properties, and/or facilities on or adjacent to park land.

(iii) Cleanup of trees fallen, tipped, or damaged by the weather, fire, or other natural causes where they directly interfere with park management activities.

(iv) Creation of diverse native trees and other plants, coarse woody debris, and fungi sizes, ages, and species to

achieve visual aspects that resemble a formal landscape, natural or historical setting, or to improve wildlife habitat.

(v) Maintenance or creation of a regenerating natural environment that will sustain low ground cover, shrubs, and understory and overstory trees (to provide screening, wind, and sun protection).

(vi) Control of diseases and insect infestations where adjacent lands are severely jeopardized or where a drastic alteration of the natural environment is expected to occur.

(vii) Prevent the deterioration or loss of historical/cultural resources.

(viii) Maintenance or construction of ~~((service roads))~~ fire lanes for abatement of fires.

(ix) Modification of conditions to maintain or restore a desired plant community, species population, or ecological process.

~~((Grazing, hay removal, or other similar activities when performed under authority of a permit from the commission or director.~~

~~((xi))~~ Collection of edibles as specified in WAC 352-28-030 or specimens as specified in WAC 352-28-040.

(5) **Use of fallen trees:** ~~((Except where they may create safety hazards and/or interfere with the normal operation of a park))~~ When feasible, fallen trees shall be left on the ground when deemed environmentally beneficial or used for park purposes such as, but not limited to, approved building projects, trail mulching, and firewood~~((— In natural area preserves, natural forest areas, natural areas, and resource recreation areas first consideration shall be given to leaving trees on the ground for natural purposes))~~, or where the tree has no economic values contributed to a state managed resource conservation effort. In natural area preserves, natural forest areas, natural areas, and resource recreation areas first consideration shall be given to leaving trees on the ground for natural purposes.

**(6) Parks use:** Subject to the guidelines of this section, the commission may authorize the use of natural resources within recreation areas, resource recreation areas, and heritage areas for park purposes.

**AMENDATORY SECTION** (Amending WSR 08-05-009, filed 2/7/08, effective 3/9/08)

**WAC 352-28-020 Resource sales and leases.** The following qualifications, procedures, and general provisions pertain to the sale of~~((— or leasing of lands containing, tree, plant or fungi))~~ natural resources from commission owned or managed lands:

(1) Subject to the limitations set forth under WAC 352-28-010(4), the sale of natural resources ((associated with commission owned or managed lands, or the lease of lands containing natural resources to be sold.)) will be undertaken only where they advance a commission approved ~~((capital))~~ development, are part of a resource conservation plan or interagency agreement approved by the director or ~~((the))~~ designee ~~((of the director))~~, or are deemed by the director or ~~((the))~~ designee ~~((of the director))~~ to advance agency stewardship goals and are surplus to the parks needs. ~~((Sales of natural resources from lands owned, leased or managed by the commission, are limited to lands classified as resource~~

recreation, recreation, or heritage as defined in chapter 352-16 WAC, and must be consistent with criteria specified in WAC 352-28-010. Resources from other land classes must meet the criteria specified in WAC 352-28-010 prior to their consideration for sale.)

(2) Prior to a sale of natural resources ((sales from lands owned, leased or managed by the commission)), qualified park personnel or their designated agent shall conduct an inventory or cruise of the materials, appraise the value of such materials, and establish a minimum acceptable bid, unless such natural resources are for use by the park or qualify for direct sale under subsection (4) of this section.

((a)) Where trees are to be sold, ((the following qualifications must be met:

(i) Only timber which qualifies for cutting and removal under RCW 79A.05.035(2), WAC 352-28-010, and which is surplus to the needs of the park may be sold.

(ii) The timber significantly hinders the public use or operation of a park and is of such a quantity that park personnel cannot dispose of it in a timely manner.

(iii) The timber is cut or removed as part of a commission approved park maintenance or development project, or road or utility easement; a plan to address blown-down, burned, or damaged trees resulting from a catastrophic forest event; part of a resource conservation plan to maintain or restore a native plant community, species population, or ecological processes; or an agency approved maintenance or development project that contains a resource conservation plan.

(iv) Timber) such trees shall be appraised using methods consistent with those applied by the Washington department of natural resources. Complete records of the methods and assumptions used to make the timber appraisal and estimated minimum acceptable bids shall be maintained.

((b) Where nontimber resources are to be sold from lands owned, leased or managed by the commission, the following qualifications must be met:

(i) The removal of natural resources from commission owned or managed lands will only occur where the sale is part of a resource conservation plan to maintain or restore a native plant community, species population, or ecological processes.

(ii) The commission cannot achieve its stewardship goals without selling the resources or leasing the lands designated in the conservation plan noted in WAC 352-28-020(2).

(3) A public meeting on each proposed sale or lease shall be conducted in the county in which the sale or lease is to take place. Prior notice of a hearing shall be published in a newspaper of general circulation in such county. Any person who requests notification of proposed sale or lease shall be sent prior notice of a meeting by mail. A summary of the testimony presented at a meeting or received in writing shall be presented to the director.

(4)) (3) Sales ((or leases)) where the appraised value of the materials is in excess of twenty-five thousand dollars ((in appraised value or the value specified for direct sales in RCW 79.15.050, whichever is larger,)) shall require approval by a majority of the commission. ((Public testimony related to the sale or lease will be presented to the commission. Sales or leases where the appraised value of the materials is less than

or equal to twenty-five thousand dollars, or the direct sale value specified in RCW 79.15.050, shall require approval by the director. Public testimony related to the sale or lease will be presented to the director.

(5)) (4) Sales where the appraised value of the materials is less than or equal to twenty-five thousand dollars shall require approval by the director or designee. All sales ((or leases)) shall be conducted ((through an agreement with the department of natural resources pursuant to RCW 43.30.530 or by the director or the designee of the director in accordance with subsections (6) through (11) of this section. Director approved sales may use a direct sales approach as specified in RCW 79.15.050.

(6) Sales or leases shall be granted on the basis of competitive, sealed bids or public auction made by responsible qualified bidders. At least three qualified bidders shall be invited to bid and an advertisement for bids shall be published in a newspaper of general circulation in the county in which the sale or lease is to take place. Reasonable efforts shall be made to invite bids from prospective contractors operating or living in or near the general location of the sale.

(7) All sales or leases shall be granted on the basis of the highest bid from a responsible qualified bidder. No materials shall be sold for less than the minimum acceptable bid established by park personnel. Any bid shall be rejected if the prospective contractor is deemed unqualified. To qualify for bidding, a contractor must be of good character and reputation with demonstrated abilities and capacities sufficient to perform the contract and must not have failed to perform satisfactorily on any current or previous products sale contract with the state.

(8) All timber sold shall be measured, graded, and counted by a sealing bureau. When a sealing bureau is not located in the vicinity of a log buyer, such measuring, grading, and counting shall be performed according to standard log grading practices by a log buyer agreed to by a contractor and the director or the designee of the director.

(9) All sales or leases shall require sufficient liability and property damage insurance and also sufficient security bonding by the contractors to ensure protection of the state and satisfactory contract compliance and completion.

(10) All sales or leases shall require contract validation by the director or the designee of the director. The quantity of material which may be added to an approved sale or lease shall be no more than four percent of the total material included in an approved sale or lease. The addition of materials to an approved sale or lease may occur only upon the approval of the director or the designee of the director.

(11) All sales shall require authorization by the state of Washington, department of general administration, division of purchasing as provided in RCW 43.19.1919; also, all sales or leases shall be granted, subject to approval of any governing agency as may be required by legal condition of land title and/or timber ownership and/or by state or federal statute.

(12) All contracts shall be of a form approved by the attorney general with special provisions to tailor a contract to the particular needs of a park site)) pursuant to procedures approved by the commission.

**WSR 10-11-017**  
**PROPOSED RULES**  
**SECRETARY OF STATE**

[Filed May 7, 2010, 2:05 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-07-073.

Title of Rule and Other Identifying Information: Limited liability companies.

Hearing Location(s): Dolliver Building, Corporations and Charities Division, Office of the Secretary of State, 801 Capitol Way South, Olympia, WA 98504, on June 22, 2010, at 10:00 a.m.

Date of Intended Adoption: June 25, 2010.

Submit Written Comments to: Kathy Kimbel, P.O. Box 40234, Olympia, WA 98504-0234, e-mail Kathy.Kimbel@sos.wa.gov, fax (360) 586-4989, by June 22, 2010.

Assistance for Persons with Disabilities: Contact Sharon Baker by June 21, 2010, TTY (800) 422-8683.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To implement recent state law changes.

Reasons Supporting Proposal: Clarifies changes made by 2SHB 2576 and SHB 2756 in the 2010 legislative session.

Statutory Authority for Adoption: RCW 25.15.007, 25.15.805, 25.15.810.

Statute Being Implemented: Chapter 25.15 RCW.

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

Name of Proponent: Division of corporations, office of the secretary of state, governmental.

Name of Agency Personnel Responsible for Drafting: Pamela Floyd, 801 Capitol Way South, Olympia, WA 98504, (360) 725-0310; Implementation: Kathy Kimbel, 801 Capitol Way South, Olympia, WA 98504, (360) 725-0310; and Enforcement: Kyle Crews, Assistant Attorney General, 7141 Cleanwater Drive S.W., Tumwater, WA 98504-0121, (360) 664-2510.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The fee changes in these rules are either set in statute, voluntary, or completely removed.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are adopting by reference without material change, Washington state statutes and are not required to do a cost-benefit analysis per RCW 34.05.328 (5)(b)(iii).

May 7, 2010

Steve Excell

Assistant Secretary of State

**NEW SECTION**

**WAC 434-130-055 On-line services.** Customers may access limited liability company information, forms, or on-line submissions by visiting the corporations division's web site. When completing and submitting an on-line filing for a limited liability company, the filing requirements are found under WAC 434-112-065 through 434-112-075.

**AMENDATORY SECTION** (Amending WSR 94-19-005, filed 9/8/94, effective 10/1/94)

**WAC 434-130-060 Registered office address—Requirements.** A post office box address may be used in conjunction with a registered geographic office address ~~((when:~~

~~(1) The United States Postal Service cannot or will not deliver to the street address; and~~

~~(2) The post office box address is in the same Washington city or town as the registered office address; and))~~

~~((=))~~ The agent ~~((notifies))~~ must notify the office of the secretary of state and the corporation of any changes in either the street address or the post office box address.

**AMENDATORY SECTION** (Amending WSR 94-19-005, filed 9/8/94, effective 10/1/94)

**WAC 434-130-070 Annual reports—Due date.** Each limited liability company ~~((shall))~~ must file an annual report by the last day of the month of its original registration as a limited liability company. The corporations division ~~((shall notify))~~ or a subagent notifies all limited liability companies of its annual renewal date forty-five days in advance by ~~((a mailing))~~ regular mail or electronic mail that may include~~((s))~~ the annual report form. Failure to receive an annual report notice is insufficient reason for failure to file the statutorily required annual report.

**AMENDATORY SECTION** (Amending WSR 94-19-005, filed 9/8/94, effective 10/1/94)

**WAC 434-130-080 In-person or expedited counter service—Special fees.** (1) The corporations division counter is open to in-person requests from 8:00 a.m. to ~~((4:30))~~ 5:00 p.m. each business day. Staff provides expedited~~((same-day processing of))~~ services for corporate documents or requests received ~~((prior to 4:30 p.m. on that day))~~ in-person, by fax, mail, or on-line with the appropriate expedite fee. ~~((These))~~ Expedite services are available for the following transactions:

- ~~((Charter))~~ Document review and filing;
- ~~((Name reservation review and filing;~~
- ~~Document certification;~~
- ~~((=))~~ Document copying, certification, and status certificates~~((;~~
- ~~((Status change filings)).~~

(2) The fee for ~~((same-day))~~ expedited service is ~~((twenty))~~ fifty dollars for single or multiple paper transactions within each new or existing limited liability company file. On-line transactions are expedited for twenty dollars, but may be charged fifty dollars for in-person completion at front counter. In addition, a regulatory fee for each transaction may apply.

(3) There is no expedited fee for the following transactions:

- (a) Initial reports;
- (b) License renewal and required annual report;
- (c) Amended annual reports;
- (d) ~~((Reinstatements;~~

(~~e~~) In-person inspection or review of limited liability company files or other public documents located in the corporations division office;

((~~f~~)) (~~e~~) Documents left at the counter for processing with mail-in documents received the same day( ~~or~~

(~~g~~) ~~A search for nonactive limited company files less than twenty years old).~~

(4)(a) If staff cannot complete (~~the~~) an expedited service request before the end of the same day, the transaction will be completed (~~(first on the following)~~) within the next two business days.

(b) Emergency services needed outside regular business hours requiring employee overtime are one hundred fifty dollars per hour plus regulatory or statutory fees due for the specific form (~~(of the filing)~~). When the division receives an emergency request, staff notifies the customer of the service fee and any other reasonable conditions set by the director. The customer must agree to pay the fees before emergency services are provided.

(5) Over-the-counter service hours may be shortened under extraordinary circumstances. Separate service requests by one person may be limited to those relating to three corporations per (~~(day)~~) transaction. (~~(Documents submitted by courier services or document handling companies may receive twenty-four hour service. A customer may make alternate arrangements with the director prior to bringing or sending in documents, if a sudden, unexpected situation occurs during the business day.)~~)

Under special circumstances, the filing party may petition the secretary in writing to request a waiver of emergency or penalty fees.

AMENDATORY SECTION (Amending WSR 99-12-007, filed 5/20/99, effective 6/20/99)

**WAC 434-130-090 Fees.** For Washington registered domestic and foreign limited liability companies fees are as follows:

(1) Certificate of formation or application for registration, one hundred (~~(seventy-five dollars)~~) eighty;

(2) Annual report license renewal, (~~(fifty)~~) sixty dollars plus the department of licensing's handling fee of nine dollars;

(3) Certificate of amendment, restated certificate, or amended and restated certificate, thirty dollars;

(4) Delinquent annual report license renewal (~~(with required annual report filed after due date and before administrative dissolution)~~), penalty fee of twenty-five dollars, plus the renewal fee of (~~(fifty)~~) sixty dollars plus the department of licensing's handling fee of nine dollars;

(5) Reinstatement, one hundred dollars plus all delinquent license or annual fees and a twenty-five percent penalty computed on the total amount;

(6) Articles of merger, twenty dollars for each listed company;

(7) (~~(Certificate)~~) Statement of change of registered agent, registered office address, or designation of new registered agent, (~~(ten dollars per entity name)~~) no fee;

(8) Resignation of registered agent, twenty dollars per entity name;

(9) An initial report or amended annual report, ten dollars;

(10) Registration, reservation, or transfer of name, thirty dollars;

(11) Certificate of dissolution, certificate of cancellation, (~~(administrative dissolution)~~) or dissolution by judicial decree, (~~(or revocation of certificate of authority)~~) no fee;

(12) (~~(Agent's consent to act as agent)~~) Revocation of certificate of dissolution, thirty dollars plus any possible missed license fees;

(13) Agent's resignation if appointed without consent( ~~or annual report when filed concurrently with annual license fee~~), no fee; and

(~~(13)~~) (14) Other statement or report filed, ten dollars.

Under special circumstances, the filing party may petition the secretary in writing to request a waiver of emergency or penalty fees.

AMENDATORY SECTION (Amending WSR 94-19-005, filed 9/8/94, effective 10/1/94)

**WAC 434-130-100 Miscellaneous fees.** (1) For photocopies, fees are as follows:

(a) Each annual report, five dollars;

(b) Certificate of formation or any single document, ten dollars;

(c) (~~(Amendments to articles and mergers)~~) A copy of all documents relating to one entity, twenty dollars;

(d) (~~(All charter documents, thirty dollars;~~

(~~e~~)) Surcharge for files exceeding one hundred pages of copy, thirteen dollars for each fifty page increment (~~(number of pages determined by weight of copies)~~).

(2) For certificates of existence fees are as follows:

(a) With complete or specific historical data, under embossed seal, thirty dollars;

(b) (~~(Computer generated)~~) Under embossed seal, without historical data, twenty dollars;

(c) Duplicate certificate, under gold or embossed seal, twenty dollars.

(3) For each certified copy of any document the fee is ten dollars plus the copy fee.

(4) For any service of process the fee is fifty dollars.

(5) Dishonored checks. If a person, corporation or other submitting entity has attempted to pay any fee due to the secretary of state by means of a check, and the check is dishonored by the financial institution when presented, the secretary of state will impose a twenty-five dollar penalty, payable to the secretary of state.

In the event a valid replacement check and dishonor charge is not received in the office of the secretary of state within the time prescribed by its accounting division, the transaction covered by the dishonored check will be (~~(cancelled)~~) cancelled and all other late filing fees and penalties will be instituted.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-130-040

Telephone services.

WAC 434-130-050 Original signature required.

**WSR 10-11-022**

**PROPOSED RULES**

**WASHINGTON STATE LOTTERY**

[Filed May 10, 2010, 10:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-05-014.

Title of Rule and Other Identifying Information: Title 315 WAC, the lottery commission has identified technical corrections and updates to WAC 315-02-130, 315-06-120, 315-10-025, 315-12-030, and 315-12-150. These updates include address corrections, editorial improvements, and logical section placement. The commission also seeks to repeal WAC 315-14-010 Fifth anniversary celebration drawing.

Hearing Location(s): Washington's Lottery, 814 4th Avenue, Olympia, WA 98506, on June 22, 2010, at 0900.

Date of Intended Adoption: July 20, 2010.

Submit Written Comments to: Jana Jones, P.O. Box 43000, Olympia, WA 98506, e-mail [jjones@walottery.com](mailto:jjones@walottery.com), fax (360) 586-1039, by June 4, 2010.

Assistance for Persons with Disabilities: Contact Debbie Robinson by June 4, 2010, TTY (360) 586-0933 or (360) 664-4815.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The lottery commission has identified technical corrections and updates to WAC 315-02-130, 315-06-120, 315-10-025, 315-12-030, and 315-12-150. These updates include address corrections, editorial improvements, and logical section placement. The commission also seeks to repeal WAC 315-14-010 Fifth Anniversary celebration drawing.

Statutory Authority for Adoption: RCW 67.70.040 (1), (3).

Statute Being Implemented: RCW 67.70.040.

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

Name of Proponent: Washington state lottery commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Jana Jones, Washington's Lottery, (360) 664-4833; and Enforcement: Len Brudvik, Washington's Lottery, (360) 664-4742.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The only business allowed by law to sell lottery products are existing licensed lottery retailers.

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

May 5, 2010

Jana L. Jones

Director of Legal Services

AMENDATORY SECTION (Amending Order 3, filed 10/15/82)

**WAC 315-02-130 Employee of the commission defined.** "Employee of the commission" means the employees or agents of the ~~((commission))~~ lottery and the director ~~((unless the context clearly indicates one or the other)).~~

AMENDATORY SECTION (Amending WSR 08-11-043, filed 5/14/08, effective 6/14/08)

**WAC 315-06-120 Payment of prizes—General provisions.** (1) The director may designate claim centers for the filing of prize claims, and the location of such centers shall be publicized from time to time by the director.

(2) A claim shall be entered in the name of one claimant, which shall be either a natural person, association, corporation, general or limited partnership, club, trust, estate, society, company, joint stock company, receiver, trustee, or another acting in a fiduciary or representative capacity whether appointed by a court or otherwise. A claim which includes one or more tickets with an address label or stamp on the back of the ticket shall be deemed to have been entered in the name of one claimant: Provided, That if the address label or stamp contains the name of more than one claimant, the prize payment will be made to the one who has signed the ticket and/or claim form or, if there is no signature, to the first claimant listed on the address label or stamp. If there are two or more claimant names written or signed on the ticket, lottery personnel shall return the ticket(s) to claimants and shall request that the claimants sign a notarized statement relinquishing ownership to one claimant. The claimant must submit his or her Social Security number (SSN) or the federal employer's identification number (FEIN) when claiming any prize exceeding six hundred dollars.

(3) A claim may be entered in the name of a claimant other than a natural person only if the claimant is a legal entity and possesses a federal employer's identification number (FEIN) as issued by the Internal Revenue Service, such number is shown on the claim form and the entity's terms comply with subsection (4) of this section. Groups, family units, organizations, clubs, or other organizations which are not a legal entity, or do not possess a federal employer's identification number, shall designate one natural person or one legal entity in whose name the claim is to be entered.

(4) The terms governing a claimant other than a natural person, i.e., articles of incorporation, trust terms, etc., shall be submitted to the director for approval. Terms not in compliance with lottery statutes or rules shall not be approved. Payment shall not be made to a claimant other than a natural person until the director has approved the terms.

All claimants other than natural persons shall have governing terms which:

(a) Prohibit deletion, amendment, or addition of terms without the director's approval;

(b) State the names of all natural persons who have a direct or indirect right or interest in the claimant, each of their percentage interests and their Social Security numbers;

(c) Acknowledge that the debt collection process mandated by RCW 67.70.255 and WAC 315-06-125 shall be

applied to the natural persons who hold interests in the claimant through their Social Security numbers; and

(d) Provide that in the event the claimant ceases to exist prior to the full payout of the prize, the lottery will not make further payment without court order.

(5) The lottery shall not make payment to a claimant other than a natural person unless the terms governing the claimant include those enumerated in subsection (4) of this section.

(6) Unless otherwise provided in the rules for a specific type of game, a claimant shall sign the back of the ticket and/or complete and sign a claim form approved by the director. The claimant shall submit the claim form and/or claimant's ticket to the lottery in accordance with the director's instructions as stated in the game brochure and/or on the back of the ticket or submit a request for reconstruction of an alleged winning ticket and sufficient evidence to enable reconstruction and that the claimant had submitted a claim for the prize, if any, for that ticket. The claimant, by submitting the claim or request for reconstruction, agrees to the following provisions:

(a) The discharge of the state, its officials, officers, employees, and the commission of all further liability upon payment of the prize; and

(b) The authorization to use the claimant's name and, upon written permission, photograph for publicity purposes by the lottery.

(7) A prize must be claimed within the time limits prescribed by the director in the instructions for the conduct of a specific game, but in no case shall a prize be claimed later than one hundred eighty days, except a shared game lottery, after the official end of that instant game or draw game drawing for which that draw game ticket was purchased.

(8) The director may deny awarding a prize to a claimant if:

(a) The ticket was not legally issued initially;

(b) The ticket was stolen from the commission, director, its employees or retailers, or from a lottery retailer; or

(c) The ticket has been altered or forged, or has otherwise been mutilated such that the authenticity of the ticket cannot be reasonably assured by the director.

(9) No natural person or legal entity entitled to a prize may assign the right to payment, except under the following limited circumstances:

(a) That payment of a prize may be made to any court appointed legal representative, including, but not limited to, guardians, executors, administrators, receivers, or other court appointed assignees; and

(b) When payment of all or part of the remainder of an annuity and the right to receive future annual prize payments has been voluntarily assigned to another person, pursuant to an appropriate judicial order that meets the requirements of RCW 67.70.100(2).

(10) In the event that there is a dispute or it appears that a dispute may occur relative to any prize, the director may refrain from making payment of the prize pending a final determination by the director or by a court of competent jurisdiction relative to the same.

(11) A ticket that has been legally issued by a lottery retailer is a bearer instrument until signed. The person who

signs the ticket or has possession of an unsigned ticket is considered the bearer of the ticket. Payment of any prize may be made to the bearer, and all liability of the state, its officials, officers, and employees and of the commission, director and employees of the commission terminates upon payment.

(12) All prizes shall be paid within a reasonable time after the claims are validated by the director and a winner is determined. Provided, prizes paid for claims validated pursuant to WAC 315-10-070(2) shall not be paid prior to one hundred eighty-one days after the official end of that instant game.

(13) The date of the first installment payment of each prize to be paid in installment payments shall be the date the claim is validated, or the date the winner makes a choice of payment by annual payments or by single cash payment pursuant to WAC 315-34-057. Subsequent installment payments shall be made as follows:

(a) If the prize was awarded as the result of a drawing conducted by the lottery, installment payments shall be made weekly, monthly, or annually from the date of the drawing in accordance with the type of prize awarded ~~((; however, at the director's discretion, the lottery may designate an alternate payment date for regular prize payment; or))~~.

(b) If the prize was awarded in a manner other than a drawing conducted by the lottery, installment payments shall be made weekly, monthly, or annually from the date the claim is validated in accordance with the type of prize awarded. ~~((However, at the director's discretion, the lottery may designate an alternate payment date for regular prize payment.))~~

(14) The director may, at any time, delay any payment in order to review a change of circumstances relative to the prize awarded, the payee, the claim or any other matter that may have come to his or her attention. All delayed payments shall be brought up to date immediately upon the director's confirmation and continue to be paid on each originally scheduled payment date thereafter.

(15) If any prize is payable for the life of the winner, only a natural person may claim such a prize. Such "win for life" type prizes shall cease upon the death of the winner or the end of a guaranteed payment period (if any), whichever is later. Win for life prizes may be assigned; and the following conditions apply to such assignments:

(a) The original winner's actual life shall determine when prize payments cease; and

(b) The assignee shall be responsible for notifying the lottery of the original winner's death.

(16) The director's decisions and judgments in respect to the determination of a winning ticket or of any other dispute arising from the payment or awarding of prizes shall be final and binding upon all participants in the lottery.

(17) Each lottery retailer shall pay all prizes authorized to be paid by the lottery retailer by these rules during its normal business hours at the location designated on its license.

(18) In the event a dispute between the director and the claimant occurs as to whether the ticket is a winning ticket, and if the ticket prize is not paid, the director may, solely at his or her option, replace the disputed ticket with an unplayed ticket (or tickets of equivalent sales price from any game). This shall be the sole and exclusive remedy of the claimant.



(19) At the director's discretion, the lottery may designate an alternative payment date for prize payment.

AMENDATORY SECTION (Amending WSR 08-11-043, filed 5/14/08, effective 6/14/08)

**WAC 315-10-025 Cost to purchase an instant game ticket.** The price of an instant game ticket shall not be less than \$1.00 and not more than \$20.00, except for those tickets used in media promotions authorized by the director and retailer incentive programs authorized by the ~~((director))~~ commission.

AMENDATORY SECTION (Amending WSR 08-11-043, filed 5/14/08, effective 6/14/08)

**WAC 315-12-030 Description of central and field organization of the commission and the director.** The administrative office of the commission and director is located at 814 - 4th Avenue, Olympia, WA 98506. Regional offices of the director located in other cities are as follows:

<u>CITY</u>	<u>SERVICES</u>
EVERETT REGION (Casino Square Shopping Plaza 205 E. Casino Road Everett, WA 98204) <u>11419 19th Avenue S.E.</u> <u>Suite A106</u> Everett, WA 98208	(a) Sales Representative (b) Payout Center
OLYMPIA REGION 814 - 4th Avenue Olympia, WA 98506	(a) Sales Representative (b) Payout Center (c) Ticket Warehousing
FEDERAL WAY REGION 33701 9th Avenue S Federal Way, WA 98003-6762	(a) Sales Representative (b) Payout Center
SPOKANE REGION East 10517 Sprague Avenue Spokane, WA 99206-3631	(a) Sales Representative (b) Payout Center
VANCOUVER REGION El Camino Fountain Shopping Mall Suite 4 1503 N.E. 78th Street Vancouver, WA 98665	(a) Sales Representative (b) Payout Center
YAKIMA REGION 9 South 5th Yakima, WA 98901	(a) Sales Representative (b) Payout Center

All records of the commission and director are maintained in the administrative office in Olympia.

AMENDATORY SECTION (Amending WSR 08-11-043, filed 5/14/08, effective 6/14/08)

**WAC 315-12-150 Communications.** All written communications with the commission or director pertaining to the administration or enforcement of chapter 42.56 RCW and these rules shall be addressed as follows: Washington State Lottery, P.O. Box ((9770)) 43026, Olympia, WA 98504-3026, Attn: Public Records Officer. You may contact us through our web site at [www.walottery.com](http://www.walottery.com).

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 315-14-010 Fifth anniversary celebration drawing.

**WSR 10-11-034**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Financial Services Administration)  
[Filed May 11, 2010, 1:42 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-08-051.

Title of Rule and Other Identifying Information: Amending WAC 388-06-0010, purpose; WAC 388-06-0020, definitions for WAC 388-06-0100 through 388-06-0260; WAC 388-06-0110, who must have background checks; WAC 388-06-0130, scope of background check regulations; WAC 388-06-0150, what does the background check cover; WAC 388-06-0160, who pays for the background check; WAC 388-06-0180, other criminal convictions that prohibit working with vulnerable individuals; WAC 388-06-0250, release of background check information to current/prospective employers; and WAC 388-06-0525, eligibility for one hundred twenty-day provisional hire.

Adding new sections WAC 388-06-0700, definitions for WAC 388-06-0710 through 388-06-0720; WAC 388-06-0710, who may submit a background check to the background check central unit; and WAC 388-06-0720, who receives the results of a background check conducted by the background check central unit.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on June 22, 2010, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 23, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by June 22, 2010.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by June 8, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [jennisha.johnson@dshs.wa.gov](mailto:jennisha.johnson@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The administrative services division is proposing these rules to comply with Initiative 1029 and chapter 580, Laws of 2009, requiring DSHS to conduct national fingerprint background checks for all long-term care workers beginning January 1, 2012, and

requiring DSHS to share the results of long-term care background checks with the department of health. These rule changes describe the background check requirements for long-term care workers contracted or hired by the division of developmental disabilities; describe the responsibilities of the DSHS background check central unit; and include clarifying changes.

Reasons Supporting Proposal: Same as above.

Statutory Authority for Adoption: RCW 43.43.832, 74.39A.055.

Statute Being Implemented: RCW 74.39A.050, 74.39A.055, 74.39A.095, 74.39A.260, 43.20A.710, 43.43.837.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Cindy LaRose, P.O. Box 45025, Olympia, WA 98504-5025, (360) 902-8072.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule is exempt under RCW 19.85.025(3):

WAC 388-06-0010 through 388-06-0525 - rule amendments are explicitly and specifically dictated by statute or rule amendments clarify language without changing the effect.

WAC 388-06-0700 through 388-06-0720 - relate to internal operations that are not subject to violation by a non-government party.

A cost-benefit analysis is not required under RCW 34.05.328. Sections 388-06-0010 through 388-06-0525 of this rule are exempt from preparing further analysis under RCW 34.05.328 (5)(b)(iv) and (v) - rule content is explicitly and specifically dictated by statute or rule amendments clarify language without changing the effect.

Sections 388-06-0700 through 388-06-0720 are also exempt under RCW 34.05.328 (5)(b)(ii) - relating to internal operations that are not subject to violation by a nongovernment party.

