

WSR 10-14-050
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed June 30, 2010, 8:14 a.m., effective July 1, 2010]

Effective Date of Rule: July 1, 2010.

Purpose: The legislature in ESSB 6872 simplified chapter 74.46 RCW by repealing numerous section[s] and granting the department the authority to incorporate the detail of the repealed sections in chapter 388-96 WAC. To identify the subjects of the rule making view ESSB 6872 at <http://apps.leg.wa.gov/documents/billdocs/2009-10/Pdf/Bills/Senate/Passed/Legislature/http://apps.leg.wa.gov/documents/billdocs/2009-10/Pdf/Bills/Senate%20Passed%20Legislature/6872-S.PL.pdf>.

The amendments or adoptions to chapter 388-96 WAC to implement ESSB 6872 include but are not limited to the following (1) the effect of bed banking on rates; (2) financing allowance component rate allocation minimum facility occupancy of licensed beds, regardless of how many beds are set up or in use at eighty-five percent for essential community providers, ninety percent for small nonessential community providers, and at ninety-two percent for large nonessential community providers; (3) to increase the categories for exceptional care rates; and (4) adopt new rules for pay-for-performance supplemental rates.

The department will amend or adopt new rules to implement ESSB 6444 section 206 that include but are not limited to the following: WAC 388-96-766(3) to implement no rate add-ons to nursing facility medicaid payment rates for capital improvements not requiring a certificate of need and a certificate of capital authorization for fiscal year 2011.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-96-202, 388-96-740, 388-96-741, 388-96-742 and 388-96-749; and amending WAC 388-96-010, 388-96-108, 388-96-217, 388-96-218, 388-96-366, 388-96-384, 388-96-534, 388-96-535, 388-96-536, 388-96-542, 388-96-559, 388-96-561, 388-96-565, 388-96-585, 388-96-708, 388-96-709, 388-96-747, 388-96-748, 388-96-758, 388-96-759, 388-96-766, 388-96-776, 388-96-781, 388-96-782, 388-96-802, 388-96-803, 388-96-901, and 388-96-904.

Statutory Authority for Adoption: Chapter 74.46 RCW as amended by chapter 34, Laws of 2010, ESSB 6444 Biennial Appropriations Act.

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

Reasons for this Finding: See above.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 28, Amended 28, Repealed 5.

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

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

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

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

Date Adopted: June 23, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-12-037, filed 5/29/01, effective 6/29/01)

WAC 388-96-010 Definitions. Unless the context indicates otherwise, the following definitions apply in this chapter.

"Accounting" means activities providing information, usually quantitative and often expressed in monetary units, for:

- (1) Decision making;
- (2) Planning;
- (3) Evaluating performance;
- (4) Controlling resources and operations; and
- (5) External financial reporting to investors, creditors, regulatory authorities, and the public.

"Accrual method of accounting" is a method of accounting in which revenues are reported in the period when they are earned, regardless of when they are collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid.

"Administration and management" means activities used to maintain, control, and evaluate the efforts and resources of an organization for the accomplishment of the objectives and policies of that organization.

"Allowable costs" ((means)) are documented costs that are necessary, ordinary, and related to the care of medicaid recipients, and are not expressly declared nonallowable by this chapter or chapter 74.46 RCW. Costs are ordinary if they are of the nature and magnitude that prudent and cost conscious management would pay.

"Allowable depreciation costs" ((means)) are depreciation costs of tangible assets, whether owned or leased by the contractor, meeting the criteria specified in ((RCW 74.46.330)) WAC 388-96-552.

"Assignment of contract" means:

- (1) A new nursing facility licensee has elected to care for medicaid residents;
- (2) The department finds no good cause to object to continuing the medicaid contract at the facility; and

(3) The new licensee accepts assignment of the immediately preceding contractor's contract at the facility.

"Bad debts" are amounts considered to be uncollectible from accounts and notes receivable.

"Beneficial owner" is:

(1) Any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares:

(a) Voting power which includes the power to vote, or to direct the voting of such ownership interest; and/or

(b) Investment power which includes the power to dispose, or to direct the disposition of such ownership interest.

(2) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement, or any other contract, arrangement, or device with the purpose of effect of divesting himself or herself of beneficial ownership of an ownership interest or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of this chapter:

(3) Any person who, subject to (b) of this subsection, has the right to acquire beneficial ownership of such ownership interest within sixty days, including but not limited to any right to acquire:

(a) Through the exercise of any option, warrant, or right;

(b) Through the conversation of an ownership interest;

(c) Pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or

(d) Pursuant to the automatic termination of a trust, discretionary account, or similar arrangement; except that, any person who acquires an ownership interest or power specified in (3)(a), (3)(b), or (3)(c) of this subsection with the purpose or effect of changing or influencing the control of the contractor, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the ownership interest which may be acquired through the exercise or conversion of such ownership interest or power:

(4) Any person who in the ordinary course of business is a pledgee of ownership interest under a written pledge agreement shall not be deemed to be the beneficial owner of such pledged ownership interest until the pledgee has taken all formal steps necessary which are required to declare a default and determines that the power to vote or to direct the vote or to dispose or to direct the disposition of such pledged ownership interest will be exercised; except that:

(a) The pledgee agreement is bona fide and was not entered into with the purpose nor with the effect of changing or influencing the control of the contractor, nor in connection with any transaction having such purpose or effect, including persons meeting the conditions set forth in (b) of this subsection; and

(b) The pledgee agreement, prior to default, does not grant to the pledgee:

(i) The power to vote or to direct the vote of the pledged ownership interest; or

(ii) The power to dispose or direct the disposition of the pledged ownership interest, other than the grant of such power(s) pursuant to a pledge agreement under which credit is extended and in which the pledgee is a broker or dealer.

"Capitalized lease" means a lease required to be recorded as an asset and associated liability in accordance with generally accepted accounting principles.

"Cash method of accounting" means a method of accounting in which revenues are recorded when cash is received, and expenditures for expense and asset items are not recorded until cash is disbursed for those expenditures and assets.

"Change of ownership" means a substitution, elimination, or withdrawal of the individual operator or operating entity contracting with the department to deliver care services to medical care recipients in a nursing facility and ultimately responsible for the daily operational decisions of the nursing facility.

(1) Events which constitute a change of ownership include, but are not limited to, the following:

(a) Changing the form of legal organization of the contractor, e.g., a sole proprietor forms a partnership or corporation;

(b) Transferring ownership of the nursing facility business enterprise to another party, regardless of whether ownership of some or all of the real property and/or personal property assets of the facility are also transferred;

(c) Dissolving of a partnership;

(d) Dissolving the corporation, merging the corporation with another corporation, which is the survivor, or consolidating with one or more other corporations to form a new corporation;

(e) Transferring, whether by a single transaction or multiple transactions within any continuous twenty-four-month period, fifty percent or more of the stock to one or more:

(i) New or former stockholders; or

(ii) Present stockholders each having held less than five percent of the stock before the initial transaction;

(f) Substituting of the individual operator or the operating entity by any other event or combination of events that results in a substitution or substitution of control of the individual operator or the operating entity contracting with the department to deliver care services; or

(g) A nursing facility ceases to operate.

(2) Ownership does not change when the following, without more, occurs:

(a) A party contracts with the contractor to manage the nursing facility enterprise as the contractor's agent, i.e., subject to the contractor's general approval of daily operating and management decisions; or

(b) The real property or personal property assets of the nursing facility change ownership or are leased, or a lease of them is terminated, without a substitution of individual operator or operating entity and without a substitution of control of the operating entity contracting with the department to deliver care services.

"Charity allowance" means a reduction in charges made by the contractor because of the indigence or medical indigence of a patient.

"Component rate allocation(s)" means the initial component rate allocation(s) of the rebased rate for a rebase period effective July 1. If a month and a day, other than July 1, with a year precedes "component rate allocation(s)," it means the initial component rate allocation(s) of the rebased

rate of the rebase period has been amended or updated effective the date that precedes it, e.g., October 1, 1999 direct care component rate allocation.

"Contract" means an agreement between the department and a contractor for the delivery of nursing facility services to medical care recipients.

"Cost report" means all schedules of a nursing facility's cost report submitted according to the department's instructions.

"Courtesy allowances" ((means)) are reductions in charges in the form of an allowance to physicians, clergy, and others, for services received from the contractor. Employee fringe benefits are not considered courtesy allowances.

"Department" means department of social and health services and its employees.

"Direct care supplies (DCS)" are those supplies:

- (1) Used by staff providing direct care to residents;
- (2) Consumed during a single accounting period; and
- (3) Expensed in that accounting period. Supplies excluded from DCS include but are not limited to the following:

- (1) medical equipment (such as IV poles);
- (2) Items covered by medicaid fee-for-service system;

and

- (3) Administrative supplies used by direct care staff (such as pencils, pens, paper, office supplies, etc).

"Donated asset" means an asset the contractor acquired without making any payment for the asset either in cash, property, or services. An asset is not a donated asset if the contractor:

- (1) Made even a nominal payment in acquiring the asset;

or

- (2) Used donated funds to purchase the asset.

"Essential community provider" means a facility which is the only nursing facility within a commuting distance radius of at least forty minutes duration, traveling by automobile.

"Equity capital" means total tangible and other assets which are necessary, ordinary, and related to patient care from the most recent provider cost report minus related total long-term debt from the most recent provider cost report plus working capital as defined in this section.

"Fiscal year" means the operating or business year of a contractor. All contractors report on the basis of a twelve-month fiscal year, but provision is made in this chapter for reports covering abbreviated fiscal periods. As determined by context or otherwise, "fiscal year" may also refer to a state fiscal year extending from July 1 through June 30 of the following year and comprising the first or second half of a state fiscal biennium.

"Gain on sale" means the actual total sales price of all tangible and intangible nursing facility assets including, but not limited to, land, building, equipment, supplies, goodwill, and beds authorized by certificate of need, minus the net book value of such assets immediately prior to the time of sale.

"Goodwill" means the excess of the price paid for a nursing facility business over the fair market value of all net identifiable tangible and intangible assets acquired, as mea-

sured in accordance with generally accepted accounting principles.

"Home/central office costs" are costs resulting from the operation of the contractor's home/central office and costs of centralized services that are performed by the home/central office in support of the contractor's nursing facility(ies).

"Home/central office duplicative costs" are costs resulting from the same type of service (e.g., accounts receivable collections) performed both at the home/central office and at the nursing facility(ies) in support of the nursing facility(ies).

"Home/central office nonduplicative costs" are costs resulting from services performed only at the home/central office on behalf of the nursing facility(ies).

"Imprest fund" means a fund which is regularly replenished in exactly the amount expended from it.

"Intangible asset" is an asset that lacks physical substance but possesses economic value.

"Interest" means the cost incurred for the use of borrowed funds, generally paid at fixed intervals by the user.

"Joint facility costs" are any costs that benefit more than one facility, or one facility and any other entity.

"Large nonessential community providers" are non-essential community providers with more than sixty licensed beds regardless of how many beds are set up or in use. Licensed beds include any beds banked under chapter 70.38 RCW.

"Multiservice facility" means a facility at which two or more types of health or related care are delivered, e.g., a hospital and nursing facility, or a boarding home and nursing facility.

"Nonadministrative wages and benefits" ((means)) are wages, benefits, and corresponding payroll taxes paid for nonadministrative personnel, not to include administrator, assistant administrator, or administrator-in-training.

"Nonallowable costs" ((means)) are the same as "unallowable costs."

"Nonrestricted funds" ((means)) are funds ((which)) that are not restricted to a specific use by the donor, e.g., general operating funds.

"Nursing facility occupancy percentage" is a percentage determined by multiplying the number of calendar days for the cost report period by the number of licensed beds, regardless of how many beds are set up, in use, or banked under chapter 70.38 RCW, for the same cost report period. Then, the product is divided into the nursing facility's actual resident days for the same cost report period ((is divided by the product)). ((When the nursing facility under chapter 70.38 RCW reinstates or reduces the number of licensed beds, then under WAC 388-96-708 or 388-96-709 the number of licensed beds after reinstatement or reduction will be used. In all determinations that require a nursing facility occupancy percentage, the department will use the greater of either a nursing facility's occupancy percentage or eighty-five percent.))

"Operating lease" means a lease under which rental or lease expenses are included in current expenses in accordance with generally accepted accounting principles.

"Ownership interest" means all interests beneficially owned by a person, calculated in the aggregate, regardless of the form which such beneficial ownership takes.

"Per diem (per patient day or per resident day) costs" means total allowable costs for a fiscal period divided by total patient or resident days for the same period.

"Prospective daily payment rate" means the rate assigned by the department to a contractor for providing service to medical care recipients prior to the application of settlement principles.

"Real property," whether lease or owned by the contractor, means the building, allowable land, land improvements, and building improvements associated with a nursing facility.

"Recipient" means a medicaid recipient.

"Related care" (~~includes~~) means only those services that are directly related to providing direct care to nursing facility residents including but not limited to:

- (1) The director of nursing services;
- (2) (~~Activities and social services programs~~) Supervision of nursing services;
- (3) (~~Medical and medical records specialists~~) Activities and social services programs; (~~and~~)
- (4) (~~Consultation provided by:~~)
 - (a) Medical directors; and
 - (b) Pharmacists)) Medical and medical records specialists.

(5) Consultation provided by:

- (a) Medical directors; and
- (b) Pharmacists.

"Relative" includes:

- (1) Spouse;
- (2) Natural parent, child, or sibling;
- (3) Adopted child or adoptive parent;
- (4) Stepparent, stepchild, stepbrother, stepsister;
- (5) Father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law;
- (6) Grandparent or grandchild; and
- (7) Uncle, aunt, nephew, niece, or cousin.

"Related organization" means an entity which is under common ownership and/or control with, or has control of, or is controlled by, the contractor.

(a) "Common ownership" exists when an entity is the beneficial owner of five percent or more ownership interest in the contractor and any other entity.

(b) "Control" exists where an entity has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or institution, whether or not it is legally enforceable and however it is exercisable and exercised.

"Restricted fund" means those funds the principal and/or income of which is limited by agreement with or direction of the donor to a specific purpose.

"Small nonessential community providers" are non-essential community providers with sixty or fewer licensed beds regardless of how many beds are set up or in use. Licensed beds include any beds banked under chapter 70.38 RCW.

"Start up costs" (~~means~~) are the one-time preopening costs incurred from the time preparation begins on a newly

constructed or purchased building until the first patient is admitted. Start up costs include:

- (1) Administrative and nursing salaries;
- (2) Utility costs;
- (3) Taxes;
- (4) Insurance;
- (5) Repairs and maintenance; and
- (6) Training costs.

Start up costs do not include expenditures for capital assets.

"Total rate allocation" means the initial rebased rate for a rebase period effective July 1. If a month and a day, other than July 1, with a year precedes "total rate allocation," it means the initial rebased rate of the rebase period has been amended or updated effective the date that precedes it, e.g., October 1, 1999 direct care component rate allocation.

"Unallowable costs" (~~means~~) are costs (~~which~~) that do not meet every test of an allowable cost.

"Uniform chart of accounts" (~~means a list of~~) are account titles identified by code numbers established by the department for contractors to use in reporting costs.

"Vendor number" means a number assigned to each contractor delivering care services to medical care recipients.

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

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

NEW SECTION

WAC 388-96-011 Conditions of participation. In order to participate in the nursing facility medicaid payment system established by this chapter and chapter 74.46 RCW, the person or legal entity responsible for operation of a facility shall:

(1) Obtain a state certificate of need and/or federal capital expenditure review (section 1122) approval pursuant to chapter 70.38 RCW and Part 100, Title 42 C.F.R. where required;

(2) Hold the appropriate current license;

(3) Hold current Title XIX certification;

(4) Hold a current contract to provide services under this chapter and chapter 74.46 RCW;

(5) Comply with all provisions of the contract and all applicable statutes and regulations, including but not limited to the provisions of this chapter and chapter 74.46 RCW; and

(6) Obtain and maintain medicare certification, under Title XVIII of the social security act, 42 U.S.C. Sec. 1395, as amended, for a portion of the facility's licensed beds.

NEW SECTION

WAC 388-96-012 Public disclosure. (1) Cost reports and final audit reports filed by the contractor shall be subject to public disclosure pursuant to chapter 42.56 RCW.

(2) Subsection (1) of this section does not prevent a contractor from having access to its own records or from authorizing an agent or designee to have access to the contractor's records.

(3) Regardless of whether any document or report submitted to the department pursuant to this chapter is subject to public disclosure, copies of such documents or reports shall be provided by the department, upon written request, to the legislature and to federal, state, or local agencies or law enforcement officials who have an official interest in the contents thereof.

NEW SECTION

WAC 388-96-022 Due dates for cost reports. (1) The contractor shall submit annually a complete report of costs and financial conditions of the contractor prepared and presented in a standardized manner and in accordance with this chapter and chapter 74.46 RCW.

(2) Not later than March 31st of each year, each contractor shall submit to the department an annual cost report for the period from January 1st through December 31st of the preceding year.

(3) Not later than one hundred twenty days following the termination or assignment of a contract, the terminating or assigning contractor shall submit to the department a cost report for the period from January 1st through the date the contract was terminated or assigned.

(4) If the cost report is not properly completed or if it is not received by the due date established in subsection (2) or (3) of this section, all or part of any payments due under the contract may be withheld by the department until such time as required cost report is properly completed and received.

(5) The department may impose civil fines, or take adverse rate action against contractors and former contractors who do not submit properly completed cost reports by the applicable due date established in subsection (2) or (3) of this section.

NEW SECTION

WAC 388-96-099 Completing cost reports and maintaining records. (1) To determine reported costs, nursing facility contractors shall use generally accepted accounting principles, the provisions of this chapter, and chapter 74.46 RCW. In the event of conflict, chapter 74.46 RCW, this chapter, and instructions issued by the department take precedence over generally accepted accounting principles.

(2) A nursing facility's records shall be maintained on the accrual method of accounting and agree with or be reconcilable to the cost report. All revenue and expense accruals shall be reversed against the appropriate accounts unless they are received or paid, respectively, within one hundred twenty days after the accrual is made. However, if the contractor can document a good faith billing dispute with the supplier or vendor, the period may be extended, but only for those portions of billings subject to good faith dispute. Accruals for vacation, holiday, sick pay, payroll, and real estate taxes may be carried for longer periods, provided the contractor follows generally accepted accounting principles and pays this type of accrual when due.

NEW SECTION

WAC 388-96-102 Requirements for retention of records by the contractor. (1) The contractor shall specify a location in the state of Washington at which the contractor shall retain all records supporting the cost reports for a period of four years following the filing of the required cost reports. Also, at the same location, for a period of four years, for each calendar year, the contractor shall retain all records supporting trust funds established under WAC 388-96-366(2) and account receivables. For example, supporting records for 2009 trust funds and accounts receivables must be kept through 2013.