May 7, 2010

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-03-003, filed 1/8/09, effective 2/8/09)

**WAC 388-06-0010 What is the purpose of this chapter?** (1) The purpose of this chapter is to establish rules for background checks conducted by children's administration (CA), and the division of developmental disabilities (DDD) at the department of social and health services (DSHS). The department does background checks on individuals who are licensed, certified, contracted, or authorized to care for or have unsupervised access to children and to individuals with a developmental disability. Background checks are conducted to find and evaluate any history of criminal convictions ((and child)) or civil adjudication proceedings, including those involving abuse, abandonment, financial exploitation, or neglect of a child or vulnerable adult.

(2) This chapter also defines when the one hundred twenty-day provisional hire is allowed by DSHS. WAC 388-06-0500 through 388-06-0540 apply to all DSHS administrations.

(3) WAC 388-06-0600 through 388-06-0640 of this chapter includes the background check requirements for DSHS employees and applicants seeking, working or serving in a covered position.

(4) WAC 388-06-0700 through 388-06-0720 of this chapter describes the responsibilities of the background check central unit.

AMENDATORY SECTION (Amending WSR 01-18-025, filed 8/27/01, effective 10/1/01)

**WAC 388-06-0020 What definitions apply to WAC 388-06-0100 through 388-06-0260 of this chapter?** The following definitions apply to WAC 388-06-0100 through 388-06-0260 of this chapter:

**"Authorized" or "authorization"** means not disqualified by the department to have unsupervised access to children and individuals with a developmental disability. This includes persons who are certified, contracted, allowed to receive payments from department funded programs, or volunteer.

**"CA"** means children's administration, department of social and health services. Children's administration is the cluster of programs within DSHS responsible for the provision of licensing of foster homes, group facilities/programs and child-placing agencies, child protective services, child welfare services, and other services to children and their families.

~~((**"CAMIS"** means case and management information system. This data system is used by children's administration.))~~

**"Certification"** means:

(1) Department approval of a person, home, or facility that does not legally need to be licensed, but wishes to have evidence that they met the minimum licensing requirements.

(2) Department licensing ~~((of a))~~ of a child-placing agency to certify and supervise foster home and group care programs.

**"Children" ((of)) and "youth" ((means)) are used interchangeably in this chapter and refer to individuals who are under parental or department care including:**

(1) Individuals under eighteen years old; or

(2) Foster children up to twenty-one years of age and enrolled in high school or a vocational school program; or

(3) Developmentally disabled individuals up to twenty-one years of age for whom there are no issues of child abuse and neglect; or

(4) JRA youth up to twenty-one years of age and who are under the jurisdiction of JRA or a youthful offender under the jurisdiction of the department of corrections who is placed in a JRA facility.

~~((**(5) These two terms are used interchangeably in this chapter.**))~~

**"Civil adjudication proceeding"** is a judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse,

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

"**DCFS**" means division of children and family services and is a division within children's administration that provides child welfare, child protective services, and support services to children in need of protection and their families.

"**DDD**" means the division of developmental disabilities, department of social and health services (DSHS).

"**DLR**" means the division of licensed resources that is a division within children's administration, the department of social and health services.

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

"**I**" and "**you**" refers to anyone who has unsupervised access to children or to persons with developmental disabilities in a home, facility, or program. This includes, but is not limited to, persons seeking employment, a volunteer opportunity, an internship, a contract, certification, or a license for a home or facility.

"**JRA**" means the juvenile rehabilitation administration, department of social and health services.

"**Licensor**" means an employee of DLR or of a child placing agency licensed or certified under chapter 74.15 RCW to approve and monitor licenses for homes or facilities that offer care to children. Licenses require that the homes and facilities meet the department's health and safety standards.

"**Individuals with a developmental disability**" means individuals who meet eligibility requirements in Title 71A RCW (~~(, WAC 388-825-030, for services)~~). A developmental disability is any of the following: (~~(Mental retardation)~~) Intellectual disability, cerebral palsy, epilepsy, autism, or another neurological condition described in ((WAC 388-825-030) chapter 388-823 WAC; originates before the age of eighteen years; is expected to continue indefinitely; and ((results in)) constitutes a substantial ((handicap)) limitation to the individual.

"**Spousal abuse**" includes any crime of domestic violence as defined in RCW 10.99.020 when committed against a spouse, former spouse, person with whom the perpetrator has a child regardless of whether the parents have been married or lived together at any time, or an adult with whom the perpetrator is presently residing or has resided in the past.

"**Unsupervised**" means not in the presence of:

(1) The licensee, another employee or volunteer from the same business or organization as the applicant who has not been disqualified by the background check.

(2) Any relative or guardian of the child or developmentally disabled individual or vulnerable adult to whom the applicant has access during the course of his or her employment or involvement with the business or organization (RCW 43.43.080(9)).

"**Unsupervised access**" means that an individual will or may be left alone with a child or vulnerable adult (individual with developmental disability) at any time for any length of time.

"**We**" refers to the department, including licensors and social workers.

"**WSP**" refers to the Washington State Patrol.

AMENDATORY SECTION (Amending WSR 09-06-028, filed 2/24/09, effective 3/6/09)

**WAC 388-06-0110 Who must have background checks?** (~~(The department requires background checks on individuals who will have unsupervised access to children or to individuals with a developmental disability in homes, facilities, or operations licensed, relicensed, or contracted by the department to provide care as required under chapter 74.15 RCW. The department requires background checks on the following people:~~

(1) ~~A person licensed, certified, or contracted by us to care for children (chapter 74.15 RCW and RCW 43.43.832);~~

(2) ~~A prospective or current employee for a licensed care provider or a person or entity contracting with us;~~

(3) ~~A volunteer or intern with regular or unsupervised access to children who is in a home or facility that offers licensed care to children;~~

(4) ~~A person who is at least sixteen years old, is residing in a foster home, relative's home, or child care home and is not a foster child;~~

(5) ~~A person not related to the child who the court has approved placement as allowed in RCW 13.34.130;~~

(6) ~~A relative other than a parent who may be caring for a child or an individual with a developmental disability;~~

(7) ~~A person who regularly has unsupervised access to a child or an individual with a developmental disability;~~

(8) ~~A provider who has unsupervised access to a child or individual with a developmental disability in the home of the child or individual with a developmental disability; and~~

(9) ~~Prospective adoptive parents)~~ (1) Per RCW 74.15-

030, the department requires background checks on all providers who may have unsupervised access to children or individuals with a developmental disability. This includes licensed, certified or contracted providers, their current or prospective employees and prospective adoptive parents as defined in RCW 26.33.020.

(2) Per RCW 74.39A.055, the department requires state and federal background checks on all long-term care workers for the elderly or persons with disabilities hired or contracted after January 1, 2012.

(a) This does not include long-term care workers qualified and contracted or hired on or before December 31, 2011.

(b) Parents are not exempt from the long-term care background check requirements.

(3) Per RCW 74.15.030, the department also requires background checks on other individuals who may have unsupervised access to children or to individuals with a developmental disability in department licensed or contracted homes, or facilities which provide care. The department requires background checks on the following people:

(a) A volunteer or intern with regular or unsupervised access to children;

(b) Any person who regularly has unsupervised access to a child or an individual with a developmental disability;

(c) A relative other than a parent who may be caring for a child;

(d) A person who is at least sixteen years old, is residing in a foster home, relatives home, or child care home and is not a foster child.

**AMENDATORY SECTION** (Amending WSR 01-18-025, filed 8/27/01, effective 10/1/01)

**WAC 388-06-0130 Does the background check process apply to new and renewal licenses, certification, contracts, and authorizations to have unsupervised access to children or individuals with a developmental disability?**

(1) For children's administration these regulations apply to all applications for new and renewal licenses, contracts, certifications, and authorizations to have unsupervised access to children ~~(and)~~ or individuals with a developmental disability that are processed by the ~~(department)~~ children's administration after the effective date of this chapter.

(2) For the division of developmental disabilities these regulations apply to any of the following that may involve unsupervised access to children and individuals with a developmental disability:

(a) Initial contracts, licenses or certifications and renewals as required by the applicable DDD background check renewal schedule and program regulations; and

(b) Any contract, license or certification renewal when there was a lapse of one day or more following expiration.

**AMENDATORY SECTION** (Amending WSR 09-06-028, filed 2/24/09, effective 3/6/09)

**WAC 388-06-0150 What does the background check cover?** (1) ~~The department must review ~~(the following records)~~ criminal convictions and pending charges based on identifying information provided by you. The background check may include but is not limited to the following information sources:~~

~~(a) ~~(Criminal convictions and pending charges based on identifying information provided by you. However, if you have lived in Washington State for less than three years prior to the check, the department must conduct a fingerprint based background check for you to have unsupervised access to children or to individuals with developmental disabilities)~~ Washington state patrol.~~

~~(b) ~~(If the)~~ Washington courts.~~

~~(c) Department of corrections.~~

~~(d) Department of health.~~

~~(e) Civil adjudication proceedings.~~

~~(f) Applicant's self-disclosure.~~

~~(g) Out-of-state law enforcement and court records.~~

(2) Except as required in WAC 388-06-0150 (4)(b) and (5), children's administration and division of developmental disabilities will conduct a fingerprint-based background check on any individual who has lived in Washington state for less than three years.

(3) Background ~~(check is being)~~ checks conducted for children's administration~~(-it must)~~ also include:

~~((+)) (a) A review of child protective services case files information or other applicable information system.~~

~~((+)) (b) Administrative hearing decisions related to any DSHS license that has been revoked, suspended, or denied.~~

~~((e) If the background check is being)~~ (4) In addition to the requirements in subsections (1) through (3) of this section, background checks conducted by children's administration for placement of a child in out-of-home care, including foster homes, adoptive homes, relative placements, and placement with other suitable persons under chapter 13.34 RCW, ~~(the department must check the following in addition to the requirements above)~~ include the following for each person over eighteen years of age residing in the home:

~~((+)) (a) Child abuse and neglect registries in each state a person has lived in the five years prior to conducting the background check.~~

~~((+)) (b) Washington state patrol (WSP) and federal bureau of investigation (FBI) fingerprint based background checks regardless of how long you have resided in Washington.~~

~~((2)) (5) The ~~(department may also review:~~~~

~~(a) Any civil judgment, determination or disciplinary board final decisions of child abuse or neglect.~~

~~(b) Law enforcement records of convictions and pending charges in other states or locations if:~~

~~(i) You have lived in another state.~~

~~(ii) Reports from other credible sources indicating a need to investigate another state's records)~~ division of developmental disabilities requires fingerprint-based background checks for all long-term care workers as defined in RCW 74.39A.009(16) hired or contracted on or after January 1, 2012. These background checks must include a review of conviction records through the Washington state patrol, the federal bureau of investigation, and the national sex offender registry.

**AMENDATORY SECTION** (Amending WSR 09-06-028, filed 2/24/09, effective 3/6/09)

**WAC 388-06-0160 Who pays for the background check?** (1) Children's administration (CA) pays the DSHS general administrative costs for background checks for foster home applicants, CA relative and other suitable caregivers, and CA adoptive home applicants.

(2) Children's administration pays the WSP and FBI-fingerprint processing fees for foster home applicants, CA relative and other suitable caregivers, CA adoptive home applicants, and other adults ~~(+)~~ associated with the home who require ~~(fingerprinting)~~ background clearances under chapter 13.34 RCW.

(3) Children's administration does not pay ~~(fingerprinting)~~ WSP and FBI fingerprint processing fees or expenses for employees, contractors, or volunteers associated with ~~(any)~~ facilities other ~~(type of home or facility)~~ than foster homes.

(4) The division of developmental disabilities pays for background checks, including fingerprint-based background

checks, for individuals seeking authorization to provide services to ~~((their))~~ clients of the division.

AMENDATORY SECTION (Amending WSR 01-18-025, filed 8/27/01, effective 10/1/01)

**WAC 388-06-0180 Are there other criminal convictions that will prohibit me from working with children or individuals with a developmental disability?** The department must disqualify you from licensing, contracting, certification, or from having unsupervised access to children or to individuals with a developmental disability if it has been less than five years from a conviction for the following crimes:

(1) Any physical assault not included in WAC 388-06-0170;

(2) Any sex offense not included in WAC 388-06-0170;

(3) Any felony conviction not included in WAC 388-06-0170; or

(4) Felony violation of the following drug-related crimes:

(a) The imitation controlled substances act (for substances that are falsely represented as controlled substances (see chapter 69.52 RCW));

(b) The legend drug act (prescription drugs, see chapter 69.41 RCW);

(c) The precursor drug act (substances used in making controlled substances, see chapter 69.43 RCW);

(d) The uniform controlled substances act (illegal drugs or substances, see chapter 69.50 RCW); or

(e) Unlawfully manufacturing, delivering or possessing a controlled substance with intent to deliver, or unlawfully using a building for drug purposes.

(5) Any federal or out-of-state conviction for an offense that under the laws of ~~((this))~~ Washington state would disqualify you for no less than five years from having unsupervised access to children or individuals with a developmental ~~((disabilities in your home or facility no less than five years from a conviction listed in this section))~~ disability.

AMENDATORY SECTION (Amending WSR 01-18-025, filed 8/27/01, effective 10/1/01)

**WAC 388-06-0250 Is the background check information released to my employer or prospective employer?**

(1) ~~((The department))~~ Children's administration will share with employers or approved care providers only that:

(a) You are disqualified; or

(b) You have not been disqualified by the background check.

(2) Division of developmental disabilities will release the source of the disqualifying crime or negative action and WSP rap sheet to authorized requesters as allowed by state law.

(3) The department will follow laws related to the release of criminal history records (chapters 10.97 and 43.43 RCW) and public disclosure (chapter 42.17 RCW) when releasing any information.

AMENDATORY SECTION (Amending WSR 01-15-019, filed 7/10/01, effective 8/10/01)

**WAC 388-06-0525 When are individuals eligible for the one hundred twenty-day provisional hire?** Individuals are eligible for the one hundred twenty-day provisional hire immediately. The signed background check application and ~~((two FBI fingerprint cards must be sent to the BCCU within forty-eight hours by the agency, entity or hiring individual))~~ fingerprinting process must be completed as required by the applicable DSHS program.

### BACKGROUND CHECK CENTRAL UNIT

#### NEW SECTION

**WAC 388-06-0700 What definitions apply to WAC 388-06-0710 through 388-06-0720? "Authorized entity"** means a department of social and health services program, service provider, licensee, contractor, or other public or private agency that has permission from the department to conduct background checks through the background check central unit.

**"Background check applicant"** means an employee, volunteer, student, intern, licensee, service provider, contractor or other individual who is the subject of the background check and who will work in a position that:

(1) May have unsupervised access to vulnerable adults, juveniles or children as described in WAC 388-06-0610; or

(2) Is designated by the department as a sensitive position.

**"Background check central unit"** is the program responsible for conducting background checks for the department of social and health services.

(1) The background check central unit is responsible for:

(a) Compiling background check information from external and internal data sources; and

(b) Providing information to the authorized entity who requested the background check.

(2) The background check central unit does not:

(a) Make the final hiring, contracting, placement, or licensing decision for the department or authorized entity; or

(b) Determine what program, service provider, licensee, contractor, or other public or private agency qualifies as an authorized entity.

**"Department"** means the department of social and health services.

#### NEW SECTION

**WAC 388-06-0710 Who may submit a background check to the background check central unit?** An authorized entity may request a background check through the background check central unit when the authorized entity has:

(1) A valid background check central unit account number;

(2) A current department background authorization form filled out and signed by the applicant; and

(3) Submitted the background check request under the applicable program requirements.

NEW SECTION

**WAC 388-06-0720 Who receives the results of a background check conducted by the background check central unit?** (1) The background check central unit follows laws related to the release of criminal history records (chapter 10.97 and 43.43 RCW), public disclosure (chapter 42.56 RCW); and other applicable laws when releasing background information.

(2) The authorized entity who submits a background check request receives a copy of the background check results.

(3) The background check applicant may request a copy of his or her background check results.

(4) As required in RCW 74.39A.055(2), the department will share the results of state and national background checks with the Washington department of health to satisfy its certification responsibilities under chapter 18.88B RCW.

**WSR 10-11-036**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed May 11, 2010, 1:45 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-06-061.

Title of Rule and Other Identifying Information: The community services division is proposing to implement new deeming procedures for sponsored aliens by changing or adding language to WAC 388-450-0156 When am I exempt from deeming? and 388-450-0160 How does the department decide how much of my sponsor's income to count against my benefits?

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on June 22, 2010, at 10:00 a.m.

Date of Intended Adoption: Not sooner than June 23, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on June 22, 2010.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by June 8, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsjl4@dshs.wa.gov](mailto:johnsjl4@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: USDA Food and Nutrition Service final rules for the Farm Security and Rural Investment Act (FSRIA) of 2002 (farm bill) final rule announcement included new procedures for applying sponsored alien deeming exemptions, deeming sponsor's income

and resources to sponsored families that include children with United States citizenship, and for reporting or not reporting sponsored aliens to the United States Attorney General when they are eligible for the indigence exemption.

Reasons Supporting Proposal: The rule changes are needed to comply with the FSRIA final rule clarification and bring Washington's Basic Food program rules in line with new federal regulations and secure federal financial support for program benefits.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Statute Being Implemented: RCW 74.04.005, 74.04.-050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. § 273.1 and 273.9 (d)(1).

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Robert Thibodeau, 712 Pear Street S.E., Olympia, WA 98504, (360) 725-4634.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendments only affect DSHS clients by changing the way income and resources may or may not be deemed to sponsored aliens that are otherwise eligible for federal supplemental nutrition assistance program (SNAP) benefits under the Basic Food program.

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

May 6, 2010

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-15-057, filed 7/13/04, effective 8/13/04)

**WAC 388-450-0156 When am I exempt from deeming?** (1) If you meet any of the following conditions, you are **permanently** exempt from deeming and we do not count your sponsor's income or resources against your benefits:

(a) The Immigration and Nationality Act (INA) does not require you to have a sponsor. Immigrants who are not required to have a sponsor include those with the following status with Immigration and Naturalization Service (INS):

- (i) Refugee;
- (ii) Parolee;
- (iii) Asylee;
- (iv) Cuban entrant; or
- (v) Haitian entrant.

(b) You were sponsored by an organization or group as opposed to an individual;

(c) You do not meet the alien status requirements to be eligible for benefits under chapter 388-424 WAC;

(d) You have worked or can get credit for forty qualifying quarters of work under Title II of the Social Security Act.

We do not count a quarter of work toward this requirement if the person working received TANF, food stamps, Basic Food, SSI, CHIP, or nonemergency medicaid benefits. We count a quarter of work by the following people toward your forty qualifying quarters:

- (i) Yourself;
- (ii) Each of your parents for the time they worked before you turned eighteen years old (including the time they worked before you were born); and
- (iii) Your spouse if you are still married or your spouse is deceased.
- (e) You become a United States (U.S.) Citizen;
- (f) Your sponsor is dead; or
- (g) If INS or a court decides that you, your child, or your parent was a victim of domestic violence from your sponsor and:
  - (i) You no longer live with your sponsor; and
  - (ii) Leaving your sponsor caused your need for benefits.
- (2) You are exempt from the deeming process while you are in the same AU as your sponsor;
- (3) For Basic Food, you are exempt from deeming while you are under age eighteen.
- (4) For state family assistance, general assistance, state-funded Basic Food benefits, and state-funded medical assistance for legal immigrants you are exempt from the deeming process if:
  - (a) Your sponsor signed the affidavit of support more than five years ago;
  - (b) Your sponsor becomes permanently incapacitated; or
  - (c) You are a qualified alien according to WAC 388-424-0001 and you:
    - (i) Are on active duty with the U.S. armed forces or you are the spouse or unmarried dependent child of someone on active duty;
    - (ii) Are an honorably-discharged veteran of the U.S. armed forces or you are the spouse or unmarried dependent child of a honorably-discharged veteran;
    - (iii) Were employed by an agency of the U.S. government or served in the armed forces of an allied country during a military conflict between the U.S. and a military opponent; or
    - (iv) Are a victim of domestic violence and you have petitioned for legal status under the Violence Against Women Act.
  - (5) If you, your child, or your parent was a victim of domestic violence, you are exempt from the deeming process for twelve months if:
    - (a) You no longer live with the person who committed the violence; and
    - (b) Leaving this person caused your need for benefits.
  - (6) If your AU has income at or below one hundred thirty percent of the Federal Poverty Level (FPL), you are exempt from the deeming process for twelve months. This is called the "indigence exemption". You may choose to use this exemption or not to use this exemption in full knowledge of the possible risks involved. See risks in subsection (9) below. For this rule, we count the following as income to your AU:
    - (a) Earned and unearned income your AU receives from any source; and

(b) Any noncash items of value such as free rent, commodities, goods, or services you receive from an individual or organization.

(7) If you ((are exempt from deeming because your AU does not have income over one hundred thirty percent of the FPL, we)) use the indigence exemption, and are eligible for a federal program, we are required by law to give the United States attorney general the following information:

- (a) The names of the sponsored people in your AU;
- (b) That you are exempt from deeming due to your income; ~~(and)~~
- (c) Your sponsor's name; and
- (d) The effective date that your twelve-month exemption began.

(8) If you use the indigence exemption, and are eligible for a state program, we do not report to the United States attorney general.

(9) If you choose not to use the indigence exemption:

- (a) You could be found ineligible for benefits for not verifying your sponsor's income and resources; or
- (b) You will be subject to regular deeming rules under WAC 388-450-0160.

AMENDATORY SECTION (Amending WSR 01-21-026, filed 10/9/01, effective 11/1/01)

**WAC 388-450-0160 How does the department decide how much of my sponsor's income to count against my benefits?** (1) We must count some of your sponsor's income as unearned income to your assistance unit (AU) if:

- (a) Your sponsor signed the INS affidavit of support form I-864 or I-864A; and
- (b) You are not exempt from the deeming process under WAC 388-450-0156.

(2) We take the following steps to decide the monthly amount of your sponsor's income we deem as your income and count against your benefits:

- (a) We start with your sponsor's earned and unearned income that is not excluded under WAC 388-450-0015;
- (b) If your sponsor's spouse signed the affidavit of support, we add all of the spouse's earned and unearned income that is not excluded under WAC 388-450-0015;
- (c) We subtract twenty percent of the above amount that is earned income under WAC 388-450-0030;
- (d) For cash and medical assistance, we subtract the need standard under WAC 388-478-0015. We count the following people who live in your sponsor's home as a part of your sponsor's AU to decide the need standard:
  - (i) Your sponsor;
  - (ii) Your sponsor's spouse; and
  - (iii) Everyone else in their home that they could claim as a dependent for federal income tax purposes.

(e) For food assistance, we subtract the maximum gross monthly income under WAC 388-478-0060. We count the following people that live in your sponsor's home as a part of your sponsor's AU to decide the maximum gross monthly income:

- (i) Your sponsor;
- (ii) Your sponsor's spouse; and

(iii) Everyone else in their home that they could claim as a dependent for federal income tax purposes.

(f) If you can show that your sponsor has sponsored other people as well, we divide the result by the total number of people who they sponsored including any member of your household that is exempt from deeming according to WAC 388-450-0156.

(3) After we have decided how much income to deem to you, we count the greater amount of the following against your benefits:

- (a) The amount of income calculated from deeming; or
- (b) The amount of money your sponsor actually gives you for your needs.

**WSR 10-11-037**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed May 11, 2010, 1:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-06-061.

Title of Rule and Other Identifying Information: The community services division is proposing to implement new proration procedures for Basic Food standard utility allowances (SUA) by changing or adding language to WAC 388-450-0140 How does the income of an ineligible assistance unit member affect my eligibility and benefits for Basic Food?

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on June 22, 2010, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 23, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on June 22, 2010.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by June 8, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: USDA Food and Nutrition Service final rules for the Farm Security and Rural Investment Act (FSRIA) of 2002 (farm bill) final rule announcement included new procedures for not allowing the proration of mandatory standard utility allowances (SUA) for eligible assistance unit members when there are ineligible members that have income and pay part of the utility expenses.

Reasons Supporting Proposal: The rule changes are needed to comply with the FSRIA final rule clarification and bring Washington's Basic Food program rules in line with new federal regulations and secure federal financial support for program benefits.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Statute Being Implemented: RCW 74.04.005, 74.04.-050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Rule is necessary because of federal law, C.F.R. § 273.1 and 273.9 (d)(1).

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Robert Thibodeau, 712 Pear Street S.E., Olympia, WA 98504, (360) 725-4634.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendments only affect DSHS clients by allowing the full SUA in the Basic Food benefit calculation for eligible assistance unit members when an ineligible member has income and pays part of the utility expenses.

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

May 11, 2010

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-14-040, filed 6/29/04, effective 7/30/04)

**WAC 388-450-0140 How does the income of an ineligible assistance unit member affect my eligibility and benefits for Basic Food?** The department decides who must be in your assistance unit (AU) under WAC 388-408-0035. If an AU member is ineligible for Basic Food under WAC 388-408-0035, this affects your AU's eligibility and benefits as follows:

(1) We do not count the ineligible member(s) to determine your AU size for the gross monthly income limit, net monthly income limit, or maximum allotment under WAC 388-478-0060.

(2) If an AU member is ineligible because they are disqualified for an intentional program violation (IPV), they failed to meet work requirements under chapter 388-444 WAC, or they are ineligible fleeing felons under WAC 388-442-0010:

(a) We count all of the ineligible member's gross income as a part of your AU's income; and

(b) We count all of the ineligible member's allowable expenses as part of your AU's expenses.

(3) If an AU member is an ineligible ABAWD under WAC 388-444-0030, is ineligible due to their alien status, failed to sign the application to state their citizenship or alien



status, or refused to get or provide us a Social Security number:

(a) We allow the twenty percent earned income disregard for the ineligible member's earned income;

(b) We prorate the remaining income of the ineligible member among all the AU members by excluding the ineligible member's share and counting the remainder to the eligible members; and

(c) We divide the ineligible member's allowable expenses evenly among all members of the AU when the ineligible member has income except that we do not divide the standard utility allowance (SUA). We allow the full SUA based on the total number of members in your AU.

**WSR 10-11-038**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed May 11, 2010, 1:49 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-02-095.

Title of Rule and Other Identifying Information: The community services division is proposing to amend WAC 388-424-0001 Citizenship and alien status—Definitions, 388-424-0006 Citizenship and alien status—Date of entry, and 388-424-0020 How does my alien status impact my eligibility for the federally funded Washington Basic Food program benefits?

The proposed changes are necessary to allow special immigrants from Iraq and Afghanistan to be eligible for federally funded benefits to the same extent and for the same period of time as refugees as allowed under the federal law. Changes were also filed via emergency adoption as WSR 10-08-020 and 10-09-111.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on June 22, 2010, at 10:00 a.m.

Date of Intended Adoption: No earlier than June 23, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on June 22, 2010.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant by June 8, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsjl4@dshs.wa.gov](mailto:johnsjl4@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments will establish eligibility of special immigrants from Iraq and Afghanistan for federally funded benefits to the

same extent and for the same period of time as refugees as it is allowed under federal law.

Reasons Supporting Proposal: The amendments will be consistent with federal law as it is defined in Pub. L. No. 111-118 the Department of Defense Appropriations Act of 2010, Division A, Title VIII, Section 8120, and a new federal guidance issued on January 29, 2010, by the Food and Nutrition Service, United States Department of Agriculture.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, and 74.08A.-120.

Statute Being Implemented: RCW 74.04.050, 74.04.-055, 74.04.057, 74.08.090, 74.04.510, and 74.08A.120.

Rule is necessary because of federal law, P.L. 111-118 the Department of Defense Appropriations Act of 2010, Division A, Title VIII, Section 8120, Food and Nutrition Service Administration.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Olga Walker, 712 Pear Street S.E., Olympia, WA 98504, (360) 725-4641.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not have an economic impact on small businesses, it only affects DSHS clients in order to allow special immigrants from Iraq and Afghanistan to be eligible for the same public benefits to the same extent and the same period of time as refugees.

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

May 7, 2010

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-14-116, filed 6/30/08, effective 8/1/08)

**WAC 388-424-0001 Citizenship and alien status—Definitions. "American Indians"** born outside the United States. American Indians born outside the U.S. are eligible for benefits without regard to immigration status or date of entry if:

(1) They were born in Canada and are of fifty percent American Indian blood (but need not belong to a federally recognized tribe); or

(2) They are members of a federally recognized Indian tribe or Alaskan Native village or corporation.

**"Hmong or Highland Lao."** These are members of the Hmong or Highland Laotian tribe, which rendered military assistance to the U.S. during the Vietnam era (August 5, 1964 to May 7, 1975), and are "lawfully present" in the United States. This category also includes the spouse (including unremarried widow or widower) or unmarried dependent child of such tribe members.

**"Nonimmigrants."** These individuals are allowed to enter the U.S. for a specific purpose, usually for a limited time. Examples include:

- (1) Tourists,
- (2) Students,
- (3) Business visitors.

**"PRUCOL" (Permanently residing under color of law)** aliens. These are individuals who:

- (1) Are not "qualified aliens" as described below; and
- (2) Intend to reside indefinitely in the U.S.; and
- (3) United States Citizenship and Immigration Services or USCIS (formerly the Immigration and Naturalization Service or INS) knows are residing in the U.S. and is not taking steps to enforce their departure.

~~("Special immigrants from Iraq and Afghanistan." According to federal law, special immigrants are Iraqi and Afghan aliens granted special immigrant status under section 101 (a)(27) of the Immigration and Nationality Act (INA).)~~

**"Qualified aliens."** Federal law defines the following groups as "qualified aliens." All those not listed below are considered "nonqualified":

(1) **Abused spouses or children**, parents of abused children, or children of abused spouses, who have either:

(a) A pending or approved I-130 petition or application to immigrate as an immediate relative of a U.S. citizen or as the spouse or unmarried son or daughter of a Lawful Permanent Resident (LPR) - see definition of LPR below; or

(b) A notice of "prima facie" approval of a pending self-petition under the Violence Against Women Act (VAWA); or

(c) Proof of a pending application for suspension of deportation or cancellation of removal under VAWA; and

(d) The alien no longer resides with the person who committed the abuse.

(e) Children of an abused spouse do not need their own separate pending or approved petition but are included in their parent's petition if it was filed before they turned age twenty-one. Children of abused persons who meet the conditions above retain their "qualified alien" status even after they turn age twenty-one.

(f) An abused person who has initiated a self-petition under VAWA but has not received notice of prima facie approval is not a "qualified alien" but is considered PRUCOL. An abused person who continues to reside with the person who committed the domestic violence is also PRUCOL. For a definition of PRUCOL, see above.

(2) **Amerasians** who were born to U.S. citizen armed services members in Southeast Asia during the Vietnam war.

(3) Individuals who have been granted **asylum** under Section 208 of the Immigration and Nationality Act (INA).

(4) Individuals who were admitted to the U.S. as **conditional entrants** under Section 203 (a)(7) of the INA prior to April 1, 1980.

(5) **Cuban/Haitian entrants**. These are nationals of Cuba or Haiti who were paroled into the U.S. or given other special status.

(6) Individuals who are **lawful permanent residents** (LPRs) under the INA.

(7) Persons who have been granted **parole** into the U.S. for at least a period of one year (or indefinitely) under Section 212 (d)(5) of the INA, including "public interest" parolees.

(8) Individuals who are admitted to the U.S. as **refugees** under Section 207 of the INA.

(9) **Special immigrants from Iraq and Afghanistan are individuals granted special immigrant status under section 101 (a)(27) of the Immigration and Nationality Act (INA). Under federal law, special immigrants from Iraq and Afghanistan, their spouses and unmarried children under twenty-one are to be treated the same as refugees in their eligibility for public assistance.**

(10) Persons granted **withholding of deportation or removal** under Sections 243(h) (dated 1995) or 241 (b)(3) (dated 2003) of the INA.

**"Undocumented aliens."** These are persons who either:

- (1) Entered the U.S. without inspection at the border, or
- (2) Were lawfully admitted but have lost their status.

**"U.S. citizens."**

(1) The following individuals are considered to be citizens of the U.S.:

(a) Persons born in the U.S. or its territories (Guam, Puerto Rico, and the U.S. Virgin Islands; also residents of the Northern Mariana Islands who elected to become U.S. citizens); or

(b) Legal immigrants who have naturalized after immigrating to the U.S.

(2) Persons born abroad to at least one U.S. citizen parent may be U.S. citizens under certain conditions.

(3) Individuals under the age of eighteen automatically become citizens when they meet the following three conditions on or after February 27, 2001:

(a) The child is a lawful permanent resident (LPR);

(b) At least one of the parents is a U.S. citizen by birth or naturalization; and

(c) The child resides in the U.S. in the legal and physical custody of the citizen parent.

(4) For those individuals who turned eighteen before February 27, 2001, the child would automatically be a citizen if still under eighteen when he or she began lawful permanent residence in the U.S. and both parents had naturalized. Such a child could have derived citizenship when only one parent had naturalized if the other parent were dead, a U.S. citizen by birth, or the parents were legally separated and the naturalizing parent had custody.

**"U.S. nationals."** A U.S. national is a person who owes permanent allegiance to the U.S. and may enter and work in the U.S. without restriction. The following are the only persons classified as U.S. nationals:

(1) Persons born in American Samoa or Swain's Island after December 24, 1952; and

(2) Residents of the Northern Mariana Islands who did not elect to become U.S. citizens.

**"Victims of trafficking."** According to federal law, victims of trafficking have been subject to one of the following:

(1) Sex trafficking, in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained eighteen years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(3) Under federal law, persons who have been certified or approved as victims of trafficking by the federal Office of Refugee Resettlement (ORR) are to be treated the same as refugees in their eligibility for public assistance.

(4) Immediate family members of victims are also eligible for public assistance benefits as refugees. Immediate family members are the spouse or child of a victim of any age and the parent or minor sibling if the victim is under twenty-one years old.

**AMENDATORY SECTION** (Amending WSR 09-15-082, filed 7/14/09, effective 8/14/09)

**WAC 388-424-0006 Citizenship and alien status—**

**Date of entry.** (1) A person who physically entered the U.S. prior to August 22, 1996 and who continuously resided in the U.S. prior to becoming a "qualified alien" (as defined in WAC 388-424-0001) is not subject to the five-year bar on TANF, nonemergency medicaid, and SCHIP.

(2) A person who entered the U.S. prior to August 22, 1996 but became "qualified" on or after August 22, 1996, or who physically entered the U.S. on or after August 22, 1996 and who requires five years of residency to be eligible for federal Basic Food, can only count years of residence during which they were a "qualified alien."

(3) A person who physically entered the U.S. on or after August 22, 1996 is subject to the five-year bar on TANF, nonemergency medicaid, and SCHIP unless exempt. The five-year bar starts on the date that "qualified" status is obtained.

(4) The following "qualified aliens," as defined in WAC 388-424-0001, are exempt from the five-year bar:

- (a) Amerasian lawful permanent residents;
- (b) Asylees;
- (c) Cuban/Haitian entrants;
- (d) Persons granted withholding of deportation or removal;
- (e) Refugees;
- (f) Special immigrants from Iraq and Afghanistan;
- (g) Victims of trafficking who have been certified or had their eligibility approved by the office of refugee resettlement (ORR); and

~~((g))~~ (h) Lawful permanent residents, parolees, or battered aliens, as defined in WAC 388-424-0001, who are also an armed services member or veteran as described in WAC 388-424-0007.

(5) In addition to subsection (4) of this section, the following "qualified aliens" are also exempt from the five-year bar on nonemergency medicaid and SCHIP:

- (a) Pregnant women;
- (b) Children under nineteen years of age; and
- (c) Children under twenty-one years of age who are residing in a medical institution as described in WAC 388-505-0230.

**AMENDATORY SECTION** (Amending WSR 09-21-046, filed 10/14/09, effective 11/4/09)

**WAC 388-424-0020 How does my alien status impact my eligibility for the federally funded Washington Basic Food program benefits?** (1) If you are a U.S. citizen or U.S. national as defined in WAC 388-424-0001 and meet all other eligibility requirements, you may receive federal Basic Food benefits.

(2) If you are not a U.S. citizen or U.S. national, you must fall within (a)(~~(i)~~) or (b)(~~(i)~~ or ~~(e)~~) of this subsection, and meet all other eligibility requirements, in order to receive federal Basic Food benefits:

(a) You are a member of one of the following groups of "qualified aliens" or similarly defined lawful immigrants as defined in WAC 388-424-0001:

- (i) Amerasian;
- (ii) Asylee;
- (iii) Cuban or Haitian entrant;
- (iv) Deportation or removal withheld;
- (v) Refugee;
- (vi) Special immigrant from Iraq or Afghanistan;
- (vii) Victim of trafficking;
- ~~((vii))~~ (viii) Noncitizen American Indian; or
- ~~((viii))~~ (ix) Hmong or Highland Lao tribal member.

(b)(i) You are a member of one of the following groups of qualified aliens as defined in WAC 388-424-0001:

- (A) Conditional entrant;
- (B) Lawful permanent resident (LPR);
- (C) Paroled for one year or more; or
- (D) Victim of domestic violence or parent or child of a victim.

(ii) And, one of the following also applies to you:

(A) You have worked or can get credit for forty Social Security Administration (SSA) work quarters - as described in WAC 388-424-0008;

(B) You are an active duty personnel or honorably discharged veteran of the U.S. military or you are the spouse, unmarried surviving spouse, or unmarried dependent child of someone who meets this requirement, as described in WAC 388-424-0007(1);

(C) You receive cash or medical benefits based on Supplemental Security Income (SSI) criteria for blindness or disability;

(D) You have lived in the U.S. as a "qualified alien" as described in WAC 388-424-0001 for at least five years;

(E) You are under age eighteen; or

(F) You were lawfully residing in the U.S. on August 22, 1996 and were born on or before August 22, 1931.

~~((e) You are a special immigrant from Iraq or Afghanistan eligible for eight months of federally funded assistance from the date of your entry into the United States or from the date you received special immigrant status if this occurred after your U.S. entry.))~~

(3) If you are ineligible for federal Basic Food benefits due to your alien status, you may be eligible for state Basic Food benefits (see WAC 388-424-0025).

**WSR 10-11-040**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed May 11, 2010, 2:13 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-07-074.

Title of Rule and Other Identifying Information: WAC 392-137-115 Student resident definition.

Hearing Location(s): Office of the Superintendent of Public Instruction, Old Capitol Building, Wanamaker Conference Room, 600 South Washington, Olympia, WA, on June 22, 2010, at 10:30 a.m.

Date of Intended Adoption: June 22, 2010.

Submit Written Comments to: Becky McLean, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, e-mail [becky.mclean@k12.wa.us](mailto:becky.mclean@k12.wa.us), fax (360) 664-3683, by June 20, 2010.

Assistance for Persons with Disabilities: Contact Kristin Collins, by June 20, 2010, TTY (360) 664-3631 or (360) 725-6270.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: We propose that the standard of residency to be a student's expectation to reside at a particular address for more than twenty days. This aligns with WAC 392-121-108(1), which instructs districts to not count a student who are [is] absent for more than twenty days.

Reasons Supporting Proposal: Residency establishes a district's responsibility to serve a student. Current rules do not provide guidelines or standards for a timeline to be considered when evaluating a student's residency status. This rule establishes a twenty day window for a district's consideration of student residency.

Statutory Authority for Adoption: RCW 28A.150.290 (1).

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

Name of Proponent: Office of superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Becky McLean, Old Capital [Capitol] Building, 600 South Washington, Olympia, WA, (360) 725-6306; Implementation and Enforcement: Calvin W. Brodie, Old Capital [Capitol] Building, 600 South Washington, Olympia, WA, (360) 725-6301.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

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

May 11, 2010

Randy Dorn  
State Superintendent

AMENDATORY SECTION (Amending Order 26, filed 9/17/90, effective 10/18/90)

**WAC 392-137-115 Student residence—Definition.**  
As used in this chapter, the term "student residence" means

the physical location of a student's principal abode—i.e., the home, house, apartment, facility, structure, or location, etc.—where the student lives the majority of the time. The following shall be considered in applying this section:

(1) The mailing address of the student—e.g., parent's address or post office box—may be different than the student's principal abode.

(2) The student's principal abode may be different than the principal abode of the student's parent(s).

(3) The lack of a mailing address for a student does not preclude residency under this section.

(4) If students are expected to reside at address for twenty days or more.

**WSR 10-11-041**

**PROPOSED RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed May 11, 2010, 2:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-07-060.

Title of Rule and Other Identifying Information: WAC 388-450-0040 Native American benefits and payments, 388-450-0080 Why [What] is self-employment income?, 388-455-0005 How do lump sum payments affect benefits?, 388-455-0015 When and how does the department treat lump sum payments as income for cash assistance and family medical programs?, 388-470-0045 How do my resources count toward the resource limits for cash assistance and family medical programs?, 388-475-0350 SSI-related medical—Property and contracts excluded as resources, 388-475-0550 SSI-related medical—All other excluded resources, and 388-475-0600 SSI-related medical—Definition of income.

Hearing Location(s): Office Building 2, Auditorium, DSHS, Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on July 6, 2010, at 10:00 a.m.

Date of Intended Adoption: Not sooner than July 7, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax (360) 664-6185, by 5 p.m. on July 6, 2010.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by June 22, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsjl4@dshs.wa.gov](mailto:johnsjl4@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To implement necessary language regarding:

(1) Exemption of certain property from resources for medicaid and children's health insurance program (CHIP) eli-

gibility for Native Americans, as required under the American Recovery and Reinvestment Act (ARRA) of 2009 (Recovery Act); and

(2) Payments or interest accrued on payments made under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) listed as excluded resources for SSI-related medical programs.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: ARRA of 2009 (Recovery Act), Public Law 111-5, Section 5006(b); 42 C.F.R. 435.601, EEOICPA of 2000, Public Law 106398, Sec. 1, app., title XXXVI (Oct. 30, 2000) (section 1 adopting as Appendix H.R. 5408), Section 3646 of the Appendix.

Rule is necessary because of federal law, ARRA of 2009 (Recovery Act), Public Law 111-5, Section 5006(b).

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

Name of Agency Personnel Responsible for Drafting: Wendy Boedigheimer, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1357; Implementation and Enforcement: Mary Beth Ingram, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1306.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Does not impact small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(vii) exempts client eligibility rules from the cost-benefit analysis requirement.

May 7, 2010

Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-12 issue of the Register.

## WSR 10-11-047

### PROPOSED RULES

### LIQUOR CONTROL BOARD

[Filed May 12, 2010, 1:26 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-07-088.

Title of Rule and Other Identifying Information: WAC 314-13-030 What method of payment can a retailer use to purchase spirituous liquor from the board?

Hearing Location(s): Washington State Liquor Control Board, 3000 Pacific Avenue S.E., Olympia, WA 98504, on June 23, 2010, at 10:00 a.m.

Date of Intended Adoption: June 30, 2010.

Submit Written Comments to: Karen McCall, 3000 Pacific Avenue S.E., Olympia, WA 98504, e-mail rules@liq.wa.gov, fax (360) 664-9869, by June 23, 2010.

Assistance for Persons with Disabilities: Contact Karen McCall by June 23, 2010, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the revision to WAC 314-13-030 is to implement RCW

66.16.041 in relation to the liquor control board accepting bank credit and debit cards for purchases of liquor. Also amended to reflect current practice for accepting checks.

Reasons Supporting Proposal: The revisions to this rule encompass current law and practice.

Statutory Authority for Adoption: RCW 66.16.041, 66.08.030.

Statute Being Implemented: RCW 66.16.041.

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

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

Name of Agency Personnel Responsible for Drafting: Karen McCall, 3000 Pacific Avenue S.E., Lacey, WA 98504, (360) 664-1631; Implementation and Enforcement: John Redal, Director Retail Services, 3000 Pacific Avenue S.E., Lacey, WA 98504, (360) 664-1712.

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

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

May 12, 2010

Sharon Foster

Chairman

AMENDATORY SECTION (Amending WSR 01-06-015, filed 2/26/01, effective 3/29/01)

### WAC 314-13-030 What method of payment can a retailer use to purchase spirituous liquor from the board?

(1) Per RCW 66.16.040, retailers (~~must~~) may pay (~~cash~~) for spirituous liquor purchased from the board with any of the following:

- (a) Cash;
- (b) Establishment owner's personal or business check;
- (c) Corporate credit card; or
- (d) Licensee or establishment owner's bank debit card.

(2) (~~For the purposes of this section, a check will be considered cash as long as the check is immediately made good when presented and is not used as a device for obtaining or extending credit. Therefore, state-run~~) State liquor stores will take certified checks from retailers for the purchase of spirituous liquor, and will take establishment owner's personal or (company) business checks (~~under the following conditions~~):

(a) ~~Persons or entities that have held a liquor license for less than two years must supply the board a letter of credit from the bank in which the account is held.~~

(b) ~~Persons or entities that have held a liquor license for two years or longer must either:~~

- (i) ~~Apply and be approved for a check acceptance agreement with the board, on a form provided by the board; or~~
- (ii) ~~Supply the board a letter of credit from the bank in which the account is held).~~

(3) ~~Contract liquor stores may (adopt the check acceptance policy outlined in this rule)~~ accept checks at their own discretion.

(4) State liquor stores will accept corporate credit cards or licensee or establishment owner's bank debit cards under the following conditions:

(a) Licensees will provide the store with a current list of employees who have signature rights on a corporate credit card purchase. It is the licensee's responsibility to ensure the list is current.

(b) The credit card sales draft must be signed by a person on the signature rights list.

(c) The signature on the sales draft must match the signature on the signature rights list. If the signature does not match, photo identification will be requested. If the identity of the cardholder cannot be verified, the sale cannot be made unless another form of payment is used.

(d) The credit card sales draft must be signed in the liquor store.

**WSR 10-11-059**  
**PROPOSED RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed May 13, 2010, 10:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-23-017.

Title of Rule and Other Identifying Information: Adds new section to chapter 181-79A WAC requiring teachers to report address changes to the state teacher certification office.

Hearing Location(s): Red Lion Hotel, 2300 Evergreen Park Drive S.W., Olympia, WA 98502, on July 21, 2010, at 8:30 a.m.

Date of Intended Adoption: July 21, 2010.

Submit Written Comments to: David Brenna, Legislative and Policy Coordinator, P.O. Box 47236, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by July 12, 2010.

Assistance for Persons with Disabilities: Contact David Brenna by July 12, 2010, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Places a requirement on licensed teacher[s] to report a change of address to the state certification office.

Reasons Supporting Proposal: Able to provide license status to teachers only if they have an updated address.

Statutory Authority for Adoption: RCW 28A.410.210.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 47236 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore

does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-3631, e-mail david.brenna@k12.wa.us.

May 13, 2010

David Brenna

Legislative and  
Policy Coordinator

**NEW SECTION**

**WAC 181-79A-158 Requirements for providing contact information.** Educators holding certificates shall provide a current street address to the superintendent of public instruction, certification office, beginning September, 2010. Any change of address shall be communicated to the same office within sixty days.

**WSR 10-11-082**  
**PROPOSED RULES**  
**HORSE RACING COMMISSION**

[Filed May 17, 2010, 9:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-03-062.

Title of Rule and Other Identifying Information: WAC 260-36-100 Fingerprints.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on August 13, 2010, at 9:30 a.m.

Date of Intended Adoption: August 13, 2010.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail dmoore@whrc.state.wa.us, fax (360) 459-6461, by August 9, 2010.

Assistance for Persons with Disabilities: Contact Patty Sorby by August 9, 2010, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To allow the commission to determine the interval that an applicant must provide fingerprints.

Reasons Supporting Proposal: The Washington horse racing commission (WHRC) implemented a requirement for fingerprints based on a three year cycle in 2006. Since the initial cycle in where all licensees provided fingerprints, there are small percentages that have criminal history that requires action by the WHRC. The commission may now extend the interval to submit fingerprints to make licensing more convenient for individuals previously licensed.

Statutory Authority for Adoption: RCW 67.16.020.

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

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

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

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

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

May 17, 2010  
Douglas L. Moore  
Deputy Secretary

AMENDATORY SECTION (Amending WSR 08-05-087, filed 2/15/08, effective 3/17/08)

**WAC 260-36-100 Fingerprints.** Every person applying for a license must furnish the commission his or her fingerprints upon making an initial application for a license (~~and at least once every three years thereafter~~). Following the initial application, each person must then submit fingerprints at an interval determined by the commission. However, the commission, executive secretary, stewards, or security investigators, in their discretion, may require fingerprints from any applicant or licensee at any time. If an applicant fails to furnish fingerprints, the stewards may suspend the license or deny, and/or assess a fine.

**WSR 10-11-088**  
**PROPOSED RULES**  
**GAMBLING COMMISSION**  
[Filed May 17, 2010, 1:43 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-06-089.

Title of Rule and Other Identifying Information: WAC 230-03-080 License approval process.

Hearing Location(s): Vancouver Heathman Lodge, 7801 Greenwood Drive, Vancouver, WA 98662, (360) 254-3100, on August 12 or 13, 2010, at 9:00 a.m.

Date of Intended Adoption: August 12 or 13, 2010.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail SusanA@wsgc.wa.gov, fax (360) 486-3625, by August 1, 2010.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by August 1, 2010, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule amendment is needed to reflect a legislative change made in 2007 when RCW 9.46.070 was changed to authorize the director to temporarily issue or suspend amusement game, manufacturer, distributor, service supplier, and individual licenses subject to the final approval by the commission.

Reasons Supporting Proposal: In 2000, this rule was amended to allow the director to issue temporary licenses after administrative approval for all licenses, except manu-

facturers and house-banked card rooms. Temporary licenses allow applicants to conduct a gambling activity for up to sixty days pending commission approval.

In 2005, this rule was amended to allow the director to issue temporary licenses for **all** gambling activities for up to sixty days pending commission approval. In early 2006, during the rules simplification project, this rule was amended to remove this language because it was not consistent with RCW 9.46.070.

In 2007, we requested legislation to correct the inconsistency with the RCW to allow the commissioners to authorize the director to temporarily issue or suspend licenses for amusement game, manufacturer, distributor, service supplier, and individual licenses subject to final approval by the commission. This request was approved during the 2007 legislative session. However, this rule was not updated to reflect the legislative change.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared because the proposed rule change does not impose more than minor costs, as defined in chapter 19.85 RCW, to licensees.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

May 17, 2010

Susan Arland

Rules Coordinator

AMENDATORY SECTION (Amending Order 457, filed 3/22/06, effective 1/1/08)

**WAC 230-03-080 License approval process.** (1) The director may issue a temporary license on completion of the licensing investigation for licenses issued under RCW 9.46.070 (~~(1) and (2)~~).

(2) The commissioners take action on applications at a public meeting. These actions may include license approval, holding an application over to a future meeting, or returning an application to staff for further investigation.

**WSR 10-11-092****WITHDRAWAL OF PROPOSED RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

(By the Code Reviser's Office)

[Filed May 18, 2010, 8:42 a.m.]

WAC 388-76-10103, proposed by the department of social and health services in WSR 09-20-060 appearing in issue 09-22 of the State Register, which was distributed on November 18, 2009, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

**WSR 10-11-093****WITHDRAWAL OF PROPOSED RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

(By the Code Reviser's Office)

[Filed May 18, 2010, 8:43 a.m.]

WAC 388-78A-2731, proposed by the department of social and health services in WSR 09-20-061 appearing in issue 09-22 of the State Register, which was distributed on November 18, 2009, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

**WSR 10-11-094****WITHDRAWAL OF PROPOSED RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

(By the Code Reviser's Office)

[Filed May 18, 2010, 8:43 a.m.]

WAC 388-97-1910 and 388-97-4165, proposed by the department of social and health services in WSR 09-20-062 appearing in issue 09-22 of the State Register, which was distributed on November 18, 2009, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

**WSR 10-11-095****WITHDRAWAL OF PROPOSED RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

(By the Code Reviser's Office)

[Filed May 18, 2010, 8:43 a.m.]

WAC 388-101-3055, proposed by the department of social and health services in WSR 09-21-094 appearing in issue 09-22 of the State Register, which was distributed on November 18, 2009, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

**WSR 10-11-096****WITHDRAWAL OF PROPOSED RULES  
LIQUOR CONTROL BOARD**

(By the Code Reviser's Office)

[Filed May 18, 2010, 8:43 a.m.]

WAC 314-44-005 and 314-44-015, proposed by the liquor control board in WSR 09-22-102 appearing in issue 09-22 of the State Register, which was distributed on November 18, 2009, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

**WSR 10-11-106****PROPOSED RULES  
DEPARTMENT OF  
LABOR AND INDUSTRIES**

[Filed May 18, 2010, 10:43 a.m.]

Supplemental Notice to WSR 10-05-097.

Preproposal statement of inquiry was filed as WSR 10-01-169.

Title of Rule and Other Identifying Information: WAC 296-20-1103 Travel expense.

Hearing Location(s): Department of Labor and Industries, Room S118, 7273 Linderson Way S.W., Tumwater, WA 98501, on June 30, 2010, at 1:30 p.m.

Date of Intended Adoption: July 20, 2010.

Submit Written Comments to: Bob Mayer, Health Services Analysis, P.O. Box 44322, Olympia, WA 98504-4322, e-mail mayr235@Lni.wa.gov, fax (360) 902-5021, by June 30, 2010.

Assistance for Persons with Disabilities: Contact office of information and assistance by June 23, 2010, TTY (360) 902-5797 or (360) 902-5021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule change is to update department policy on travel



expenses for injured workers traveling out of their immediate residential area to the nearest point of adequate treatment or vocational training. The anticipated effects would be to ensure a payment methodology that is reasonable, fair, and cost efficient. Also, language updates terminology in the existing rule and removes an obsolete reference to the department rehabilitation center.

**Comparison to proposed rule filed with original CR-102:** This revised rule continues to affect travel for treatment or vocational retraining, but does not impact travel for vocational services (such as vocational assessment and counseling).

Reasons Supporting Proposal: The proposed rule provides reasonable and fair reimbursement for injured workers' travel expenses. Reimbursement changes are also needed to achieve budget goals for the state fund workers' compensation program.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The rule changes supports department goals of ensuring payment methodologies that are reasonable, fair, and cost efficient.

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Bob Mayer, 7273 Linderson Way S.W., Tumwater, WA, (360) 902-5021; Implementation: Janet Peterson, health services analysis program manager, (360) 902-6699; and Enforcement: Bob Malooly, assistant director of insurance services, (360) 902-4209.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no disproportionate cost to small business.

A cost-benefit analysis is not required under RCW 34.05.328. There is no more than minimal cost to business. Controlling the department's payments for injured worker travel expenses may marginally reduce workers' compensation premiums charged to employers.

May 18, 2010  
Judy Schurke  
Director

**AMENDATORY SECTION** (Amending WSR 93-16-072, filed 8/1/93, effective 9/1/93)

**WAC 296-20-1103 Travel expense.** The department or self-insurer will reimburse travel expense incurred by workers for the following reasons:

- (1) Examinations at department's or self-insurer's request;
- (2) Vocational services at department's or self-insurer's request;
- (3) ~~((treatment at department rehabilitation center;~~
- (4)) Fitting of prosthetic device; and
- ~~((5))~~ (4) Upon *prior authorization* for treatment or vocational retraining when worker must travel more than

~~((ten))~~ fifteen miles one-way from the worker's home to the nearest point of adequate treatment or vocational retraining. Travel expense *is not* payable when adequate treatment is available within ~~((ten))~~ fifteen miles of injured worker's home, yet the injured worker prefers to report to an attending ~~((doctor))~~ provider outside the worker's home area.

Under subsections (3) and (4) of this section, when travel expense is authorized the first fifteen miles one-way are not payable. The first and last fifteen miles are not payable on an authorized round trip.

Travel expenses will be reimbursed at the current department rate.

Receipts are required for all expenses except parking expenses under ten dollars.

Claims for reimbursement of travel expenses must be received by the department or self-insurer within one year after the date expenses are incurred. Refer to WAC 296-20-125 and to department policy for additional rules.

## WSR 10-11-110

### PROPOSED RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed May 18, 2010, 1:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-02-095 and 10-08-080.

Title of Rule and Other Identifying Information: WAC 388-424-0009 Citizenship and alien status—Social Security number (SSN) requirements and 388-424-0010 Citizenship and alien status—Eligibility restrictions for TANF, nonemergency medicaid, and SCHIP.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on July 6, 2010, at 10:00 a.m.

Date of Intended Adoption: Not sooner than July 7, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on July 6, 2010.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by June 22, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules are necessary in order to comply with recently passed federal legislation pertaining to the Children's Health Insurance Program Reauthorization Act (CHIPRA) and Section 8120, Title VIII, Division A of Department of Defense Appropriation Act of 2010 which was signed into law on December 19,

2009, and became Public Law 111-118. The amendments include adding certain PRUCOL (permanently residing under color of law) aliens in the group eligible for pregnancy medical and children's medical; and updating eligibility for assistance for special immigrants from Iraq and Afghanistan. Special immigrants from Iraq and Afghanistan are now eligible for sixty months of federally-funded assistance. The department is also updating and clarifying current language including adding apple health for kids and renaming state children's health insurance program (SCHIP) as children's health insurance program (CHIP).

Reasons Supporting Proposal: Compliance with federal regulations is required to continue to receive federal funding.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.08.090; CHIPRA of 2009, Public Law 111-3, Section 214; Section 8120, Title VIII, Division A of Department of Defense Appropriation Act of 2010, Public Law 111-118.

Statute Being Implemented: RCW 74.04.050, 74.04.-055, 74.08.090.

Rule is necessary because of federal law, CHIPRA of 2009, Public Law 111-3, Section 214; Section 8120, Title VIII, Division A of Department of Defense Appropriation Act of 2010, Public Law 111-118.

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

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1342; Implementation and Enforcement: Kathy Johansen, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1321.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule change does not impact small businesses. The preparation of a comprehensive small business economic impact statement is not required.

A cost-benefit analysis is not required under RCW 34.05.328. Client eligibility rules for medical assistance are exempt from the cost-benefit analysis requirement per RCW 34.05.328 (5)(b)(vii).

May 13, 2010  
Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-15-004, filed 7/7/04, effective 8/7/04)

**WAC 388-424-0009 Citizenship and alien status—Social Security number (SSN) requirements.** (1) A "qualified alien," as defined in WAC 388-424-0001, who has applied for a Social Security number (SSN) as part of their application for benefits cannot have benefits delayed, denied, or terminated pending the issuance of the SSN by the Social Security Administration (SSA).

(2) The following immigrants are not required to apply for an SSN:

(a) An alien, regardless of immigration status, who is applying for a program listed in WAC 388-476-0005(7);

(b) A PRUCOL (permanently residing under color of law) alien (~~(as defined in WAC 388-424-0001)~~) who is not in

one of the PRUCOL groups listed in WAC 388-424-0010(4); and

(c) Members of a household who are not applying for benefits for themselves.

(3) "Qualified aliens," as defined in WAC 388-424-0001, and PRUCOL aliens in any of the PRUCOL groups listed in WAC 388-424-0010(4), who are applying for federal benefits but who are not authorized to work in the U.S., must still apply for a nonwork SSN. The department must assist them in this application without delay.

(4) An immigrant who is otherwise eligible for benefits may choose not to provide the department with an SSN without jeopardizing the eligibility of others in the household. See WAC 388-450-0140 for how the income of such individuals is treated.

AMENDATORY SECTION (Amending WSR 09-15-082, filed 7/14/09, effective 8/14/09)

**WAC 388-424-0010 Citizenship and alien status—Eligibility (~~(restrictions)~~) for TANF, (~~(nonemergency)~~) medicaid, and (~~(SCHIP)~~) CHIP.** (1) To receive temporary assistance for needy families(TANF), (~~(nonemergency)~~) medicaid, or (~~(SCHIP)~~) children's health insurance program (CHIP) benefits, (~~(you)~~) an individual must meet all other eligibility requirements and be one of the following as defined in WAC 388-424-0001:

(a) A United States (U.S.) citizen;

(b) A U.S. national;

(c) An American Indian born outside the U.S.;

(d) A "qualified alien";

(e) A victim of trafficking; or

(f) A Hmong or Highland Lao (~~(or~~

~~(g) A special immigrant from Iraq or Afghanistan eligible for eight months of federally funded assistance from your date of entry into the United States or from the date you received special immigrant status).~~

(2) A "qualified alien" who first physically entered the U.S. before August 22, 1996 as described in WAC 388-424-0006(1) may receive TANF, (~~(nonemergency)~~) medicaid, and (~~(SCHIP)~~) CHIP.