(2) When there is (are) an unresolved issue(s) on a cost report, the department may direct supporting records to be retained for a longer period. All such records shall be made available upon demand to authorized representatives of the department, the office of the state auditor, and the centers for medicare and medicaid services (CMS).

(3) When a contract is terminated or assigned, all payments due the terminating or assigning contractor will be withheld until accessibility and preservation of the records within the state of Washington are assured.

NEW SECTION

WAC 388-96-105 Retention of cost reports and resident assessment information by the department. The department will retain cost reports for one year after final settlement or reconciliation, or the period required under chapter 40.14 RCW, whichever is longer. Resident assessment information and records shall be retained as provided in statute or by department rule.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

WAC 388-96-108 Failure to submit final reports. (1) If a nursing facility's contract is terminated or assigned, and the nursing facility does not submit a final cost report as required by ((RCW 74.46.040)) WAC 388-96-022, the nursing facility shall return to the department all payments made to the terminating or assigning contractor relating to the period for which a report has not been received within sixty days after the terminating or assigning contractor receives a written demand from the department.

(2) Effective sixty days after the terminating or assigning contractor receives a written demand for payment, interest will begin to accrue payable to the department on any unpaid balance at the rate of one percent per month.

NEW SECTION

WAC 388-96-205 Purposes of department audits—Examination—Incomplete or incorrect reports—Contractor's duties—Access to facility—Fines—Adverse rate actions. (1) The purposes of department audits and examinations under this chapter and chapter 74.46 RCW are to ascertain that:

(a) Allowable costs for each year for each medicaid nursing facility are accurately reported;

(b) Cost reports accurately reflect the true financial condition, revenues, expenditures, equity, beneficial ownership, related party status, and records of the contractor;

(c) The contractor's revenues, expenditures, and costs of the building, land, land improvements, building improvements, and movable and fixed equipment are recorded in compliance with department requirements, instructions, and generally accepted accounting principles;

(d) The responsibility of the contractor has been met in the maintenance and disbursement of patient trust funds; and

(e) The contractor has reported and maintained accounts receivable in compliance with this chapter and chapter 74.46 RCW.

(2) The department shall examine the submitted cost report, or a portion thereof, of each contractor for each nursing facility for each report period to determine whether the information is correct, complete, reported in conformance with department instructions and generally accepted accounting principles, the requirements of this chapter, and chapter 74.46 RCW. The department shall determine the scope of the examination.

(3) When the department finds that the cost report is incorrect or incomplete, the department may make adjustments to the reported information for purposes of establishing component rate allocations or in determining amounts to be recovered in direct care, therapy care, and support services under WAC 388-96-211 (3) and (4) or in any component rate resulting from undocumented or misreported costs. A schedule of the adjustments shall be provided to the contractor, including dollar amount and explanations for the adjustments. Adjustments shall be subject to review under WAC 388-96-901 and WAC 388-96-904.

(4) Audits of resident trust funds and receivables shall be reported separately and in accordance with the provisions of this chapter and chapter 74.46 RCW.

(5) The contractor shall:

(a) Provide access to the nursing facility, all financial and statistical records, and all working papers that are in support of the cost report, receivables, and resident trust funds. To ensure accuracy, the department may require the contractor to submit for departmental review any underlying financial statements or other records, including income tax returns, relating to the cost report directly or indirectly;

(b) Prepare a reconciliation of the cost report with:

(i) Applicable federal income and federal and state payroll tax returns; and

(ii) The records for the period covered by the cost report.

(c) Make available to the department staff an individual or individuals to respond to questions and requests for information from department staff. The designated individual or individuals shall have sufficient knowledge of the issues, operations, or functions to provide accurate and reliable information.

(6) If an examination discloses material discrepancies, undocumented costs, or mishandling of resident trust funds, the department may open or reopen one or both of the two preceding cost report or resident trust fund periods, whether examined or unexamined, for indication of similar discrepancies, undocumented costs, or mishandling of resident trust funds.

(7) Any assets, liabilities, revenues, or expenses reported as allowable that are not supported by adequate documentation in the contractor's records shall be disallowed. Documentation must show both that costs reported were incurred during the period covered by the report and were related to resident care, and that assets reported were used in the provision of resident care.

(8) When access is required at the facility or at another location in the state, the department shall notify a contractor of its intent to examine all financial and statistical records, and all working papers that are in support of the cost report, receivables, and resident trust funds.

(9) The department is authorized to assess civil fines and take adverse rate action if a contractor, or any of its employees, does not allow access to the contractor's nursing facility records.

NEW SECTION

WAC 388-96-208 Reconciliation of medicaid resident days to billed days and medicaid payments—Payments due—Accrued interest—Withholding funds. (1) The department shall reconcile medicaid resident days to billed days and medicaid payments for each medicaid nursing facility for each calendar year, or for that portion of the calendar year the provider's contract was in effect.

(2) The contractor shall make any payment owed the department as determined by reconciliation and/or settlement at the lower of cost or rate in direct care, therapy care, and support services component rate allocations within sixty days after the department notifies the contractor of the amount owed.

(3) The department shall pay the contractor within sixty days after it notifies the contractor of an underpayment.

(4) Interest at the rate of one percent per month accrues against the department or the contractor on an unpaid balance existing sixty days after notification of the contractor. Accrued interest shall be adjusted back to the date it began to accrue if the payment obligation is subsequently revised after administrative or judicial review.

(5) The department shall withhold funds from the contractor's payment for services shall take all other actions authorized by law, to recover amounts including any accrued interest due and payable from the contractor. Neither a timely filed appeal under WAC 388-96-901 and WAC 388-96-904 nor the commencement of judicial review to contest a payment obligation shall delay recovery from the contractor or payment to the contractor.

NEW SECTION

WAC 388-96-211 Proposed settlement report—Payment refunds—Overpayments—Determination of unused rate funds—Total and component payment rates. (1) Contractors shall submit with each annual nursing facility cost report a proposed settlement report showing underspending or overspending in each component rate during the cost report year on a per-resident day basis. The department shall accept or reject the proposed settlement report, explain any adjustments, and if needed, issue a revised settlement report.

(2) Contractors shall not be required to refund payments made in the operations, variable return, property, and financing allowance component rates in excess of the adjusted costs of providing services corresponding to these components.

(3) The facility will return to the department any overpayment amounts in each of the direct care, therapy care, and support services rate components that the department identifies following the examination and settlement procedures as described in this chapter, provided that the contractor may retain any overpayment that does not exceed one percent of the facility's direct care, therapy care, and support services component rate. However, no overpayments may be retained in a cost center to which savings have been shifted to cover a deficit, as provided in subsection (4) of this section. Facilities that are not in substantial compliance for more than ninety days, and facilities that provide substandard quality of care at any time during the period for which settlement is being calculated, will not be allowed to retain any amount of overpayment in the facility's direct care, therapy care, and support services component rate. The terms "not in substantial compliance" and "substandard quality of care" shall be defined by federal survey regulations.

(4) Determination of unused rate funds, including the amounts of direct care, therapy care, and support services to be recovered, shall be done separately for each rate component, and, except as otherwise provided in this subsection, neither costs nor rate payments shall be shifted from one component rate or corresponding service area to another in determining the degree of underspending or recovery, if any. In computing a preliminary or final settlement, savings in the support services cost center shall be shifted to cover a deficit in the direct care or therapy cost centers up to the amount of any savings, but no more than twenty percent of the support services component rate may be shifted. In computing a preliminary or final settlement, savings in direct care and therapy care may be shifted to cover a deficit in these two cost centers up to the amount of savings in each, regardless of the percentage of either component rate shifted. Contractor-retained overpayments up to one percent of direct care, therapy care, and support services rate components, as authorized in subsection (3) of this section, shall be calculated and applied after all shifting is completed.

(5) Total and component payment rates assigned to a nursing facility, as calculated and revised, if needed, under the provisions of this chapter and chapter 74.46 RCW shall represent the maximum payment for nursing facility services rendered to medicaid recipients for the period the rates are in effect. No increase in payment to a contractor shall result from spending above the total payment rate or in any rate component.

AMENDATORY SECTION (Amending WSR 04-21-027, filed 10/13/04, effective 11/13/04)

WAC 388-96-217 Civil fines. (1) ~~((When the department finds that a current or former contractor, or any partner, officer, director, owner of five percent or more of the stock of a current or former corporate contractor, or managing agent))~~ The department shall deny, suspend, or revoke a license or provisional license or, in lieu thereof or in addition thereto,

assess monetary penalties of a civil nature not to exceed one thousand dollars per violation in any case in which it finds that the licensee, or any partner, officer, director, owner of five percent or more of the assets of the nursing home, or managing employee has failed or refused to comply with any requirement of chapters 74.46 RCW or 388-96 WAC~~((the department may assess monetary penalties of a civil nature not to exceed one thousand dollars per violation. Every day of noncompliance with any requirement of chapters 74.46 RCW or 388-96 WAC is a separate violation))~~.

(2) The department may fine a contractor or former contractor or any partner, officer, director, owner of five percent or more of the stock of a current or former corporate contractor, or managing agent for the following but ~~((is))~~ not limited to the following ~~((in its fine assessments))~~:

(a) Failure to file a mathematically accurate and complete cost report, including a final cost report, on or prior to the applicable due date established by this chapter or authorized by extension granted in writing by the department; ~~((or))~~

(b) Failure to permit an audit authorized by this chapter or to grant access to all records and documents deemed necessary by the department to complete such an audit;

(c) Has knowingly or with reason to know made a false statement of a material fact in any record required by this chapter and/or chapter 74.46 RCW;

(d) Refused to allow representatives or agents of the department to inspect all books, records, and files required by this chapter to be maintained or any portion of the premises of the nursing home;

(e) Willfully prevented, interfered with, or attempted to impede in any way the work of any duly authorized representative of the department and the lawful enforcement of any provision of this chapter and/or chapter 74.46 RCW; or

(f) Willfully prevented or interfered with any representative of the department in the preservation of evidence of any violation of any of the provisions of this chapter or chapter 74.46 RCW.

(3) Every day of noncompliance with any requirement of subsection (1) and/or (2) of this section is a separate violation.

~~((3))~~ (4) The department shall send notice of a fine assessed under subsection (1) and/or (2) of this section by certified mail return receipt requested to the current contractor, administrator, or former contractor informing the addressee of the following:

(a) The fine shall become effective the date of receipt of the notice by the addressee; and

(b) If within two weeks of the date of receipt of the notice by the addressee, ~~((an acceptable cost report is received by the department; an audit is allowed; or access to documentation is allowed, as applicable))~~ the addressee complies with the requirement(s) of subsection (1), the department may waive the fine.

~~((4))~~(a) The department may fine a current or former contractor, or any partner, officer, director, owner of a current or former corporate contractor, or managing agent for failure to comply with RCW 74.46.630.

(b) The department shall send notice of a fine assessed under (a) of this subsection by certified mail, to the current

~~contractor, administrator, or former contractor informing the addressee that the fine shall become effective upon receipt of notice by the addressee.)~~

AMENDATORY SECTION (Amending WSR 04-21-027, filed 10/13/04, effective 11/13/04)

WAC 388-96-218 Proposed, preliminary, and final settlements. (1) For each component rate, the department shall calculate a proposed, preliminary or final settlement at the lower of prospective payment rate or audited allowable costs, except as otherwise provided in this chapter (~~and chapter 74.46 RCW~~) and chapter 74.46 RCW.

(2) As part of the cost report, the proposed settlement report is due in accordance with ~~((RCW 74.46.040))~~ WAC 388-96-022. In the proposed preliminary settlement report, a contractor shall compare the contractor's payment rates during a cost report period, weighted by the number of resident days reported for the same cost report period to the contractor's allowable costs for the cost report period. ~~((In accordance with RCW 74.46.100, 74.46.155 and 74.46.165))~~ In accordance with WAC 388-96-205, 388-96-208 and 388-96-211 the contractor shall take into account all authorized shifting, retained savings, and upper limits to rates on a cost center basis.

(a) The department will:

(i) Review the proposed preliminary settlement report for accuracy; and

(ii) Accept or reject the proposal of the contractor. If accepted, the proposed preliminary settlement report shall become the preliminary settlement report. If rejected, the department shall issue, by component payment rate allocation, a preliminary settlement report fully substantiating disallowed costs, refunds, or underpayments due and adjustments to the proposed preliminary settlement.

(b) When the department receives the proposed preliminary settlement report:

(i) By the cost report due date specified in ~~((RCW 74.46.040))~~ WAC 388-96-022, it will issue the preliminary settlement report within one hundred twenty days of the cost report due date; or

(ii) After the cost report due date specified in ~~((RCW 74.46.040))~~ WAC 388-96-022, it will issue the preliminary settlement report within one hundred twenty days of the date the cost report was received.

(c) In its discretion, the department may designate a date later than the dates specified in subsection (2)(b)(i) and (ii) of this section to issue preliminary settlements.

(d) A contractor shall have twenty-eight days after receipt of a preliminary settlement report to contest such report under WAC 388-96-901 and 388-96-904. Upon expiration of the twenty-eight day period, the department shall not review or adjust a preliminary settlement report. Any administrative review of a preliminary settlement shall be limited to calculation of the settlement, to the application of settlement principles and rules, or both, and shall not encompass rate or audit issues.

(3) The department shall issue a final settlement report to the contractor after the completion of the department audit process, including exhaustion or termination of any adminis-

trative review and appeal of audit findings or determinations requested by the contractor, but not including judicial review as may be available to and commenced by the contractor.

(a) The department shall prepare a final settlement by component payment rate allocation and shall fully substantiate disallowed costs, refunds, underpayments, or adjustments to the cost report and financial statements, reports, and schedules submitted by the contractor. The department shall take into account all authorized shifting, savings, and upper limits to rates on a component payment rate allocation basis. For the final settlement report, the department shall compare:

(i) The payment rates it paid the contractor for the facility in question during the report period, weighted by the number of allowable resident days reported for the period each rate was in effect to the contractor's;

(ii) Audited allowable costs for the reporting period; or

(iii) Reported costs for the nonaudited reporting period.

(b) A contractor shall have twenty-eight days after the receipt of a final settlement report to contest such report pursuant to WAC 388-96-901 and 388-96-904. Upon expiration of the twenty-eight day period, the department shall not review a final settlement report. Any administrative review of a final settlement shall be limited to calculation of the settlement, the application of settlement principles and rules, or both, and shall not encompass rate or audit issues.

(c) The department shall reopen a final settlement if it is necessary to make adjustments based upon findings resulting from a department audit performed pursuant to ~~((RCW 74.46.100))~~ WAC 388-96-205. The department may also reopen a final settlement to recover an industrial insurance dividend or premium discount under RCW 51.16.035 in proportion to a contractor's medicaid recipient days.

(4)(a) In computing a preliminary or final settlement, a contractor must comply with the requirements of ~~((RCW 74.46.165 (2), (3), and (4)))~~ WAC 388-96-211 for retaining or refunding to the department payments made in excess of the adjusted costs of providing services corresponding to each component rate allocation.

(b) The nursing facility contractor shall refund all amounts due the department within sixty days after ~~((the date of decision or termination plus))~~ the department notifies the contractor of the overpayment and demands repayment. When notification is by postal mail, the department shall deem the contractor to have received the department's notice five calendar days after the date of the notification letter, unless proof of the date of receipt of the department's notification letter exists, in which case the actual date of receipt shall be used to determine the sixty day period for repayment. After the sixty day period, interest on any unpaid balance ((after sixty days)) will accrue at one percent per month.

(c) Repayment will be without prejudice to obtain review of the settlement determination pursuant to WAC 388-96-901 and 388-96-904. After an administrative hearing and/or judicial review, if the payment obligation is reduced, then the department will rescind the difference between the accrued interest on the payment obligation and the interest that would have accrued on the reduced payment obligation from the date interest began to accrue on the original payment obligation.

(5) In determining whether a facility has forfeited unused rate funds in its direct care, therapy care and support services component rates under authority of (~~RCW 74.46.165~~) WAC 388-96-211, the following rules shall apply:

(a) Federal or state survey officials shall determine when a facility is not in substantial compliance or is providing substandard care, according to federal and state nursing facility survey regulations;

(b) Correspondence from state or federal survey officials notifying a facility of its compliance status shall be used to determine the beginning and ending dates of any period(s) of noncompliance; and

(c) Forfeiture shall occur if the facility was out of substantial compliance more than ninety days during the settlement period. The ninety-day period need not be continuous if the number of days of noncompliance exceed ninety days during the settlement period regardless of the length of the settlement period. Also, forfeiture shall occur if the nursing facility was determined to have provided substandard quality of care at any time during the settlement period.

~~((6)(a) For calendar year 1998, the department will calculate two settlements covering the following periods:~~

- ~~(i) January 1, 1998 through September 30, 1998; and~~
- ~~(ii) October 1, 1998 through December 31, 1998.~~

~~(b) The department will use medicare rates weighted by total patient days (i.e., medicaid and non-medicaid days) to divide 1998 costs between the two settlement periods identified in subsection (6)(a) of this section.~~

~~(c) The department will net the two settlements for 1998 to determine a nursing facility's 1998 settlement).~~

AMENDATORY SECTION (Amending Order 3070, filed 9/28/90, effective 10/1/90)

WAC 388-96-366 Facility records and handling of resident moneys. (1) A nursing facility may not require residents to deposit personal funds with the facility. A facility may hold a resident's personal funds only if the resident or resident's guardian provides written authorization.

(2) Once a nursing facility accepts the written authorization of the resident or resident's guardian, the facility shall hold, safeguard, and account for such personal funds under an established system in accordance with this chapter and chapter 74.46 RCW. For all resident moneys entrusted to the contractor and received by the contractor for the resident, the nursing facility shall establish and maintain ((as a service to the residents)) a bookkeeping system((;)) incorporated into the business records and adequate for audit((; for all resident moneys received by the facility)).

(3) The nursing facility shall maintain the resident's or guardian's written authorization in the resident's file. The facility shall deposit any resident's personal funds in excess of ~~((fifty))~~ one-hundred dollars in an interest-bearing resident personal fund account or accounts, separate from any of the facility's operating accounts, and credit all interest earned on an account to the account. With respect to any other personal funds, the facility shall keep such funds in a noninterest-bearing account or petty cash fund maintained for residents.

(4) The facility shall give the resident at least a quarterly reporting of all financial transactions involving personal

funds held for the resident by the facility. Also, the facility shall send the representative payee, the guardian, or other designated agents of the resident a copy of the quarterly accounting report.

(5) The nursing facility shall further maintain a written record of all personal property deposited with the facility for safekeeping by or for the resident. The facility shall issue or obtain written receipts upon taking possession or disposing of such property and retain copies and/or originals of such receipts. The facility shall maintain records adequate for audit.

(6) The facility shall purchase a surety bond, or otherwise provide assurances or security satisfactory to the department, to assure the security of all personal funds of residents deposited with the facility.