(3) A "qualified alien" who first physically entered the U.S. on or after August 22, 1996 cannot receive TANF, (~~(nonemergency)~~) medicaid, or (~~(SCHIP)~~) CHIP for five years after obtaining status as a qualified alien unless(~~(~~

~~(a) He or she is an alien as described in WAC 388-424-0006(4); or~~

~~(b) He or she is an alien as described in WAC 388-424-0006(5) applying for nonemergency medicaid or SCHIP)) the criteria in WAC 388-424-0006 (4) or (5) are met.~~

(4) A child or pregnant woman in one of the following PRUCOL (permanently residing under color of law) groups may receive medicaid or CHIP:

(a) A citizen of a compact of free association state (Micronesia, Marshall Islands or Palau) who has been admitted to the U.S. as a nonimmigrant;

(b) An individual in temporary resident status as an amnesty beneficiary;

(c) An individual in temporary protected status;

(d) A family unity beneficiary;

(e) An individual currently under deferred enforced departure;

(f) An individual who is a spouse or child of a U.S. citizen with an approved Visa petition pending adjustment of status;

(g) A parent or child of an individual with special immigration status;

(h) A fiance of a U.S. citizen;

(i) A religious worker;

(j) An individual assisting the Department of Justice in a criminal investigation; or

(k) An individual with a petition of status pending of three years or longer.

(5) An alien who is ineligible for TANF, medicaid or CHIP because of the five-year bar or because of their immigration status may be eligible for:

(a) Emergency benefits as described in WAC 388-436-0015 (consolidated emergency assistance program) and WAC 388-438-0110 (alien ~~((emergency))~~ medical program); or

(b) State-funded cash or chemical dependency benefits as described in WAC 388-424-0015 (state family assistance (SFA), general assistance (GA) and the alcohol and drug addiction treatment and support act (ADATSA)), and medical benefits as described in WAC 388-424-0016; or

(c) Pregnancy medical benefits as described in WAC 388-462-0015; or

(d) ~~((Children's healthcare benefits))~~ Apple health for kids as described in WAC 388-505-0210 (2) or (5).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Purpose is to establish procedures for the disbursement of the WAVE scholarship as direct grants to students. These rules formally codify in WAC the current procedures used in the WAVE program.

Reasons Supporting Proposal: RCW 28B.76.670.

Statutory Authority for Adoption: RCW 28B.76.670.

Statute Being Implemented: RCW 28B.76.670.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Recommend approval of language as written.

Name of Proponent: Higher education coordinating board, governmental.

Name of Agency Personnel Responsible for Drafting: Ann M. Voyles, 917 Lakeridge Way, Olympia, WA 98504-3430, (360) 753-7843; Implementation: John Klacik, 917 Lakeridge Way, Olympia, WA 98504-3430, (360) 753-7851; and Enforcement: Don Bennett, 917 Lakeridge Way, Olympia, WA 98504-3430, (360) 753-7831.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No economic impact.

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

May 18, 2010

Julie Japhet

Assistant Director of

Student Financial Assistance

## WSR 10-11-111

### PROPOSED RULES

### HIGHER EDUCATION COORDINATING BOARD

[Filed May 18, 2010, 1:54 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-17-090.

Title of Rule and Other Identifying Information: Chapter 250-85 WAC, Washington award for vocational excellence (WAVE) program.

Hearing Location(s): Higher Education Coordinating Board, 2nd Floor Conference Room, 919 Lakeridge Way, Olympia, WA 98502 (stop to sign in at front desk of 917 Lakeridge Way building), on Tuesday, June 22, 2010, at 8:30 a.m.

Date of Intended Adoption: July 15, 2010.

Submit Written Comments to: Ann M. Voyles (through June 17, 2010); Julie Japhet (after June 17, 2010), Higher Education Coordinating Board, P.O. Box 43430, Olympia, WA 98504-3430, e-mail [annv@hecb.wa.gov](mailto:annv@hecb.wa.gov) or [juliej@hecb.wa.gov](mailto:juliej@hecb.wa.gov), fax (360) 704-6243 (through June 17, 2010) or (360) 704-6240 (after June 17, 2010) by 12:00 noon, Monday, June 21, 2010.

Assistance for Persons with Disabilities: Contact Kristin Ritter by 5:00 p.m., Friday, June 18, 2010, (360) 753-7850.

## Chapter 250-85 WAC

### WASHINGTON AWARD FOR VOCATIONAL EXCELLENCE (WAVE) PROGRAM

#### NEW SECTION

**WAC 250-85-010 What is the Washington award for vocational excellence (WAVE) program?** The Washington award for vocational excellence program, also known as WAVE, recognizes the outstanding achievements of vocational or technical students graduating from high school, or attending a community college or technical college, while in the state of Washington.

To the extent that funds are appropriated by the legislature, the WAVE program provides a scholarship to help pay the costs of undergraduate level coursework at participating in-state public or private colleges and universities, or at in-state private career colleges and schools licensed by the workforce training and education coordinating board.

#### NEW SECTION

**WAC 250-85-020 What is the application process for the WAVE scholarship?** Contact the workforce training and education coordinating board or the on-campus WAVE coordinator at your high school, skills center, or public community or technical college for application information.

NEW SECTION

**WAC 250-85-030 What eligibility requirements must a recipient meet to use the WAVE scholarship?** In addition to the usage and time limitations stated in WAC 250-85-050, a WAVE recipient must:

(1) Be a Washington resident as defined in chapter 250-18 WAC.

(2) Be a student enrolled in undergraduate level coursework.

(3) Attend a participating college, university, or private career college or school located within the state, as defined in RCW 28B.76.670 and WAC 250-85-100.

(4) Not pursue a degree in theology.

(5) Receive a minimum grade point average (GPA) of 3.0, or the equivalent, for the last academic term of attendance at a participating institution to receive the scholarship for the next academic term of attendance.

(a) If the grade point average is below 3.0 for the last academic term of attendance, the WAVE recipient must perform at least one academic term of study without the scholarship at a participating institution and receive at least a 3.0 grade point average for that academic term before again qualifying to receive the scholarship.

(b) The grade point requirement applies only to enrollment at participating institutions, as defined in WAC 250-85-100. GPAs earned for coursework taken through out-of-state institutions or ineligible in-state institutions are not used to determine a recipient's ongoing eligibility for the WAVE scholarship.

(c) The minimum grade point average requirement applies after the recipient's first use of the scholarship.

NEW SECTION

**WAC 250-85-040 What other conditions apply to the use of the WAVE scholarship?** The WAVE recipient:

(1) May use the scholarship for nonconsecutive academic terms of study.

(2) May attend school full time or less than full time and receive the scholarship.

(3) Uses one term of WAVE eligibility for each academic term the scholarship is received, without regard to enrollment status (i.e., full time or less than full time) or the dollar value of the scholarship paid for the academic term. Exceptions may apply.

(4) May transfer from one participating in-state school to another and continue to receive the scholarship as long as all other eligibility requirements are met.

(5) May use and receive the scholarship for study at only one institution at a time in any given academic term. An exception may be authorized by the higher education coordinating board; however, scholarship value and usage restrictions may apply.

(6) May receive the scholarship at a participating institution for study abroad in some circumstances. For this exception to apply, the recipient must be enrolled at (i.e., have concurrent or dual enrollment), and pay the tuition and fees for the term abroad through, the in-state participating institution (also known as the "school of record"). The grade point average, or grade point equivalent, for the academic term(s) of

study abroad must transfer to the in-state school of record so that the recipient's ongoing eligibility for the WAVE scholarship may be determined.

(7) May receive the scholarship at a participating institution for undergraduate level coursework while attending an out-of-state campus location of the same school in some circumstances. For this exception to apply, the recipient must be enrolled at (i.e., have concurrent or dual enrollment), and pay the tuition and fees through, the in-state participating institution (also known as the "parent institution"). The grade point average, or grade point equivalent, must transfer to the parent institution in-state so that the recipient's ongoing eligibility for the WAVE scholarship may be determined.

NEW SECTION

**WAC 250-85-050 What are the term usage and time limits for the WAVE scholarship?** (1) Individuals awarded the WAVE scholarship may receive up to six academic quarters, or four semesters, or the equivalent combination of academic quarters and semesters, of scholarship for undergraduate level coursework.

(2) Recipients have three years to begin using the WAVE scholarship and six years to complete using the scholarship. This means that a WAVE recipient must:

(a) Begin using the scholarship no later than the fall term three years after designation as a WAVE recipient. Failure to do so results in forfeiture of all eligibility to use the scholarship. For example, a student named as a WAVE recipient in spring 2008 must receive the scholarship for at least one academic term no later than the end of fall term 2011.

(b) Complete using the scholarship no later than the fall term six years after designation as a WAVE recipient. Any unused portion of the scholarship is forfeited at the end of the sixth year. For example, a student named as a WAVE recipient in spring 2008 must complete use of the full scholarship no later than the end of fall term 2014. Any unused eligibility is forfeited by the recipient at the end of fall 2014.

NEW SECTION

**WAC 250-85-060 What is the monetary value of the WAVE scholarship?** (1) The scholarship value is indexed to undergraduate, resident tuition, and service and activity fees at the state's public colleges and universities, not to exceed the cost at the public research universities. The scholarship value does not include the cost of technology fees or other miscellaneous fees.

(2) The scholarship will not exceed the value of public tuition and service and activity fees for full-time enrollment at the fifteen credit level for an academic term.

(3) The scholarship is reduced for less than full-time enrollment or withdrawal from all classes. See WAC 250-85-070, What is the result of dropping a class after receiving the WAVE scholarship funds?

(4) The scholarship for WAVE recipients enrolled at participating independent institutions, or licensed private career colleges or schools, will not exceed the maximum scholarship values for recipients enrolled full time at the public research universities.

(5) The scholarship value may be adjusted and is payable to the extent that funding is appropriated for the WAVE program. Scholarship values may be reduced in a fiscal year to remain within available dollars as funding dictates or as required by the legislature. Participating institutions are notified if adjustments are necessary during the course of an academic or fiscal year.

#### NEW SECTION

**WAC 250-85-070 What is the result of dropping a class after receiving the WAVE scholarship funds?** The scholarship value may be reduced if the tuition charge is decreased for an academic term in which a WAVE recipient drops one or more classes.

(1) If a WAVE recipient drops a class or withdraws within the institution's tuition refund period, the student must reimburse the difference between the original scholarship value already paid and the decreased scholarship value. The institution shall return any overpaid amount to the higher education coordinating board.

(2) If the recipient drops or withdraws from class after the institution's tuition refund period has expired, the recipient may, but is not required to, reimburse the WAVE scholarship already paid for an academic term. The options regarding repayment of the WAVE scholarship include:

(a) Performing one academic term at a participating institution without the scholarship and receiving a qualifying GPA for the term in order to regain eligibility to use the WAVE scholarship.

(b) Repaying in full the scholarship amount received to restore eligibility for the term of usage. The institution shall return any reimbursed amount to the higher education coordinating board.

#### NEW SECTION

**WAC 250-85-080 What educational costs may be paid with the WAVE scholarship?** Individuals must decide which educational expenses to pay with the WAVE funds for the academic term. The WAVE scholarship will not cover all educational costs. Examples of expenses in the student budget for which the scholarship may be used are: Tuition, room and board, books and supplies, transportation, or other miscellaneous personal expenses.

#### NEW SECTION

**WAC 250-85-090 What are the payment priorities for the WAVE scholarship?** Because the scholarships are paid from limited funds appropriated to the program, payments are subject to the following priorities:

(1) First priority is to recipients attending during the regular academic year who are identified to the higher education coordinating board by the college or university on or before the twentieth day of the fall term as enrolled, or planning to enroll later, during the same academic year. The phrase "regular academic year" means the time frame which includes the fall, winter, and spring academic terms.

(2) Second priority is to recipients identified to the higher education coordinating board by the college or univer-

sity after the twentieth day of the fall term as enrolled, or planning to enroll later, during the same regular academic year.

(3) Third priority is for recipients enrolled for the summer term, if funds are available. Due to limited funds availability, WAVE scholarships for summer term study may be prorated and are paid on a first-come, first-served basis.

(4) In the event that funds appropriated to the program are fully expended, or reduced in a fiscal year or biennial budget, or if payment of the scholarships at full value is expected to exceed available dollars, the scholarships will be proportionally reduced or eliminated to remain within available funds.

#### NEW SECTION

**WAC 250-85-100 Where may a recipient use the WAVE scholarship?** The scholarship may be used only for undergraduate level coursework at approved postsecondary institutions in the state of Washington that meet one of the definitions described later in this section. The postsecondary institution must have current, valid, signed, and approved institutional participation and electronic access agreements in effect with the higher education coordinating board for a recipient to receive the WAVE scholarship while attending the school. A school that meets both requirements is a "participating institution."

A participating institution must meet one of the following definitions:

(1) The Washington public institutions of higher education, including the state research universities, the state regional universities, The Evergreen State College, the state community colleges, and the state technical colleges.

(2) A private, nonprofit educational institution that:

(a) Has a main campus which is permanently situated in this state.

(b) Provides programs of education beyond the high school level leading at least to the baccalaureate degree.

(c) Is accredited by the northwest association of schools and colleges, or another accrediting body approved by the higher education coordinating board as meeting equivalent standards as those institutions accredited by the northwest association.

(3) A private career college or school that has a physical campus located in the state, licensed to operate within the state of Washington by the workforce training and education coordinating board, and offering postsecondary education to prepare persons for a vocation or profession.

#### NEW SECTION

**WAC 250-85-110 What are the responsibilities of a WAVE scholarship recipient?** A recipient of the WAVE scholarship is responsible:

(1) To notify the institution's scholarship coordinator of the intent to use the WAVE scholarship for each academic term as well as any enrollment status changes, such as dropping or adding a class, a leave of absence, withdrawing entirely, or planning to transfer to another school.

(2) To pay the tuition and services and activities fees to the college or university, or to make arrangements with the institution for payment of those costs.

(3) To reimburse all or part of the scholarship if dropping or withdrawing from class in an academic term after receiving payment as described in WAC 250-85-070, What is the result of dropping a class after receiving the WAVE scholarship funds?

(4) To notify the higher education coordinating board and the workforce training and education coordinating board of name and other contact information changes.

NEW SECTION

**WAC 250-85-120 What are the responsibilities of the workforce training and education coordinating board?** The workforce training and education coordinating board:

- (1) Has primary responsibility for program policy for the WAVE program.
- (2) Administers the application and recipient selection processes for the WAVE program.
- (3) Provides the higher education coordinating board with all pertinent information for the purpose of paying the WAVE scholarship to recipients selected after June 30, 1994.

NEW SECTION

**WAC 250-85-130 What are the responsibilities of the higher education coordinating board?** The higher education coordinating board:

- (1) Serves as fiscal agent for payment of the WAVE scholarship for undergraduate coursework to recipients selected after June 30, 1994.
- (2) Is responsible for policy related to scholarship payment and fiscal issues, in consultation with the workforce training and education coordinating board.
- (3) Enters into the necessary agreements with eligible participating institutions for payment of the scholarship.
- (4) Adopts all necessary rules and guidelines for payment of WAVE scholarships.
- (5) Maintains payment records on all WAVE recipients.
- (6) Monitors ongoing student eligibility to receive and maintain the scholarship.
- (7) Provides the workforce training and education coordinating board with relevant recipient usage information.

**WSR 10-11-112**  
**PROPOSED RULES**  
**HIGHER EDUCATION**  
**COORDINATING BOARD**

[Filed May 18, 2010, 1:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-15-147.

Title of Rule and Other Identifying Information: Chapter 250-20 WAC, Washington state need grant.

Purpose:

- Incorporate opportunity internship graduate eligibility throughout rules to comply with 2009 legislation.
- Add language pertaining to newly eligible transfer students (enhanced SNG) to comply with 2009 legislation.
- Define \$100 variance allowance for enrollment changes requiring administrative adjustments.
- Alternative method for calculating self-help.
- Clarification on foster youth assurance.
- Minor technical changes and corrections.

Hearing Location(s): Higher Education Coordinating Board, 2nd Floor Conference Room, 919 Lakeridge Way, Olympia, WA 98502 (stop to sign in at front desk of 917 Lakeridge Way building), on Tuesday, June 22, 2010, at 10:30 a.m.

Date of Intended Adoption: July 15, 2010.

Submit Written Comments to: Carissa Glassburn (through June 17, 2010); Julie Japhet (after June 17, 2010), Higher Education Coordinating Board, P.O. Box 43430, Olympia, WA 98504-3430, e-mail carissag@hecb.wa.gov or juliej@hecb.wa.gov, fax (360) 704-6241 (through June 17, 2010) or (360) 704-6240 (after June 17, 2010), by 12:00 noon, Monday, June 21, 2010.

Assistance for Persons with Disabilities: Contact Kristin Ritter by 5:00 p.m., Friday, June 18, 2010, (360) 753-7850.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Purpose is to make technical corrections, updates, and clarifications for the rules governing the state need grant program.

Reasons Supporting Proposal: To comply with legislative changes and incorporate policy changes.

Statute Being Implemented: Chapter 28B.92 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Recommend approval of language as written.

Name of Proponent: Higher education coordinating board, governmental.

Name of Agency Personnel Responsible for Drafting: Carissa Glassburn, 917 Lakeridge Way, Olympia, WA 98504-3430, (360) 753-7841; Implementation: John Klacik, 917 Lakeridge Way, Olympia, WA 98504-3430, (360) 753-7851; and Enforcement: Don Bennett, 917 Lakeridge Way, Olympia, WA 98504-3430, (360) 753-7831.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No economic impact.

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

May 18, 2010

Julie Japhet

Assistant Director of  
Student Financial Assistance

AMENDATORY SECTION (Amending WSR 08-15-156, filed 7/22/08, effective 8/22/08)

**WAC 250-20-011 Student eligibility.** For a student to be eligible for a state need grant he or she must:

(1) Be a "needy student" as determined by the higher education coordinating board in accordance with RCW 28B.10.802. These students must also meet the "income cut-off," be a "former foster youth" ~~((or)),~~ be a "disadvantaged student or be an opportunity internship graduate."

(2) Be a resident of the state of Washington in accordance with RCW 28B.15.012 (2)(a) through (d).

(3) Be enrolled or accepted for enrollment as an undergraduate student at a participating postsecondary institution. A student is not eligible if he or she has received a bachelor's degree or its foreign equivalent.

(a) For purposes of need grant eligibility, the student must be enrolled, at time of disbursement, in a course load of at least six credits per quarter or semester (except as specified in WAC 250-20-021 less-than-half-time pilot project and opportunity internship graduates).

(b) A student enrolled less than half time may not receive this grant for the term in question (except as specified in WAC 250-20-021 less-than-half-time pilot project and opportunity internship graduates), but is eligible for reinstatement or reapplication for a grant upon return to at least a half-time status. Correspondence courses may not comprise more than one-half of the student's minimum credit load for which aid is being considered.

(c) Have a high school diploma or its equivalent. Equivalent standards include a general education development certificate or a certificate of completion of a home study program recognized by the student's home state. For a student without a high school diploma or its equivalent, a school may accept a recognized ability-to-benefit test as defined by federal financial aid regulations.

(4) Maintain satisfactory progress as defined in WAC 250-20-021(19).

(5) Not be pursuing a degree in theology.

~~(6) ((Not have received a state need grant for more than the equivalent of ten full-time semesters or fifteen full-time quarters or equivalent combination of these two, nor exceed one hundred twenty-five percent of the published length of time of the student's program. A student may not start a new associate degree or certificate program as a state need grant recipient until at least five years have elapsed since earning an associate degree as a need grant recipient, except that a student may earn two associate degrees concurrently. A student shall be deemed to have received an associate degree as a state need grant recipient if the student received state need grant payments in more than three quarters, two semesters, or equivalent clock hours while pursuing an associate degree. Upon receipt of a bachelor's degree or its foreign equivalent, a student is no longer eligible.~~

~~(7))~~ Have submitted the Free Application for Federal Student Aid to receive consideration for a Pell grant (except as specified in WAC 250-20-021 less-than-half-time pilot project and opportunity internship graduates).

~~((8))~~ (7) Certify that he or she does not owe a refund or repayment on a state or federal grant, and is not in default on a loan made, insured, or guaranteed under the Federal Family Education Loan Program, the Federal Perkins Loan Program, or the Federal Direct Student Loan Program.

(8) Not exceed the following state need grant usage limits:

(a) The equivalent of ten full-time semesters or fifteen full-time quarters or equivalent combination of these two.

(b) One hundred twenty-five percent of the school's published program length.

(c) A new associate degree or certificate program as a state need grant recipient within five years of earning an associate degree as a need grant recipient, except that a student may earn two associate degrees concurrently. A student shall be deemed to have received an associate degree as a state need grant recipient if the student received grant payments in more than three quarters, two semesters, or equivalent clock hours while pursuing an associate degree.

(d) For an individual qualifying for the state need grant as an opportunity internship graduate, the equivalent of two full-time semesters or three full-time quarters.

AMENDATORY SECTION (Amending WSR 08-15-156, filed 7/22/08, effective 8/22/08)

**WAC 250-20-021 Program definitions.** (1) The term "needy student" shall mean a post-high school student of an institution of postsecondary education who demonstrates to the higher education coordinating board the financial inability, either parental, familial, or personal, to bear the total cost of education for any semester or quarter. Needy student also means an opportunity internship graduate who enrolls in a postsecondary program of study within one year of high school graduation. The determination of ~~((need))~~ financial inability to bear the total cost of education shall be made in accordance with federal needs analysis formulas and provisions as recognized and modified by the board.

(2) The term "disadvantaged student" shall mean a student who by reasons of adverse cultural, educational, environmental, experiential, or familial circumstance is unlikely to aspire to, or enroll in, higher education. Generally, this shall mean a dependent student whose parents have not attained a college education and/or whose family income is substantially below the state's median ~~((or has participated in a means tested early awareness program designed to qualify him or her for enrollment as a full-time student at a postsecondary institution in the state of Washington))~~.

(3) The term "postsecondary institution" shall mean:

(a) Any public university, college, community college, or vocational-technical institute operated by the state of Washington political subdivision thereof, or any other university, college, school or institute in the state of Washington offering instruction beyond the high school level which is a member institution of an approved accrediting association.

(b) If such institution agrees to participate in the program in accordance with all applicable rules and regulations.

(c) Any institution, branch, extension or facility operating within the state of Washington which is affiliated with an institution operating in another state must be a separately accredited member institution of an approved accrediting association.

(d) The separate accreditation requirement is waived for branch campuses of out-of-state institutions if the branch campus:

(i) Is eligible to participate in federal student aid programs; and

(ii) Has operated as a nonprofit college or university delivering on-site classroom instruction for a minimum of twenty consecutive years within the state of Washington; and

(iii) Has an annual enrollment of at least seven hundred full-time equivalent students.

(4) The term "approved accrediting association" shall mean the following organizations:

(a) Northwest Commission on Colleges and Universities;

(b) Middle States Association of Colleges and Schools, Commission on Higher Education;

(c) New England Association of Schools and Colleges;

(d) North Central Association of Colleges and Schools;

(e) Southern Association of Colleges and Schools;

(f) Western Association of Schools and Colleges;

(g) Accrediting Bureau of Health Education Schools;

(h) Accrediting Council for Continuing Education and Training;

(i) Accrediting Commission of Career Schools and Colleges of Technology;

(j) Accrediting Council for Independent Colleges and Schools;

(k) National Accrediting Commission of Cosmetology Arts and Sciences.

(5) "Washington resident" shall be defined as an individual who satisfies the requirements of RCW 28B.15.012 (2)(a) through (d) and board-adopted rules and regulations pertaining to the determination of residency.

(6) "Dependent student" shall mean any post-high school student who does not qualify as an independent student in accordance with WAC 250-20-021(7).

(7) "Independent student" shall mean any student who qualifies as an independent student for the receipt of federal aid. These qualifications include a student who has either:

(a) Reached his or her twenty-fourth birthday before January 1st of the aid year; or

(b) Is a veteran of the U.S. Armed Forces; or

(c) Is an orphan or ward of the court; or

(d) Has legal dependents other than a spouse; or

(e) Is a married student or a graduate/professional student; or

(f) Is determined to be independent for the receipt of federal aid on the basis of the professional judgment of the aid administrator.

(8) "Placebound student" means a student who:

(a) Is unable to complete a college program because of family or employment commitments, health concerns, exceptional monetary needs, or similar factors; and

(b) Has completed the associate of arts or the associate of science degree, or its equivalent; and

(c) May be influenced by the receipt of an enhanced student financial aid award to complete a baccalaureate degree at an eligible institution.

(9) Definitions of "undergraduate students" will be in accord with definitions adopted for institutional use by the board.

~~((9))~~ (10) "Student budgets" are determined by institutions and approved by the board. The student budget consists of that amount required to support an individual as a student for nine months and may take into consideration cost factors

for maintaining the student's dependents. This should be the amount used to calculate the student's total need for all state and federal funds.

~~((10))~~ (11) "State need grant cost-of-attendance," ~~(is the standard student cost per sector, as developed by the board.)~~

(a) The costs-of-attendance for each sector are calculated by adding together a standard maintenance allowance for books and supplies including tools, room, board, transportation and personal items, for all undergraduate students state-wide as developed by the Washington Financial Aid Association, and the sector's regular tuition and fees for full-time, resident, undergraduate students.

(b) In no case may the costs-of-attendance exceed the statutory ceiling established by RCW 28B.92.060(4). The ceiling is calculated by adding together the same standard maintenance allowance used in determining the state need grant cost-of-attendance, plus the regular tuition and fees charged for a full-time resident undergraduate student at a research university, plus the current average state appropriation per student for operating expenses in all public institutions.

(c) For example, in the 1992-93 academic year, the value of the statutory ceiling is \$13,783. This value is composed of the Washington Financial Aid Association's maintenance budget of \$6,964, plus the regular tuition and fees charged for a resident undergraduate student at a research university of \$2,274, plus the current average state appropriation per student for operating expenses in all public institutions of \$4,545.

(d) The value of each element used in the construction of the statutory ceiling will be updated annually.

(e) The higher education coordinating board will consult with appropriate advisory committees and the representative association of student financial aid administrators, to annually review and adjust the costs-of-attendance. The costs-of-attendance for each sector will be published concurrent with annual guidelines for program administration.

~~((11))~~ (12) "Family income" is the student's family income for the calendar year prior to the academic year for which aid is being requested.

(a) Income means adjusted gross income and nontaxable income as reported on the federally prescribed application for federal student aid.

(b) For the dependent student family income means parental income.

(c) For the independent student family income means the income of the student and any other adult, if any, reported as part of the student's family.

(d) The institutional aid administrator may adjust the family's income up or down to more accurately reflect the family's financial situation during the academic year. When such adjustments are made they shall be consistent with guidelines for making changes to determine federal student aid eligibility.

~~((12))~~ (13) "Income cutoff" means the amount of family income below which a student is determined to be eligible for the state need grant.

(a) The cutoff shall be expressed as a percent of the state's median family income. The exact point of cutoff shall



be determined each year by the board based on available funding.

(b) The board will endeavor to award students, in order, from the lowest income to the highest income, within the limits of available funding.

(c) At the discretion of the institution's aid administrator, a student who is eligible for a state need grant in a given academic year may be deemed eligible for the ensuing academic year if his or her family income increases by no more than three percent, even if the stated median family income cutoff for grant eligibility is lower than that amount.

~~((13))~~ (14) "Median family income" is the median income for Washington state, adjusted by family size and reported annually in the federal register.

~~((14))~~ (15) "Base grant" is the state need grant award for each sector before the addition of a dependent care allowance. The base grant per student will be no less than the published base grant in 1998-1999. The base grant may be further adjusted according to the student's family income level and rate of enrollment as described in WAC 250-20-041.

~~(For certain students who have completed board approved early awareness and preparation programs such as, GEAR UP or a Trio program, the base grant will be an amount fixed annually by the board. Generally the base grant, in these cases, will be no less than the current value of the federal PELL grant program.~~

~~(15))~~ (16) "Dependent care allowance" is a flat grant amount, to be determined by the board, which is in addition to the eligible student's base grant.

(a) The allowance is awarded to those students who have dependents in need of care. The dependent must be someone (other than a spouse) living with the student.

(b) Care must be that assistance provided to the dependent by someone outside of the student's household and not paid by another agency.

(c) Eligible grant recipients must document their need for the dependent care allowance.

~~((16))~~ (17) "State need grant award" is the base grant adjusted according to level of family income, plus a dependent care allowance, if applicable.

~~((17))~~ (18) "Academic year" is that period of time between July 1 and the following June 30 during which a full-time student would normally be expected to complete the equivalent of two semesters or three quarters of instruction.

~~((18))~~ (19) "Clock hours" means a period of time which is the equivalent of either:

(a) A 50 to 60 minute class, lecture, or recitation; or

(b) A 50 to 60 minute period of faculty-supervised laboratory shop training or internship.

~~((19))~~ (20) "Gift equity packaging policy" is the institution's policy for assigning gift aid to all needy, eligible students.

~~((20))~~ (21) "Satisfactory progress" is the student's successful completion of a minimum number of credit or clock hours for each term in which the grant was received. Each school's policy for measuring progress of state need grant recipients must define satisfactory as the student's completion of the minimum number of credit or clock hours for which the aid was disbursed.

(a) The minimum satisfactory progress standard for full-time students is twelve credits per term or 300 clock hours per term. Satisfactory progress for three-quarter time students is nine credits per term or 225 clock hours per term. Satisfactory progress for half-time students is six credits per term or 150 clock hours per term. Satisfactory progress for less than half-time pilot program students is three credits or 75 hours per term.

(b) Each school's policy must deny further disbursements of the need grant at the conclusion of any term in which he or she fails to complete at least one-half of the minimum number of credits or clock hours for which the aid was disbursed or otherwise fails to fulfill the conditions of the institution's satisfactory progress policy.

(c) The school may make disbursements to a student who is in a probationary status. "Probation" is defined as completion of at least one-half, but less than all of the minimum number of credits for which the aid was calculated and disbursed. The school must have a probation policy, approved by the board, which limits the number of terms in which a student may receive the need grant while in a probationary status.

(d) The school's aid administrator may at any time, using professional judgment exercised on a case-by-case basis, reinstate a student back into a satisfactory progress status, in response to an individual student's extenuating circumstances.

~~((21))~~ (22) The term "full institutional accreditation" shall mean the status of public recognition that an accrediting agency recognized by the U.S. Department of Education grants to an educational institution that meets the agency's established standards and requirements. Institutional accreditation applies to the entire institution, indicating that each of an institution's parts is contributing to the achievement of the institution's objectives.

~~((22))~~ (23) The term "eligible program" for a public or private nonprofit educational institution, shall mean:

(a) A certificate, associate or baccalaureate degree program; at least a two-year program that is acceptable for full credit toward a bachelor's degree~~(-);~~ or

(b) A program that provides at least a 15-week undergraduate program of 600 clock hours, 16 semester hours, or 24 quarter hours that leads to a degree or certificate and prepares the student for gainful employment in a recognized occupation~~(-To be an "eligible program," a program must be); and~~

(c) A program encompassed within the institution's accreditation and be an eligible program for purposes of the federal Title IV student financial aid programs~~(-);~~

~~((23))~~ (d) Apprenticeships qualifying as eligible programs for opportunity internship graduates. Apprenticeships must be associated with participating state need grant institutions.

(24) The three "public sectors of higher education" are the research universities, comprehensive universities, and the community and technical colleges.

~~((24))~~ (25) A "for-profit institution" is a postsecondary educational institution other than a public or private nonprofit institution which provides training for gainful employment in a recognized profession.

~~((25))~~ (26) A "postsecondary vocational institution" is a public or private nonprofit institution which provides training for gainful employment in a recognized profession.

~~((26))~~ (27) The "less-than-half-time pilot project" is defined as follows:

(a) The pilot project is authorized for 2007-2011 in chapter 404, Laws of 2007 and is meant to test the feasibility of providing state need grant awards to students who enroll in three, four or five credits.

(b) All rules and guidelines that govern student and school participation in the state need grant program shall apply to pilot project except the following:

(i) The student may enroll for three, four or five credits per term.

(ii) The grant award is equal to one-quarter of the regular base grant amount.

(iii) Students otherwise enrolled in credit bearing ~~((coursework))~~ course work may receive the grant for up to one academic year before being accepted into a program that leads to a degree or certificate.

~~((27))~~ (28) The term "former foster youth" means a person who is at least eighteen years of age, but no more than twenty-four years of age, who was a dependent of the department of social and health services at the time he or she attained the age of eighteen.

(29) An "opportunity internship graduate" means a low-income high school student who successfully completes an opportunity internship program (as defined in RCW 28C.18.162) and graduates from high school.

AMENDATORY SECTION (Amending WSR 08-15-156, filed 7/22/08, effective 8/22/08)

**WAC 250-20-031 Student application procedure.** (1) Application for a state grant must be made each year.

(2) All applications will be ranked anew each year.

(3) Application for a state need grant is accomplished through a student's application for admission to, and financial aid from, the institution of his or her choice.

(4) Financial data must be generated in accordance with the method set forth by the higher education coordinating board to assure that information will be consistent on a state-wide basis.

The board shall annually specify the student data elements essential for determining state need grant eligibility and shall authorize the forms and processes for collecting and analyzing such data.

(5) The burden of proof of a grant recipient's eligibility is with the institution. At a minimum:

(a) The institution must be able, on request of the board, to reconstruct the calculations and rationale for the student's grant eligibility and award amounts.

(b) The financial aid form or comparable financial status documents, with the resulting financial need analysis must be on record in the financial aid office for all grant recipients.

(c) The institution must also have on record justification for reawarding a need grant to any student who failed to make satisfactory progress.

(6) The board shall establish annual criteria by which the eligible student is to be identified, ranked, and awarded.

Those criteria shall include the maximum award for each sector and the income cutoff level.

(7) The institution shall examine the student's aid application to determine overall need and specific state need grant eligibility and the appropriate award, using the board-approved criteria.

(8) The board will make available to all participating institutions, a list of all students who owe state need grant repayments or have otherwise exhausted their state need grant eligibility. It is the institution's responsibility to ensure that no ineligible student receives a state need grant.

(9) The financial aid administrator at each institution will be required to sign a statement attesting to the fact that all eligible financial aid applicants within state need grant parameters will be identified and served to the extent funds are available and that financial information will be determined in strict adherence to program guidelines.

(10) No group of students, such as single parents or part-time students, may be advantaged or disadvantaged in its access to the state need grant by any institutional awarding policy.

(11) The board will provide institutions with a list of eligible opportunity internship graduates.

AMENDATORY SECTION (Amending WSR 08-15-156, filed 7/22/08, effective 8/22/08)

**WAC 250-20-041 Award procedure.** (1) The institution will offer grants to eligible students from funds reserved by the board. It is the institution's responsibility to ensure that the reserve is not over expended within each academic year.

(2) The state need grant award for an individual student shall be the base grant, appropriate for the sector attended and a dependent care allowance, if applicable, adjusted for the student's family income and rate of enrollment. Each eligible student receiving a grant must receive the maximum grant award for which he or she is eligible, unless such award should exceed the student's overall need or the institution's approved gift equity packaging policy.

(3) The grant amount for students shall be established as follows:

(a) The award shall be based on the representative average tuition, service, and activity fees charged within each public sector of higher education. The average is to be determined annually by the higher education coordinating board. The award for students enrolled in the applied baccalaureate pilot program authorized in RCW 28B.50.810 shall be based on the representative tuition and fees used for the comprehensive universities.

(b) ~~((Except for the 2003-04 and 2004-05 academic years,))~~ The base grant award shall not exceed the actual tuition and fees charged to the eligible student on an annualized basis by more than one hundred dollars. ((During the 2003-04 and 2004-05 years the grant award may exceed the tuition charged to the eligible student by fifty dollars.)) The one hundred dollar variance is only applicable in circumstances where changes to a student's credit or enrollment level after the initial disbursement would require a state need grant award adjustment to ensure that the award does not exceed the cost of tuition.

(c) The base grant award for students attending independent four-year institutions shall be equal to that authorized for students attending the public four-year research institutions. The base grant for students attending private vocational institutions shall be equal to that authorized for students attending the public community and technical colleges.

(4) The total state need grant award shall be reduced for students with family incomes greater than fifty percent of the state's median and for less than full-time enrollment.

(a) Students whose incomes are equal to fifty-one percent to seventy-five percent of the state's median family income shall receive seventy-five percent of the maximum award. Students whose incomes are equal to seventy-six percent to one hundred percent of the state's median family income shall receive fifty percent of the maximum award. Students whose incomes are equal to one hundred one percent to one hundred twenty-five percent of the state's median family income shall receive twenty-five percent of the maximum award.

(b) Eligible students shall receive a prorated portion of their state need grant for any academic period in which they are enrolled at least half-time, as long as funds are available. Students enrolled at a three-quarter time rate, at the time of disbursement, will receive seventy-five percent of their grant. Students enrolled half-time at the time of disbursement will receive fifty percent of their grant.

(c) Less-than-half-time pilot project students and opportunity internship program graduates enrolled at a less-than-half-time rate will receive twenty-five percent of their grant.

(5) Placebound students may receive enhanced grants to the extent funds are appropriated for this purpose. The value of the enhanced grant will be determined by the board.

(6) Depending on the availability of funds, students may receive the need grant for summer session attendance.

~~((6))~~ (7) The institution will be expected, insofar as possible, to match the state need grant with other funds sufficient to meet the student's need. Matching moneys may consist of student financial aid funds and/or student self-help.

~~((7))~~ (8) All financial resources available to a state need grant recipient, when combined, may not exceed the amount computed as necessary for the student to attend a postsecondary institution. The student will not be considered over-awarded if he or she receives additional funds after the institution awards aid, and the total resources exceed his or her financial need by \$200 or less by the end of the academic year.

~~((8))~~ (9) The institution shall ensure that the recipient's ((need grant award, in combination with grant aid from all sources, not exceed seventy-five percent of the student's cost-of-attendance)) aid package at a minimum consists of self-help equal to the lesser of twenty-five percent of the student's cost-of-attendance or an amount calculated annually by the board. The calculation is based on an assessment of the minimum amount that a typical student could reasonably earn while in school.

(a) The self-help amount calculated annually by the board shall be determined by multiplying the net value of minimum wage (wage less employer taxes and medical aid), multiplied by twelve hours per week, and further multiplied by a representative thirty-three week academic year.

(b) The school's aid administrator may exercise professional judgment and reduce the self-help requirement on a case-by-case basis. These cases should recognize exceptional individual student circumstances where a minimum self-help requirement would present a significant barrier to the student's educational success. These circumstances shall be documented in the student's file.

(c) In counting self-help sources of aid, the aid administrator ~~((shall))~~ may include all loans, employment, work-study, ~~((scholarships, grants not based on need,))~~ and those scholarships or grants that were earned based on the student's substantial efforts over time, as well as family contribution, and unmet need.

~~((9))~~ (10) The institution will notify the student of receipt of the state need grant.

~~((10))~~ (11) Any student who has received at least one disbursement and chooses to transfer to another participating institution within the same academic year may request that the receiving institution apply to the board for funds to continue receipt of the grant.

AMENDATORY SECTION (Amending WSR 08-15-156, filed 7/22/08, effective 8/22/08)

**WAC 250-20-051 Grants disbursement and repayment.** (1) At intervals designated by the executive director, financial aid administrators from participating independent colleges and proprietary institutions will submit the appropriate cash request or reimbursement form to the higher education coordinating board for each state need grant recipient certifying enrollment and grant eligibility.

(a) Upon receipt of the cash request or reimbursement forms, the higher education coordinating board will forward payments to the appropriate institution for each recipient or directly to the school as reimbursement.

(b) At private and proprietary schools, as long as the student remains eligible for the grant, the payment must be given directly to the student without the institution placing any other condition on receipt of the payment. Institutions which participate in the electronic funds transfer reimbursement program, must follow the requirements of the student directives. The student directive is a board-approved document used to direct the schools in the student's choice of payment method, either a direct deposit or school issued warrant.

(c) All signed receipts and student directives for state need grants are to be retained by the institution. They must be made available for inspection upon request of the board. All unclaimed payments must be returned to the board on or before the date specified by the board each term.

(d) A student-by-student reconciliation must be completed by the institution at the end of each term.

(2) All other institutions may request funds as necessary to make disbursements to students.

(a) Interim progress reports must be filed with the board as requested.

(b) A student-by-student reconciliation must be filed with the board at the end of each academic year.

(3) No institution may disburse nor claim more funds than that amount reserved by the board for the body of students at each institution.

(4) Should a student recipient withdraw prior to or on fifty percent of the term or prior to completing fifty percent of the scheduled clock hours during the term in which he or she received a state need grant, the student shall be required to repay a portion of the grant amount according to the board-approved repayment policy. This policy is separate and distinct from the federal repayment policy and computation. Beginning in 2009-2010 the board-approved repayment policy shall incorporate the following repayment principles.

(a) The repayment calculation is based on the portion of the term not completed or the percent of scheduled clock hours not completed.

(b) A fifty percent reduction is applied to the final repayment calculation for relief of irretrievable costs of attendance. This adjustment is only available to students who officially or unofficially withdraw when the last date of attendance is known.

(c) If the last known date of attendance occurs after fifty percent of the term, the state need grant award is considered one hundred percent earned and no repayment is due.

(d) If a state need grant recipient attends a portion of a term and withdraws with no verified last date of attendance, the repayment will be fifty percent of the grant amount with no additional adjustments.

(e) If a state need grant recipient never attends courses in the term for which they received a state need grant award, the repayment is one hundred percent of the grant amount.

The institution shall advise the student and the board of amounts to be repaid.

(5) The board reserves the right, if funds are available, to pay to public institutions an administrative expense allowance for the shared responsibility of administering the program on the board's behalf. The allowance shall be calculated annually as a percentage of the need grant funds disbursed by the institution.

(6) Funds from grants which are declined, forfeited or otherwise unused shall be reawarded until disbursed (~~except that eligible former foster youth shall be assured receipt of a grant~~).

(7) The foster youth assurance is intended for unserved foster youth that were not identified during routine state need grant awarding processes and only after the institution has depleted its SNG reserve.

**WSR 10-11-116**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed May 18, 2010, 3:35 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-13-077.

Title of Rule and Other Identifying Information: Chapter 296-127 WAC, Prevailing wage.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Room S117, Tumwater, WA, on June 28, 2010, at 1:00 p.m.; at the Department of

Labor and Industries, Tukwila Service Location, 12806 Gateway Drive, Tukwila, WA, on June 29, 2010, at 10:00 a.m.; and at the Department of Labor and Industries, Spokane Service Location, 901 North Monroe Street, Suite 100, Spokane, WA, on July 1, 2010, at 10:00 a.m.

Date of Intended Adoption: August 17, 2010.

Submit Written Comments to: Sally Elliott, P.O. Box 44400, Olympia, WA 98504-4400, e-mail [yous235@lni.wa.gov](mailto:yous235@lni.wa.gov), fax (360) 902-5292, by July 1, 2010.

Assistance for Persons with Disabilities: Contact Sally Elliott at [yous235@lni.wa.gov](mailto:yous235@lni.wa.gov) or (360) 902-6411.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The prevailing wage rules have not gone through a comprehensive review since the early 1990s. The department has reviewed the rules and will be making amendments to reflect court decisions and statutory amendments, integrate administrative policies, streamline current processes, create consistency with the Prevailing Wage Act, clarify language, add explanatory notes, and make housekeeping changes.

The proposed rule making includes the following changes:

• **WAC 296-127-010 Definitions for chapter 296-127 WAC.**

- o Subsection (3) **Industrial statistician**, this definition revision reflects changes in department organization; there is no longer an employment standards, apprenticeship, and crime victims (ESAC) division.
- o Subsection (4) **Assistant director**, this definition is updated so that the term refers to the assistant director of "specialty compliance services" rather than the prior ESAC division.
- o Subsection (7)(a), "For the purposes of chapter 39.12 RCW," is added to avoid confusion in applying "public work" terminology as it is used in other statutes. The manner of execution of the work, i.e., "by contract, purchase order, or any other legal agreement," is stricken as superfluous and for consistency with chapter 39.12 RCW and RCW 39.04.-010(4).
- o Subsection (7)(b), the reference to "municipal street railway system" is no longer applicable. The definition of "ordinary maintenance" is amended to adopt the definition as set forth in current applicable case law: *City of Spokane (Wheelabrator) v. Dep't of Labor & Indus.*, 100 Wn. App. 805, 998 P.2d 913 (2000).
- o Subsection (8) **Contract**, for purposes of clarification, this definition deletes references to whether a contract is advertised or not. The "in writing" reference is deleted since it has been the source of confusion and misinterpretation.
- o Subsection (9) **Residential construction**, end punctuation mark is corrected for grammar.
- o Subsections (10) **Filing**, (11) **Service**, and (12) **Issuance**, these definitions bring the rules into line with definitions as used in the Administrative Procedure Act, and/or to comport with plain meaning of terms. The definitions bring clarity to the chapter.

- o The added notes provide information about the newly adopted "residential construction" provisions in prevailing wage law (RCW 39.12.030), and the definitions section in general.

• **WAC 296-127-011 Time for determining prevailing wage.**

- o The change to subsection (3)(c) removes sunsetted provisions referenced in the rule.
- o The revision in subsection (6) makes it clear that "journey-level" wages is the wage rate level to be included in the schedule of rates to be incorporated into public works bid specifications and contract documents, consistent with department policy and practice.
- o The other revisions add provisions for service contracts, a subject not adequately addressed in current rules, and specifically state the need for annual wage updates in multi-year maintenance, service, and building service maintenance contracts, the cost of which annual wage updates shall be borne by the awarding agency. These rule proposals implement existing administrative policies and are consistent with the provisions of chapter 39.12 RCW.

• **WAC 296-127-015 Applicability of prevailing wages for supervisors.**

- o Deletion of subsection (1) removes references to "journey level in charge" work classification, etc. to reflect current conditions; there is no such work classification currently utilized in prevailing wage rate designations.
- o This change to current subsection (2)(a) changes the threshold for prevailing wage rate application to supervisor efforts from twenty percent of the hours worked on a public works project in a week to ten percent of the hours worked on a public works project in a day. This is a more appropriate threshold and better fulfills the remedial purposes of the Prevailing Wage Act.

• **WAC 296-127-019 Survey methodology.**

- o Deletion of subsection (6)(d) is dictated by current law that prohibits the combining of adjacent county data to validate a survey.
- o The new subsection (8)(b)(iv) addresses the same issue and provides for the industrial statistician's utilization of an alternative method to establish prevailing wage rates when insufficient hours to validate a survey are reported for a given county.

• **WAC 296-127-020 Interpretation of phrases used in chapter 39.12 RCW.**

- o This is a clean-up providing appropriate statutory references, making it clear that the successor liability provisions apply to RCW 39.12.065 as well as RCW 39.12.050 where the successor has actual or constructive knowledge of a predecessor's liability, and clarifying that the "contractor" and "subcontractor" provisions apply to enforcement of all of chapter 39.12 RCW, not only RCW 39.12.050.

• **WAC 296-127-026 Exemptions for sole owners and their spouses, partnerships, corporations and employees of public agencies.**

- o The title is revised to subsection (1) remove the "exemptions" language which has been a source of confusion and subsection (2) to include limited liability companies in the provisions of the rule.
- o New subsection (1)(c) includes 30% ownership members of limited liability companies in the provisions of the rule. The inclusion of limited liability companies within rule coverage is consistent [with] the intent of the rule and consistent with current business organizational structures. The introductory language also clarifies that the rule applies to "the work of" persons covered by the subsection, which ties in with new subsection (2) discussed below.
- o Subsection (4) (new subsection (1)(e)) removes a reference to public employees paid "on monthly or per diem salary," a mode of payment no longer applicable, and makes it clear that the provision applies to all workers regularly employed by the state or any political subdivision.
- o New subsection (2) makes it clear that although the rule exempts certain individuals from requirements to be paid prevailing wages for their work, they are still subject to other provisions of prevailing wage law, including intent and affidavit filing requirements. This is consistent with chapter 39.12 RCW and promotes greater clarity.

• **WAC 296-127-050 Filing statements of intent to pay prevailing wages and affidavits of wages paid for contracts under two thousand five hundred dollars.**

- o The title is revised to more specifically refer to the type of combined statement to which the rule applies, and to bring the amount of the contract covered into compliance with the statute ("two thousand five hundred dollars or less, including tax" rather than "under two thousand five hundred dollars").
- o Other revisions are included to conform the rule to department policy for utilization of alternate, combined forms.

• **New section WAC 296-127-055 Alternate filing of combined statement of intent to pay prevailing wages and affidavit of wages paid forms for limited public works contracts less than thirty-five thousand dollars including sales tax.**

- o This is a new rule to correspond with RCW 39.04.155(3).

• **WAC 296-127-060 Director of department of labor and industries to arbitrate disputes—General provisions.**

- o The revisions change the wording so that it is gender neutral.

• **WAC 296-127-061 Requests for arbitration.**

- o The revisions correct the instructions for filing a petition for arbitration and reduce the number of copies required to be filed.

- **WAC 296-127-062 Conduct of arbitration hearing.**
  - o The revisions correct the instructions for filing a petition for arbitration, reducing the number of copies required to be filed, and the wording is revised so that it is gender neutral.
- **WAC 296-127-150 Notice of violation.**
  - o The revisions clarify that certain provisions in notices of violation are applicable to only certain types of violations, i.e., RCW 39.12.065 violations as opposed to RCW 39.12.050 violations, and clean up the language used to describe the filing of a request for hearing in connection with a notice of violation.
- **WAC 296-127-160 Appeal of notice of violation.**
  - o The revisions clarify the appeal process, using language consistent with the Administrative Procedure Act. The number of required copies of an appeal is reduced to two.
- **WAC 296-127-170 Hearing on notice of violation.**
  - o The revisions clarify language, correct statute references, and reduce the number of copies required for filing a notice of appeal.
- **WAC 296-127-190 Filing of lien against retainage or bonds.**
  - o The revisions correct statute references.
- **WAC 296-127-200 Surety bond payable to director.**
  - o The revisions correct statute references.
- **WAC 296-127-300 Filing and service.**
  - o The revisions correct addresses and filing procedures.
- **WAC 296-127-320 Payroll.**
  - o The revisions to subsection (1) clarify that the payroll records must contain a statement of hours worked and overtime rates.
  - o Subsection (2) revisions conform the rule to department policy with respect to: (a) The need for certified payroll records to contain the workers' entire Social Security number only if requested as part of an L&I investigation; (b) authorizing the use of only the last four digits of the Social Security number for satisfying certified payroll requests that are not part of an L&I investigation; and (c) requiring use of L&I "affirmation" language on all certified payroll records.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: Chapter 39.12 RCW, RCW 43.22.051 and 43.22.270.

Statute Being Implemented: Chapter 39.12 RCW and RCW 43.22.270.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: David Soma, Tumwater, Washington, (360) 902-5330; Implementation and Enforcement: Steve McLain, Tumwater, Washington, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules are specifically exempt from the small business economic impact statement requirement because none of the proposed rules will impose more than minor costs on businesses (see RCW 19.85.030 (1)(a)). In general, prevailing wage work is work done at the cost of the public. It is expected that businesses performing public work pass on the costs of paying prevailing wage rates to the public through their submission of bids. Additionally, many of the proposed rules are intended to clarify rule language without changing effect (see RCW 19.85-025(3), referencing RCW 34.05.310 (4)(d)).

A cost-benefit analysis is required under RCW 34.05-328. A preliminary cost-benefit analysis may be obtained by contacting Sally Elliott, Department of Labor and Industries, P.O. Box 44400, Olympia, WA 98504-4400, phone (360) 902-6411, fax (360) 902-5292, e-mail [yous235@lni.wa.gov](mailto:yous235@lni.wa.gov).

May 18, 2010

Judy Schurke  
Director

AMENDATORY SECTION (Amending WSR 94-01-100, filed 12/16/93, effective 1/16/94)

**WAC 296-127-010 Definitions for chapter 296-127 WAC.** (1) "Department" means the department of labor and industries.

(2) "Director" means the director of the department or his or her duly authorized deputy or representative.

(3) "Industrial statistician" means the industrial statistician of the ~~((department's employment standards, apprenticeship, and crime victims (ESAC) division))~~ department.

(4) "Assistant director" means the assistant director of ~~((the employment standards, apprenticeship, and crime victims (ESAC) division or his or her duly authorized deputy or representative))~~ specialty compliance services.

(5) "Contractor" means:

(a) The prime contractor, and each and every subcontractor, required to be registered under chapter 18.27 RCW and/or licensed under chapter 19.28 RCW, that performs any work on a public works project site, and/or is required to pay industrial insurance premiums as a construction company.

(b) Employers engaged in shipbuilding and ship repair, building service maintenance, and any fabricator or manufacturer that produces nonstandard items specifically for a public works project.

(c) Employers that contract with contractors or subcontractors for the purpose of the production and/or delivery of materials pursuant to the terms of WAC 296-127-018.

(6) The term municipality shall include every city, county, town, district, political subdivision, or other public agency thereof which is authorized by law to require the execution of public work, except drainage districts, diking districts, diking and drainage improvement districts, drainage improvement districts, diking improvement districts, consolidated diking and drainage improvement districts, consoli-

dated drainage improvement districts, consolidated diking improvement districts, irrigation districts, or any such other districts as shall from time to time be authorized by law for the reclamation or development of waste or undeveloped lands.

(7)(a) For purposes of chapter 39.12 RCW, the term "public work" shall include:

(i) All work, construction, alteration, enlargement, improvement, repair, and/or demolition that is executed ~~((by contract, purchase order, or any other legal agreement and that is executed))~~ at the cost of the state of Washington or of any municipality. The source of the funding shall not determine the applicability of the statute, and may include, but is not limited to, such sources as those payments made through contracts with insurance companies on behalf of the insured state or municipality;

(ii) All work, construction, alteration, enlargement, improvement, repair, and/or demolition which, by law, constitutes a lien or charge on any property of the state or of a municipality;

(iii) All work, construction, alteration, repair, or improvement, other than ordinary maintenance that the state or a municipality causes to be performed by a private party through a contract to rent, lease, or purchase at least fifty percent of the project by one or more state agencies or municipalities, pursuant to RCW 39.04.260;

(iv) Maintenance, except ordinary maintenance as defined by (b)(iii) of this subsection, when performed by contract. Maintenance is defined as keeping existing facilities in good usable, operational condition;

(v) Janitorial and building service maintenance as defined by WAC 296-127-023, when performed by contract, on public buildings and/or assets; and

(vi) The fabrication and/or manufacture of nonstandard items produced by contract specifically for a public works project as defined by (a)(i) through (v) of this subsection.

(b) For purposes of chapter 39.12 RCW, the term "public work" shall not include:

(i) Work, construction, alteration, enlargement, improvement, repair, demolition, and/or maintenance for which no wage or salary compensation is paid, consistent with the requirements of RCW 35.21.278;

(ii) ~~((The construction, alteration, repair, or improvement of any municipal street railway system;~~

~~((iii))) "Ordinary maintenance," which is defined only as ~~((work not))~~ maintenance which is performed by ~~((contract and that is performed on a regularly scheduled basis (e.g., daily, weekly, monthly, seasonally, semiannually, but not less frequently than once per year), to service, check, or replace items that are not broken; or work not performed by contract that is not regularly scheduled but is required to maintain the asset so that repair does not become necessary))~~ laborers, workers, or mechanics regularly employed by the state, or any county, municipality, or political subdivision created by its laws.~~

(8) "Contract" means a contract, purchase order, or any other legal agreement ~~((in writing))~~ for public work to be performed for a fixed or determinable amount ~~((, which is duly awarded after advertisement and competitive bid. A contract~~

~~that is awarded from a small works roster, or under the emergency provisions of state law, need not be advertised)).~~

(9) "Residential construction" means construction, alteration, repair, improvement, or maintenance of single family dwellings, duplexes, apartments, condominiums, and other residential structures not to exceed four stories in height, including basement, when used solely as permanent residences. It does not include the utilities construction (water and sewer lines), or work on streets, or work on other structures (e.g., for recreation and business).

(10) "Filing," "filed," or to "file" means actual receipt of the document during office hours at the office of the director, or at such other place designated by the department for filing of the document.

(11) "Service," with respect to documents, means service pursuant to RCW 34.05.010(19), except as otherwise provided by these rules.

(12) "Issue," "issued," or "issuance" means service pursuant to RCW 34.05.010(19).

Note: See RCW 39.12.030 regarding awarding agency contract specification requirements with respect to "residential construction."

Note: The definitions in this rule, including the "ordinary maintenance" definition, are for purposes of prevailing wage law, chapter 39.12 RCW. Other areas of statute may have their own independent use or definition for such terms.

AMENDATORY SECTION (Amending WSR 04-10-083, filed 5/4/04, effective 6/4/04)

**WAC 296-127-011 Time for determining prevailing wage.** (1) Prevailing wage rates for all public work contracts will be determined by the industrial statistician and published on the first business day of February and the first business day of August of each year. These rates shall become effective thirty days after the date of publication. However, the industrial statistician may revise an established prevailing wage rate in response to an administrative or judicial finding overturning the established rate, or at any time necessary to correct an error, with such revision becoming effective thirty days after the date of publication. However, in the event of an emergency as determined by the director of the department, such revised rate shall take effect upon publication.

(2) The department shall establish deadlines for the submission of:

(a) Completed wage surveys, for inclusion of submitted data in the survey computations;

(b) Newly ratified collective bargaining agreements for inclusion in the semiannual prevailing wage publication;

(c) Notice of collectively bargained wage and benefit adjustments, and/or relevant contractual changes, for inclusion in the semiannual prevailing wage publication; and

(d) Notice of changes in apprenticeship standards and incremental wage rates for inclusion in the semiannual prevailing wage publication.

(3) The applicable prevailing wage rates for a ~~((given public works))~~ contract subject to chapter 39.12 RCW will be determined as follows:

(a) For all ~~((public works))~~ contracts ~~((, except janitorial or building service maintenance contracts))~~ subject to chapter 39.12 RCW, the applicable prevailing wage rates shall be the

rates that are in effect on the date when bids by prime contractors are due for submission to contract awarding agencies. Except for maintenance, service, and building service maintenance contracts covered in subsection (5) of this section, these rates shall remain in effect for the duration of the contract.

(b) If contracts are not awarded within six months of the date bids are due, the applicable prevailing wage rates shall be those that are in effect on the date the contract is awarded. Except for maintenance, service, and building service maintenance contracts covered in subsection (5) of this section, these rates shall remain in effect for the duration of the contract.

(c) For work orders issued under job order contracts (~~(pursuant to chapter 301, Laws of 2003)~~), the appropriate prevailing wage rates shall be the rates that are in effect on the date when the individual work order is issued.

(4) If a contract (~~(for public work)~~) is not awarded pursuant to bids, the applicable prevailing wage rates shall be those that are in effect on the date when the contract is executed. Except for maintenance, service, and building service maintenance contracts covered in subsection (5) of this section, these rates shall remain in effect for the duration of the contract.

(5) Maintenance, service, and building service maintenance contracts of more than one year in duration must include wage increase language requiring an update to, and payment of, the applicable prevailing wages for each year after the first year of the contract. The cost of the increases in wages due employees shall be borne by the contract awarding agency.

(6) A schedule of the applicable journey-level prevailing wage rates must be included by:

(a) Contract awarding agencies, in the bid specifications and contract documents for each contract.

(b) Contractors, in the bid and/or contract documents provided to subcontractors.

AMENDATORY SECTION (Amending WSR 92-01-104, filed 12/18/91, effective 1/31/92)

**WAC 296-127-015 Applicability of prevailing wages for supervisors.** Determinations as to whether individuals are workers, laborers, or mechanics are based on the scope of work actually performed by the individuals, rather than the title of their occupations.

(1) (~~Where additional supervisory duties are required of workers, laborers, or mechanics by statute or regulation, the industrial statistician shall establish a rate of pay for a work classification to be called "journey level in charge." These rates shall be published in the semiannual prevailing wage publication.~~

(2)) Supervisors (e.g., foremen, general foremen, superintendents, etc.,) are entitled to receive at least the journey level prevailing rate of wage for performing manual or physical labor:

(a) For each hour spent in the performance of manual or physical labor if it is for more than (~~(twenty)) ten~~ percent (~~(but less than fifty percent))~~ of their hours worked on a public works project during any given (~~(week)) day~~.

(b) For all hours worked in any given week if they perform manual or physical labor for fifty percent or more of their hours worked on a public works project during such week.

(~~(2)) (2)~~ If supervisors subject to the journey level prevailing wage rate are paid a salary, the compensation (salary divided by number of hours worked) must be equal to or greater than the prevailing wage rate for the type of work performed.

AMENDATORY SECTION (Amending WSR 92-01-104, filed 12/18/91, effective 1/31/92)

**WAC 296-127-019 Survey methodology.** (1) The industrial statistician shall establish prevailing wage rates by:

(a) Conducting wage and hour surveys for established trades and occupations;

(b) Adopting the wage and benefit adjustments established in collective bargaining agreements for those trades and occupations where the most recently established prevailing wage rates were derived from a collective bargaining agreement; and/or

(c) In instances when the procedures established in (a) and (b) of this subsection are not feasible, employing other methods deemed appropriate by the industrial statistician as set out in subsection (8) of this section.