AMENDATORY SECTION (Amending WSR 01-12-037, filed 5/29/01, effective 6/29/01)

WAC 388-96-384 Liquidation or transfer of resident personal funds. (1) Upon the death of a resident, the facility shall ~~((promptly))~~ convey within thirty days the resident's personal funds held by the facility with a final accounting of such funds to the department of social and health services office of financial recovery (or successor office) or to the individual or probate jurisdiction administering the resident's estate.

~~((H))~~ When the deceased resident was a recipient of long-term care services paid for in whole or in part by the ~~((state of Washington))~~ department, then the personal funds held by the facility and the final accounting shall be sent to ~~((the state of Washington,))~~ department of social and health services((;)) office of financial recovery (or successor office).

~~((b))~~ ~~((The personal funds of the deceased resident and final accounting must be conveyed to the individual or probate jurisdiction administering the resident's estate or to the state of Washington, department of social and health services, office of financial recovery (or successor office) no later than the thirtieth day after the date of the resident's death.~~

~~((H))~~ When the personal funds of the deceased resident are to be paid to the ~~((state of Washington))~~ department, ~~((those funds shall be paid by))~~ the facility shall:

(i) Pay with a check, money order, certified check or cashier's check made payable to the secretary, department of social and health services ~~((; and mailed to the Office of Financial Recovery, Estate Recovery Unit, P.O. Box 9501, Olympia, Washington 98507-9501, or such address as may be directed by the department in the future.))~~;

(ii) Complete a transmittal of resident personal funds form (DSHS form 18-544) for each deceased resident;

(iii) Place the name and social security number of the deceased individual from whose personal funds account the moneys are being paid on the check, money order, certified check or cashier's check ~~((or))~~ and the ~~((statement accompanying the payment shall contain the name and Social Security number of the deceased individual from whose personal funds account the moneys are being paid))~~ transmittal of resident personal funds form (DSHS form 18-544); and

(iv) Mail the check or money order and the DSHS 18-544 to the office of financial recovery, estate recovery unit, P.O. Box 9501, Olympia, Washington 98507-9501, or such address as may be directed by the department in the future.

(c) The department of social and health services, office of financial recovery, estate recovery unit shall establish a release procedure for use of funds necessary for burial expenses.

(2) In situations where the resident leaves the nursing home without authorization and the resident's whereabouts is unknown:

(a) The nursing facility shall make a reasonable attempt to locate the missing resident. This includes contacting:

- (i) Friends,
- (ii) Relatives,
- (iii) Police,
- (iv) The guardian, and
- (v) The home and community services office in the area.

(b) If the resident cannot be located after ninety days, the nursing facility shall notify the department of revenue of the existence of "abandoned property," outlined in chapter 63.29 RCW. The nursing facility shall deliver to the department of revenue the balance of the resident's personal funds within twenty days following such notification.

(3) Prior to the sale or other transfer of ownership of the nursing facility business, the facility operator shall:

(a) Provide each resident or resident representative with a written accounting of any personal funds held by the facility;

(b) Provide the new operator with a written accounting of all resident funds being transferred; and

(c) Obtain a written receipt for those funds from the new operator.

NEW SECTION

WAC 388-96-499 Principles of allowable costs. (1) The substance of a transaction will prevail over its form.

(2) All documented costs which are ordinary, necessary, related to care of medical care recipients, and not expressly unallowable under this chapter and/or chapter 74.46 RCW are to be allowable.

(3) Costs of providing therapy care are allowable, subject to any applicable limit contained in this chapter and/or chapter 74.46 RCW, provided documentation establishes the costs were incurred for medical care recipients and other sources of payment to which recipients may be legally entitled, such as private insurance or medicare, were first fully utilized.

(4) The payment for property usage is to be independent of ownership structure and financing arrangements.

(5) Allowable costs shall not include costs reported by a contractor for a prior period to the extent such costs, due to statutory exemption, will not be incurred by the nursing facility in the period to be covered by the rate.

(6) Any costs deemed allowable under this chapter are subject to the provisions of RCW 74.46.421. The allowability of a cost shall not be construed as creating a legal right or entitlement to reimbursement of the cost.

NEW SECTION

WAC 388-96-528 Payments to related organizations—Limits—Documentation. (1) Costs applicable to services, facilities, and supplies furnished by a related organization to the contractor shall be allowable only to the extent they do not exceed the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere.

(2) Documentation of costs to the related organization shall be made available to the department. Payments to or for the benefit of the related organization will be disallowed where the cost to the related organization cannot be documented.

AMENDATORY SECTION (Amending WSR 97-17-040, filed 8/14/97, effective 9/14/97)

WAC 388-96-534 Joint cost allocation disclosure (JCAD). (1) The contractor shall disclose to the department:

(a) The nature and purpose of all costs representing allocations of joint facility costs; and

(b) The methodology of the allocation utilized.

(2) The contractor shall demonstrate in such disclosure:

(a) The services involved are necessary and nonduplicative; and

(b) Costs are allocated in accordance with benefits received from the resources represented by those costs.

(3) The contractor shall make such disclosure not later than September 30th for the following year; except, a new contractor shall submit the first year's disclosure together with the submissions required by WAC 388-96-026. Within this section, the meaning of the:

(a) "Effective date" is the date the department will recognize allocation per an approved JCAD; and

(b) "Implementation date" is the date the facility will begin or began incurring joint facility costs.

(4) The department shall ~~((determine the acceptability of))~~ approve or reject the JCAD ~~((methodology))~~ not later than December 31 of each year for all JCADs received by September 30th. The department may request additional information or clarification. The effective date of JCAD received:

(a) ~~((The effective date of an acceptable JCAD that was received))~~ By September 30th is January 1st.

(b) ~~((The effective date of an acceptable JCAD that was received))~~ After September 30th shall be ninety days from the date the JCAD was received by the department.

(5) When the contractor does not provide requested additional information and/or clarification, then the effective date of the JCAD is thirty days from the date the requested information and/or clarification is received as long as the department approves the JCAD; and

(6) The contractor shall submit to the department for approval an amendment or revision to an approved JCAD ~~((methodology))~~ at least thirty days prior to the implementation date of the amendment or revision. For amendments or revisions received less than thirty days before the implementation date, the effective date of approval will be thirty days from the date the JCAD is received by the department.

~~((6))~~ (7) When a contractor, who is not currently incurring joint facility costs, begins to incur joint facility costs during the calendar year, the contractor shall provide the information required in subsections (1) and (2) of this section at least ninety days prior to the implementation date. If the JCAD is not received ninety days before the implementation date, the effective date of the approval will be ninety days from the date the JCAD is received by the department.

~~((7))~~ (8) Joint facility costs not disclosed, allocated, and reported in conformity with this section are ~~((nonallowable))~~ unallowable costs. Joint facility costs incurred before the effective dates of subsections (4), (5), and (6) of this section are unallowable. Costs disclosed, allocated, and reported in conformity with a department-approved JCAD ~~((methodology))~~ must undergo review and be determined allowable costs for the purposes of rate setting and audit.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

WAC 388-96-535 Management agreements, management fees, and central office services. (1) The contractor shall disclose to the department the nature and purpose of ~~((the))~~ all management agreements, including an organizational chart showing the relationship ~~((between))~~ among the contractor, management company and all related organizations. The department may request additional information or clarification.

(2) A copy of the agreement must be received by the department at least sixty days before it is to become effective. A copy of any amendment to a management agreement must be received by the department at least thirty days in advance of the date it is to become effective. Failure to meet these deadlines will result in the unallowability of cost incurred more than sixty days prior to submitting a management agreement and more than thirty days prior to submitting an amendment.

(3) Management fees will be allowed only when:

(a) A written management agreement both creates a principal/agent relationship between the contractor and the manager, and sets forth the items, services, and activities to be provided by the manager; and

(b) Documentation demonstrates that the service contracted for were actually delivered; and

(c) The scope of services performed under a management agreement are not so extensive that the manager or managing entity is substituted for the contractor in fact, substantially relieving the contractor/licensee of responsibility for operating the facility.

(4) Acceptance of a management agreement ~~((may))~~ shall not be construed as a determination that all management fees or costs are allowable in whole or in part. Management fees or costs not disclosed or approved in conformity with chapter 74.46 RCW and this section are unallowable. When necessary for the health and safety of medical care recipients, in writing, the department may waive the sixty-day or thirty-day advance notice requirement of ~~((RCW 74.46.280 in writing))~~ subsection (2) of this section.

~~((3))~~ (5)(a) Management fees are allowable only for necessary, nonduplicative services that are of the nature and

magnitude that prudent and cost-conscious management would pay ~~((—Costs of services, facilities, supplies and employees furnished by the management company are subject to RCW 74.46.220); and~~

(b) Management fees paid to or for the benefit of a related organization will be allowable to the extent they not exceed the lower of the:

(i) Actual cost to the related organization of providing necessary services related to patient care under the agreement; or

(ii) The cost of comparable services purchased elsewhere. Where costs to the related organization represent joint facility costs, the measurement of such costs shall comply with WAC 388-96-534.

~~((4))~~ (6) Allowable fees for all general management services of any kind referenced in this section, including corporate or business entity management and management fees not allocated to specific services, are subject to any applicable cost center limit established in chapter 74.46 RCW and this chapter.

~~((5))~~ (7) Central office costs, owner's compensation, and other fees or compensation, including joint facility costs ~~((;))~~ for general administrative and management services, ~~((including))~~ and management expense not allocated to specific services ~~((;))~~ shall be subject to any cost center limit established by chapter 74.46 RCW and chapter 388-96 WAC.

~~((6))~~ (8) Necessary travel and housing expenses of non-resident staff working at a contractor's nursing facility shall be considered allowable costs if the visit does not exceed three weeks.

~~((7))~~ (9) Bonuses paid to employees at a contractor's nursing facility or management company shall be considered compensation.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

WAC 388-96-536 Does the department limit the allowable compensation for an owner or relative of an owner? (1) ~~((The department shall limit))~~ Total compensation of an owner or relative of an owner shall be limited to ordinary compensation for necessary services actually performed.

(a) Compensation is ordinary if it is the amount usually paid for comparable services in a comparable facility to an unrelated employee, and does not exceed any applicable limits set out in chapter 74.46 RCW and this chapter.

(b) A service is necessary if it is related to patient care and would have had to be performed by another person if the owner or relative had not done it.

(2) If the service provided would require licensed staff, e.g., RN, then the same license standard must be met when performed by an owner, relative or other administrative personnel.

(3) The contractor, in maintaining customary time records adequate for audit, shall include such records for owners and relatives who receive compensation.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

WAC 388-96-542 Home office or central office. (1) ~~((The department shall audit the home office or central office whenever a nursing facility receiving such services is audited))~~ In setting medicaid nursing facility rates, the department will include both duplicative and nonduplicative home/central office costs that are documented, ordinary, necessary, and related to the provision of medical and personal care services to authorized patients.

(2)(a) Assets used in the provision of services by or to a nursing facility, but not located on the premises of the nursing facility, shall not be included in net invested funds or in the calculation of property payment for the nursing facility.

(b) The nursing facility may allocate depreciation, interest expense, and operating lease expense for the home office, central office, and other off-premises assets to the cost of the services provided to or by the nursing facility on a reasonable statistical basis approved by the department.

(c) The allocated costs of (b) of this subsection may be included in the cost of services in such cost centers where such services and related costs are appropriately reported.

(3) Home office or central office costs must be allocated and reported in conformity with the department-approved JCAD methodology as required by WAC 388-96-534.

(4) Home office or central office costs are subject to the limitation specified in ~~((RCW 74.46.410))~~ WAC 388-96-585.

NEW SECTION

WAC 388-96-552 Depreciable assets. Tangible assets of the following types in which a contractor has an interest through ownership or leasing are subject to depreciation:

(1) Building - the basic structure or shell and additions thereto;

(2) Fixed equipment - attachments to buildings, including, but not limited to, wiring, electrical fixtures, plumbing, elevators, heating system, and air conditioning system. The general characteristics of this equipment are:

(a) Affixed to the building and not subject to transfer; and

(b) A fairly long life, but shorter than the life of the building to which affixed.

(3) Movable equipment including, but not limited to, beds, wheelchairs, desks, and X-ray machines. The general characteristics of this equipment are:

(a) A relatively fixed location in the building;

(b) Capable of being moved as distinguished from building equipment;

(c) A unit cost sufficient to justify ledger control;

(d) Sufficient size and identity to make control feasible by means of identification tags; and

(e) A minimum life greater than one year.

(4) Movable equipment including, but not limited to, waste baskets, bed pans, syringes, catheters, silverware, mops, and buckets which are properly capitalized. No depreciation shall be taken on items which are not properly capitalized as directed in WAC 388-96-533. The general characteristics of this equipment are:

(a) In general, no fixed location and subject to use by various departments;

(b) Small in size and unit cost;

(c) Subject to inventory control;

(d) Large number in use; and

(e) Generally, a useful life of one to three years.

(5) Land improvements including, but not limited to, paving, tunnels, underpasses, on-site sewer and water lines, parking lots, shrubbery, fences, and walls where replacement is the responsibility of the contractor; and

(6) Leasehold improvements - betterments and additions made by the lessee to the leased property, which become the property of the lesser after the expiration of the lease.

NEW SECTION

WAC 388-96-556 Initial cost of operation. (1) The necessary and ordinary one-time expenses directly incident to the preparation of a newly constructed or purchased building by a contractor for operation as a licensed facility shall be allowable costs. These expenses shall be limited to start-up and organizational costs incurred prior to the admission of the first patient.

(2) Start-up costs shall include, but not be limited to, administrative and nursing salaries, utility costs, taxes, insurance, repairs and maintenance, and training; except, that they shall exclude expenditures for capital assets. These costs will be allowable in the operations cost center if they are amortized over a period of not less than sixty months beginning with the month in which the first patient is admitted for care.

(3) Organizational costs are those necessary, ordinary, and directly incident to the creation of a corporation or other form of business of the contractor including, but not limited to, legal fees incurred in establishing the corporation or other organization and fees paid to states for incorporation; except, that they do not include costs relating to the issuance and sale of shares of capital stock or other securities. Such organizational costs will be allowable in the operations cost center if they are amortized over a period of not less than sixty months beginning with the month in which the first patient is admitted for care.

(4) Interest expense and loan origination fees relating to construction of a facility incurred during the period of construction shall be capitalized and amortized over the life of the facility pursuant to WAC 388-96-559. The period of construction shall extend from the date of the construction loan to the date the facility is put into service for patient care and shall not exceed the project certificate of need time period pursuant to RCW 70.38.125.

NEW SECTION

WAC 388-96-558 Depreciation expense. Depreciation expense on depreciable assets which are required in the regular course of providing patient care will be an allowable cost. It shall be computed using the depreciation base, lives, and methods specified in this chapter and chapter 74.46 RCW.

AMENDATORY SECTION (Amending WSR 01-12-037, filed 5/29/01, effective 6/29/01)

WAC 388-96-559 Cost basis of land and depreciation base. (1) For all partial or whole rate periods (~~(after December 31, 1984)~~) unless otherwise provided or limited by this chapter (~~(or by this section, chapter 388-96 WAC)~~) or chapter 74.46 RCW, the total depreciation base of depreciable assets and the cost basis of land shall be ~~((the lowest of:~~

~~(a) The contractor's appraisal, if any;
(b) The department's appraisal obtained through the department of general administration of the state of Washington, if any; or~~

~~(e))~~ the historical purchase cost of the contractor, or lessor if the assets are leased by the contractor, in acquiring ownership of the asset in an arm's-length transaction, and preparing the asset for use, less goodwill, and less accumulated depreciation, if applicable, incurred during periods the assets have been used in or as a facility by any and all contractors. Such accumulated depreciation is to be measured in accordance with WAC 388-96-561, 388-96-565, chapter 388-96 WAC, and chapter 74.46 RCW.

~~(a)~~ Where the straight-line or sum-of-the-years digits method of depreciation is used the contractor:

~~(i)~~ May deduct salvage values from historical costs for computers, televisions and each cloth based item, e.g., mattresses, linen, and draperies; and

~~(ii)~~ Shall deduct salvage values from historical costs of at least:

~~(A)~~ Five percent of the historical value for computers, televisions, and each noncloth item included in moveable equipment; and

~~(B)~~ Twenty-five percent of the historical value for each vehicle.

(2) Unless otherwise provided or limited by this chapter or by chapter 74.46 RCW, the department shall, in determining the total depreciation base of a depreciable real or personal asset owned or leased by the contractor, deduct depreciation relating to all periods subsequent to the more recent of:

(a) The date such asset was first used in the medical care program; or

(b) The most recent date such asset was acquired in an arm's-length purchase transaction which the department is required to recognize for medicaid cost reimbursement purposes.

(c) No depreciation shall be deducted for periods such asset was not used in the medical care program or was not used to provide nursing care.

(3) ~~((The department may have the fair market value of the asset at the time of purchase established by appraisal through the department of general administration of the state of Washington if))~~ When:

(a) When the department challenges the historical cost of an asset ~~(=)~~ or

~~((=))~~ the contractor cannot or will not provide the historical cost of a leased asset and the department is unable to determine such historical cost from its own records or from any other source, the department may have the fair market value of the asset at the time of purchase established by an appraisal.

~~((The contractor may allocate or reallocate values among land, building, improvements, and equipment in accordance with the department's appraisal.))~~

~~((H))~~ (b) When an appraisal is conducted, the depreciation base of the asset and cost basis of land will not exceed the fair market value of the asset. ((An appraisal conducted by or through the department of general administration shall be final unless the appraisal is shown to be arbitrary and capricious)) The contractor may allocate or reallocate values among land, building, improvements, and equipment in accordance with the department's appraisal.

(4) ~~((If the land and depreciable assets of a newly constructed nursing facility were never used in or as a nursing facility before being purchased from the builder, the cost basis and the depreciation base shall be the lesser of:~~

~~(a) Documented actual cost of the builder; or~~

~~(b) The approved amount of the certificate of need issued to the builder.~~

~~When the builder is unable or unwilling to document its costs, the cost basis and the depreciation base shall be the approved amount of the certificate of need.~~

~~(=))~~ For leased assets, the department may examine documentation in its files or otherwise obtainable from any source to determine:

(a) The lessor's purchase acquisition date; or

(b) The lessor's historical cost at the time of the last arm's-length purchase transaction.

If the department is unable to determine the lessor's acquisition date by review of its records or other records, the department, in determining fair market value as of such date, may use the construction date of the facility, as found in the state fire marshal's records or other records, as the lessor's purchase acquisition date of leased assets.

(5) If a contractor cannot or will not provide the lessor's purchase acquisition costs of assets leased by the contractor and the department is unable to determine historical purchase cost from another source, the appraised asset value of land, building, or equipment, determined by or through the department of general administration shall be adjusted, if necessary, by the department using the *Marshall and Swift Valuation Guide* to reflect the value at the lessor's acquisition date. If an appraisal has been prepared for leased assets and the assets subsequently sell in the first arms-length transaction since January 1, 1980, under subsection (9) of this section, the *Marshall and Swift Valuation Guide* will be used to adjust, if necessary, the asset value determined by the appraisal to the sale date. If the assets are located in a city for which the *Marshall and Swift Valuation Guide* publishes a specific index, or if the assets are located in a county containing that city, the city-specific index shall be used to adjust the appraised value of the asset. If the assets are located in a city or county for which a specific index is not calculated, the *Western District Index* calculated by Marshal and Swift shall be used.

(6) For all rate periods past or future, where depreciable assets or land are acquired from a related organization, the contractor's depreciation base and land cost basis shall not exceed the base and basis the related organization had or would have had under a contract with the department.

(7) ~~((If a contractor cannot or will not provide the lessor's purchase acquisition cost of assets leased by the contractor~~

and the department is unable to determine historical purchase cost from another source, the appraised asset value of land, building, or equipment, determined by or through the department of general administration shall be adjusted, if necessary, by the department using the *Marshall and Swift Valuation Guide* to reflect the value at the lessor's acquisition date. If an appraisal has been prepared for leased assets and the assets subsequently sell in the first arm's-length transaction since January 1, 1980, under subsection (9) of this section, the *Marshall and Swift Valuation Guide* will be used to adjust, if necessary, the asset value determined by the appraisal to the sale date. If the assets are located in a city for which the *Marshall and Swift Valuation Guide* publishes a specific index, or if the assets are located in a county containing that city, the city-specific index shall be used to adjust the appraised value of the asset. If the assets are located in a city or county for which a specific index is not calculated, the *Western District Index* calculated by Marshall and Swift shall be used)) If the land and depreciable assets of a newly constructed nursing facility were never used in or as a nursing facility before being purchased from the builder, the cost basis and the depreciation base shall be the lesser of:

(a) Documented actual cost of the builder; or

(b) The approved amount of the certificate of need issued to the builder. When the builder is unable or unwilling to document its cost, the cost basis and the depreciation base shall be the approved amount of the certificate of need.

(8) For new or replacement building construction or for substantial building additions requiring the acquisition of land and which commenced to operate on or after July 1, 1997, the department shall determine allowable land costs of the additional land acquired for the new or replacement construction or for substantial building additions to be the lesser of:

(a) The contractor's or lessor's actual cost per square foot; or

(b) The square foot land value as established by an appraisal that meets the latest publication of the *Uniform Standards of Professional Appraisal Practice (USPAP)* and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The department shall obtain a USPAP appraisal that meets FIRREA first from:

(i) An arms'-length lender that has accepted the ordered appraisal; or

(ii) If the department is unable to obtain from the arms'-length lender a lender-approved appraisal meeting USPAP and FIRREA standards or if the contractor or lessor is unable or unwilling to provide or cause to be provided a lender-approved appraisal meeting USPAP and FIRREA standards, then:

(A) The department shall order such an appraisal; and

(B) The contractor shall immediately reimburse the department for the costs incurred in obtaining the USPAP and FIRREA appraisal.

(9) Except as provided for in subsection (8) of this section, for all rates effective on or after January 1, 1985, if depreciable assets or land are acquired by purchase which were used in the medical care program on or after January 1, 1980, the depreciation base or cost basis of such assets shall not exceed the net book value existing at the time of such

acquisition or which would have existed had the assets continued in use under the previous medicaid contract with the department; except that depreciation shall not be accumulated for periods during which such assets were not used in the medical care program or were not in use in or as a nursing care facility.

(10)(a) Subsection (9) of this section shall not apply to the most recent arm's-length purchase acquisition if it occurs ten years or more after the previous arm's-length transfer of ownership nor shall subsection (9) of this section apply to the first arm's-length purchase acquisition of assets occurring on or after January 1, 1980, for facilities participating in the medicaid program before January 1, 1980. The depreciation base or cost basis for such acquisitions shall not exceed the lesser of the fair market value as of the date of purchase of the assets determined by an appraisal conducted by or through the department of general administration or the owner's acquisition cost of each asset, land, building, or equipment. An appraisal conducted by or through the department of general administration shall be final unless the appraisal is shown to be arbitrary and capricious. Should a contractor request a revaluation of an asset, the contractor must document ten years have passed since the most recent arm's-length transfer of ownership. As mandated by Section 2314 of the Deficit Reduction Act of 1984 (P.L. 98-369) and state statutory amendments, and under RCW 74.46.840, for all partial or whole rate periods after July 17, 1984, this subsection is inoperative for any transfer of ownership of any asset, including land and all depreciable or nondepreciable assets, occurring on or after July 18, 1984, leaving subsection (9) of this section to apply without exception to acquisitions occurring on or after July 18, 1984, except as provided in subsections (10)(b) and (11) of this section.

(b) For all rates after July 17, 1984, subsection (8)(a) shall apply, however, to transfers of ownership of assets:

(i) Occurring before January 1, 1985, if the costs of such assets have never been reimbursed under medicaid cost reimbursement on an owner-operated basis or as a related party lease; or

(ii) Under written and enforceable purchase and sale agreements dated before July 18, 1984, which are documented and submitted to the department before January 1, 1988.

(c) For purposes of medicaid cost reimbursement under this chapter, an otherwise enforceable agreement to purchase a nursing home dated before July 18, 1984, shall be considered enforceable even though the agreement contains:

(i) No legal description of the real property involved; or

(ii) An inaccurate legal description, notwithstanding the statute of frauds or any other provision of law.

(11)(a) In the case of land or depreciable assets leased by the same contractor since January 1, 1980, in an arm's-length lease, and purchased by the lessee/contractor, the lessee/contractor shall have the option to have the:

(i) Provisions of subsection (10) of this section apply to the purchase; or

(ii) Component rate allocations for property and financing allowance calculated under the provisions of this chapter and chapter 74.46 RCW. Component rate allocations will be based upon provisions of the lease in existence on the date of

the purchase, but only if the purchase date meets the criteria of ~~((RCW 74.46.360 (6)(c)(ii)(A) through (D)))~~ this subsection.

(b) The lessee/contractor may select the option in subsection (11)(a)(ii) of this section only when the purchase date meets one of the following criteria. The purchase date is:

(i) After the lessor has declared bankruptcy or has defaulted in any loan or mortgage held against the leased property;

(ii) Within one year of the lease expiration or renewal date contained in the lease;

(iii) After a rate setting for the facility in which the reimbursement rate set, under this chapter and under chapter 74.46 RCW, no longer is equal to or greater than the actual cost of the lease; or

(iv) Within one year of any purchase option in existence on January 1, 1988.

(12) For purposes of establishing the property and financing allowance component rate allocations, the value of leased equipment, if unknown by the contractor, may be estimated by the department using previous department of general administration appraisals as a data base. The estimated value may be adjusted using the *Marshall and Swift Valuation Guide* to reflect the value of the asset at the lessor's purchase acquisition date.

NEW SECTION

WAC 388-96-560 Land, improvements—Depreciation. Land is not depreciable. The cost of land includes but is not limited to, off-site sewer and water lines, public utility charges necessary to service the land, governmental assessments for street paving and sewers, the cost of permanent roadways and grading of a nondepreciable nature, and the cost of curbs and sidewalks, replacement of which is not the responsibility of the contractor.

AMENDATORY SECTION (Amending Order 2970, filed 4/17/90, effective 5/18/90)

WAC 388-96-561 Cost basis of land and depreciation base—Donated or inherited assets. (1) The historical cost ~~((basis or depreciation base of land or depreciable assets, either donated[,] or))~~ of depreciable and nondepreciable donated assets, or of depreciable and nondepreciable assets received through testate or intestate distribution, ((with)) shall be the lesser of:

(a) Fair market value at the date of donation or death ~~((less goodwill, provided the estimated salvage value shall be deducted from fair market value where the straight-line or sum-of-the-years-digits method of depreciation is used));~~ or

(b) The historical cost base of the owner last contracting with the department, if any.

(2) When the donation or distribution is between related organizations, the base shall be the lesser of:

(a) Fair market value, less goodwill and, where appropriate, salvage value; or

(b) The depreciation base or cost basis the related organization had or would have had for the asset under a contract with the department.

(3) Estimated salvage value of acquired, donated, or inherited assets shall be deducted from historical cost where the straight-line or sum-of-the-years' digits method of depreciation is used.

(4) Notwithstanding the provisions of subsections (1) and (2) of this section, for all rates after July 17, 1984, neither the depreciation base of depreciable assets nor the cost basis of land shall increase for reimbursement purposes if the asset is donated or acquired through testate or intestate distribution on or after July 18, 1984, the enactment date of the Deficit Reduction Act of 1984.

NEW SECTION

WAC 388-96-562 Depreciable assets—Disposed—Retired. (1) Where depreciable assets are disposed of through sale, trade-in, scrapping, exchange, theft, wrecking, fire, or other casualty, depreciation shall no longer be taken on the assets. No further depreciation shall be taken on permanently abandoned assets.

(2) Where an asset has been retired from active use but is being held for stand-by or emergency service, and the department has determined that it is needed and can be effectively used in the future, depreciation may be taken.

NEW SECTION

WAC 388-96-564 Methods of depreciation. (1) Buildings, land improvements, and fixed equipment shall be depreciated using the straight-line method of depreciation. For new or replacement building construction or for major renovations, either of which receives certificate of need approval or certificate of need exemption under chapter 70.38 RCW on or after July 1, 1999, the number of years used to depreciate fixed equipment shall be the same number of years as the life of the building to which it is affixed. Major-minor equipment shall be depreciated using either the straight-line method, the sum-of-the-years' digits method, or declining balance method not to exceed one hundred fifty percent of the straight line rate. Contractors who have elected to take either the sum-of-the-years' digits method or the declining balance method of depreciation on major-minor equipment may change to the straight-line method without permission of the department.

(2) The annual provision for depreciation shall be reduced by the portion allocable to use of the asset for purposes which are neither necessary nor related to patient care.

(3) No further depreciation shall be claimed after an asset has been fully depreciated unless a new depreciation base is established pursuant to WAC 388-96-559.

AMENDATORY SECTION (Amending WSR 99-24-084, filed 11/30/99, effective 12/31/99)

WAC 388-96-565 Lives. (1)(a) New buildings, replacement buildings, major remodels, and major repair projects are those projects that meet or exceed the expenditure minimum established by the department of health pursuant to chapter 70.38 RCW. Except for new buildings replacement buildings, major remodels and major repair projects ~~((as defined in subsection (5) of this section)), ((to))~~ the contractor will compute allowable depreciation ~~((the contractor must use))~~ using

lives (~~(reflecting)~~) that reflect the estimated actual useful life of the assets (e.g., land improvements, buildings, including major remodels and major repair projects, equipment, leasehold improvements, etc.). However the lives used must not be shorter than guidelines lives in the most current edition of *Estimated Useful Lives of Depreciable Hospital Assets* published by American Hospital Publishing, Inc.

(b) Lives shall be measured from the date on which the assets were first used in the medical care program or from the date of the most recent arms-length acquisition of the asset, whichever is more recent. In cases where WAC 388-96-559(9) and (10) does apply, the shortest life that may be used for buildings is the remaining useful life under the prior contract. In all cases, lives shall be extended to reflect periods, if any, when assets were not used in or as a facility.

(2) For asset acquisitions and new facilities, major remodels, and major repair projects that begin operations on or after July 1, 1997, the department shall use the most current edition of estimated useful lives of depreciable hospital assets, or as it may be renamed, published by the American Hospital Publishing, Inc., an American hospital association company, for determining the useful life of new buildings, major remodels, and major repair projects, however, the shortest life that may be used for new buildings receiving certificate of need approval or certificate of need exemptions under chapter 70.38 RCW on or after July 1, 1999, is forty years. New buildings, major remodels, and major repair projects include those projects that meet or exceed the expenditure minimum established by the department of health pursuant to chapter 70.38 RCW.

(a) To compute allowable depreciation for major remodels and major repair projects ((as defined in subsection (5) of this section that began operating:

(a)) before July 1, 1997, the contractor must use the shortest lives in the most recently published lives for construction classes as defined and described in the *Marshall Valuation Service* published by the Marshall Swift Publication Company; ((a)) and

(b) ((After July 1, 1997, the contractor must use the shortest lives of the guideline lives in the most current edition of *Estimated Useful Lives of Depreciable Hospital Assets* published by American Hospital Publishing, Inc)) To compute allowable depreciation for new buildings and replacement buildings that began operating before July 1, 1997, the contractor must use the construction classes as defined and described in *Marshall Valuation Service* published by the Marshall Swift Publication Company; provided that, thirty years is the shortest life that may be used.

(3) ((To compute allowable depreciation for new buildings and replacement buildings as defined in subsection (5) of this section that:

(a) Began operating before July 1, 1997, the contractor must use the construction classes as defined and described in *Marshall Valuation Service* published by the Marshall Swift Publication Company; provided that, thirty years is the shortest life that may be used;

(b) Began operating on or after July 1, 1997, the contractor must use the most current edition of *Estimated Useful Lives of Depreciable Hospital Assets* published by American

Hospital Publishing, Inc.; provided that, thirty years is shortest life that may be used; and

(e) Received certificate of need approval or certificate of need exemptions under chapter 70.38 RCW on or after July 1, 1999, the contractor must use the most current edition of *Estimated Useful Lives of Depreciable Assets* published by American Hospital Publishing, Inc.; provided that, forty years is the shortest life that may be used.

(4)) To compute allowable depreciation, the contractor must:

(a) Measure lives from the most recent of either the date on which the assets were first used in the medical care program or the last date of purchase of the asset through an arm's-length acquisition; and

(b) Extend lives to reflect periods, if any, during which assets were not used in a nursing facility or as a nursing facility.

((5) New buildings, replacement buildings, major remodels, and major repair projects are those projects that meet or exceed the expenditure minimum established by the department of health pursuant to chapter 70.38 RCW.

(6)) (4) Contractors shall depreciate building improvements other than major remodels and major repairs ((defined in subsection (5) of this section)) over the remaining useful life of the building, as modified by the improvement, but not less than fifteen years.

((7)) (5) Improvements to leased property which are the responsibility of the contractor under the terms of the lease shall be depreciated over the useful life of the improvement in accordance with American Hospital Association guidelines.

((8)) (6) A contractor may change the estimate of an asset's useful life to a longer life for purposes of depreciation.

((9)) (7) For new or replacement building construction or for major renovations ((receiving)), either of which receives certificate of need approval or certificate of need exemption under chapter 70.38 RCW on or after July 1, 1999, the ((department will)) number of years used to depreciate fixed equipment shall be the same number of years as the life of the building to which it is affixed.

NEW SECTION

WAC 388-96-574 New or replacement construction—Property tax increases. If a contractor experiences an increase in state or county property taxes as a result of new building construction, replacement building construction, or substantial building additions that require the acquisition of land, then the department shall adjust the contractor's prospective rates to cover the medicaid share of the tax increase. The rate adjustments shall only apply to construction and additions completed on or after July 1, 1997. The rate adjustments authorized by this section are effective on the first day of the month following the month that the increased tax payment is due. Rate adjustments made under this section are subject to all applicable cost limitations contained in this chapter and chapter 74.46 RCW.

AMENDATORY SECTION (Amending WSR 99-24-084, filed 11/30/99, effective 12/31/99)

WAC 388-96-585 Unallowable costs. (1) ~~((The department shall not allow costs if not documented, necessary, ordinary, and related to the provision of care services to authorized patients.))~~ Unallowable costs listed in subsection (2) of this section represent a partial summary of such costs, in addition to those unallowable under chapter 74.46 RCW and this chapter.

(2) ~~((The department shall))~~ Unallowable costs include(;) but are not ((limit, unallowable costs)) limited to the following:

(a) ~~((Costs in excess of limits or violating principles set forth in this chapter;~~

~~(b) Costs resulting from transactions or the application of accounting methods circumventing principles set forth in this chapter;~~

~~(c) Bad debts. Beginning July 1, 1983, the department shall allow bad debts of Title XIX recipients only if:~~

~~(i) The debt is related to covered services;~~

~~(ii) It arises from the recipient's required contribution toward the cost of care;~~

~~(iii) The provider can establish reasonable collection efforts were made;~~

~~(iv) The debt was actually uncollectible when claimed as worthless; and~~

~~(v) Sound business judgment established there was no likelihood of recovery at any time in the future.~~

~~Reasonable collection efforts shall consist of at least three documented attempts by the contractor to obtain payment demonstrating that the effort devoted to collecting the bad debts of Title XIX recipients is the same devoted by the contractor to collect the bad debts of non-Title XIX recipients;~~

~~(d) Any portion of trade association dues attributable to legal and consultant fees and costs in connection with lawsuits or other legal action against the department shall be unallowable;~~

~~(e) Legal and consultant fees in connection with a fair hearing against the department relating to those issues where:~~

~~(i) A final administrative decision is rendered in favor of the department or where otherwise the determination of the department stands at the termination of administrative review; or~~

~~(ii) In connection with a fair hearing, a final administrative decision has not been rendered; or~~

~~(iii) In connection with a fair hearing, related costs are not reported as unallowable and identified by fair hearing docket number in the period they are incurred if no final administrative decision has been rendered at the end of the report period; or~~

~~(iv) In connection with a fair hearing, related costs are not reported as allowable, identified by docket number, and prorated by the number of issues decided favorably to a contractor in the period a final administrative decision is rendered;~~

~~(f) All interest costs not specifically allowed in this chapter or chapter 74.46 RCW; and~~

~~(g) Increased costs resulting from a series of transactions between the same parties and involving the same assets, e.g.,~~

~~sale and lease back, successive sales or leases of a single facility or piece of equipment)) costs of items or services not covered by the medical care program. Costs of such items or services will be unallowable even if they are indirectly reimbursed by the department as the result of an authorized reduction in patient contribution:~~

~~(b) Costs of services and items provided to recipients which are covered by the medical care program but not included in the medicaid per-resident day payment rate established under this chapter and chapter 74.46 RCW;~~

~~(c) Costs associated with a capital expenditure subject to section 1122 approval (part 100, Title 42 C.F.R.) if the department found it was not consistent with applicable standards, criteria, or plans. If the department was not given timely notice of a proposed capital expenditure, all associated costs will be unallowable up to the date they are determined to be reimbursable under applicable federal regulations;~~

~~(d) Costs associated with a construction or acquisition project requiring certificate of need approval, or exemption from the requirements for certificate of need for the replacement of existing nursing home beds, pursuant to chapter 70.38 RCW if such approval or exemption was not obtained;~~

~~(e) Interest costs other than those provided by WAC 388-96-556(4) on and after January 1, 1985;~~

~~(f) Salaries or other compensation of owners, officers, directors, stockholders, partners, principals, participants, and others associated with the contractor or its home office, including all board of directors' fees for any purpose, except reasonable compensation paid for service related to patient care;~~

~~(g) Costs in excess of limits or in violation of principles set forth in this chapter;~~

~~(h) Costs resulting from transactions or the application of accounting methods which circumvent the principles of the payment system set forth in this chapter and chapter 74.46 RCW;~~