(2) The department will determine the identity of employers to be surveyed for a specific trade or occupation by:

(a) Mailing trade and occupation questionnaires to all contractors whose registration under chapter 18.27 RCW or license under chapter 19.28 RCW is active;

(b) Mailing trade and occupation questionnaires to Washington state department of transportation prequalified contractors; and

(c) Compiling and maintaining lists of employers that are not required to be registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW, but that employ workers in building service maintenance, in shipbuilding or ship repair, in the fabrication and/or manufacture of nonstandard items produced specifically for a public works project, and/or in the production and delivery of materials as defined in WAC 296-127-018. Trades and occupations utilized by the shipbuilding and ship repair industries shall not have their survey data combined with their construction counterparts, for the purpose of establishing prevailing wage rates for that industry.

(3)(a) Wage survey forms will be mailed to:

(i) Those contractors and employers whose businesses currently are active and were active during the established survey period, and whose response to the trade and occupation questionnaire indicates that they employ one or more of the trades or occupations being surveyed; and

(ii) Labor unions representing workers in the trades or occupations being surveyed.

(b) The department annually shall mail to statewide trade associations and statewide labor organizations a proposed schedule of trades intended to be surveyed during the upcoming fiscal year. In addition, the department shall notify those



statewide trade associations and labor organizations, reasonably known to be affected, of the mailing of wage surveys.

(4) Data reported on survey forms may be verified by the department, and will be used only when submitted on behalf of or by:

(a) Individual contractors identified by a contractor registration number that currently is valid, and was valid during the established survey period;

(b) Employers that are not required to be registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW, that directly employ and supervise workers as employees in building service maintenance, in shipbuilding or ship repair, in the manufacture of nonstandard items specifically produced for a public works project, or in the production and delivery of materials, as defined in WAC 296-127-018;

(c) Labor unions submitting wage and hour data on behalf of contractors and/or employers who are signatory to those unions' collective bargaining agreements covering the trade or occupation being surveyed; or

(d) Interested parties providing wage and hour data by trade and occupation from certified payroll records and/or from hours reported by trade and occupation on affidavits of wages paid, according to guidelines established by the department.

(5) The department shall use affidavit forms that include a requirement that contractors report the actual number of hours worked by each trade and occupation utilized on the public works project for which the affidavit is filed.

(6) Valid data reported on wage surveys shall be calculated, as follows:

(a) If the majority of hours reported for a trade or occupation in the largest city in a county is paid at the same wage rate, then that rate shall be established as the prevailing wage rate.

(b) If the same wage rate is not reported to have been paid for the majority of hours reported in the largest city in a county for a trade or occupation, then the average wage rate shall be established as the prevailing wage rate, based on a weighted average of the hours, wages, and benefits reported in the largest city.

(c) If a statistically significant number of hours fails to be reported for the largest city in a county, then the average wage rate for the county is established as the prevailing wage, based on a weighted average.

~~((d) If there fails to be reported for an entire county, sufficient hours to validate the survey data, that county's hours shall be combined with those reported for other counties that are adjacent, until the established hours threshold for validation has been met.))~~

(7) Survey data will not be accepted if the data report the hours and wages of those who are exempt from the prevailing wage requirements of chapter 39.12 RCW, as defined in WAC 296-127-026.

(8)(a) The industrial statistician may utilize alternative methods to establish prevailing wage rates consistent with the terms of (b) of this subsection. These methods include, but are not limited to:

(i) The use of wage and hour data from the department of employment security;

(ii) The use of wage and hour data from the industrial insurance division of the department of labor and industries;

(iii) The use of data from surveys performed by the United States Department of Labor, wage and hour division; ~~((¶))~~

(iv) The use of wage and hour data reported to the department on affidavits of wages paid.

(b) These alternative methods will not be used for trades or occupations for which surveys had been completed as of the effective date of this section unless a subsequent survey produces insufficient data. In addition, these alternative methods may be used under circumstances that include, but are not limited to, the following:

(i) To establish prevailing wage rates for a new trade or occupation where a survey is not immediately feasible;

(ii) In response to an administrative or judicial determination of invalid wage rate or scope of work description;

(iii) In response to changes or additions in licensing, safety, or other requirements of other state agencies, departments or divisions; ~~((¶))~~

~~(iv) To establish rates if there fails to be reported sufficient hours for an entire county to validate the survey data; or~~

(v) To establish rates for industries and trades and occupations generally not surveyed, in order to meet the requirement of having established wage rates for publication in contract or bid specifications as required by RCW 39.12.030.

(9) Any party that submits false information under this section shall, after a determination to that effect has been issued by the director after a hearing pursuant to chapter 34.05 RCW, forfeit as a civil penalty the sum of five hundred dollars.

AMENDATORY SECTION (Amending WSR 92-01-104, filed 12/18/91, effective 1/31/92)

**WAC 296-127-020 Interpretation of phrases used in chapter 39.12 RCW.** (1) The "acceptance date of the public works project" referred to in RCW 39.12.065 is the date that the contract awarding agency formally accepts the completed public works project pursuant to state law.

(2) RCW 39.12.050 and 39.12.065 refer to "inadvertent filing or reporting error." The department defines an error as "inadvertent" if it is made by a contractor, as defined by WAC 296-127-010(5), or employer that shows that the error was made notwithstanding the use of due care by the contractor or employer. The burden of proving that an error is inadvertent rests with the contractor or employer charged with the error.

(3) The definition of "locality" in RCW 39.12.010(2) contains the phrase "wherein the physical work is being performed." The department interprets this phrase to mean the actual work site. For example, if nonstandard items specifically produced for public works projects are prefabricated in a county other than the county wherein the public works project is to be completed, the wage for the offsite prefabrication shall be the applicable prevailing wage for the county in which the actual prefabrication takes place. Workers who deliver such nonstandard items, as well as materials pursuant to the terms of WAC 296-127-018, shall be paid the applica-

ble prevailing wage for the county in which the public works project is located.

(4) In the implementation and enforcement of chapter 39.12 RCW ((39.12.050)) the terms "contractor" and "subcontractor" include ~~((an))~~ a successor entity, however organized, with substantially identical corporate and/or operational structure to an entity that has been found to violate RCW 39.12.050 and/or 39.12.065, when the successor entity has actual or constructive notice of the former entity's violation of chapter 39.12 RCW. The factors used to determine substantial identity shall include an assessment of whether there is: Substantial continuity of the same business operation; use of the same machinery and/or equipment; similarity of jobs and types of working conditions; continuity of supervisors; and similarity of product or services.

AMENDATORY SECTION (Amending Order 88-22, filed 10/31/88)

**WAC 296-127-026 ((Exemptions for)) Sole owners and their spouses, partnerships, limited liability companies, corporations, and employees of public agencies. (1) The prevailing wage requirements of chapter 39.12 RCW do not apply to the work of:**

- ~~((1))~~ (a) Sole owners and their spouses((-  
~~(2))~~);
  - (b) Any partner who owns at least thirty percent of a partnership((-  
~~(3))~~);
  - (c) Any member who owns at least thirty percent of a limited liability company;
  - (d) The president, vice-president and treasurer of a corporation if each one owns at least thirty percent of the corporation((-  
~~(4))~~); or
  - (e) Workers regularly employed ((on monthly or per diem salary)) by the state or any political subdivision created by its laws.
- (2) Individuals identified in subsections (1)(a) through (e) of this section, although not subject to requirements to be paid prevailing wages under chapter 39.12 RCW, must comply with all other provisions of chapter 39.12 RCW including, but not limited to, the requirements for filing of intents to pay prevailing wage, affidavits of wages paid, and certified payroll records.

AMENDATORY SECTION (Amending WSR 92-01-104, filed 12/18/91, effective 1/31/92)

**WAC 296-127-050 Alternate filing of combined statements of intent to pay prevailing wages and affidavits of wages paid forms for contracts ((under)) of two thousand five hundred dollars or less including sales tax.** A contract awarding agency may, as part of a public works contract, ~~((enter into an agreement))~~ agree with ~~((a))~~ an individual contractor to approve on behalf of the department a combined statement((s)) of intent to pay prevailing wages and affidavit((s)) of wages paid ~~((on behalf of the department))~~ form for contracts with the individual contractor wherein the total amount does not exceed two thousand five

hundred dollars including sales tax as provided in RCW 39.12.040(2), pursuant to the following terms:

(1) When there is only a single payment made on the entire contract to a single contractor, with no subcontractors, the single contractor that performs the entire public work contract may at the sole option of the contract awarding agency be allowed to file with the contract awarding agency a combined statement of intent to pay prevailing wages and affidavit of wages paid form;

(2) The agreement must be incorporated into the bid specifications and contract document;

~~((2))~~ (3) The combined statement of intent ((forms)) and affidavit of wages paid form((s)), provided by the department, must be filed by the contractor with, and approved by, the contract awarding agency ((by the contractor)) prior to the disbursement of public funds;

~~((3))~~ (4) Contract awarding agencies must retain copies of all combined statements of intent to pay prevailing wages ((received)) and affidavits of wages paid forms approved pursuant to this section for a period of not less than three years;

~~((4))~~ (5) Contract awarding agencies must send to the department copies of all combined statements of intent to pay prevailing wages and affidavits of wages paid ((received)) forms approved pursuant to this section within thirty days of receipt from the contractor;

~~((5))~~ (6) The contract awarding agency shall accept full responsibility and liability for payment to the claimant of any valid wage claims ((directly to the claimant));

~~((6))~~ (7) The contract awarding agency may proceed against any contractor found to have violated the provisions of ((the statute)) chapter 39.12 RCW, and may debar such contractor from consideration for future contracts with the agency for up to one year and ((will)) must provide to the department ((with)) the names and contractor registration or other employer identification numbers of any such debarred contractors within thirty days of the debarment; and

~~((7))~~ (8) Contract awarding agencies and contractors shall not ((enter into contracts or agreements to perform public work that subdivide or otherwise disaggregate any public works project of more than two thousand five hundred dollars, to enable such public works project to be awarded pursuant to this section)) break any project into units or accomplish any projects by phases if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process or limited public works process.

#### NEW SECTION

**WAC 296-127-055 Alternate filing of combined statement of intent to pay prevailing wages and affidavit of wages paid forms for limited public works contracts less than thirty-five thousand dollars including sales tax.** A contract awarding agency may, as part of a public works contract awarded pursuant to the limited public works provisions of RCW 39.04.155(3), agree with an individual contractor to approve, on behalf of the department, a combined statement of intent to pay prevailing wages and affidavit of wages paid form for contracts with the individual contractor

wherein the total amount is less than thirty-five thousand dollars including sales tax pursuant to the following terms:

(1) When there is only a single payment made on the entire contract to a single contractor with no subcontractors, the single contractor that performs the entire public work contract may at the sole option of the contract awarding agency be allowed to file with the contract awarding agency a combined statement of intent to pay prevailing wages and affidavit of wages paid form;

(2) The agreement must be incorporated into the bid specifications and contract document;

(3) The combined statement of intent and affidavit of wages paid form, provided by the department, must be filed by the contractor with, and approved by, the contract awarding agency prior to the disbursement of public funds;

(4) Contract awarding agencies must retain copies of all combined statements of intent to pay prevailing wages and affidavits of wages paid forms approved pursuant to this section for a period of not less than three years;

(5) Accompanied by the required filing fees for both a statement of intent to pay prevailing wages and an affidavit of wages paid form, contract awarding agencies must send to the department copies of all combined statement of intent to pay prevailing wages and affidavits of wages paid forms approved pursuant to this section within thirty days of receipt from the contractor;

(6) The contract awarding agency shall accept full responsibility and liability for payment to the claimant of any valid wage claims;

(7) The contract awarding agency may proceed against any contractor found to have violated the provisions of chapter 39.12 RCW, and may debar such contractor from consideration for future contracts with such agency for up to one year and must provide to the department the names and contractor registration or other employer identification numbers of any such debarred contractors within thirty days of the debarment; and

(8) Contract awarding agencies and contractors shall not break any project into units or accomplish any projects by phases if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process or limited public works process.

AMENDATORY SECTION (Amending Order 82-28, filed 8/27/82)

**WAC 296-127-060 Director of department of labor and industries to arbitrate disputes—General provisions.**

(1) The contract executed between a public authority and the successful bidder or contractor and all ~~((of his))~~ subcontractors shall contain a provision that in case any dispute arises as to what are the prevailing rates of wages for a specific trade, craft or occupation and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the director, and ~~((his))~~ the director's decision shall be final, conclusive, and binding on all parties involved in the dispute.

(2) In exercising ~~((his))~~ the director's authority to hear and decide disputes the director shall consider among other things, timeliness, the nature of the relief sought, matters of

undue hardship or injustice, or public interest. A "timely" request for arbitration is one received within thirty days after the contract has been awarded.

(3) Any party in interest who is seeking a modification or other change in a wage determination under RCW 39.12.015, and who has requested the industrial statistician to make such modification or other change and the request has been denied, after appropriate reconsideration by the assistant director shall have a right to petition for arbitration of the determination.

(a) For purpose of this section, the term "party in interest" is considered to include, without limitation:

(i) Any contractor, or an association representing a contractor, who is likely to seek or to work under a contract containing a particular wage determination, or any worker, laborer or mechanic, or any council of unions or any labor organization which represents a laborer or mechanic who is likely to be employed or to seek employment under a contract containing a particular wage determination, and

(ii) Any public agency concerned with the administration of a proposed contract or a contract containing a particular wage determination issued pursuant to chapter 39.12 RCW.

(b) For good cause shown, the director may permit any party in interest to intervene or otherwise participate in any proceeding held by the director. A petition to intervene or otherwise participate shall be in writing, and shall state with precision and particularity:

(i) The petitioner's relationship to the matters involved in the proceedings, and

(ii) The nature of the presentation which ~~((he))~~ the petitioner would make. Copies of the petition shall be served on all parties or interested persons known to be participating in the proceeding, who may respond to the petition. Appropriate service shall be made of any response.

AMENDATORY SECTION (Amending Order 82-28, filed 8/27/82)

**WAC 296-127-061 Requests for arbitration.** (1) The petition for arbitration (original and ~~((four))~~ two copies) shall be filed with the Director((:)) of the Department of Labor and Industries, ((General Administration Building)) 7273 Linder-son Way Southwest, Tumwater, Washington 98501, or mailing address: Post Office Box 44001, Olympia, Washington 98504-4001. In addition, copies of the petition shall be served personally or by mail upon each of the following:

(a) The public agency or agencies involved~~((:))~~;

(b) The industrial statistician~~((:))~~; and

(c) Any other person (or the authorized representatives of such person) known to be interested in the subject matter of the petition.

(2) The director shall under no circumstances request any administering agency to postpone any contract performance because of the filing of a petition. This is a matter which must be resolved directly with the administering agency by the petitioner or other party in interest.

(3) A petition for arbitration of a wage determination shall:

(a) Be in writing and signed by the petitioner or his counsel (or other authorized representative)(~~(s)~~); and

(b) Identify clearly the wage determination, location of project or projects in question, and the agency concerned(~~(s)~~); and

(c) State that the petitioner has requested reconsideration of the wage determination in question and describe briefly the action taken in response to the request(~~(s)~~); and

(d) Contain a short and plain statement of the grounds for review(~~(s)~~); and

(e) Be accompanied by supporting data, views, or arguments(~~(s)~~); and

(f) Be accompanied by a filing fee of \$75.00. Fees shall be made payable to the department of labor and industries.

AMENDATORY SECTION (Amending Order 82-28, filed 8/27/82)

**WAC 296-127-062 Conduct of arbitration hearing.**

(1) Interested persons other than the petitioner shall have a reasonable opportunity as specified by the director in particular cases to submit to the director written data, views, or arguments relating to the petition. Such material (original and (~~four~~) two copies) shall be filed with the Director(~~(s)~~) of the Department of Labor and Industries, ((General Administration Building)) 7273 Linderson Way Southwest, Tumwater, Washington 98501, or mailing address: Post Office Box 44001, Olympia, Washington 98504-4001 and be accompanied by a filing fee of \$35.00. Fees shall be made payable to the department of labor and industries. Copies of any such material shall be served on the petitioner and other interested persons.

(2) Each party in interest shall have the right to appear in person or by or with counsel or other qualified representatives in any proceeding before the director. If all parties agree, oral testimony may be waived and arguments submitted in writing.

(3) Upon (~~(his)~~) the director's own initiative or upon motion of any interested person or party, the director may consolidate in any proceeding or concurrently consider two or more appeals which involve substantially the same persons or parties, or issues which are the same or closely related, if (~~(he)~~) the director finds that such consolidation or concurrent review will contribute to an efficient review and to the ends of justice, and it will not unduly delay consideration of any such appeals.

(4) The director shall prescribe the time and place for hearing. The director shall schedule the hearing within forty-five days of the request. For good cause shown, the director may allow a continuance at the request of a party in interest.

(a) With respect to any proceeding (~~(before him, the director may)~~) over which the director presides, upon (~~(his)~~) the director's own initiative or ((upon the)) in response to a request of any interested person or party, the director may direct the interested persons or parties to appear before the director at a specified time and place in order to simplify the issues presented or to take up any other matters which may tend to expedite or otherwise facilitate the disposition of the proceeding.

(b) All papers submitted to the director under this section shall be filed with the Department of Labor and Industries, (~~General Administration Building~~) 7273 Linderson Way Southwest, Tumwater, Washington, or mailing address: Post Office Box 44001, Olympia, Washington 98504-4001. An original and (~~four~~) two copies of all papers shall be submitted. Service under this (~~(part)~~) section shall be by the filing party or interested person; service may be personal or may be by mail. Service by mail is complete on mailing.

(5) The final disposition shall be by the director.

(a) The director may decline review of any case whenever in (~~(his)~~) the director's judgment a review would be inappropriate or because of the lack of timeliness, the nature of the relief sought, or other reasons.

(b) The director shall decide the case upon the basis of all relevant matter contained in the entire record (~~(before him)~~) but the director may utilize (~~(his)~~) the director's experience, technical competence, and specialized knowledge in evaluating the evidence.

(c) Upon reasonable notice to the parties or interested persons, the director may vary the procedures specified in this (~~(part)~~) section in particular cases.

(6) The director may allow all parties a period of ten days for filing post-hearing briefs prior to closing the record and concluding the hearing.

(7) The director shall issue a written decision within (~~(30)~~) thirty days of the conclusion of the hearing. A copy shall be sent to each party in interest.

AMENDATORY SECTION (Amending Order 85-28, filed 1/17/86)

**WAC 296-127-150 Notice of violation.** (1) If the department determines after its investigation that there is reasonable cause to believe that the prevailing wage law has been violated, the department shall notify the violator of its determination. The notice of violation shall be served on the violator personally or by certified mail.

(2) The notice of violation shall:

(a) Describe concisely the violation;

(b) Specify which statute or statutes were violated;

(c) For RCW 39.12.065 violations only:

(i) If known, identify the laborers, workers, and mechanics who are affected by the violation;

(~~(d)~~) (ii) If known, state the amount of unpaid prevailing wages the violator owes;

(~~(e)~~) (iii) State that an employee cannot by contract or agreement waive the right to receive the prevailing wage;

(~~(f)~~) (d) State the penalty that the department will assess for a violation, if any, of RCW 39.12.065 and 39.12.-050; and

(~~(g)~~) (e) If applicable, state the date the complaint was filed with the department.

(3) RCW 39.12.065 and 39.12.050 establish the penalty amounts.

(4) If the notice alleges a violation of RCW 39.12.065, the department shall serve a copy of the notice of violation on the violator's sureties under chapters 39.08, 18.27, 19.28, and 60.28 RCW.

(5) The notice of violation shall inform the violator and, if a violation of RCW 39.12.065 is alleged, its sureties, that they may request a hearing on the violations, the amount of unpaid prevailing wages owed, or the penalties assessed. The notice shall specify that if no request for hearing is ~~((requested))~~ filed within thirty days of the date of issuance of the notice, the director shall issue a final, unappealable order finding that the violation did occur, ordering the violator to pay any unpaid prevailing wages, and assessing penalties.

AMENDATORY SECTION (Amending Order 85-28, filed 1/17/86)

**WAC 296-127-160 Appeal of notice of violation.** The violator or any of its sureties who are interested in the matter may file a request ~~((a))~~ for hearing on a notice of violation. One original and ~~((four))~~ two copies of the request must be filed with the director within thirty days after the date the department issued the notice. The party ~~((requesting))~~ filing the request for the hearing must also serve a copy of the notice on all interested sureties and, if the requestor is a surety, on the violator.

The request for hearing must be in writing and must specify:

- (1) The name and address of the party requesting the hearing;
- (2) The notice of violation that is being appealed;
- (3) The items of the notice of violation that the requestor believes are erroneous; and
- (4) The reasons the notice of violation is erroneous.

AMENDATORY SECTION (Amending Order 85-28, filed 1/17/86)

**WAC 296-127-170 Hearing on notice of violation.** (1) Upon filing of a timely request for hearing from a notice of violation, the director may hear the appeal personally or may delegate the authority to hold the hearing and draft a proposed decision to an administrative law judge pursuant to chapters ~~((34.12))~~ 39.12 and 34.05 RCW. The plaintiff in the hearing shall be the department, and the defendants shall be the violator and its interested sureties. The department shall have the burden of proving, by a preponderance of the evidence, that the violations occurred and that any wages were unpaid as stated in the notice.

(2) Any interested party may upon motion, be allowed to intervene as a plaintiff in the hearing. "Standing" shall be construed broadly to effectuate the remedial purposes of the prevailing wage law. An interested party, whether or not admitted as a plaintiff, may submit written arguments and affidavits. The parties shall be given an opportunity to respond to or rebut any arguments and affidavits before the person presiding over the hearing makes his or her decision.

(3) The hearing shall be conducted in accordance with ~~((the Uniform procedure rules,))~~ chapters ~~((1-08 WAC))~~ 39.12 and 34.05 RCW, and chapter 10-08 WAC.

(4) If the director presides over the hearing, the director shall issue a final decision that includes findings of fact and conclusions of law, and if appropriate an order to pay unpaid prevailing wages, a penalty, or both.

(5) If an administrative law judge presides over the hearing, she or he shall issue a proposed decision that includes findings of fact, conclusions of law, and if appropriate an order to pay unpaid prevailing wages, a penalty, or both. The proposed decision shall be served by certified mail or personally on the violator, the interested sureties, the department, and any interested parties who have intervened as plaintiffs. Any of these parties, if aggrieved by the proposed decision, may appeal to the director within thirty days after the date of issuance of the proposed decision. If none of the parties appeals within thirty days, the proposed decision may not be appealed either to the director or the courts.

(6) An appellant must file with the director an original and ~~((four))~~ two copies of its notice of appeal. The notice of appeal must specify which findings and conclusions are erroneous. The appellant must attach to the notice the written arguments supporting its appeal.

The appellant must serve a copy of the notice of appeal and the arguments on the other parties. The respondent parties must file with the director their written arguments within thirty days after the date the notice of appeal and the arguments were served upon them.

(7) The director shall review the proposed decision in accordance with the Administrative Procedure Act, chapter ~~((34.04))~~ 34.05 RCW. The director may: Allow the parties to present oral arguments as well as the written arguments; require the parties to specify the portions of the record on which the parties rely; require the parties to submit additional information by affidavit or certificate; remand the matter to the administrative law judge for further proceedings; and require a departmental employee to prepare a summary of the record for the director to review. The director shall issue a final decision that can affirm, modify, or reverse the proposed decision.

(8) The director shall serve the final decision on all parties. Any aggrieved party may appeal the final decision to superior court pursuant to chapter 34.05 RCW ~~((34.04.130))~~ unless the final decision affirms an unappealed proposed decision. If no party appeals within the period set by chapter 34.05 RCW ~~((34.04.130))~~, the director's decision is conclusive and binding on all parties.

AMENDATORY SECTION (Amending Order 85-28, filed 1/17/86)

**WAC 296-127-190 Filing of lien against retainage or bonds.** (1) Upon receipt of a timely complaint that a contractor has violated RCW 39.12.065, and that the contractor owes unpaid prevailing wages, the department may file a lien against the retainage or bond obtained by the contractor under RCW ~~((60.28.010))~~ 60.28.011.

(2) Upon issuance by the director of a final decision that finds that a contractor has violated RCW 39.12.065 or 39.12.050, and that sets a civil penalty for the violation, the department shall file liens for the penalty amount against the retainage and bonds the contractor obtained under RCW 39.12.065 (2)(c), 39.08.010, and ~~((60.28.010))~~ 60.28.011.

AMENDATORY SECTION (Amending Order 85-28, filed 1/17/86)

**WAC 296-127-200 Surety bond payable to director.**

(1) RCW 39.12.065 (2)(c) authorizes the director to require a contractor to obtain a surety bond "running to the director in the amount of the violation found." The intent and wording indicates that the director may require such a bond only after issuing a final decision finding that the contractor has violated RCW 39.12.065.

(2) The director may demand that a violating contractor post the bond when:

(a) The director has issued a final decision that finds that the contractor owes unpaid prevailing wages or a penalty, whether or not the decision has been appealed to the courts; and

(b) The retainage or bonds provided under RCW ((~~60.28.010~~) 60.28.011, 18.27.040, and 19.28.120 are or may be insufficient to pay the amount of prevailing wages or the penalty owed.

(3) A contractor may at any time voluntarily obtain a bond running to the director to guarantee the payment of the prevailing wages and any penalty. The contractor may allow the director to satisfy any claim for unpaid wages or the penalty from this bond instead of from the retainage or bonds obtained under RCW ((~~60.28.010~~) 60.28.011, 18.27.040, 19.28.120, and 39.08.010.

AMENDATORY SECTION (Amending Order 85-28, filed 1/17/86)

**WAC 296-127-300 Filing ((and service)) location.** All papers required to be filed with the director under this chapter or chapter 39.12 RCW shall be addressed to Director, Department of Labor and Industries, ((~~General Administration Building~~) 7273 Linderson Way Southwest, Tumwater, Washington 98501, or mailing address: Post Office Box 44001, Olympia, WA. 98504-4001.

((~~Filing and service shall be made as allowed by WAC 1-08-090 through 1-08-140.~~))

AMENDATORY SECTION (Amending WSR 92-01-104, filed 12/18/91, effective 1/31/92)

**WAC 296-127-320 Payroll.** (1) Each contractor shall keep accurate payroll records for three years from the date of acceptance of the public works project by the contract awarding agency, showing the name, address, Social Security number, trade or occupation, hours worked, straight time rate, hourly rate of usual benefits as defined by WAC 296-127-014(1), and overtime rate and hours worked each day and week, including any employee authorizations executed pursuant to WAC 296-127-022, and the actual rate of wages paid, for each laborer, worker, and mechanic employed by the contractor for work performed on a public works project.

(2) A contractor shall, within ten days after it receives a written request, from the department or from any interested party as defined by RCW 39.12.010(4), file a certified copy of the payroll records with the agency that awarded the public works contract and with the department. Certified payroll records requested by the department as part of an investiga-

tion into potential violation of prevailing wage law must include in the records the full Social Security number for each employee. Certified payroll records provided to satisfy any other type of request need include only the last four digits of the Social Security number for each employee. Certification shall be on the "Affirmation" section of an Industrial Statistician approved Certified Payroll Report form or on a contractor's own form which incorporates the exact "Affirmation" language from the Industrial Statistician approved Certified Payroll Report form.

(3) A contractor's noncompliance with this section shall constitute a violation of RCW 39.12.050.

**WSR 10-11-117  
PROPOSED RULES  
DEPARTMENT OF HEALTH**

[Filed May 18, 2010, 5:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-20-090.

Title of Rule and Other Identifying Information: Chapter 246-320 WAC, Hospital licensing regulations (construction standards only), updating WAC 246-320-500 Applicability of WAC 246-320-500 through 246-320-600, 246-320-505 Design, construction review, and approval of plans, and 246-320-600 Washington state amendments.

Hearing Location(s): Department of Health, Point Plaza East, Room 152/153, 310 Israel Road S.E., Tumwater, WA 98501-7852, on June 29, 2010, at 1:30 p.m.

Date of Intended Adoption: July 9, 2010.

Submit Written Comments to: John Hilger, P.O. Box 47868, Olympia, WA 98604-7868 [98504-7868], e-mail john.hilger@doh.wa.gov, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by June 29, 2010.

Assistance for Persons with Disabilities: Contact John Hilger by June 25, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules would adopt updated hospital construction standards. This is accomplished through adopting the newest edition (2010) of the Guidelines for Design and Construction of Health Care Facilities, published by the American Society for Healthcare Engineering of the American Hospital Association, 155 North Wacker Drive Chicago, IL 60606. Nationally, forty-six states have adopted these guidelines as the minimum health care construction guidelines for health care facilities. The proposed rules would also revise the Washington state amendments in WAC 246-320-600 to correlate with the updated 2010 guidelines.

Reasons Supporting Proposal: The proposed rules would adopt the most current industry standards for health care facilities which will provide for the public's safety and well-being. In order for the department to utilize the updated guidelines, the 2010 edition must be incorporated into the construction standards sections of the hospital licensing rules. The Washington state amendments in WAC 246-320-600 also need to be revised to correlate with the updated 2010 guidelines.

Statutory Authority for Adoption: Chapter 70.41 RCW.  
Statute Being Implemented: RCW 70.41.030.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Chad Beebe, Tumwater, Washington, (360) 236-2944; Implementation and Enforcement: Bart Eggen, Tumwater, Washington, (360) 236-2960.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry. A copy of the statement may be obtained by contacting John Hilger, 310 Israel Road S.E., Tumwater, WA 98501-7852, phone (360) 236-2929, fax (360) 236-2901, e-mail john.hilger@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05-.328. A preliminary cost-benefit analysis may be obtained by contacting John Hilger, P.O. Box 47868, Olympia, WA 98604-7868 [98504-7868], phone (360) 236-2929, fax (360) 236-2901, e-mail john.hilger@doh.wa.gov.

May 18, 2010  
Mary C. Selecky  
Secretary

**AMENDATORY SECTION** (Amending WSR 08-14-023, filed 6/20/08, effective 7/21/08)

**WAC 246-320-500 Applicability of WAC 246-320-500 through 246-320-600.** The purpose of construction regulations is to provide for a safe and effective patient care environment. These rules are not retroactive and are intended to be applied as outlined below.