~~(i) Costs applicable to services, facilities, and supplies furnished by a related organization in excess of the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere;~~

~~(j) Bad debts of nonTitle XIX recipients. Bad debts of Title XIX recipients are allowable only when:~~

~~(i) The debt is related to covered services;~~

~~(ii) It arises from the recipient's required contribution toward the cost of care;~~

~~(iii) The provider can establish reasonable collection efforts were made. Reasonable collection efforts shall consist of at least three documented attempts by the contractor to obtain payment demonstrating that the effort devoted to collecting the bad debts of Title XIX recipients is the same devoted by the contractor to collect the bad debts of nonTitle XIX recipients;~~

~~(iv) The debt was actually uncollectible when claimed as worthless; and~~

~~(v) Sound business judgment established there was no likelihood of recovery at any time in the future.~~

~~(k) Charity and courtesy allowances;~~

~~(l) Cash, assessments, or other contributions, excluding dues, to charitable organizations, professional organizations,~~

trade associations, or political parties, and costs incurred to improve community or public relations;

(m) Vending machine expenses;

(n) Expenses for barber or beautician services not included in routine care;

(o) Funeral and burial expenses;

(p) Costs of gift shop operations and inventory;

(q) Personal items such as cosmetics, smoking materials, newspapers and magazines, and clothing, except those used in patient activity programs;

(r) Fund-raising expenses, except those directly related to the patient activity program;

(s) Penalties and fines;

(t) Expenses related to telephones, radios, and similar appliances in patients' private accommodations;

(u) Televisions acquired prior to July 1, 2001;

(v) Federal, state, and other income taxes;

(w) Costs of special care services except where authorized by the department;

(x) Expenses of an employee benefit not in fact made available to all employees on an equal or fair basis, for example, key-man insurance and other insurance or retirement plans;

(y) Expenses of profit-sharing plans;

(z) Expenses related to the purchase and/or use of private or commercial airplanes which are in excess of what a prudent contractor would expend for the ordinary and economic provision of such a transportation need related to patient care;

(aa) Personal expenses and allowances of any nursing home employees or owners or relatives of any nursing home employees or owners;

(bb) All expenses of maintaining professional licenses or membership in professional organizations;

(cc) Costs related to agreements not to compete;

(dd) Amortization of goodwill, lease acquisition, or any other intangible asset, whether related to resident care or not, and whether recognized under generally accepted accounting principles or not;

(ee) Expenses related to vehicles which are in excess of what a prudent contractor would expend for the ordinary and economic provision of transportation needs related to patient care;

(ff) Legal and consultant fees in connection with a fair hearing against the department when the department's Board of Appeals upholds the department's actions in an administrative review decision. When the administrative review decision is pending, reported legal and consultant fees will be unallowable. To be allowable, the contractor must report legal and consultant fees related to an administrative review decision issued in the contractor's favor in the cost report period in which the Board of Appeals issues its decision irrespective of when the legal and consultant fees related to the administrative review were incurred;

(gg) Legal and consultant fees of a contractor or contractors in connection with a lawsuit against the department;

(hh) Lease acquisition costs, goodwill, the cost of bed rights, or any other intangible assets;

(ii) All rental or lease costs other than those provided for in WAC 388-96-580;

(jj) Postsurvey charges incurred by the facility as a result of subsequent inspections under RCW 18.51.050 which occur beyond the first postsurvey visit during the certification survey calendar year;

(kk) Compensation paid for any purchased nursing care services, including registered nurse, licensed practical nurse, and nurse assistant services, obtained through service contract arrangement in excess of the amount of compensation paid for such hours of nursing care service had they been paid at the average hourly wage, including related taxes and benefits, for in-house nursing care staff of like classification at the same nursing facility, as reported in the most recent cost report period;

(ll) For all partial or whole rate periods after July 17, 1984, costs of land and depreciable assets that cannot be reimbursed under the Deficit Reduction Act of 1984 and implementing state statutory and regulatory provisions;

(mm) Costs reported by the contractor for a prior period to the extent such costs, due to statutory exemption, will not be incurred by the contractor in the period to be covered by the rate;

(nn) Costs of outside activities, for example, costs allocated to the use of a vehicle for personal purposes or related to the part of a facility leased out for office space;

(oo) Travel expenses outside the states of Idaho, Oregon, and Washington and the province of British Columbia. However, travel to or from the home or central office of a chain organization operating a nursing facility is allowed whether inside or outside these areas if the travel is necessary, ordinary, and related to resident care;

(pp) Moving expenses of employees in the absence of demonstrated, good-faith effort to recruit within the states of Idaho, Oregon, and Washington, and the province of British Columbia;

(qq) Depreciation in excess of four thousand dollars per year for each passenger car or other vehicle primarily used by the administrator, facility staff, or central office staff;

(rr) Costs for temporary health care personnel from a nursing pool not registered with the secretary of the department of health;

(ss) Payroll taxes associated with compensation in excess of allowable compensation of owners, relatives, and administrative personnel;

(tt) Costs and fees associated with filing a petition for bankruptcy;

(uu) All advertising or promotional costs, except reasonable costs of help wanted advertising;

(vv) Outside consultation expenses required to meet department-required minimum data set completion proficiency;

(ww) Interest charges assessed by any department or agency of this state for failure to make a timely refund of overpayments and interest expenses incurred for loans obtained to make the refunds;

(xx) All home office or central office costs, whether on or off the nursing facility premises, and whether allocated or not to specific services, in excess of the median of those adjusted costs for all facilities reporting such costs for the most recent report period;

(yy) Tax expenses that a nursing facility has never incurred;

(zz) Effective July 1, 2007, and for all future rate settings, any costs associated with the quality maintenance fee repealed by chapter 241, Laws of 2006;

(aaa) Any portion of trade association dues attributable to legal and consultant fees and costs in connection with lawsuits or other legal action against the department shall be unallowable; and

(bbb) Increased costs resulting from a series of transactions between the same parties and involving the same assets (e.g., sale and lease back, successive sales or leases of a single facility or piece of equipment).

AMENDATORY SECTION (Amending WSR 04-21-027, filed 10/13/04, effective 11/13/04)

WAC 388-96-708 ~~((Reinstatement of beds previously))~~ **Beds removed from service under chapter 70.38 RCW, new beds approved under chapter 70.38 RCW, and beds permanently relinquished—Effect on prospective payment rate.** (1) ~~((After removing))~~ When a contractor removes beds from service (banked) under the provisions of chapter 70.38 RCW, the ((contractor may bring back into service beds that were previously)) **number of licensed beds used in rate determinations under this chapter and chapter 74.46 RCW will not be reduced by the number of beds banked.**

~~(2)(a) ((When the contractor returns to service beds banked under the provisions of chapter 70.38 RCW,))~~ Effective July 1, 2010, licensed beds include any beds banked under chapter 70.38 RCW and thus, the department will ((recalculate)) **calculate** the contractor's prospective medicaid payment rate allocations using the greater of actual days from the cost report period on which the rate is based or days calculated by multiplying the ((new)) **number of licensed beds including banked beds** times the appropriate minimum occupancy pursuant to **this chapter and chapter 74.46 RCW** times the number of calendar days in the cost report period on which the rate being ((recalculated)) **calculated** is based.

(b) For all nursing facilities, occupancy is based on licensed beds, regardless of how many are set up or in use. For purposes of calculating minimum occupancy, licensed beds include any beds banked under chapter 70.38 RCW. For all nursing facilities, minimum facility occupancy of licensed beds for operations, property, and financing allowance component rate allocations shall be:

(i) Essential community providers - eighty-five percent;

(ii) Small nonessential community providers - ninety percent;

(iii) Large nonessential community providers - ninety-two percent.

(c) For all nursing facilities, minimum facility occupancy of licensed beds for therapy and support services component rate allocations shall be eighty-five percent. For all nursing facilities, minimum facility occupancy of licensed beds for direct care component rate allocations shall be based upon actual facility occupancy.

~~(3) ((The effective date of the recalculated prospective rate for beds returned to service shall be the first of the~~

~~month))~~ For the purpose of rates determination, when a contractor:

~~(a) ((In which the banked beds returned to service when the beds are returned to service on the first of the month))~~ Permanently relinquishes banked beds or some of its licensed beds, the department will reduce the number of licensed beds by the number of beds relinquished; or

~~(b) ((Following the month in which the banked beds returned to service when the beds are returned to service after the first of the month))~~ Acquires new beds under chapter 70.38 RCW, the department will increase the number of licensed beds by the number of new beds.

~~(4) ((The recalculated))~~ Prospective payment rate shall comply with all the provisions of rate setting contained in chapter 74.46 RCW or in this chapter, including all lids and maximums unless otherwise specified in this section.

~~(5) ((The recalculated))~~ Prospective medicaid payment rate shall be subject to adjustment if required by RCW 74.46.421.

~~((6) After the department recalculates the contractor's prospective medicaid component rate allocations using the increased number of licensed beds, the department will use the increased number of licensed beds in all post unbanking rate settings, until under chapter 74.46 RCW and/or this chapter, the post unbanking number of licensed beds changes.))~~

AMENDATORY SECTION (Amending WSR 04-21-027, filed 10/13/04, effective 11/13/04)

WAC 388-96-709 Prospective rate revisions—Reduction in licensed beds by means other than "banking" pursuant to chapter 70.38 RCW. (1) For the purpose of minimum occupancy calculation banked beds are included in the number of licensed beds. The department will recalculate a contractor's prospective medicaid payment rate when the contractor permanently reduces the number of its licensed beds and:

(a) Provides a copy of the new bed license ((and)), if issued, documentation of the number of beds sold, exchanged or otherwise placed out of service, along with the name of the contractor that received the beds, if any, and the letter from the department of health (DOH) confirming the number of beds relinquished and the date they were relinquished; and

(b) Requests a rate revision.

~~(2) ((For facilities other than essential community providers which bank beds under chapter 70.38 RCW, after May 25, 2001,))~~ The department will revise medicaid rates ((shall be revised upward,)) in accordance with ((department rules, in direct care, therapy care, support services, and variable return components only, by)) **this chapter and chapter 74.46 RCW** using the facility's decreased licensed bed capacity to ((recalculate)) **calculate** minimum occupancy for rate setting. ((No rate upward revision shall be made to operations, property, or financing allowance.))

~~(3) ((The requested revised prospective medicaid payment rate will be effective the first of the month.))~~

~~(a) ((The new license is effective))~~ When the new license is effective the first day of the month or when the DOH letter confirms the beds were relinquished the first day of the

month, the revised prospective payment rate will be effective the first day of the month; or

(b) ((Following)) When the new license is effective after the first day of the month or when the DOH letter confirms the beds were relinquished after the first day of the month, the revised prospective payment rate will be effective the first day of the month following the month the new license ((is)) was effective ((when the new license is effective after the first day of the month it is issued)) or the DOH letter confirmed beds were relinquished after the first day of the month.

(4)(a) The department will recalculate a nursing facility's prospective medicaid payment rate allocations using the greater of actual days from the cost report period on which the rate is based or days calculated by multiplying the new number of licensed beds including banked bed times the appropriate minimum occupancy pursuant to this chapter and chapter 74.46 RCW times the number of calendar days in the cost report period on which the rate being recalculated is based.

(b) For all nursing facilities, occupancy is based on licensed beds, regardless of how many are set up or in use. For purposes of calculating minimum occupancy, licensed beds include any beds banked under chapter 70.38 RCW. For all nursing facilities, minimum facility occupancy of licensed beds for operations, property, and financing allowance component rate allocations shall be:

(i) Essential community providers - eighty-five percent.

(ii) Small nonessential community providers - ninety percent.

(iii) Large nonessential community providers - ninety-two percent.

(c) For all nursing facilities, minimum facility occupancy of licensed beds for therapy and support services component rate allocations shall be eighty-five percent. For all nursing facilities, minimum facility occupancy of licensed beds for direct care component rate allocations shall be based upon actual facility occupancy.

(5) The revised prospective medicaid payment rate will comply with all the provisions of rate setting contained in chapter 74.46 RCW and in this chapter, including all lids and maximums, unless otherwise specified in this section.

~~(((6) After the department recalculates the contractor's prospective medicaid component rate allocations using the decreased number of licensed beds, the department will use the decreased number of licensed beds in all post banking rate settings, until under chapter 74.46 RCW and/or this chapter, the post banking number of licensed beds changes.))~~

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

WAC 388-96-747 Constructed, remodeled or expanded facilities. (1) When a facility is constructed, remodeled, or expanded after obtaining a certificate of need or exemption from the requirements for certificate of need for the replacement of existing nursing home beds pursuant to RCW 70.38.115 (13)(a), the department shall determine actual and allocated allowable land cost and building construction cost. Payment for such allowable costs, determined

pursuant to the provisions of this chapter, shall not exceed the maximums set forth in this subsection (~~and in subsections (2) and (7) of this section~~). The department shall determine construction class and types through examination of building plans submitted to the department and/or on-site inspections. The department shall use definitions and criteria contained in the Marshall and Swift Valuation Service published by the Marshall and Swift Publication Company. Buildings of excellent quality construction shall be considered to be of good quality, without adjustment, for the purpose of applying these maximums.

(2) Construction costs shall be final labor, material, and service costs to the owner or owners and shall include:

(a) Architect's fees;

(b) Engineers' fees (including plans, plan check and building permit, and survey to establish building lines and grades);

(c) Interest on building funds during period of construction and processing fee or service charge;

(d) Sales tax on labor and materials;

(e) Site preparation (including excavation for foundation and backfill);

(f) Utilities from structure to lot line;

(g) Contractors' overhead and profit (including job supervision, workmen's compensation, fire and liability insurance, unemployment insurance, etc.);

(h) Allocations of costs which increase the net book value of the project for purposes of medicaid payment;

(i) Other items included by the Marshall and Swift Valuation Service when deriving the calculator method costs.

(3) The department shall allow such construction costs, at the lower of actual costs or the maximums derived from the sum of the basic construction cost limit plus the common use area limit which corresponds to the type, class and number of total nursing home beds for the new construction, remodel or expansion. The maximum limits shall be calculated using the most current cost criteria contained in the *Marshall and Swift Valuation Service* and shall be adjusted forward to the mid-point date between award of the construction contract and completion of construction.

(4) When some or all of a nursing facility's common-use areas are situated in a basement, the department shall exclude some or all of the per-bed allowance for common-use areas to derive the construction cost lid for the facility. The amount excluded will be equal to the ratio of basement common-use areas to all common-use areas in the facility times the common-use area limits determined in accordance with subsection (3) of this section. In lieu of the excluded amount, the department shall add an amount calculated using the calculator method guidelines for basements in nursing homes published in the *Marshall and Swift Valuation Service*.

(5) Subject to provisions regarding allowable land contained in this chapter, allowable costs for land shall be the lesser of:

(a) Actual cost per square foot, including allocations;

(b) The average per square foot land value of the ten nearest urban or rural nursing facilities at the time of purchase of the land in question. The average land value sample shall reflect either all urban or all rural facilities depending upon the classification of urban or rural for the facility in

question. The values used to derive the average shall be the assessed land values which have been calculated for the purpose of county tax assessments; or

(c) Land value for new or replacement building construction or substantial building additions requiring the acquisition of land that commenced to operate on or after July 1, 1997, determined in accordance with ~~((RCW 74.46.360 (2) and (3)))~~ WAC 388-96-559 (8), (9) and (10).

(6) If allowable costs for construction or land are determined to be less than actual costs pursuant to subsections (1) and (7) of this section, the department may increase the amount if the owner or contractor is able to show unusual or unique circumstances having substantially impacted the costs of construction or land. Actual costs shall be allowed to the extent they resulted from such circumstances up to a maximum of ten percent above levels determined under subsections (3), (4), and (5) of this section for construction or land. An adjustment under this subsection shall be granted only if requested by the contractor. The contractor shall submit documentation of the unusual circumstances and an analysis of its financial impact with the request.

(7) ~~((#))~~ When a capitalized addition or retirement of an asset will result in an increased licensed bed capacity during the calendar year following the capitalized addition or replacement, the department shall use ~~((the facility's anticipated resident occupancy level subsequent to the increase in licensed bed capacity as long as the occupancy for the increased number of beds is at or above eighty-five percent. Subject to the provisions of this chapter and chapter 74.46 RCW, in no case shall the department use less than eighty-five percent occupancy of the facility's increased licensed bed capacity))~~ minimum facility occupancy of licensed beds for operations, property, and financing allowance component rate allocations of:

(a) Eighty-five percent for essential community providers;

(b) Ninety percent for small nonessential community providers; or

(c) Ninety-two percent for large nonessential community providers.

If a capitalized addition, replacement, or retirement results in a decreased licensed bed capacity, WAC 388-96-709 will apply.

AMENDATORY SECTION (Amending WSR 99-24-084, filed 11/30/99, effective 12/31/99)

WAC 388-96-748 Financing allowance component rate allocation. (1) ~~((Beginning July 1, 1999;))~~ For each medicaid nursing facility, the department will establish a financing allowance component rate allocation. The financing allowance component rate allocation will be rebased annually, effective July 1st, in accordance with this chapter and chapter 74.46 RCW. Effective July 1, 2010, for the purpose of calculating minimum occupancy, licensed beds include the nursing facility's banked beds.

(2) The department will determine the financing allowance component rate allocation by:

(a) Multiplying the net invested funds of each nursing facility by the applicable factor identified in subsection (3) of this section; and

(b) Dividing the sum of the products by the greater of:

(i) A nursing facility's total resident days from the most recent cost report period; or

(ii) Resident days calculated on:

(A) Eighty-five percent facility occupancy for essential community providers;

(B) Ninety percent facility occupancy for small nonessential community providers; and

(C) Ninety-two percent facility occupancy for large nonessential providers.

(3)(a) The multiplication factor required by subsection (2) (a) of this section is determined by the acquisition date of the tangible fixed asset(s). For each nursing facility, the department will multiply the net invested funds for assets acquired:

(i) Before May 17, 1999 by a factor of .10; and/or

(ii) On or after May 17, 1999 by a factor of .085.

(b) The department will apply the factor of .10 to the net invested funds pertaining to new construction or major renovations:

(i) That received certificate of need approval before May 17, 1999;

(ii) That received an exemption from certificate of need requirements under chapter 70.38 RCW before May 17, 1999; or

(iii) For which the nursing facility submitted working drawings to the department of health for construction review before May 17, 1999.

(c) For a new contractor as defined under WAC 388-96-026 (1)(c), assets acquired from the former contractor will retain their initial acquisition dates when determining the new contractor's financing allowance under this section.

(4) In computing the portion of net invested funds representing the net book value of tangible fixed assets, the same assets, depreciation bases, lives, and methods referred to in WAC 388-96-555, 388-96-559, 388-96-561, 388-96-562, 388-96-564 and 388-96-565, including owned and leased assets, shall be utilized, except that the capitalized cost of land upon which the facility is located and such other contiguous land which is reasonable and necessary for use in the regular course of providing resident care shall also be included. Subject to provisions and limitations contained in this chapter, for land purchased by owners or lessors before July 18, 1984, capitalized cost of land shall be the buyer's capitalized cost. For all partial or whole rate periods after July 17, 1984, if the land is purchased after July 17, 1984, capitalized cost shall be that of the owner of record on July 17, 1984, or buyer's capitalized cost, whichever is lower. In the case of leased facilities where the net invested funds are unknown or the contractor is unable to provide necessary information to determine net invested funds, the secretary shall have the authority to determine an amount for net invested funds based on an appraisal conducted according to WAC 388-96-559 and 388-96-561.

(5) The financing allowance rate allocation calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421.

AMENDATORY SECTION (Amending WSR 09-08-081, filed 3/30/09, effective 4/30/09)

WAC 388-96-758 Add-on for low-wage workers. (1) ~~((Under section 206, chapter 329, Laws of 2008, effective July 1, 2008;))~~ The department will grant a low wage add-on payment not to exceed one dollar and fifty-seven cents per resident day to any nursing home provider that has indicated a desire to receive the add-on ~~((by May 30, 2008))~~ pursuant to subsection (7) of this section. A nursing home may use the add-on only for in-house staff and not for allocated, home office, or purchased service increases. A nursing home may use the add on to:

(a) Increase wages, benefits, and/or staffing levels for certified nurse aides;

(b) Increase wages and/or benefits but not staffing levels for dietary aides, housekeepers, laundry aides, or any other category of worker whose statewide average dollars-per-hour wage was less than fifteen dollars in calendar year ~~((2006))~~ 2008, according to cost report data. The department has determined that the additional categories of workers qualifying under this standard are:

- (i) Activities directors and assistants;
- (ii) Patient choices coordinators;
- (iii) Central supply/ward clerks;
- (iv) Expanded community service workers; and
- (v) Social workers; and

(c) Address wage compression for related job classes immediately affected by wage increases to low-wage workers.

(2) A nursing home that ~~((received effective July 1, 2008))~~ receives a low-wage add-on ~~((under chapter 329, Laws of 2008))~~ shall report to the department its expenditure of that add-on by:

(a) Completing Cost Report Schedule L 1; and

(b) Returning it to the department by January 31 ~~((; 2009))~~.

(3) By examining Cost Report Schedule L 1, the department will determine whether the nursing home complied with the statutory requirements for distribution of the low wage add-on. When the department is unable to determine or unsure that the statutory requirements have been met, it will conduct an on site audit.

(4) When the department determines that the statutory requirements have been met, the low wage add-on will be reconciled at the same time as the regular settlement process but as a separate reconciliation. The reconciliation process will compare gross dollars received in the add-on to gross dollars spent.

(5) When the department determines that the low wage add-on has not been spent in compliance with the statutory requirements, then it will recoup the noncomplying amount as an overpayment.

(6) The department also will require the completing of Cost Report Schedule L 1 for any calendar year in which the low wage add-on is paid for six months or more. Subsections (1) through (5) of this section will apply to all completions of Cost Report Schedule L 1 irrespective of the calendar year in which it is paid.

(7) ~~((If the legislature extends the low wage worker add-on in the state fiscal year 2010 budget, nursing home provid-~~

~~ers will have the opportunity again to elect whether they wish to receive the add-on in their July 1, 2009 rates))~~ Each May of the calendar year, the department will ask nursing home contractors whether they will want to continue to receive the add-on or begin to receive the add-on. For nursing home contractors responding by May 31st indicating a desire to receive the low wage worker add-on, the department will pay them the low wage add-on effective July 1st. For nursing home contractors that do not respond by May 31st indicating a desire to receive the low wage worker add-on, the department will cease or not begin paying them the low wage add-on effective July 1st.

AMENDATORY SECTION (Amending WSR 09-08-081, filed 3/30/09, effective 4/30/09)

WAC 388-96-759 Standards for low-wage workers add-on. (1) In accordance with WAC 388-96-758, the low-wage worker add-on must be used to provide increases in wages or benefits, or to address resulting wage compression beginning on or after the date on which the add-on is first included in the rate. ~~((For the first year, that date is July 1, 2008. It))~~ The low wage add-on may be used to increase staffing levels for certified nurse aides only. ((The)) Nursing home contractors receiving the low wage add-on may not ((be used after July 1)) use it to pay for increases ((beginning before that date)) for time periods that they were not receiving the low wage worker add-on.

(2) Any type of traditional employee benefit is allowable. Such benefits typically fall in one of two categories: retirement, and life or health insurance. However, nontraditional benefits are also allowable (for example, wellness benefits, subsidized meals, or assistance with daycare).

(3) The employer's share of payroll taxes associated with wages and benefits may be covered with the add-on.

(4) For purposes of wage compression, an "immediately affected" job class is one that is related to the low-wage worker category, either in the organizational structure (for example, it supervises the low-wage worker category) or by existing practice (for example, the facility has a benchmark of paying that job class a certain percentage more than the low-wage worker category). Facilities must be able to explain the basis of the relationship if requested. Because the statute refers to "resulting wage compression," a facility must use a portion of the add-on to increase wages or benefits before it may use any of the add-on to address any wage compression caused by such increase.

(5) A facility may use the add-on in relation to any of the job categories listed in WAC 388-96-758, regardless of whether the average wage it pays to its own employees is above fifteen dollars per hour, either before or after including the additional wages funded by the add-on.

(6) Wages or benefits, including employee bonuses, otherwise properly paid with the add on will not be considered as unallowable costs per RCW 74.46.410 (2)(x).

(7) The low wage add-on payments calculated in accordance with WAC 388-96-758 and this section shall be adjusted to the extent necessary to comply with RCW 74.46.421.

AMENDATORY SECTION (Amending WSR 04-21-027, filed 10/13/04, effective 11/13/04)

WAC 388-96-766 Notification. (1)(a) The contractor must inform the department of its current electronic mail (e-mail) address at which it wants to receive rate notifications. It is the responsibility of the contractor to inform the department of any changes to the e-mail address at which it wants to receive notice of the department's actions. The department will notify each contractor (~~in writing~~) by email using the contractor's supplied email address of its prospective medicaid payment rate allocation and any actions that result in a change to the contractor's prospective medicaid payment rate allocation. The date of the department's notification e-mail will be used to determine whether the notification and the contractor's response met any legal requirements.

(b) When the contractor seeks to appeal or take exception to a department action taken under authority of this chapter or chapter 74.46 RCW and eligible for administrative review under WAC 388-96-901, it shall comply with WAC 388-96-904 when requesting an administrative review conference.

(2)(a) Unless otherwise specified at the time it is issued, the medicaid payment rate allocation and/or component rate allocation(s) will be effective from the first day of the month in which it (they) is (are) issued. When the department amends a medicaid payment rate allocation and/or component rate allocation(s) as the result of an appeal in accordance with WAC 388-96-904, the amended rate will have the same effective date as the appealed rate.

~~((2)(b))~~ (b) When a total medicaid component payment rate allocation and/or rate allocation(s) is (are) adjusted, updated or amended after the calendar year in which the adjustment or update was effective, then the department will account for any amounts owed through the settlement process.

(3)(a) When the department has sent written notice by post, it shall deem the contractor to have received the department's notice five calendar days after the date of the notification letter, unless proof of the date of receipt of the department's notification letter exists, in which case the actual date of receipt shall be used. Proof of date of receipt of department's notification must be from an independent source that has no stake in the outcome.

(b) When the department has sent notice by certified letter, the department shall deem the contractor to have received the department's notice five calendar days after the date the U.S. Post Office first attempts to deliver the certified letter containing the notice of the department's action(s).

AMENDATORY SECTION (Amending WSR 04-21-027, filed 10/13/04, effective 11/13/04)

WAC 388-96-776 Add-ons to the property and financing allowance payment rate—Capital improvements. (1) For new or replacement building construction or major renovation projects begun after July 1, 2001, the contractor must have a certificate of capital authorization (CCA) issued pursuant to WAC 388-96-783 and chapter 74.46 RCW.

(2)(a) Beginning July 1, 2001, the department shall grant an add-on to a prospective payment rate for capitalized improvements done under RCW 74.46.431(12) for all new or replacement building construction or major renovation projects; provided, the department granted the contractor a certificate of capital authorization (CCA) pursuant to WAC 388-96-783 for the fiscal year in which the contractor will complete the project and the net rate effect is ten cents per patient day or greater.

(b) Rate add-on requests filed with the department or approved by the certificate of need unit of the department of health for projects commencing before July 1, 2001 and finishing after July 1, 2001, are not subject to CCA requirements set forth in this chapter and chapter 74.46 RCW.

(3) The department may grant a rate add-on to a payment rate for capital improvements not requiring a CON and a CCA per subsections (1) and (2) of this section. However, the capital improvement must have a net rate effect of ten cents per patient day or greater. For fiscal year 2011, the department shall grant no rate add-ons to payment rates for capital improvements not requiring a CON and a CCA.

(4) Rate add-ons for all construction and renovation projects granted pursuant to subsection (1) or (2) of this section shall be limited to the total legislative authorization for capital construction and renovation projects for the fiscal year (FY) of the biennium in which the construction or renovation project will be completed. Rate add-ons are subject to the provisions of RCW 74.46.421.

(5) When physical plant improvements made under subsection (1) or (2) of this section are completed in phases, the department shall:

(a) Grant a rate add-on in accordance with subsection (6) of this section for any addition, replacement or improvement when each phase is completed and certified for occupancy for the purpose for which it was intended;

(b) Limit the rate add-on to the actual cost of the depreciable tangible assets meeting the criteria of ~~((RCW 74.46-330))~~ WAC 388-96-552;

(c) Add-on construction fees as defined in WAC 388-96-747 and other capitalized allowable fees and costs for the completed phase of the project; and

(d) Make the effective date for the rate add-on for the completed phase the quarterly rate change immediately following the completion and certification for occupancy of the phase. When the date of the written request for a phase add-on rate falls after the first quarter immediately following the completion and certification for occupancy of the phase, the department will issue the rate add-on retroactive to the first of the quarter in which the department received a complete written request.

(6) When the construction class of any portion of a newly constructed building will improve as the result of any addition, replacement or improvement occurring in a later, but not yet completed and fully utilized phase of the project, the most appropriate construction class, as applicable to that completed and fully utilized phase, will be assigned for purposes of calculating the rate add-on. The department shall not revise the rate add-on retroactively after completion of the portion of the project that provides the improved construction class. Rather, the department shall calculate a new rate add-

on when the improved construction class phase is completed and fully utilized and the rate add-on will be effective in accordance with subsection (7) of this section using the date the class was improved.

(7) The contractor requesting a rate add-on under subsection (1), (2) or (3) of this section shall submit a written request to the department separate from all other requests and inquiries of the department, e.g., WAC 388-96-904 (1) and (5). A complete written request shall include the following:

(a) A copy of documentation requiring completion of the addition or replacements to maintain licensure or certification for adjustments requested under subsection (1) of this section;

(b) A copy of the new bed license, whether the number of licensed beds increases or decreases, if applicable;

(c) All documentation, e.g., copies of paid invoices showing actual final cost of assets and/or service, e.g., labor purchased as part of the capitalized addition or replacements;

(d) Certification showing the completion date of the capitalized additions or replacements and the date the assets were placed in service per ~~((RCW 74.46.360))~~ WAC 388-96-559;

(e) A properly completed depreciation schedule for the capitalized additions or replacement as provided in this chapter; and

(f) When the rate increase is requested pursuant to subsection (3) of this section, a written justification for granting the rate increase.

(8) For rate add-on requests for projects not completed in phases that are approved pursuant to subsection (7) of this section and the written request is received:

(a) Within sixty calendar days following the completion and certification of occupancy of the new or replacement construction, major renovation, or the acquisition and installation (if applicable) of a capital improvement made under subsection (3) of this section, the effective date of the rate add-on will be the first of the month following the month in which the project was completed and certified for occupancy or acquired and installed; or

(b) More than sixty days following the completion and certification for occupancy of the new or replacement construction, major renovation project, or the acquisition and installation (if applicable) of a capital improvement made under subsection (3) of this section, the effective date of the rate add-on will be the first of the month following the month in which the written request was received.

(9) If the initial written request is incomplete, the department will notify the contractor of the documentation and information required. The contractor shall submit the requested information within fifteen calendar days from the date the contractor receives the notice to provide the information. If the contractor fails to complete the add-on request by providing all the requested documentation and information within the fifteen calendar days from the date of receipt of notification, the department shall deny the request for failure to complete.

(10) If, after the denial for failure to complete, the contractor submits another written request for a rate add-on for the same project the date of receipt for the purpose of applying subsection (8) of this section will depend upon whether

the subsequent request for the same project is complete, i.e., the department does not have to request additional documentation and information in order to make a determination. If a subsequent request for funding of the same project is:

(a) Complete, then the date of the first request may be used when applying subsection (8) of this section; or

(b) Incomplete, then the date of the subsequent request must be used when applying subsection (8) of this section even though the physical plant improvements may be completed and fully utilized prior to that date.

(11) The department shall respond, in writing, not later than sixty calendar days after receipt of a complete request.

(12) If the contractor does not use the funds for the purpose for which they were granted, the department immediately shall have the right to recoup the misspent or unused funds.

(13) When any physical plant improvements made under subsection (1) or (2) of this section result in a change in licensed beds, any rate add-on granted will be subject to the provisions regarding the number of licensed beds, patient days, occupancy, etc., included in this chapter and chapter 74.46 RCW.

(14) ~~((Effective July 1, 2002, except for essential community providers,))~~ The medicaid share of nursing facility new construction or refurbishing projects shall be based upon a minimum facility occupancy ((of ninety percent for the operations, property, and financing allowance component rate allocations. For essential community providers, the medicaid share of nursing facility new construction or refurbishing project will be based upon a minimum facility occupancy of eighty-five percent for operations, property, and financing allowance component rate allocations)). For all nursing facilities, occupancy is based on licensed beds, regardless of how many are set up or in use. For purposes of calculating minimum occupancy, licensed beds include any beds banked under chapter 70.38 RCW. For all nursing facilities, minimum facility occupancy of licensed beds for operations, property, and financing allowance component rate allocations shall be:

(a) Essential community providers - eighty-five percent.

(b) Small nonessential community providers - ninety percent.

(c) Large nonessential community providers - ninety-two percent.

(15) When a capitalized addition or replacement results in an increased licensed bed capacity during the calendar year following the capitalized addition or replacement:

(a) The department shall determine a nursing facility's prospective medicaid:

(i) Property payment rate allocation by dividing the property costs using the greater of actual days from the cost report period on which the rate being recalculated is based or days calculated by multiplying the new number of licensed beds times ninety percent for small nonessential community providers and ninety-two percent for large nonessential community providers times the number of calendar days in the cost report period on which the rate being recalculated is based. For essential community providers, the department shall use eighty-five percent to calculate days to compare with actual days; and

(ii) Financing allowance payment rate allocation by multiplying the net invested funds by the applicable factor in WAC 388-96-748(3) and dividing by the greater of the facility's actual days from the cost report period on which the rate being recalculated is based or on days calculated by multiplying the new number of licensed beds times ninety percent occupancy percent for small nonessential community providers and ninety-two percent for large nonessential community providers times the calendar days in the cost report period on which the rate being recalculated is based. For essential community providers, the department shall use eighty-five percent occupancy to calculate days to compare to actual days.

AMENDATORY SECTION (Amending WSR 00-12-098, filed 6/7/00, effective 7/8/00)

WAC 388-96-781 Exceptional ((direct)) care ((component)) rate ((allocation)) add-on—Covered medicaid residents. A nursing facility (NF) may receive an increase in its direct care and/or therapy component rate allocations for providing exceptional care to a medicaid resident who:

(1) Receives specialized services to meet chronic complex medical conditions and neurodevelopment needs of medically fragile children(~~and~~

(2)) and resides in a NF where all residents are under age twenty-one with at least fifty percent of the residents entering the facility before the age of fourteen;

(2) Receives expanded community services (ECS);

(3) Is admitted to the NF as an extraordinary medical placement (EMP) and the department of corrections (DOC) has approved the exceptional direct care and/or therapy payment;

(4) Is ventilator or tracheotomy (VT) dependent and resides in a NF that the department has designated as active ventilator-weaning center;

(5) Has a traumatic brain injury (TBI) established by a comprehensive assessment reporting evaluation (CARE) assessment administered by department staff and resides in a NF that the department has designated as capable for TBI patients;

(6) Has a TBI and currently resides in nursing facility specializing in the care of TBI residents where more than fifty percent of residents are classified with TBIs based on the federal minimum data set assessment (MDS 2 or its successor); or

(7) Is admitted to a NF from a hospital with an exceptional care need and medicaid purchasing administration (MPA) or a successor administration has approved the exceptional direct care and/or therapy payment.

AMENDATORY SECTION (Amending WSR 04-21-027, filed 10/13/04, effective 11/13/04)

WAC 388-96-782 Exceptional therapy care and exceptional direct care—Payment. (1) For WAC 388-96-781(1) residents, the department will pay the resident's total rate in effect on December 31, 1999, inflated by the industry weighted average economic trends and conditions adjustment factor.

(2) For WAC 388-96-781 (4), (5) and (6) residents, the department may establish a rate add-on that when added to

the nursing facility's per diem medicaid rate does not exceed the cost of caring for the client in a hospital.

NEW SECTION

WAC 388-96-784 Expense for construction interest.

Interest expense and loan origination fees relating to construction of a facility incurred during the period of construction shall be capitalized and amortized over the life of the facility pursuant to WAC 388-96-559. The period of construction shall extend from the date of the construction loan to the date the facility is put into service for patient care but shall not exceed the project certificate of need time period pursuant to RCW 70.38.125.

NEW SECTION

WAC 388-96-785 Supplemental payments. To the extent the federal government approves such payments under the state's plan for medical assistance, and only to the extent that funds are specifically appropriated for this purpose in the biennial appropriations act, the department shall make supplemental payments to nursing facilities operated by public hospital districts. The payments shall be calculated and distributed in accordance with the terms and conditions specified in the biennial appropriations act. The payments shall be supplemental to the component rate allocations calculated in accordance with Part E of chapter 74.46 RCW and the related sections of this chapter neither the provisions of Part E of chapter 74.46 RCW nor the settlement provisions of this chapter apply to these supplemental payments.

NEW SECTION

WAC 388-96-786 Pay for performance add-on. (1)

When based on the cost report for the calendar year immediately preceding July 1, the nursing facility has more than seventy-five percent direct staff turnover, the department will reduce a nursing facility's total rate by one percent.

(2) When based on the cost report for the calendar year immediately preceding July 1, the nursing facility has seventy-five percent or less direct staff turnover, the department will pay an add-on to a nursing facility's total rate and not to any component rate allocation.

(3) When there have been no reductions under subsection (1), there will be no pay for performance add-ons.

(4) The department will not settle the pay for performance add-on.

(5) The pay for performance add-ons calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421.