(1) These regulations apply to hospitals including:

- (a) New buildings to be licensed as a hospital;
- (b) Conversion of an existing building or portion of an existing building for use as a hospital;
- (c) Additions to an existing hospital;
- (d) Alterations to an existing hospital; and
- (e) Buildings or portions of buildings licensed as a hospital and used for hospital services;
- (f) Excluding nonpatient care buildings used exclusively for administration functions.

(2) The requirements of chapter 246-320 WAC in effect at the time the application and fee are submitted to the department, and project number is assigned by the department, apply for the duration of the construction project.

(3) Standards for design and construction.

Facilities constructed and intended for use under this chapter shall comply with:

(a) The following chapters of the ((2006)) 2010 edition of the *Guidelines for Design and Construction of Health Care Facilities* as published by the American ((Institute of Architects, 1735 New York Avenue, N.W., Washington D.C. 20006)) Society for Healthcare Engineering of the American Hospital Association, 155 North Wacker Drive Chicago, IL 60606, as amended in WAC 246-320-600:

((i)) 1.1 Introduction

((ii)) 1.2 Environment of Care

((iii)) 1.3 Site

((iv)) 1.4 Equipment

((v)) 1.5 Planning, Design and Construction

((vi)) 1.6 Common Requirements

((vii)) 2.1 General Hospital

((viii)) 2.2 Small Inpatient Primary Care Hospitals

((ix)) 2.3 Psychiatric Hospital

((x)) 2.4 Rehabilitation Facilities

((xi)) 3.1 Outpatient Facilities

((xii)) 3.2 Primary Care Outpatient Centers

((xiii)) 3.3 Small Primary (Neighborhood) Outpatient Facilities

((xiv)) 3.4 Freestanding Outpatient Diagnostic and Treatment Facilities

((xv)) 3.5 Freestanding Urgent Care Facilities

((xvi)) 3.6 Freestanding Birthing Centers

((xvii)) 3.7 Outpatient Surgical Facilities

((xviii)) 3.8 Office Surgical Facilities

((xix)) 3.9 Gastrointestinal Endoscopy Facilities

((xx)) 3.10 Renal Dialysis Centers

((xxi)) 3.11 Psychiatric Outpatient Centers

((xxii)) 3.12 Mobile, Transportable, and Relocatable Units

((xxiii)) 4.2 Hospice Facility))

(i) 1.1 Introduction

(ii) 1.2 Planning, Design, Construction, and Commissioning

(iii) 1.3 Site

(iv) 1.4 Equipment

(v) 2.1 Common Elements for Hospitals

(vi) 2.2 Specific Requirements for General Hospitals

(vii) 2.4 Specific Requirements for Critical Access Hospitals (Reserved)

(viii) 2.5 Specific Requirements for Psychiatric Hospitals

(ix) 2.6 Specific Requirements for Rehabilitation Hospitals and Other Facilities

(x) 3.1 Common Elements for Outpatient Facilities

(xi) 3.2 Specific Requirements for Primary Care Outpatient Centers

(xii) 3.3 Specific Requirements for Small Primary Care (Neighborhood) Outpatient Facilities

(xiii) 3.4 Specific Requirements for Freestanding Outpatient Diagnostic and Treatment Facilities

(xiv) 3.6 Specific Requirements for Freestanding Cancer Treatment Facilities

(xv) 3.7 Specific Requirements for Outpatient Surgical Facilities

(xvi) 3.8 Specific Requirements for Office Surgical Facilities

(xvii) 3.9 Specific Requirements for Gastrointestinal Endoscopy Facilities

(xviii) 3.10 Specific Requirements for Renal Dialysis Centers

(xix) 3.11 Specific Requirements for Psychiatric Outpatient Centers

(xx) 3.12 Specific Requirements for Outpatient Rehabilitation Facilities

(xxi) 4.3 Specific Requirements for Hospice Facilities

(xxii) 5.1 Mobile, Transportable, and Relocatable Units

(xxiii) 5.2 Freestanding Birth Centers

(xxiv) Part 6: Ventilation of Health Care Facilities

(b) *The National Fire Protection Association, Life Safety Code*, NFPA 101, 2000.

(c) *The State Building Code* as adopted by the state building code council under the authority of chapter 19.27 RCW.

(d) Accepted procedure and practice in cross-contamination control, *Pacific Northwest Edition, 6th Edition, December 1995, American Waterworks Association*.

**AMENDATORY SECTION** (Amending WSR 08-14-023, filed 6/20/08, effective 7/21/08)

**WAC 246-320-505 Design, construction review, and approval of plans.** (1) Drawings and specifications for new construction, excluding minor alterations, must be prepared by or under the direction of, an architect registered under chapter 18.08 RCW. The services of a consulting engineer registered under chapter 18.43 RCW (~~must~~) may be used for the various branches of work where appropriate. The services of a registered engineer may be used in lieu of the services of an architect if work involves engineering only.

(2) A hospital will meet the following requirements:

(a) Request and attend a presubmission conference for projects with a construction value of two hundred fifty thousand dollars or more. The presubmission conference shall be scheduled to occur for the review of construction documents that are no less than fifty percent complete.

(b) Submit construction documents for proposed new construction to the department for review within ten days of submission to the local authorities. Compliance with these standards and regulations does not relieve the hospital of the need to comply with applicable state and local building and zoning codes.

(c) The construction documents must include:

(i) A written program containing, but not limited to the following:

(A) Information concerning services to be provided and operational methods to be used;

(B) An interim life safety measures plan to ensure the health and safety of occupants during construction and installation of finishes.

(C) An infection control risk assessment indicating appropriate infection control measures, keeping the surrounding area free of dust and fumes, and ensuring rooms or areas are well ventilated, unoccupied, and unavailable for use until free of volatile fumes and odors;

(ii) Drawings and specifications to include coordinated architectural, mechanical, and electrical work. Each room, area, and item of fixed equipment and major movable equipment must be identified on all drawings to demonstrate that the required facilities for each function are provided; and

(iii) Floor plan of the existing building showing the alterations and additions, and indicating location of any service or support areas; and

(iv) Required paths of exit serving the alterations or additions.

(d) The hospital will respond in writing when the department requests additional or corrected construction documents;

(e) Notify the department in writing when construction has commenced;

(f) Provide the department with a signed form acknowledging the risks if starting construction before the plan review has been completed. The acknowledgment of risks form shall be signed by the:

(i) Architect; and

(ii) Hospital CEO, COO or designee; and

(iii) Hospital facilities director.

(g) Submit to the department for review any addenda or modifications to the construction documents;

(h) Assure construction is completed in compliance with the final "department approved" documents. Compliance with these standards and regulations does not relieve the hospital of the need to comply with applicable state and local building and zoning codes. Where differences in interpretations occur, the hospital will follow the most stringent requirement.

(i) The hospital will allow any necessary inspections for the verification of compliance with the construction document, addenda, and modifications.

(j) Notify the department in writing when construction is completed and include a copy of the local jurisdiction's approval for occupancy.

(3) The hospital will not begin construction or use any new or remodeled areas until:

(a) The infection control risk assessment has been approved by the department;

(b) The interim life safety plan has been approved by the department;

(c) An acknowledgment of risk form has been submitted to the department as required by subsection (2)(f) of this section;

(d) The department has approved construction documents or granted authorization to begin construction; and

(e) The local jurisdictions have issued a building permit, when applicable or given approval to occupy.

(4) The department will issue an "authorization to begin construction" when subsection (3)(a), (b), and (c) are approved and the presubmission conference is concluded.

**AMENDATORY SECTION** (Amending WSR 08-14-023, filed 6/20/08, effective 7/21/08)

**WAC 246-320-600 Washington state amendments.**

This section contains the Washington state amendments to the ((2006)) 2010 edition of the *Guidelines for Design and Construction of Health Care Facilities* as published by the American ((Institute of Architects, 1735 New York Avenue, N.W., Washington, D.C. 20006)) Society for Healthcare Engineering of the American Hospital Association, 155 North Wacker Drive Chicago, IL 60606. Subsections with an asterisk (\*) preceding a paragraph number indicates that explanatory or educational material can be found in an appendix item located in the 2010 Guidelines.

**((CHAPTER 1.2 ENVIRONMENT OF CARE**

2.1.3.4 This section is not adopted.



**CHAPTER 1.3 SITE**

## 2.2 Availability of Transportation

This section is not adopted.

## 3.3 Parking

This section is not adopted.

**CHAPTER 1.4 EQUIPMENT**

A1.3.1 Design should consider the placement of cables from portable equipment so that personnel circulation and safety are maintained.

**CHAPTER 1.5 PLANNING, DESIGN AND CONSTRUCTION**

## 2.1 General

## 2.1.1 ICRA Panel

The ICRA shall be conducted by a panel with expertise in the areas affected by the project; at a minimum this would include infection control, epidemiology and facility representation.

**CHAPTER 1.6 COMMON REQUIREMENTS**

## 2.1.1 General

Unless otherwise specified herein, all plumbing systems shall be designed and installed in accordance with the plumbing code as adopted by the state building code council.

## 2.1.3.2 Handwashing Stations

General handwashing stations used by medical and nursing staff, patients, and food handlers shall be trimmed with valves that can be operated without hands. Single-lever or wrist blade devices shall be permitted. Blade handles used for this purpose shall be at least 4 inches (10.2 centimeters) in length.

## 2.2.2 HVAC Air Distribution

## 2.2.2.1 HVAC Ductwork

## (2) Humidifiers:

(a) If humidifiers are located within a ventilation system upstream of the final filters, they shall be at least 15 feet (4.57 meters) upstream of the final filters.

(b) Ductwork with duct-mounted humidifiers shall have a means of water removal.

(c) An adjustable high-limit humidistat shall be located downstream of the humidifier to reduce the potential for condensation inside the duct.

(d) Humidifiers shall be connected to airflow proving switches that prevent humidification unless the required volume of airflow is present or high-limit humidistats are provided.

(e) All duct takeoffs shall be sufficiently downstream of the humidifier to ensure complete moisture absorption.

(f) Steam humidifiers shall be used. Reservoir type water spray or evaporative pan humidifiers shall not be used.

A2.2.2.1(2) It is recognized that some facilities may not require humidity control within the ranges in table 2.1-2 and that the final determination of a facility's ability to control humidity will be made by that facility.

**CHAPTER 2.1 GENERAL HOSPITALS**

## 1.2.2 Swing Beds

When the concept of swing beds is part of the functional program, care shall be taken to include requirements for all intended categories. Nursing homes and long-term care units must be distinct and separate from swing beds.

## A1.2.2 Swing Beds

Every bed must be able to provide both acute care and skilled nursing care. The concept is that the patient would not have to be moved, rather their status would change from "acute" to "swing bed" status.

## 2.2.1 Toilet Rooms

2.2.1.3 Toilet room doors shall swing outward or be double-acting. Where local requirements permit, surface mounted sliding doors may be used, provided adequate provisions are made for acoustical and visual privacy.

## 2.3.5 Nourishment Area

2.3.5.1 A nourishment area shall have a sink, work counter, refrigerator, storage cabinets, and equipment for hot and cold nourishment between scheduled meals. This area shall include space for trays and dishes used for nonscheduled meal service. This function may be combined with a clean utility without duplication of sinks and work counters.

## 2.3.10 Housekeeping Room

2.3.10.1 Housekeeping rooms shall be directly accessible from the unit or floor they serve and may serve more than one nursing unit on a floor. Housekeeping and soiled rooms may be combined.

## 3.1.1.1 Capacity

(1) In new construction, the maximum number of beds per room shall be two.

(2) Where renovation work is undertaken and the present capacity is more than one patient, maximum room capacity shall be no more than the present capacity with a maximum of four patients.

3.1.1.5 Handwashing Stations. These shall be provided to serve each patient room.

(1) A handwashing station shall be provided in the toilet room.

(2) Or, in private rooms, a handwashing station shall be provided in the patient room provided alcohol-based hand sanitizers are provided in the toilet room. The handwashing station shall be located outside the patient's cubicle curtain and convenient to staff entering and leaving the room.

(3) A hand sanitation station in patient rooms utilizing waterless cleaners shall be permitted in renovations of existing facilities where existing conditions prohibit an additional handwashing station.

## 3.1.2 Patient/Family Centered Care Rooms

This section is not adopted.

## 3.1.5 Support Areas for Medical/Surgical Nursing Units

## 3.1.5.5 Handwashing Stations

(1) Handwashing stations or waterless cleansing stations shall be conveniently accessible to the nurse station, medication station, and nourishment station. "Convenient" is defined as not requiring staff to access more than two spaces separated by a door.

(2) One handwashing station may serve several areas if convenient to each.

## 4.3.1 Labor Rooms

## 4.3.1.1 General

(2) Access. Labor rooms shall have controlled access with doors.

## 5.1.3 Definitive Emergency Care

## 5.1.3.7(5) Decontamination Area

(a) Location. In new construction, a decontamination room shall be provided with an outside entry door as far as practical from the closest other entrance. The internal door of this room shall open into a corridor of the emergency department, swing into the room and be lockable against ingress from the corridor.

(b) Space requirements. The room shall provide a minimum of 80 square feet (7.43 square meters) clear floor area.

(c) Facility requirements:

(i) The room shall be equipped with two hand held shower heads with temperature controls.

(ii) Portable or hard-piped oxygen shall be provided. Portable suction shall also be available.

(d) Construction requirements. The room shall have all smooth, nonporous, scrubable, nonabsorptive, nonperforated surfaces. Fixtures shall be acid-resistant. The floor of the decontamination room shall be self-coving to a height of 6 inches (15.24 centimeters).

(e) This section does not preclude decontamination capability at other locations or entrances immediately adjacent to the emergency department.

#### 5.3.3 Pre- and Postoperative Holding Areas

##### 5.3.3.2 Post-anesthetic Care Units (PACUs)

(4) Facility requirements. Each PACU shall contain a medication station; handwashing stations; nurse station with charting facilities; clinical sink; provisions for bedpan cleaning; and storage space for stretchers, supplies, and equipment.

(a) Handwashing station(s). At least one handwashing station with hands-free or wrist blade operable controls shall be available for every six beds or fraction thereof, uniformly distributed to provide equal access from each bed.

(b) Staff toilet. A staff toilet shall be located within the working area to maintain staff availability to patients.

#### 5.3.5 Support Areas for the Surgical Suite

5.3.5.4 Scrub Facilities. Two scrub positions shall be provided near the entrance to each operating room.

#### 5.9.3 Examination Room

This section is not adopted.

#### 6.1. Pharmacy

Until final adoption of USP 797 by either federal or other state programs, facilities may request plan review for conformance to USP 797 with their initial submission to the Department of Health, Construction Review Services. The most current edition of USP 797 at the time of the application will be used for plan review service.

#### 8.2.2.3 Doors

##### (2) Door Size.

(a) General. Where used in these Guidelines, door width and height shall be the nominal dimension of the door leaf, ignoring projections of frame and stops. Note: While these standards are intended for access by patients and patient equipment, size of office furniture, etc., shall also be considered.

(b) Inpatient bedrooms:

(i) New construction. The minimum door size for inpatient bedrooms in new work areas shall be 4 feet (1.22 meters) wide and 7 feet (2.13 meters) high to provide clearance for movement of beds and other equipment.

(ii) Renovation. Existing doors of not less than 2 feet 10 inches (86.36 centimeters) wide may be considered for acceptance where function is not adversely affected and replacement is impractical.

(c) Rooms for stretchers/wheelchairs. Doors to other rooms used for stretchers (including hospital wheeled-bed stretchers) and/or wheelchairs shall have a minimum width of 2 feet 10 inches (86.36 centimeters).

#### 10.1.2 Plumbing and Other Piping Systems

##### 10.1.2.5 Drainage Systems

##### (1) Piping.

(a) Drain lines from sinks used for acid waste disposal shall be made of acid-resistant material.

(b) Drain lines serving some types of automatic blood-cell counters shall be of carefully selected material that will eliminate potential for undesirable chemical reactions (and/or explosions) between sodium azide wastes and copper, lead, brass, solder, etc.

(c) Reasonable effort shall be made to avoid installing drainage piping within the ceiling or exposed in operating and delivery rooms, nurseries, food preparation centers, food-serving facilities, food storage areas, central services, electronic data processing areas, electric closets, and other sensitive areas. Where exposed overhead drain piping in these areas is unavoidable, special provision shall be made to protect the space below from leakage, condensation or dust particles.

##### 10.2.1 General

##### 10.2.1.1 Mechanical System Design

##### (2) Air-handling systems.

(a) These shall be designed with an economizer cycle where appropriate to use outside air. (Use of mechanically circulated air does not reduce need for filtration.)

(b) VAV systems. The energy saving potential of variable air volume systems is recognized and the standards herein are intended to maximize appropriate use of those systems. Any system used for occupied areas shall include provisions to avoid air stagnation in interior spaces where thermostat demands are met by temperatures of surrounding areas and air movement relationship changes if constant volume and variable volume are supplied by one air-handling system with a common pressure dependent return system.

(c) Noncentral air-handling systems (i.e., individual room units used for heating and cooling purposes, such as fan-coil units, heat pump units, etc.). These units may be used as recirculating units only. All outdoor air requirements shall be met by a separate central air-handling system with proper filtration, as noted in Table 2.1-3.

10.2.1.2 Ventilation and Space Conditioning Requirements. All rooms and areas used for patient care shall have provisions for ventilation.

(2) Air change rates. Air supply and exhaust in rooms for which no minimum total air change rate is noted may vary down to zero in response to room load. For rooms listed in Table 2.1-2, where VAV systems are used, minimum total air change shall be within limits noted, the minimum required by the Washington State Ventilation and Indoor Air Quality Code (chapter 51-13 WAC).

(3) Temperature. Space temperature shall be as indicated in Table 2.1-2.

**10.2.4 HVAC Air Distribution****10.2.4.3 Exhaust Systems****(1) General.**

(a) Exhaust systems may be combined.

(b) Local exhaust systems shall be used whenever possible in place of dilution ventilation to reduce exposure to hazardous gases, vapors, fumes, or mists.

(c) Fans serving exhaust systems shall be located at the discharge end and shall be readily serviceable.

(d) Airborne infection isolation rooms shall not be served by exhaust systems incorporating a heat wheel.

**10.2.5 HVAC Filters**

**10.2.5.2 Filter Bed Location.** Where two filter beds are required, filter bed no. 1 shall be located upstream of the air conditioning equipment and filter bed no. 2 shall be downstream of the last component of any central air handling unit and plenum/duct liner except: Steam injection type humidifiers; terminal heating coils; and mixed boxes and acoustical traps that have special covering over the lining. Terminal cooling coils and linings are permitted downstream of filter bed no. 2 with additional filtration downstream of coil meeting requirements of filter bed no. 2.

**10.2.5.5 Filter Manometers.** A manometer shall be installed across each filter bed having a required efficiency of 75 percent or more, including hoods requiring HEPA filters. Manometers may be omitted at HEPA filtered ceiling diffusers if pressure independent terminal units provide the operator a means to verify the actual airflow to the HEPA filtered diffusers in each room. Provisions shall be made to allow access for field testing. A recognized air flow measuring device would be acceptable, in lieu of terminal units.

Table 2.1 2 Ventilation Requirements for Areas Affecting Patient Care in Hospitals and Outpatient Facilities

Footnote 8 The ranges listed are the minimum and maximum limits where control is specifically needed. The maximum and minimum limits are not intended to be independent of a space's associated temperature. See figure 2.1 1 for a graphic representation of the indicated changes on a psychometric chart. Shaded area is acceptable range.

**~~CHAPTER 2.2 SMALL INPATIENT PRIMARY CARE HOSPITALS~~****1.3.2 Parking**

This section not adopted.

**~~CHAPTER 2.3 PSYCHIATRIC HOSPITALS~~****1.6.1 Parking**

This section is not adopted.

**~~CHAPTER 3.1 OUTPATIENT FACILITIES~~****1.7.2 Parking**

This section is not adopted.

**7.1.2 Plumbing and Other Piping Systems****7.1.2.1 General Piping and Valves**

(3) To prevent food contamination, no plumbing lines shall be exposed overhead or on walls where possible accumulation of dust or soil may create a cleaning problem or where leaks would create a potential for food contamination.

**~~CHAPTER 3.2 PRIMARY CARE OUTPATIENT CENTERS~~****1.3.1 Parking**

This section is not being adopted.

**~~CHAPTER 3.3 SMALL PRIMARY (NEIGHBORHOOD) OUTPATIENT FACILITIES~~****1.3.2 Parking**

This section is not adopted.

**~~CHAPTER 3.5 FREESTANDING URGENT CARE FACILITIES~~****1.2.2 Parking**

This section is not adopted.

**~~CHAPTER 3.6 FREESTANDING BIRTHING CENTERS~~****1.2.1 Parking**

This section is not adopted.

**~~CHAPTER 3.7 OUTPATIENT SURGICAL FACILITIES~~****1.6.1 Parking**

This section is not adopted.

**~~CHAPTER 3.9 GASTROINTESTINAL ENDOSCOPY FACILITIES~~****1.6.1 Parking**

This section is not adopted.

**~~CHAPTER 3.11 PSYCHIATRIC OUTPATIENT CENTERS~~****1.3.1 Parking**

This section is not adopted.))

**CHAPTER 1.1 INTRODUCTION****1.1-5.5 Referenced Codes and Standards**

Washington State Building Code (<http://www.sbcc.wa.gov/>)

**CHAPTER 1.2 PLANNING, DESIGN, AND IMPLEMENTATION PROCESS****1.2-6.1.4 Design Criteria for Room Noise Levels**

(1) Room noise levels shall not exceed the sound level ranges shown for the chosen rating system in Table 1.2-2 (Minimum-Maximum Design Criteria for Noise in Interior Spaces).

**CHAPTER 2.1 COMMON ELEMENTS FOR HOSPITALS****2.1-2.6.7 Nourishment Area or Room**

2.1-2.1.6.7.5 Nourishment function may be combined with a clean utility without duplication of sinks and work counters.

**2.1-2.6.12 Environmental Services Room**

2.1-2.6.12.3 Environmental services and soiled rooms may be combined.

**2.1-7.2.3 Surfaces****2.1-7.2.3.2 Flooring**

2.1-7.2.3.2(14) The floors and wall bases of kitchens, soiled workrooms, and other areas subject to frequent wet cleaning shall be either seamless flooring with integral coved base, sealed ceramic tile with ceramic tile base, or equivalent.

**\*2.1-8.2.1 General**

Basic HVAC system requirements are defined in Part 6 of this document, ANSI/ASHRAE/ASHE Standard 170-2008: *Ventilation of Health Care Facilities*. This section of the Guidelines includes additional requirements.

**\*2.1-8.2.1 General****\*2.1-8.2.1.1 Mechanical system design**

(f) VAV systems. The energy-saving potential of variable-air-volume systems is recognized, and the requirements herein are intended to maximize appropriate use of those systems. Any system used for occupied areas shall include provisions to avoid air stagnation in interior spaces where thermostat demands are met by temperatures of surrounding areas and air movement relationship changes if constant volume and variable volume are supplied by one air-handling system with a common pressure dependent return system.

**\*2.1-8.2.1.1 Mechanical system design**

(2) Air-handling systems with unitary equipment that serves only one room. These units shall be permitted for use as recirculating units only. All outdoor air shall be provided by a separate air-handling system with proper filtration, as noted in 2.1-8.2.5.1 (Filter efficiencies).

(a) Recirculating room HVAC units themselves shall have a MERV 6 (or higher) filter in Filter Bank 1 and are not required to have Filter Bank 2. For more information see AIA (2006).

(b) Recirculating room units shall be allowed in General Laboratory rooms and Sterilizer Equipment rooms provided at least 6 air changes are provided by the air handling system and adequate total cooling capacity is provided.

**2.1-8.2.2 HVAC Requirements for Specific Locations****2.1-8.2.2.7 Emergency and radiology waiting areas**

When these areas are not enclosed, the exhaust air change rate shall be based on the general volume of the space designated for patients waiting for treatment.

**2.1-8.2.4 HVAC Air Distribution****2.1-8.2.4.2 HVAC ductwork****\*(2) Humidifiers**

(a) If humidifiers are located upstream of the final filters, they shall be at least twice the rated distance for full moisture absorption upstream of the final filters.

(b) Ductwork with duct-mounted humidifiers shall have a means of water removal.

(c) Humidifiers shall be connected to airflow proving switches that prevent humidification unless the required volume of airflow is present or high-limit humidistats are provided.

(d) All duct takeoffs shall be sufficiently downstream of the humidifier to ensure complete moisture absorption.

(e) Steam humidifiers shall be used. Reservoir-type water spray or evaporative pan humidifiers shall not be used.

**Appendix Language:**

A2.1-8.2.4.1(2) It is recognized that some facilities may not require humidity control within the ranges in table 2.1-2 and that the final determination of a facility's ability to control humidity will be made by that facility.

**2.1-8.3.7 Call Systems****2.1-8.3.7.3 Bath Stations****Appendix Language:**

A2.1-8.3.7.3 Where new construction or renovation work is undertaken, hospitals should make every effort to install assistance systems in all public and staff toilets.

**2.1-8.4.3 Plumbing Fixtures****2.1-8.4.3.1 General**

(1) Materials. The material used for plumbing fixtures shall be nonabsorptive and acid-resistant.

(2) Clearances. Water spouts used in lavatories and sinks shall have clearances adequate to:

(a) avoid contaminating utensils and the contents of carafes, etc.

(b) provide a minimum clearance of 6" from the bottom of the spout to the flood rim of the sink to support proper hand washing asepsis technique without the user touching the faucet, control levers, or the basin.

**Appendix Language:**

A2.1-8.4.3.2 Aerator usage on water spouts may contribute to the enhanced growth of waterborne organisms and is not recommended.

**2.1-8.4.3.6 Scrub sinks.** Freestanding scrub sinks and lavatories used for scrubbing in procedure rooms shall be trimmed with foot, knee, or electronic sensor controls; single-lever wrist blades are not permitted.

**CHAPTER 2.2 SPECIFIC REQUIREMENTS FOR GENERAL HOSPITALS****2.2-2.2 Medical/Surgical Nursing Unit****2.2-2.2.2 Patient Room****2.2-2.2.2.1 Capacity**

(1) In new construction, the maximum number of beds per room shall be two.

(2) Where renovation work is undertaken and the present capacity is more than one patient, maximum room capacity shall be no more than the present capacity with a maximum of four patients.

**\*2.2-2.2.2.5 Hand-washing stations****(1) Location**

(a) A hand-washing station shall be provided in every toilet room serving more than one patient. Alcohol-based hand sanitizers shall be provided where sinks are not required.

(b) A hand-washing station shall be provided in the patient room in addition to that in the toilet room.

(i) This hand-washing station shall be convenient for use by health care personnel and others entering and leaving the room.

(ii) When multi-patient rooms are permitted, this station shall be located outside the patients' cubicle curtains.

**2.2-2.2.6 Support Areas for Medical/Surgical Nursing Units**

2.2-2.2.6.5 Hand-washing stations. For design requirements, see 2.1-2.6.5.

(1) Hand-washing stations shall be conveniently accessible to the medication station and nourishment area. "Convenient" is defined as not requiring staff to access more than two spaces separated by a door.

(2) If it is convenient to each area, one hand-washing station shall be permitted to serve several areas.

### **2.2-3.2 Freestanding Emergency Care Facility**

#### **2.2-3.2.1 General**

##### **2.2-3.2.1.1 Definition**

(1) "Freestanding emergency care facility" shall mean an extension of an existing hospital emergency department that is physically separate from (i.e., not located on the same campus as) the main hospital emergency department and that is intended to provide comprehensive emergency service.

(2) A freestanding emergency care facility that does not provide 24-hour-a-day, seven-day-a-week operation or that is not capable of providing basic services as defined for hospital emergency departments shall not be classified as a freestanding emergency care facility and shall be described under other portions of this document. Any facility advertising itself to the public as an emergency department or facility shall meet the requirements of Section 2.2-3.2.

**2.2-3.2.1.2 Application.** Except as noted in the following sections, the requirements for freestanding emergency service shall be the same as for hospital emergency service as described in Section 2.2-3.1 (Emergency Service).

##### **2.2-3.2.2 Facility Requirements**

This section is not adopted.

### **2.2-3.3.3 Pre- and Postoperative Patient Care Areas**

#### **\*2.2-3.3.3.3 Post-anesthetic care unit (PACU)**

(4) Each PACU shall contain the following:

(a) A medication station.

(b) Hand-washing stations. At least one hand-washing station with hands-free or wrist-blade operable controls shall be available for every six beds or fraction thereof, uniformly distributed to provide equal access from each bed.

(c) Nurse station with charting facilities.

(d) Clinical sink.

(e) Provisions for bedpan cleaning.

(f) Storage space for stretchers, supplies, and equipment.

(g) Staff toilet. A staff toilet shall be located within the working area to maintain staff availability to patients.

### **2.2-4.2 Pharmacy Service**

**2.2-4.2.1 General:** Until final adoption of USP 797 by either federal or other state programs, facilities may request plan review for conformance to USP 797 with their initial submission to the Department of Health, Construction Review Services.

## **CHAPTER 3.1 OUTPATIENT FACILITIES**

### **\*3.1-3.2.2 General Purpose Examination/Observation Room**

#### **3.1-3.2.2.2 Space requirements**

(3) Existing general purpose examination rooms under review for addition to a hospital license shall be no less than 80 gross square feet and provide a minimum 2'-6" clearance around the examination table.

### **3.1-4.1.2 Laboratory Testing/Work Area**

#### **3.1-4.1.2.2 Work counters**

(2) Work counters shall be sufficient to meet equipment specifications and lab technician needs and have the following:

(a) Sinks.

(b) Communications service.

(c) Electrical service.

### **3.1-6.1.1 Vehicular Drop-Off and Pedestrian Entrance**

**3.1-6.1.1 Vehicular Drop-Off and Pedestrian Entrance (for ambulatory surgery facilities only).** This shall be at grade level, sheltered from inclement weather, and accessible to the disabled.

**A3.1-6.1.1 Accessibility requirements for all facility types can be found in 1.1-4.1**

### **3.1-7.1 Building Codes and Standards**

#### **3.1-7.1.1.2**

This Section is not adopted.

#### **3.1-7.1.1.3**

This section is not adopted.

### **3.1-7.1.3 Provision for Disasters**

#### **3.1-7.1.3.1 Earthquakes**

Seismic force resistance of new construction for outpatient facilities shall comply with Section 1.2-6.5 (Provisions for Disasters). Where the outpatient facility is part of an existing building, that facility shall comply with applicable local codes.