AMENDATORY SECTION (Amending WSR 01-12-037, filed 5/29/01, effective 6/29/01)

WAC 388-96-802 ((May the nursing facility (NF) contractor bill the department for a medicaid resident's day of death, discharge, or transfer from the NF?)) Billing/payment. ((No, the NF contractor may bill the department)) (1) The department will pay nursing facility (NF) con-

tractors for the first day of a medicaid resident's stay but not the last day.

(2) The department will pay a contractor for service rendered under the facility contract and billed in accordance with the department's billing procedure. The amount paid will be computed using the appropriate rates assigned to the contractor. For each recipient, the department will pay an amount equal to the appropriate rates, multiplied by the number of medicaid resident days each rate was in effect, less the amount the recipient is required to pay for his or her care as set forth by WAC 388-96-803.

(3) A NF contractor shall not bill the department for service provided to a medicaid recipient until an award letter of eligibility for the recipient under rules established under the authority of chapter 74.09 RCW has been received by the facility. However a facility may bill and shall be reimbursed for all medical care recipients referred to the facility by the department prior to the receipt of the award letter of eligibility or the denial of such eligibility.

AMENDATORY SECTION (Amending WSR 01-12-037, filed 5/29/01, effective 6/29/01)

WAC 388-96-803 ((When a nursing facility (NF) contractor becomes aware of a change in the medicaid resident's income and/or resources, must he or she report it?)) Notification of participation—Responsibility to collect—Reporting medicaid recipient's changes in income/resources—Rate payment in full for services. ((Yes,)) (1) The department will notify a contractor of the amount each medical recipient is required to participate in the cost of his or her care and the effective date of the required participation. The contractor must collect the participation from the patient and to account for any authorized reductions from the participation.

(2) Within seventy-two hours of becoming aware of a change in the medicaid resident's income and/or resources, the NF contractor will report the change in writing to the home and community services office serving the area in which the NF is located. When reporting the change, the NF contractor will include copies of any available documentation of the change in the medicaid resident's income and/or resources.

(3) For each medicaid resident, the contractor shall accept the payment rates established by the department multiplied by the number of medicaid resident days each rate was in effect, less the amount the recipient is required to pay for his or her care as set forth in WAC 388-96-803(1) as full compensation for all services provided under the contract, certification as specified by Title XIX, and licensure under chapter 18.51 RCW. The contractor shall not seek or accept additional compensation from or on behalf of a recipient for any or all such services.

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

NEW SECTION

WAC 388-96-805 Suspension of payments. (1) The department may withhold payments to a contractor in each of the following circumstances:

(a) A required report is not properly completed and filed by the contractor within the appropriate time period, including any approved extension. Payments will be released as soon as a properly completed report is received;

(b) State auditors, department auditors, or authorized personnel in the course of their duties are refused access to a nursing facility or are not provided with existing appropriate records. Payments will be released as soon as such access or records are provided;

(c) A refund in connection with a settlement or rate adjustment is not paid by the contractor when due. The amount withheld will be limited to the unpaid amount of the refund and any accumulated interest owed to the department as authorized by this chapter;

(d) Payment for the final sixty days of service prior to termination or assignment of a contract will be held in the absence of adequate alternate security acceptable to the department pending settlement of all periods when the contract is terminated or assigned; and

(e) Payment for services at any time during the contract period in the absence of adequate alternate security acceptable to the department, when a contractor's net medicaid overpayment liability for one or more nursing facilities or other debt to the department, as determined by settlement, civil fines imposed by the department, third-party liabilities or other source, reaches or exceeds fifty thousand dollars, whether subject to good faith dispute or not, and for each subsequent increase in liability reaching or exceeding twenty-five thousand dollars. Payments will be released as soon as practicable after acceptable security is provided or refund to the department is made.

(2) No payment will be withheld until written notification of the suspension is provided to the contractor, stating the reason for the withholding. Neither a timely filed request to pursue any administrative appeals or exception procedure that the department may establish by rule nor commencement of judicial review, as may be available to the contractor in law, shall delay suspension of payment.

NEW SECTION

WAC 388-96-808 Change of ownership—Assignment of department's contract. (1) On the effective date of a change of ownership the department's contract with the old owner shall be automatically assigned to the new owner, unless:

(a) The new owner does not desire to participate in medicaid as a nursing facility provider;

(b) The department elects not to continue the contract with the new owner; or

(c) The new owner elects not to accept assignment and requests certification and a new contract. The old owner shall give the department sixty days' written notice of such intent to change ownership and assign. When certificate of need and/or section 1122 approval is required pursuant to chapter 70.38 RCW and Part 100, Title 42 C.F.R., for the new

owner to acquire the facility, and the new owner wishes to continue to provide service to recipients without interruption, certificate of need and/or section 1122 approval shall be obtained before the old owner submits a notice of intent to change ownership and assign.

(2) If the new owner desires to participate in the nursing facility medicaid payment system, it shall meet the conditions specified in WAC 388-96-011. The facility contract with the new owner shall be effective as of the date of the change of ownership.

NEW SECTION

WAC 388-96-809 Change of ownership—Final reports—Settlement securities. (1) When there is a change of ownership for any reason, final reports shall be submitted as required by WAC 388-96-022.

(2) Upon a notification of intent to change ownership, the department shall determine by settlement or reconciliation the amount of any overpayments made to the assigning or terminating contractor, including overpayments disputed by the assigning or terminating contractor. If settlements are unavailable for any period up to the date of assignment or termination, the department shall make a reasonable estimate of any overpayment or underpayments for such periods. The reasonable estimate shall be based upon prior period settlements, available audit findings, the projected impact of prospective rates, and other information available to the department. The department shall also determine and add in the total of all other debts and potential debts owed to the department regardless of source, including, but not limited to, interest owed to the department as authorized by this chapter, civil fines imposed by the department, or third-party liabilities.

(3) For all cost reports, the assigning or terminating contractor shall provide security, in a form deemed adequate by the department, equal to the total amount of determined and estimated overpayments and all debts and potential debts from any source, whether or not the overpayments are the subject of good faith dispute including but not limited to, interest owed to the department, civil fines imposed by the department, and third-party liabilities. Security shall consist of one or more of the following:

- (a) Withheld payments due the assigning or terminating contractor under the contract being assigned or terminated;
- (b) An assignment of funds to the department;
- (c) The new contractor's assumption of liability for the prior contractor's debt or potential debt;
- (d) An authorization to withhold payments from one or more medicaid nursing facilities that continue to be operated by the assigning or terminating contractor;
- (e) A promissory note secured by a deed of trust; or
- (f) Other collateral or security acceptable to the department.

(4) An assignment of funds shall:

- (a) Be at least equal to the amount of determined or estimated debt or potential debt minus withheld payments or other security provided; and
- (b) Provide that an amount equal to any recovery the department determines is due from the contractor from any source of debt to the department, but not exceeding the

amount of the assigned funds, shall be paid to the department if the contractor does not pay the debt within sixty days following receipt of written demand for payment from the department to the contractor.

(5) The department shall release any payment withheld as security if alternate security is provided under subsection (3) of this section in an amount equivalent to the determined and estimated debt.

(6) If the total of withheld payments and assigned funds is less than the total of determined and estimated debt, the unsecured amount of such debt shall be a debt due the state and shall become a lien against the real and personal property of the contractor from the time of filing by the department with the county auditor of the county where the contractor resides or owns property, and the lien claim has preference over the claims of all unsecured creditors.

(7) A properly completed final cost report shall be filed in accordance with WAC 388-96-022, which shall be examined by the department in accordance with WAC 388-96-205.

(8) Security held pursuant to this section shall be released to the contractor after all debts, including accumulated interest owed the department, have been paid by the old owner.

(9) If, after calculation of settlements for any periods, it is determined that overpayments exist in excess of the value of security held by the state, the department may seek recovery of these additional overpayments as provided by law.

(10) Regardless of whether a contractor intends to change ownership, if a contractor's net medicaid overpayments and erroneous payments for one or more settlement periods, and for one or more nursing facilities, combined with debts due the department, reaches or exceeds a total of fifty thousand dollars, as determined by settlement, civil fines imposed by the department, third-party liabilities or by any other source, whether such amounts are subject to good faith dispute or not, the department shall demand and obtain security equivalent to the total of such overpayments, erroneous payments, and debts and shall obtain security for each subsequent increase in liability reaching or exceeding twenty-five thousand dollars. Such security shall meet the criteria in subsections (3) and (4) of this section, except that the department shall not accept an assumption of liability. The department shall withhold all or portions of a contractor's current contract payments or impose liens, or both, if security acceptable to the department is not forthcoming. The department shall release a contractor's withheld payments or lift liens, or both, if the contractor subsequently provides security acceptable to the department.

(11) Notwithstanding the application of security measures authorized by this section, if the department determines that any remaining debt of the old owner is uncollectible from the old owner, the new owner is liable for the unsatisfied debt in all respects. If the new owner does not accept assignment of the contract and the contingent liability for all debt of the prior owner, a new certification survey shall be done and no payments shall be made to the new owner until the department determines the facility is in substantial compliance for the purposes of certification.

(12) Medicaid provider contracts shall only be assigned if there is a change of ownership, and with approval by the department.

AMENDATORY SECTION (Amending WSR 04-21-027, filed 10/13/04, effective 11/13/04)

WAC 388-96-901 Disputes. (1) ~~((H))~~ When a contractor wishes to contest the way in which the department applied a statute or department rule to the contractor's circumstances, the contractor shall pursue the administrative review process prescribed in WAC 388-96-904.

(a) Adverse actions taken under the authority of this chapter or chapter 74.46 RCW subject to administrative review under WAC 388-96-904 include but are not limited to the following:

- (i) Determining a nursing facility payment rate;
- (ii) Calculating a nursing facility settlement;
- (iii) Imposing a civil fine on the nursing facility;
- (iv) Suspending payment to a nursing facility; or
- (v) ~~((Refusing to contract with a nursing facility))~~ Trust fund and accounts receivable audits.

(b) Adverse actions taken under the authority of this chapter or chapter 74.46 RCW not subject to administrative review under WAC 388-96-904 include but are not limited to:

- (i) Actions taken under the authority of RCW 74.46.421 and sections of this chapter implementing RCW 74.46.421;
- (ii) Case mix accuracy review of minimum data set (MDS) nursing facility resident assessments, which shall be limited to separate administrative review under the provisions of WAC 388-96-905;
- (iii) Quarterly and semiannual rate updates to reflect changes in a facility's resident case mix including contractor errors made in the MDSs used to update the facility's resident case mix;
- (iv) Actions taken under exceptional direct and therapy care program codified at WAC 388-96-781 and 388-96-782; ~~((and))~~
- (v) Actions taken under WAC 388-96-218 (2)(c); and
- (vi) Actions taken under WAC 388-96-780.

(2) The administrative review process prescribed in WAC 388-96-904 shall not be used to contest or review unrelated or ancillary department actions, whether review is sought to obtain a ruling on the merits of a claim or to make a record for subsequent judicial review or other purpose. If an issue is raised that is not subject to review under WAC 388-96-904, the presiding officer shall dismiss such issue with prejudice to further review under the provisions of WAC 388-96-904, but without prejudice to other administrative or judicial review as may be provided by law. Unrelated or ancillary actions not eligible for administrative review under WAC 388-96-904 include but are not limited to:

(a) Challenges to the adequacy or validity of the public process followed by department in proposing or making a change to the nursing facility medicaid payment rate methodology, as required by 42 U.S.C. 1396a (a)(13)(A) and WAC 388-96-718;

(b) Challenges to the nursing facility medicaid payment system that are based in whole or in part on federal laws, regulations, or policies;

(c) Challenges to a contractor's rate that are based in whole or in part on federal laws, regulations, or policies;

(d) Challenges to the legal validity of a statute or regulation; and

(e) Actions of the department affecting a medicaid beneficiary or provider that were not commenced by the office of rates management, aging and disability services administration, for example, entitlement to or payment for durable medical equipment or other services.

(3) If a contractor wishes to challenge the legal validity of a statute ~~((or regulation)), rule, or contract provision~~ relating to the nursing facility medicaid payment system ~~((;))~~ or wishes to bring a challenge based in whole or in part on federal law, it must bring such action de novo in a court of proper jurisdiction as may be provided by law. The contractor may not use this section or WAC 388-96-904 for such purposes. This prohibition shall apply irrespective of whether the contractor wishes to obtain a decision or ruling on an issue of validity or federal compliance or wishes only to make a record for the purpose of subsequent judicial review.

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

AMENDATORY SECTION (Amending WSR 04-21-027, filed 10/13/04, effective 11/13/04)

WAC 388-96-904 Administrative review—Adjudicative proceeding. (1) ~~((a))~~ A contractor ~~((s))~~ seeking ~~((to appeal or take exception to))~~ an administrative review of an adverse action or determination of the department ~~((;))~~ taken under authority of this chapter or chapter 74.46 RCW ~~((relating to the contractor's payment rate, audit or settlement, or otherwise affecting the level of payment to the contractor, or seeking to appeal or take exception to any other adverse action taken under authority of this chapter or chapter 74.46 RCW))~~ and eligible for administrative review under ~~((this section))~~ WAC 388-96-901, shall file a written request for an administrative review conference ~~((in writing))~~ with the office of rates management within twenty-eight calendar days after receiving notice of the department's action or determination.

(b) When the department has sent written notice by United States mail, it shall deem the contractor to have received the department's notice five calendar days after the date of the notification letter, unless proof of the date of receipt of the department's notification letter exists, in which case the actual date of receipt shall be used to determine timeliness of the contractor's request for an administrative review conference.

(c) The contractor's request for administrative review shall:

- ~~((a))~~ (i) Be signed by the contractor or by a partner, officer, or authorized employee of the contractor;
- ~~((b))~~ (ii) State the particular issues raised; and
- ~~((c))~~ (iii) Include all necessary supporting documentation or other information.

(2) After receiving a request for administrative review conference that meets the criteria in subsection (1) of this sec-

tion, the department shall schedule an administrative review conference. The conference may be conducted by telephone.

(3) At least fourteen calendar days prior to the scheduled date of the administrative review conference, the contractor must supply any additional or supporting documentation or information upon which the contractor intends to rely in presenting its case. In addition, the department may request at any time prior to issuing a determination any documentation or information needed to decide the issues raised, and the contractor must comply with such a request within fourteen calendar days after it is received. The department may extend this period up to fourteen additional calendar days for good cause shown if the contractor requests an extension in writing received by the department before expiration of the initial fourteen-day period. The department shall dismiss issues that cannot be decided or resolved due to a contractor's failure to provide requested documentation or information within the required period.

(4) The department shall, within sixty calendar days after conclusion of the conference, render a determination in writing addressing the issues raised. If the department is waiting for additional documentation or information promised by or requested from the contractor pursuant to subsection (3) of this section, the sixty-day period shall not commence until the department's receipt of such documentation or information or until expiration of the time allowed to provide it. The determination letter shall include a notice of dismissal of all issues which cannot be decided due to a contractor's failure to provide documentation or information promised or requested.

(5)(a) A contractor seeking further review of a determination issued pursuant to subsection (4) of this section shall ~~((apply))~~ within twenty-eight calendar days after receiving the department's administrative review conference determination letter file a written application for an adjudicative proceeding ~~((, in writing,))~~ signed by one of the individuals authorized by subsection (1) of this section ~~((, within twenty-eight calendar days after receiving the department's administrative review conference determination letter. A review judge or other presiding officer employed by the department's board of appeals shall conduct the adjudicative proceeding))~~ with the department's board of appeals.

(b) The department shall deem the contractor to have received the department's determination five calendar days after the date of the administrative review determination letter, unless proof of the date of receipt of the letter exists, in which case the actual date of receipt shall be used to determine timeliness of the contractor's application for an adjudicative proceeding. The contractor shall attach to its application for an adjudicative proceeding the department's administrative review conference determination letter. A contractor's application for an adjudicative proceeding shall be addressed to the department's board of appeals. The board of appeals date stamp on the application for an administrative proceeding shall be used to determine whether the application is timely. When the application for adjudicative proceeding is filed by fax, the date stamped on the application received by fax will only be used to determine timeliness when the application is postmarked the same date as the faxed application.

(6) A review judge or other presiding officer employed by the department's board of appeals shall conduct the adjudicative proceeding. Except as authorized by subsection (7) of this section, the scope of an adjudicative proceeding shall be limited to the issues specifically raised by the contractor at the administrative review conference and addressed on the merits in the department's administrative review conference determination letter. The contractor shall be deemed to have waived all issues or claims that could have been raised by the contractor relating to the challenged determination or action, but which were not pursued at the conference and not addressed in the department's administrative review conference determination letter. In its request for an adjudicative proceeding or as soon as practicable, the contractor must specify its issues.

(7) If the contractor wishes to have further review of any issue not addressed on its merits, but instead dismissed in the department's administrative review conference determination letter, for failure to supply needed, promised, or requested additional information or documentation, or because the department has concluded the request was untimely or otherwise procedurally defective, the issue shall be considered by the presiding officer for the purpose of upholding the department's dismissal, reinstating the issue and remanding for further agency staff action, or reinstating the issue and rendering a decision on the merits.

(8) An adjudicative proceeding shall be conducted in accordance with this chapter, chapter 388-02 WAC and chapter 34.05 RCW. In the event of a conflict between hearing requirements in chapter 74.46 RCW and chapter 388-96 WAC specific to the nursing facility medicaid payment system and general hearing requirements in chapter 34.05 RCW and chapter 388-02 WAC, the specific requirements of chapter 74.46 RCW and chapter 388-96 WAC shall prevail. The presiding officer assigned by the department's board of appeals to conduct an adjudicative proceeding and who conducts the proceeding shall render the final agency decision.

(9) At the time an adjudicative proceeding is being scheduled for a future time and date certain, or at any appropriate stage of the prehearing process, the presiding officer shall have authority, upon the motion of either party or the presiding officer's own motion, to compel either party to identify specific issues remaining to be litigated.

(10) If the presiding officer determines there is no material issue(s) of fact to be resolved in a case, the presiding officer shall have authority, upon the motion of either party or the presiding officer's own motion, to decide the issue(s) presented without convening or conducting an in-person evidentiary hearing. In such a case, the decision may be reached on documentation admitted to the record, party admissions, written or oral stipulation(s) of facts, and written or oral argument.

(11) The board of appeals shall issue an order dismissing an adjudicative proceeding requested under subsection (5) of this section, unless within two hundred seventy calendar days after the board of appeals receives the application for an adjudicative proceeding:

(a) All issues have been resolved by a written settlement agreement between the contractor and the department signed by both and filed with the board of appeals; or

(b) An adjudicative proceeding has been held for all issues not resolved and the evidentiary record, including all rebuttal evidence and post-hearing or other briefing, is closed.

This time limit may be extended one time thirty additional calendar days for good cause shown upon the motion of either party made prior to the expiration of the initial two hundred seventy day period. It shall be the responsibility of the contractor to request that hearings be scheduled and ensure that settlement agreements are signed and filed with the board of appeals in order to comply with the time limit set forth in this subsection.