### **3.1-7.2.2 Architectural Details**

#### **3.1-7.2.2.1 Corridor width**

(1) Public corridors shall have a minimum width of 5 feet (1.52 meters). Staff-only corridors shall be permitted to be 3 feet 8 inches (1.12 meters) wide unless greater width is required by NFPA 101 (occupant load calculations). Existing clinics that do not use gurneys shall meet the requirements of NFPA 101 for appropriate occupancy type.

### **3.1-8.2.4 HVAC Air Distribution**

**3.1-8.2.4.1 Return air systems.** For patient care areas where invasive applications or procedures are performed and rooms containing materials used in these applications and procedures, return air shall be via ducted systems.

#### **3.1-8.4.3 Plumbing Fixtures**

##### **3.1-8.4.3.1 General**

(2) Clearances. Water spouts used in lavatories and sinks shall have clearances adequate to:

(a) avoid contaminating utensils and the contents of carafes, etc.

(b) provide a minimum clearance of 6" from the bottom of the spout to the flood rim of the sink to support proper hand washing asepsis technique without the user touching the faucet, control levers, or the basin.

#### **Appendix Language:**

**A3.1-8.4.3 Aerator usage on water spouts may contribute to the enhanced growth of waterborne organisms and is not recommended.**

## **CHAPTER 3.2 SPECIFIC REQUIREMENTS FOR PRIMARY CARE OUTPATIENT CENTERS**

### **3.2-1.3 Site**

#### **3.2-1.3.1 Parking**

This section is not adopted.

**CHAPTER 3.3 SPECIFIC REQUIREMENTS FOR SMALL PRIMARY CARE (NEIGHBORHOOD) OUTPATIENT FACILITIES**

**3.3-1.3 Site**

**3.3-1.3.2 Parking**

This section is not adopted.

**CHAPTER 3.7 SPECIFIC REQUIREMENTS FOR OUTPATIENT SURGICAL FACILITIES**

**3.7-1.3 Site**

**3.7-1.3.2 Parking**

This section is not adopted.

**CHAPTER 3.11 SPECIFIC REQUIREMENTS FOR PSYCHIATRIC OUTPATIENT CENTERS**

**3.11-1.3 Site**

**3.11-1.3.1 Parking**

This section is not adopted.

**CHAPTER 5.1 MOBILE, TRANSPORTABLE, AND RELOCATABLE UNITS**

**5.1-1.1 Application**

**5.1-1.1.1 Unit Types**

This section applies to mobile, transportable, and modular structures as defined below. These units can increase public access to needed services.

Mobile mammography units do not require review by the Department of Health, Construction Review Services.

Appendix Language:

A5.1-1.1.1 The facility providing services, including mobile mammography, should review these requirements in consideration of the service offering and the delivery of care model.

**5.1-7.2 Architectural Details and Surfaces for Unit Construction**

**5.1-7.2.2 Surfaces**

If the mobile unit is permanently installed, finishes shall comply with the requirements in this section.

**5.1-7.2.2.1 Interior finish materials**

(1) Interior finish materials shall meet the requirements of NFPA 101.

**5.1-8.6 Safety and Security Systems**

**5.1-8.6.1 Fire Alarm System**

Fire alarm notification shall be provided to the facility while the unit is on site.

5.1-8.6.1.2 Each mobile unit shall provide fire alarm notification by one of the following methods:

(1) Via an auto-dialer connected to the unit's smoke detectors.

(2) An audible device located on the outside of the unit.

(3) Connection to the building fire alarm system.

**Part 6**

**ANSI/ASHRAE/ASHE Standard 170-2008: Ventilation of Health Care Facilities**

**Table 7-1 - Design Parameters**

<u>Function of Space</u>	<u>RH (k), %</u>
<u>Class B and C operating rooms (m)(n)(o)</u>	<u>max 60</u>
<u>Operating/surgical cystoscopy (m)(n)(o)</u>	<u>max 60</u>

<u>Function of Space</u>	<u>RH (k), %</u>
<u>Delivery room (Caesarean) (m)(n)(o)</u>	<u>max 60</u>
<u>Treatment room (p)</u>	<u>max 60</u>
<u>Trauma room (crisis or shock) (c)</u>	<u>max 60</u>
<u>Laser eye room</u>	<u>max 60</u>
<u>Class A Operating/Procedure room (o)(d)</u>	<u>max 60</u>
<u>Endoscopy</u>	<u>max 60</u>

**WSR 10-11-118  
PROPOSED RULES  
DEPARTMENT OF HEALTH  
[Filed May 18, 2010, 5:22 p.m.]**

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: Chapter 246-272 WAC, Wastewater fees.

Hearing Location(s): Department of Health, Point Plaza East, Room 152/153, 310 Israel Road N.E., Tumwater, WA 98501, on July 1, 2010, at 2:00 p.m.

Date of Intended Adoption: July 1, 2010.

Submit Written Comments to: Brandy Brush, 111 Israel Road S.E., P.O. Box 47824, Olympia, WA 98504-7824, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2257, by July 1, 2010.

Assistance for Persons with Disabilities: Contact Brandy Brush by June 24, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules establish a new fee for on-site sewage system tank application and plan review and consolidate wastewater and reclaimed water use fees into a single retitled chapter 246-272 WAC, Wastewater and reclaimed water use fees, consolidates fees from four chapters to one, and eliminates unused fees.

Reasons Supporting Proposal: This new fee proposal supports the wastewater program so that the department can continue to implement the public health and safety requirements of chapter 246-272C WAC. SB 6444 (chapter 37, Laws of 2010) provides authorization for the department of health to create fees in fiscal year 2011 for sewage tank application and plan review. The proposed consolidation of fees and elimination of unused fees improves clarity and usability of the rules.

Statutory Authority for Adoption: RCW 43.70.110, 43.70.250 and 43.20B.020, SB 6444 (chapter 37, Laws of 2010).

Statute Being Implemented: RCW 43.70.110, 43.70.250 and 43.20B.020, SB 6444 (chapter 37, Laws of 2010).

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Brandy Brush, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-3342; Implementation and Enforcement: Stuart

Glasoe, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-3246.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(f), a small business economic impact statement is not required for proposed rules that set or adjust fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

May 18, 2010  
Mary C. Selecky  
Secretary

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 246-271-990 Fees.

**Chapter 246-272 WAC**

**((ON-SITE SEWAGE SYSTEMS)) WASTEWATER AND RECLAIMED WATER USE FEES**

**NEW SECTION**

**WAC 246-272-1000 Public sewage fees.** This section establishes fees for public sewage as regulated under chapter 246-271 WAC.

(1) The minimum fee for required review of land application of raw sewage or treatment plant effluent shall be two hundred dollars. If review time exceeds four hours, fifty dollars for each additional hour or part of an hour shall be added to the minimum fee.

(2) The minimum fee for required review of comprehensive sewer plans shall be two hundred dollars. If review time exceeds four hours, fifty dollars for each additional hour or part of an hour shall be added to the minimum fee.

**NEW SECTION**

**WAC 246-272-2000 On-site sewage system fees.** This section establishes fees for on-site sewage systems as regulated under chapter 246-272A WAC.

(1) Fees for proprietary product registration are as follows:

Category	Base Fee	Hourly Fee
Treatment or distribution product registration initial application	\$400.00	\$100.00 per hour if the application requires more than four hours of review time
Annual registration renewal	\$100.00	

(2) The base fee is required at the time of application. Any hourly fees for additional review time must be paid in full before the product will be registered.

**NEW SECTION**

**WAC 246-272-3000 Large on-site sewage system fees.** This section establishes fees for large on-site sewage systems (LOSS) as regulated under chapter 246-272B WAC.

(1) The following fees apply to LOSS review and inspection.

(a) The owner shall pay a nonrefundable base project review fee of eight hundred dollars at the time the project is submitted. The nonrefundable fee covers up to eight hours of review time.

(b) The owner shall pay one hundred dollars per hour for additional review time over eight hours for new construction LOSS.

(c) The owner shall pay one hundred dollars per hour for LOSS review not included in (a) or (b) of this subsection.

(d) The owner shall pay a flat rate of five hundred dollars for each presite and final inspection.

(2) The owner shall pay all outstanding fees before any department approval is granted.

(3) Operating permit fees consist of a base fee for each LOSS plus a LOSS volume fee as shown below.

Category	Base Fee	LOSS Volume Fee
Operating permit and annual renewal	\$150.00	\$.01 for each gallon of approved daily design flow

(4) For initial operating permits, the owner shall pay the operating permit fee at the time the application is submitted to the department.

(5) For renewal of operating permits, the owner shall pay the operating permit fee at the time the renewal application is submitted to the department.

**NEW SECTION**

**WAC 246-272-4000 On-site sewage system tanks fees.** This section establishes fees for on-site sewage system tanks as regulated under chapter 246-272C WAC.

(1) Fees for review and approval of design and construction plans for a prefabricated or cast-in-place on-site sewage system tank are as follows:

Category	Base Fee	Hourly Fee
Review and approval.	\$408.00	\$102.00 per hour if the application requires more than four hours of review time.

(2) The base fee is required at the time of application.

(3) All hourly fees for additional review time must be paid in full before any department approval is granted.

NEW SECTION

**WAC 246-272-5000 Reclaimed water use fees.** The fees for review and inspection of reclaimed water use projects will be calculated based on a rate of one hundred two dollars per hour.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-272A-990 Fees.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-272-990 Fees.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-272B-990 Fees.

AMENDATORY SECTION (Amending WSR 07-14-128, filed 7/3/07, effective 8/3/07)

**WAC 246-290-990 Water system evaluation and project review and approval fees.** (1) The fees for the review and approval of water system plans, project reports, construction documents, existing systems, and related evaluations required under chapters 246-290, 246-291, 246-293, 246-294, and 246-295 WAC are:

(a) Water system plans required under WAC 246-290-100, 246-290-105, 246-291-140, 246-293-220, and 246-293-230.

Project Type	Group A					
	Group B	<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
Water system plan (New and Updated)	\$138	\$491	\$1,206	\$2,280	\$3,705	\$5,484
Minor water system plan alteration	\$31	\$115	\$293	\$565	\$919	\$1,349

(b) Satellite management agency (SMA) plans for Group A and Group B water systems required under WAC 246-295-040.

Project Type	Total Active or Approved Services					
	<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services	
SMA plan for ownership (New and Updated)	\$491	\$1,206	\$2,280	\$3,705	\$5,484	
SMA approval amendment	\$102 per hour or appropriate fee from category above, whichever is less					
SMA plan for operation only (New and Updated)	\$1,206	\$1,206	\$1,206	\$1,206	\$1,206	

Note: SMAs owning water systems and submitting planning documents to the department for review shall be charged only the SMA fee.

(c) New plan elements required under WAC 246-290-100, 246-290-105, 246-290-125, 246-290-132, 246-290-135, 246-290-691, and 246-291-140 including:

(i) Water use efficiency; and

(ii) Wellhead protection, shall be reviewed separately by the department and the fee assessed shall reflect the time spent for this review and shall be calculated based on one hundred two dollars per hour. After the initial submittal, updated information shall be reviewed as part of the updated water system plan and the review fee shall be included in the applicable updated plan review fee listed under (a) or (b) of this subsection.

(d) Project reports required under WAC 246-290-110 and design reports required under WAC 246-291-120.

Project Type	Group A					
	Group B	<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
All types of filtration or other complex treatment processes	\$348	\$710	\$1,103	\$1,598	\$2,204	\$2,922
Chemical addition only, such as ion exchange, hypochlorination, or fluoridation	\$102	\$205	\$348	\$525	\$743	\$994
Complete water system (an additional fee shall be assessed for review of treatment facility, if any)	\$205	\$491	\$778	\$1,137	\$1,564	\$2,061



Project Type	Group A					
	Group B	<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
System modifications requiring a detailed evaluation to determine whether the system, as modified, will comply with regulations (an additional fee shall be assessed for review of treatment facility, if any)	\$138	\$348	\$565	\$851	\$1,206	\$1,626

Note: In accordance with WAC 246-290-125, project reports are not required for minor projects that are described in sufficient detail in an approved water system plan, and have been reviewed as part of the process for approving the water system plan.

(e) Special reports or plans required under WAC 246-290-230, 246-290-235, 246-290-250, 246-290-470, 246-290-636, 246-290-640, 246-290-654, 246-290-676, 246-291-230 including:

- (i) Corrosion control recommendation report;
- (ii) Corrosion control study;
- (iii) Plan to cover uncovered reservoirs;
- (iv) Predesign study;
- (v) Uncovered reservoir plan of operation;
- (vi) Tracer study plan;
- (vii) Surface water or GWI treatment facility operations plan;
- (viii) Filtration pilot study; or

(ix) GWI determination reports, shall be reviewed by the department and the fee assessed shall reflect the time spent for this review and shall be calculated based on one hundred two dollars per hour.

(f) Construction documents required under WAC 246-290-120 and design reports required under WAC 246-291-120.

Project Type	Group A					
	Group B	<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
All types of filtration or other complex treatment processes	\$348	\$710	\$1,103	\$1,598	\$2,204	\$2,922
Chemical addition only, such as ion exchange, hypochlorination, or fluoridation	\$102	\$205	\$348	\$525	\$743	\$994
Complete new water system except treatment (an additional fee shall be assessed for review of treatment facility, if any)	\$281	\$633	\$919	\$1,279	\$1,709	\$2,204
New source only (an additional fee shall be assessed for review of treatment facility, if any)	\$205	\$382	\$525	\$710	\$919	\$1,172
One or more of the following submitted as a package and not requiring a detailed evaluation as determined by the department: Water line installation, booster pump station, modifications to source pumping, piping-valving, controls or storage reservoir (an additional fee shall be assessed for review of treatment facility, if any)	\$138	\$241	\$382	\$565	\$778	\$1,027

Documents submitted for projects such as water line installation, booster pump stations, modifications to source pumping, piping/valving, controls or storage reservoirs as determined by the department where such projects:

Comply with design standards established by the department;

Project Type	Group B	Group A				
		<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
Are prepared by a professional engineer in accordance with WAC 246-290-040; and Do not require a detailed evaluation by the department.	\$64	\$118	\$198	\$281	\$389	\$512

(g) Existing system approval required under WAC 246-290-140 and 246-291-130. For the purpose of this subsection the department shall determine whether a system is expanding or nonexpanding.

Project Type	Group B	Group A				
		<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
NONEXPANDING system not requiring a detailed evaluation by the department	\$268	\$539	\$811	\$1,083	\$1,355	\$1,626
NONEXPANDING system requiring a detailed evaluation as determined by the department	\$404	\$811	\$1,229	\$1,626	\$2,034	\$2,441
EXPANDING system not requiring a detailed evaluation by the department	\$539	\$1,083	\$1,626	\$2,169	\$2,714	\$3,256
EXPANDING system requiring a detailed evaluation as determined by the department	\$676	\$1,355	\$2,034	\$2,714	\$3,391	\$4,072

(h) Monitoring waivers requested under WAC 246-290-300.

Project Type	Group B	Group A				
		<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
Inorganic chemical monitoring waiver	Not applicable	\$88 per source	\$123 per source	\$155 per source	\$188 per source	\$221 per source
Organic chemical monitoring waiver	Not applicable	\$161 per source	\$226 per source	\$294 per source	\$359 per source	\$425 per source
Use waiver	Not applicable	\$193 per source	\$260 per source	\$334 per source	\$392 per source	\$459 per source
Area wide waiver renewal	Not applicable	\$193 per source	\$240 per source	\$287 per source	\$334 per source	\$369 per source
Inorganic chemical monitoring waiver renewal	Not applicable	\$48 per source	\$62 per source	\$75 per source	\$88 per source	\$102 per source
Organic chemical monitoring waiver renewal	Not applicable	\$95 per source	\$135 per source	\$176 per source	\$215 per source	\$254 per source
Use waiver renewal	Not applicable	\$135 per source	\$181 per source	\$226 per source	\$273 per source	\$320 per source
Coliform monitoring waiver including departmental inspection requested by purveyor	Not applicable	\$414	\$512	\$652	\$830	Not applicable
Coliform monitoring waiver with third-party inspection report	Not applicable	\$128	\$128	\$128	\$128	Not applicable

(i) Other evaluations and approvals. As applicable, these fees will be charged in addition to the basic fees assessed under (a) through (h) of this subsection.

Project Type	Group B	Group A				
		<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
Well-site evaluation and approval including the site inspection and hydrogeologic information review.	\$205	\$309	\$363	\$451	\$565	\$710
Regulatory monitoring plan <sup>1</sup>	No plan required	\$198	\$268	\$337	\$404	\$471
Unfiltered system annual comprehensive report	Not applicable	\$404	\$676	\$947	\$1,218	\$1,489
<sup>1</sup> A comprehensive document containing coliform, inorganic chemical and organic chemical monitoring plans in accordance with WAC 246-290-300.						
Water system compliance report	\$115	\$115	\$115	\$115	\$115	\$115

(2) To determine the appropriate fee for a noncommunity system, calculate the service equivalent by taking the average population served each day of operation and dividing by twenty-five for a transient noncommunity (TNC) system and two and one-half for nontransient noncommunity (NTNC) system. Use the number of service equivalents to find out what Group A size category to look under and submit the appropriate fee. (All noncommunity systems are Group A systems as described in WAC 246-290-020.)

(3) Additional review and approval fees may be assessed as follows:

(a) The basic fee covers an evaluation, or the review of an initial submittal and one resubmittal if required. If additional resubmittals are required, an additional twenty-five percent of the original fee will be assessed for each additional resubmittal. For water system plan and SMA plan preparation the basic fee also covers a preplanning conference;

(b) Fees for department project approval based on local technical review will be determined on a case-by-case basis as outlined in the applicable memorandum of understanding between the department and the respective local agency;

(c) Fees may be assessed for services which the department determines are not described under subsection (1) of this section. If assessed, the fees will be calculated based on a rate of one hundred two dollars per hour.

Examples of these services include, but are not limited to:

(i) ~~((Review and inspection of water reuse projects;~~  
~~(ii)))~~ Collection of water quality samples requested by purveyor;

~~((iii)))~~ (ii) Review of alternate technologies requested by purveyor, manufacturer or authorized representative;

~~((iv)))~~ (iii) Sanitary surveys, including the time spent as part of the annual on-site inspections for systems under WAC 246-290-690(3) that is in addition to the time necessary to assess watershed control and disinfection treatment;

~~((v)))~~ (iv) Well field designations; or

~~((vi)))~~ (v) Transfers of ownership under WAC 246-290-035 or 246-294-060.

(d) Additional fees assessed by the department shall be billed to the purveyor using an itemized invoice.

(4) If the legislature revises the water system operating permit fee under RCW 70.119A.110 to incorporate into it one or more fees for service currently assessed separately under this section, and the purveyor has paid that consolidated fee,

the department shall not assess or collect a separate fee under this section for any such service.

(5) All fees required under this section except as noted in subsection (3) of this section, shall be submitted prior to the department's approval. Payment of fees shall be in the form of a check or money order made payable to: The Department of Health, P.O. Box 1099, Olympia, Washington 98507-1099. Payment of a fee shall not guarantee approval of the submitted document or evaluation request.

(6) Purveyors unable to determine the appropriate fee payment to submit should contact the department.

## WSR 10-11-124

### PROPOSED RULES

#### DEPARTMENT OF LICENSING

[Filed May 19, 2010, 10:15 a.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 10-07-157.

Title of Rule and Other Identifying Information: Renewal of driver's license or identocard by electronic commerce—Eligibility.

Hearing Location(s): Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA (check in at counter on first floor), on June 22, 2010, at 3:00 p.m.

Date of Intended Adoption: June 23, 2010.

Submit Written Comments to: Clark J. Holloway, P.O. Box 9030, Olympia, WA 98507-9030, e-mail cholloway@dol.wa.gov, fax (360) 586-8351, by June 21, 2010.

Assistance for Persons with Disabilities: Contact Clark J. Holloway by June 21, 2010, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amends WAC 308-104-019 to remove the requirement for notice of eligibility for renewal of driver's license or identocard by electronic commerce and to change eligibility requirements for applicants to renew driver's licenses by electronic commerce. Eligibility for renewal of driver's license by electronic commerce is amended to raise the maximum age for renewal by electronic commerce from age sixty-five to age seventy.

Reasons Supporting Proposal: RCW 46.20.117 (3)(b), 46.20.120 (3)(b) and (4)(b) permit applicants for driver's license renewal to renew by mail or electronic commerce "if permitted by rule of the department." The proposed amendment to WAC 308-104-019 updates the eligibility requirements to renew by electronic commerce as a result of an internal review.

Statutory Authority for Adoption: RCW 46.01.110, 46.20.117, and 46.20.120.

Statute Being Implemented: RCW 46.20.117 and 46.20.120.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Clark J. Holloway, Highways-Licenses Building, Olympia, Washington, (360) 902-3846; Implementation and Enforcement: Doron Maniece, Highways-Licenses Building, Olympia, Washington, (360) 902-3850.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

May 19, 2010

Walt Fahrer  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-16-012, filed 7/23/09)

**WAC 308-104-019 Renewal of driver's license or identicard by electronic commerce—Eligibility.** An applicant for a driver's license renewal or identicard renewal may apply by electronic commerce if ~~((he or she has received an authorization notice from the department))~~ permitted under this section.

(1) ~~((The department may send an authorization notice to))~~ A person whose valid driver's license is about to expire may be allowed to renew by electronic commerce if the person:

(a) Is eligible to renew his or her driver's license by electronic commerce under the provisions of RCW 46.20.120 (3)(b) or (4)(b);

(b) Has previously been issued a digital driver's license;

(c) Is at least twenty-four and not more than ~~((sixty-five))~~ seventy years of age;

(d) Has a valid Social Security number on file with the department;

(e) Has a valid mailing address on his or her driving record as maintained by the department;

(f) Does not have a commercial driver's license, enhanced driver's license or identicard, instruction permit, or agricultural permit;

(g) Has not paid a fee owed to the department with a check that has been dishonored;

(h) Has not failed to appear, respond, or comply with the terms of or in response to a traffic citation or notice of traffic infraction; and

(i) Does not have any actions pending against his or her driver's license or driving privileges.

(2) A person applying for driver's license renewal by electronic commerce must:

(a) Certify that he or she has had no mental or physical condition or is not taking any medication which could impair his or her ability to operate a motor vehicle safely;

(b) Make the necessary certification under WAC 308-104-010(2); and

(c) Complete the required application and pay all applicable fees.

(3) ~~((The department may send an authorization notice to))~~ A person whose valid identicard is about to expire may renew by electronic commerce if the person:

(a) Is eligible to renew his or her identicard by electronic commerce under the provisions of RCW 46.20.117 (3)(b);

(b) Is at least twenty-four years of age; and

(c) Has previously been issued a digital identicard.

(4) A person applying for identicard renewal by electronic commerce must complete the required application and pay all applicable fees.

(5) The department may specify the means and establish procedures by which a person may make an application under this section.

## WSR 10-11-125

### PROPOSED RULES

### DEPARTMENT OF LICENSING

[Filed May 19, 2010, 10:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-07-156.

Title of Rule and Other Identifying Information: Commercial driver's license—Out-of-service order violations.

Hearing Location(s): Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA (check in at counter on first floor), on June 23, 2010, at 3:00 p.m.

Date of Intended Adoption: June 24, 2010.

Submit Written Comments to: Clark J. Holloway, P.O. Box 9030, Olympia, WA 98507-9030, e-mail cholloway@dol.wa.gov, fax (360) 586-8351, by June 22, 2010.

Assistance for Persons with Disabilities: Contact Clark J. Holloway by June 22, 2010, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Adds a new section to chapter 308-100 WAC to adopt minimum periods of disqualification for persons violating out-of-service orders while operating commercial motor vehicles.

Reasons Supporting Proposal: Federal regulation 49 C.F.R. 383.51(e) has recently increased the minimum periods of disqualification of persons operating commercial motor vehicles for certain out-of-service order violations. RCW 46.25.090(6) permits the department of licensing to impose disqualification periods within a broad range that is specified

in statute, and the proposed rule will set the new minimum disqualification period requirements within the range permitted.

Statutory Authority for Adoption: RCW 46.01.110, 46.25.140.

Statute Being Implemented: RCW 46.25.090.

Rule is necessary because of federal law, 49 C.F.R. 383.51.

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Clark J. Holloway, Highways-Licenses Building, Olympia, Washington, (360) 902-3846; Implementation and Enforcement: Doron Maniece, Highways-Licenses Building, Olympia, Washington, (360) 902-3850.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

May 19, 2010

Walt Fahrer  
Rules Coordinator

#### NEW SECTION

#### **WAC 308-100-135 Out-of-service order violations.**

As required for compliance with federal regulation 49 CFR 383.51(e), the Department may not impose a minimum period of disqualification of less than:

(1) One hundred eighty days when disqualifying a person from operating a commercial motor vehicle under RCW 46.25.090 (6)(a); or

(2) Two years when disqualifying a person from operating a commercial motor vehicle under RCW 46.25.090 (6)(b).

**WSR 10-11-127  
PROPOSED RULES  
DEPARTMENT OF  
EARLY LEARNING**

[Filed May 19, 2010, 11:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-03-033.

Title of Rule and Other Identifying Information: Revising WAC 170-290-0082 Eligibility period, working connections child care (WCCC) subsidies.

Hearing Location(s): Bellingham Public Library, Fairhaven Branch Auditorium, 1117 12th Street, Bellingham, WA 98225-6617 (half-block north of Mill Avenue and 12th Street), on Tuesday, June 22, 2010, at 6:00 p.m.; at the Tacoma Public Library, Main Downtown Branch Auditorium, 1102 Tacoma Avenue South, Tacoma, WA 98402 (between South 11th and 12th Streets), on Wednesday, June

23, 2010, at 6:00 p.m.; at the Seattle Public Library, Beacon Hill Branch, 2821 Beacon Avenue South, Seattle, WA 98144-5813 (corner of South Forest Street and Beacon Avenue South), on Thursday, June 24, 2010, at 5:30 p.m.; at the Yakima Valley School (DSHS facility), Training Room, 609 Speyers Road, Selah, WA (about one mile northwest of downtown Selah), on Friday, June 25, 2010, at 6:00 p.m.; and at the Spokane Public Library, Shadle Branch, West 2111 Wellesley Avenue, Spokane, WA 99205 (corner of Belt Street and Wellesley Avenue, near Shadle Park), on Saturday, June 26, 2010, at 1:00 p.m. For more information, see the "DEL Rules Under Development" web page at <http://www.del.wa.gov/laws/development/Default.aspx>, or contact the DEL rules coordinator at [Rules@del.wa.gov](mailto:Rules@del.wa.gov).

Date of Intended Adoption: After June 30, 2010.

Submit Written Comments to: DEL Rules Coordinator, P.O. Box 40970, Olympia, WA 98504-0970, DEL on-line comment web site <https://apps.del.wa.gov/PolicyProposalComment/Detail.aspx>, e-mail [Rules@del.wa.gov](mailto:Rules@del.wa.gov), fax (360) 725-4939, by midnight on June 26, 2010.

Assistance for Persons with Disabilities: Contact the DEL rules coordinator by June 18, 2010, (360) 725-4397.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is revising WAC 170-290-0082 to implement section 2(2) of E2SHB 3141 (chapter 273, Laws of 2010, regular session). Section 2 of the act establishes a new section of DEL's chapter 43.215 RCW, and in subsection (2) directs that, "Beginning in fiscal year 2011, for families with children enrolled in an early childhood education and assistance program (ECEAP), a head start program, or an early head start program, authorizations for the working connections child care subsidy shall be effective for twelve months unless a change in circumstances necessitates reauthorization sooner than twelve months."

Reasons Supporting Proposal: Revising WAC 170-290-0082 is needed to implement section 2(2) of E2SHB 3141. Eligibility periods for WCCC subsidies, and changes in a family's circumstances that may affect a family's WCCC authorization or eligibility (and that must be reported to the WCCC program), are set by rule. The rules must also be consistent with federal child care and development fund (CCDF) regulations in 45 C.F.R. 98 and 99, in order for the state to be in compliance with requirements for receiving federal CCDF monies.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070.

Statute Being Implemented: E2SHB 3141 (chapter 273, Laws of 2010), regular session; chapter 43.215 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The working connections child care subsidy program is run jointly by DEL and the department of social and health services (DSHS). DEL adopts the rules and other policy for WCCC program in coordination with DSHS. DSHS staff in local offices statewide implement the rules by determining family eligibility for WCCC subsidies, and coor-

dinating payment to approved providers who provide child care for children in the WCCC program.

Name of Proponent: Department of early learning, governmental.

Name of Agency Personnel Responsible for Drafting: Mark Rosen, DEL State Office, Lacey, Washington, (360) 725-4694; Implementation: Lynne Shanafelt, DEL State Office, Lacey, Washington, (360) 725-2829; and Enforcement: DSHS, community services offices statewide.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule is not expected to create new costs for small businesses, or if costs are created they are expected to be minor. Preparation of a small business economic impact statement is not required.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not listed among the state agencies required to comply with RCW 34.05.328.

May 19, 2010

Bette Hyde

Director

by the office of superintendent of public instruction, and a twelve-month eligibility period for WCCC, the SSID is used to identify and measure the child's educational progress.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-0082 Eligibility period. (1) Six-month eligibility.** DSHS may approve a consumer for ((a)) an eligibility period up to six months, except as provided in subsection (2) of this section. A consumer's eligibility may end before his or her end date as stated in WAC 170-290-0110.

**(2) Twelve-month eligibility for consumers with children receiving services from head start (HS), early head start (EHS), or an early childhood education and assistance program (ECEAP).**

(a) A consumer who meets all of the requirements of part II of chapter 170-290 WAC, and has a child receiving services from HS, EHS, or ECEAP, is eligible for WCCC subsidies for a period of twelve months. The consumer's eligibility may end before his or her end date as stated in WAC 170-290-0110.

(b) All children in the consumer's household under WAC 170-290-0015 are eligible for the twelve-month eligibility period.

(c) The twelve-month eligibility period for WCCC begins and ends as follows:

(i) Once DSHS verifies a child is receiving services, the twelve-month eligibility period begins on the date that the consumer's initial application or reapplication for WCCC is approved.

(ii) The twelve-month eligibility continues regardless of whether the child continues to receive services from HS, EHS, or ECEAP. Consumers must notify DSHS within ten days when the child is no longer receiving services from HS, EHS, or ECEAP.

(iii) Eligibility ends as stated in WAC 170-290-0110 or if the parent requests termination of WCCC.

(d) During a consumer's twelve-month eligibility period, culturally appropriate parent education and family development classes are approved activities.

(e) If a child who is receiving services from HS, EHS, or ECEAP has a unique state student identifier (SSID) assigned