(12) Any party dissatisfied with a decision or an order of dismissal of the board of appeals may file a petition for reconsideration within ten calendar days after the decision or order of dismissal is served on such party. The petition shall state the specific grounds upon which relief is sought. The time for seeking reconsideration may be extended by the presiding officer for good cause upon motion of either party. The presiding officer shall rule on a petition for reconsideration and may seek additional argument, briefing, testimony, or other evidence if deemed necessary. Filing a petition for reconsideration shall not be a requisite for seeking judicial review; however, if a petition is filed by either party, the agency decision shall not be deemed final until a ruling is made by the presiding officer.

(13) A contractor dissatisfied with a decision or an order of dismissal of the board of appeals may file a petition for judicial review pursuant to RCW 34.05.570(3) or other applicable authority.

NEW SECTION

WAC 388-96-906 Section captions. Section captions as used in this chapter do not constitute any part of the rule.

REPEALER

The following section of the Washington Administrative Code is repealed:

- WAC 388-96-202 Scope of audit or department audit.
- WAC 388-96-740 Medicaid case mix index— When a facility does not meet the ninety percent minimum data set (MDS) threshold as identified in RCW 74.46.501.
- WAC 388-96-741 When the nursing facility does not have facility average case mix indexes for the four quarters specified in RCW 74.46.501 (7)(b) for determining the cost per case mix unit, what will the department use to determine the nursing facility's cost per case mix unit?
- WAC 388-96-742 Licensed beds to compute the ninety percent minimum data

set (MDS) threshold rather than a nursing facility's quarterly average census.

WAC 388-96-749

Variable return—Quartiles and percentages.

**WSR 10-14-065
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed June 30, 2010, 11:00 a.m., effective July 1, 2010]

Effective Date of Rule: July 1, 2010.

Purpose: The division of child support (DCS) is filing this fourth emergency rule in order to remove certain sections (WAC 388-14A-5002, 388-14A-5003, 388-14A-5004, 388-14A-5005, and 388-14A-5006) which are being amended by a separate emergency filing to be effective on July 1, 2010. In that filing, DCS is amending certain rules in chapter 388-14A WAC regarding the distribution of collections from federal tax refund offset, namely (WAC 388-14A-5001, 388-14A-5002, 388-14A-5003, 388-14A-5004, 388-14A-5005, 388-14A-5006, and 388-14A-5010). Other than removing those five sections listed above, there are no other changes to this rule package. DCS is still working on the adoption of final rules. **EXCEPT FOR THE REMOVAL OF WAC 388-14A-5002, 388-14A-5003, 388-14A-5004, 388-14A-5005 AND 388-14A-5006, THESE RULES ARE EXACTLY THE SAME AS THE PRIOR EMERGENCY RULES.**

This fourth set of emergency rules takes effect on July 1, 2010, and is identical in every other respect to the prior emergency rules filed as WSR 09-20-030, 10-04-037, and 10-12-039.

BASIS FOR ADOPTION OF EMERGENCY RULES: In the 2009 legislative session, the Washington state legislature adopted ESHB 1794 (chapter 84, Laws of 2009), which makes changes to chapter 26.19 RCW, the Washington state child support schedule, based on recommendations of the 2007 child support schedule workgroup which was convened under 2SHB 1009 (chapter 313, Laws of 2007) and SHB 1845 (chapter 476, Laws of 2009), regarding medical support obligations in child support orders. Both of these bills had an effective date of October 1, 2009.

DCS filed emergency rules under WSR 09-20-030 in order to implement this legislation by October 1, 2009. DCS filed the second emergency rules, identical to the first, under WSR 10-04-037 with an effective date of January 28, 2010. The third emergency was filed under WSR 10-12-039, and was effective on May 26, 2010.

DCS began the regular rule-making process by filing a CR-101, Preproposal notice of inquiry, for each of the bills: The CR-101 for ESHB 1794 was filed as WSR 09-10-046, and the CR-101 for SHB 1845 was filed as WSR 09-14-075. Because both of the bills impact the establishment of child support obligations, DCS determined that it was necessary to adopt just one set of rules which covers both bills instead of two separate rule-making projects.

DCS has done a significant amount of redrafting and revising the rules from the form in which they were first proposed. After consulting with DCS staff, stakeholders and other partners, DCS intends to file the CR-102, Notice of proposed rule making, as soon as we can. Between the filing of the CR-102 and the public rule-making hearing, DCS will again work with DCS staff, stakeholders and other partners to incorporate more comments and feedback. While the third emergency rules are exactly the same as the first emergency rules, DCS anticipates that because of the complexity of these two bills the rules proposed in the CR-102 will differ from the emergency rules in several respects, as will the final rules. DCS hopes to have final rules adopted as soon as possible.

Citation of Existing Rules Affected by this Order:
Amending WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement?, 388-14A-2035 Do I assign my rights to support when I receive public assistance?, 388-14A-2036 What does assigning my rights to support mean?, 388-14A-3140 What can happen at a hearing on a support establishment notice?, 388-14A-3205 How does DCS calculate my income?, 388-14A-3310 The division of child support serves a notice of support owed to establish a fixed dollar amount under an existing child support order, 388-14A-3312 The division of child support serves a notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support to establish a fixed dollar amount owed under a child support order, 388-14A-3315 When DCS serves a notice of support debt ~~((or))~~, notice of support owed ~~((or))~~, notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support, we notify the other party to the child support order, 388-14A-3317 What is an annual review of a support order under RCW 26.23.110?, 388-14A-3318 What is an annual review of a notice of support owed under WAC 388-14A-3312?, 388-14A-3320 What happens at a hearing on a notice of support owed?, 388-14A-3400 Are there limitations on how much of my income is available for child support?, 388-14A-4100 How does the division of child support enforce my obligation to provide health insurance for my children?, 388-14A-4110 If my support order requires me to provide ~~((health insurance))~~ medical support for my children, what do I have to do?, 388-14A-4112 When does the division of child support enforce a custodial parent's obligation to provide ~~((health insurance coverage))~~ medical support?, 388-14A-4115 Can my support order reduce my support obligation if I pay for health insurance?, 388-14A-4120 DCS uses the National Medical Support Notice to enforce an obligation to provide health insurance coverage, 388-14A-4165 What happens when a noncustodial parent does not earn enough to pay child support plus the health insurance premium?, 388-14A-4175 ~~((Is an employer))~~ Who is required to notify the division of child support when insurance coverage for the children ends?, 388-14A-4180 When must the division of child support communicate with the DSHS health and recovery services administration?, 388-14A-5007 If the paying parent has more than one case, can DCS apply support money to only one specific case?, 388-14A-6300 Duty of the administrative law judge in a hearing to determine the amount of a support obligation and 388-14A-8130 How does DCS complete the WSCSS worksheets when setting a joint child support obligation when the parents of a child in foster care are married and

residing together?; and new section WAC 388-14A-4111 When may DCS decline a request to enforce a medical support obligation?

Statutory Authority for Adoption: RCW 26.09.105(17), 26.18.170(19), 26.23.050(8), 26.23.110(14), 34.05.020, 34.05.060, 34.05.220, 74.08.090, 74.20.040, and 74.20A.055 (9) and (11).

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: ESHB 1794 (chapter 84, Laws of 2009) and SHB 1845 (chapter 476, Laws of 2009) both had an effective date of October 1, 2009. Although DCS has begun the regular rule-making process to adopt rules under this bill, we were unable to complete the adoption process by the effective date. DCS continues the regular rule-making process and will adopt final rules as soon as possible.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 23, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 23, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 23, Repealed 0.

Date Adopted: June 29, 1020 [2010].

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-02-059, filed 1/5/09, effective 1/27/09)

WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement? For purposes of this chapter, the following definitions apply:

"Absence of a court order" means that there is no court order setting a support obligation for the noncustodial parent (NCP), or specifically relieving the NCP of a support obligation, for a particular child.

"Absent parent" is a term used for a noncustodial parent.

"Accessible coverage" means health insurance coverage which provides primary care services to the children with reasonable effort by the custodian.

"Accrued debt" means past-due child support which has not been paid.

"Administrative order" means a determination, finding, decree or order for support issued under RCW 74.20A.-055, 74.20A.056, or 74.20A.059 or by another state's agency under an administrative process, establishing the existence of a support obligation (including medical support) and ordering

the payment of a set or determinable amount of money for current support and/or a support debt. Administrative orders include:

- (1) An order entered under chapter 34.05 RCW;
- (2) An agreed settlement or consent order entered under WAC 388-14A-3600; and
- (3) A support establishment notice which has become final by operation of law.

"Agency" means the Title IV-D provider of a state. In Washington, this is DCS.

"Agreed settlement" is an administrative order that reflects the agreement of the noncustodial parent, the custodial parent and the division of child support. An agreed settlement does not require the approval of an administrative law judge.

"Aid" or **"public assistance"** means cash assistance under the temporary assistance for needy families (TANF) program, the aid to families with dependent children (AFDC) program, federally funded or state-funded foster care, and includes day care benefits and medical benefits provided to families as an alternative or supplement to TANF.

"Alternate recipient" means a child of the employee or retiree named within a support order as being entitled to coverage under an employer's group health plan.

"Annual fee" means the twenty-five dollar annual fee charged between October 1 and September 30 each year, required by the federal deficit reduction act of 2005 and RCW 74.20.040.

"Applicant/custodian" means a person who applies for nonassistance support enforcement services on behalf of a child or children residing in their household.

"Applicant/recipient," "applicant," and **"recipient"** means a person who receives public assistance on behalf of a child or children residing in their household.

"Arrears" means the debt amount owed for a period of time before the current month.

"Assistance" means cash assistance under the state program funded under Title IV-A of the federal Social Security Act.

"Assistance unit" means a cash assistance unit as defined in WAC 388-408-0005. An assistance unit is the group of people who live together and whose income or resources the department counts to decide eligibility for benefits and the amount of benefits.

"Birth costs" means medical expenses incurred by the custodial parent or the state for the birth of a child.

"Cash medical support" is a term used in RCW 26.09.-105 and certain federal regulations to refer to amounts paid by an obligated parent to the other parent or to the state in order to comply with the medical support obligation stated in a child support order.

"Conditionally assigned arrears" means those temporarily assigned arrears remaining on a case after the period of public assistance ends.

"Conference board" means a method used by the division of child support for resolving complaints regarding DCS cases and for granting exceptional or extraordinary relief from debt.

"Consent order" means a support order that reflects the agreement of the noncustodial parent, the custodial parent

and the division of child support. A consent order requires the approval of an administrative law judge.

"Court order" means a judgment, decree or order of a Washington state superior court, another state's court of comparable jurisdiction, or a tribal court.

"Current support" or **"current and future support"** means the amount of child support which is owed for each month.

"Custodial parent or CP" means the person, whether a parent or not, with whom a dependent child resides the majority of the time period for which the division of child support seeks to establish or enforce a support obligation.

"Date the state assumes responsibility for the support of a dependent child on whose behalf support is sought" means the date that the TANF or AFDC program grant is effective. For purposes of this chapter, the state remains responsible for the support of a dependent child until public assistance terminates, or support enforcement services end, whichever occurs later.

"Delinquency" means failure to pay current child support when due.

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

"Dependent child" means a person:

(1) Seventeen years of age or younger who is not self-supporting, married, or a member of the United States armed forces;

(2) Eighteen years of age or older for whom a court order requires support payments past age eighteen;

(3) Eighteen years of age or older, but under nineteen years of age, for whom an administrative support order exists if the child is participating full-time in a secondary school program or the same level of vocational or technical training.

"Disbursement" means the amount of child support distributed to a case that is paid to the family, state, other child support enforcement agency in another state or foreign country, Indian tribe, or person or entity making the payment.

"Disposable earnings" means the amount of earnings remaining after the deduction of amounts required by law to be withheld.

"Distribution" means how a collection is allocated or split within a case or among multiple cases.

"Earnings" means compensation paid or payable for personal service. Earnings include:

(1) Wages or salary;

(2) Commissions and bonuses;

(3) Periodic payments under pension plans, retirement programs, and insurance policies of any type;

(4) Disability payments under Title 51 RCW;

(5) Unemployment compensation under RCW 50.40.-020, 50.40.050 and Title 74 RCW;

(6) Gains from capital, labor, or a combination of the two; and

(7) The fair value of nonmonetary compensation received in exchange for personal services.

"Employee" means a person to whom an employer is paying, owes, or anticipates paying earnings in exchange for services performed for the employer.

"Employer" means any person or organization having an employment relationship with any person. This includes:

- (1) Partnerships and associations;
- (2) Trusts and estates;
- (3) Joint stock companies and insurance companies;
- (4) Domestic and foreign corporations;
- (5) The receiver or trustee in bankruptcy; and
- (6) The trustee or legal representative of a deceased person.

"Employment" means personal services of whatever nature, including service in interstate commerce, performed for earnings or under any contract for personal services. Such a contract may be written or oral, express or implied.

"Family" means the person or persons on whose behalf support is sought, which may include a custodial parent and one or more children, or a child or children in foster care placement. The family is sometimes called the assistance unit.

"Family arrears" means the amount of past-due support owed to the family, which has not been conditionally, temporarily or permanently assigned to a state. Also called "nonassistance arrears."

"Family member" means the caretaker relative, the child(ren), and any other person whose needs are considered in determining eligibility for assistance.

"Foreign order" means a court or administrative order entered by a tribunal other than one in the state of Washington.

"Foster care case" means a case referred to the Title IV-D agency by the Title IV-E agency, which is the state division of child and family services (DCFS).

"Fraud," for the purposes of vacating an agreed settlement or consent order, means:

- (1) The representation of the existence or the nonexistence of a fact;
- (2) The representation's materiality;
- (3) The representation's falsity;
- (4) The speaker's knowledge that the representation is false;
- (5) The speaker's intent that the representation should be acted on by the person to whom it is made;
- (6) Ignorance of the falsity on the part of the person to whom it is made;
- (7) The latter's:
 - (a) Reliance on the truth of the representation;
 - (b) Right to rely on it; and
 - (c) Subsequent damage.

"Full support enforcement services" means the entire range of services available in a Title IV-D case.

"Good cause" for the purposes of late hearing requests and petitions to vacate orders on default means a substantial reason or legal justification for delay, including but not limited to the grounds listed in civil rule 60. The time periods used in civil rule 60 apply to good cause determinations in this chapter.

"Head of household" means the parent or parents with whom the dependent child or children were residing at the time of placement in foster care.

"Health care costs" means medical expenses. Certain statutes in chapter 26.19 RCW refer to medical expenses as health care costs.

"Health insurance" means insurance coverage for all medical services related to an individual's general health and well being. These services include, but are not limited to: Medical/surgical (inpatient, outpatient, physician) care, medical equipment (crutches, wheel chairs, prosthesis, etc.), pharmacy products, optometric care, dental care, orthodontic care, preventive care, mental health care, and physical therapy.

"Health insurance coverage" does not include medical assistance provided under chapter 74.09 RCW.

"Hearing" means an adjudicative proceeding authorized by this chapter, or chapters 26.23, 74.20 and 74.20A RCW, conducted under chapter 388-02 WAC and chapter 34.05 RCW.

"I/me" means the person asking the question which appears as the title of a rule.

"Income" includes:

- (1) All gains in real or personal property;
- (2) Net proceeds from the sale or exchange of real or personal property;
- (3) Earnings;
- (4) Interest and dividends;
- (5) Proceeds of insurance policies;
- (6) Other periodic entitlement to money from any source; and
- (7) Any other property subject to withholding for support under the laws of this state.

"Income withholding action" includes all withholding actions which DCS is authorized to take, and includes but is not limited to the following actions:

- (1) Asserting liens under RCW 74.20A.060;
- (2) Serving and enforcing liens under chapter 74.20A RCW;
- (3) Issuing orders to withhold and deliver under chapter 74.20A RCW;
- (4) Issuing notices of payroll deduction under chapter 26.23 RCW; and
- (5) Obtaining wage assignment orders under RCW 26.18.080.

"Locate" can mean efforts to obtain service of a support establishment notice in the manner prescribed by WAC 388-14A-3105.

"Medical assistance" means medical benefits under Title XIX of the federal Social Security Act provided to families as an alternative or supplement to TANF.

"Medical expenses" for the purpose of establishing support obligations under RCW 26.09.105, 74.20A.055 and 74.20A.056, or for the purpose of enforcement action under chapters 26.23, 74.20 and 74.20A RCW, including the notice of support debt and the notice of support owed, means(:

•) medical costs incurred on behalf of a child, which include:

- Medical services related to an individual's general health and well-being, including but not limited to, medical/surgical care, preventive care, mental health care and physical therapy; and
- Prescribed medical equipment and prescribed pharmacy products;

- Health care coverage, such as coverage under a health insurance plan, including the cost of premiums for coverage of a child;
- Dental and optometrical costs incurred on behalf of a child; and
- Copayments and/or deductibles incurred on behalf of a child.

Medical expenses are sometimes also called health care costs or medical costs.

"Medical support" means ~~((either or both))~~ any combination of the following:

- (1) ~~Medical expenses; and~~
- (2) Health insurance coverage for a dependent child;
- (2) Amounts owed by one parent to the other parent as a monthly payment toward the premium paid by the other parent for health insurance coverage for a dependent child;
- (3) Amounts owed by a noncustodial parent to the state as a monthly payment toward the cost of managed care coverage for the child by the state, if the child receives state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment; and
- (4) Amounts owed by one parent to the other parent as his or her proportionate share of uninsured medical expenses for a dependent child.

"Monthly payment toward the premium" means a parent's contribution toward:

- Premiums paid by the other parent for insurance coverage for the child; or
- Amounts paid for managed care coverage for the child by the state, if the child receives state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment.

This contribution is based on the obligated parent's proportionate share of the premium paid, but may not exceed twenty-five percent of the obligated parent's basic support obligation.

"National Medical Support Notice" or **"NMSN"** is a federally mandated form that DCS uses to enforce a health insurance support obligation; the NMSN is a notice of enrollment as described in RCW 26.18.170.

"Noncustodial parent or NCP" means the natural parent, adoptive parent, responsible stepparent or person who signed and filed an affidavit acknowledging paternity, from whom the state seeks support for a dependent child. A parent is considered to be an NCP when for the majority of the time during the period for which support is sought, the dependent child resided somewhere other than with that parent.

"Obligated parent" means a parent who is required under a child support order to provide health insurance coverage or to reimburse the other parent for his or her share of medical expenses for a dependent child. The obligated parent could be either the NCP or the CP.

"Other ordinary expense" means an expense incurred by a parent which:

- (1) Directly benefits the dependent child; and
- (2) Relates to the parent's residential time or visitation with the child.

"Participant" means an employee or retiree who is eligible for coverage under an employer group health plan.

"Pass-through" means the portion of a support collection distributed to assigned support that the state pays to a family currently receiving TANF.

"Past support" means support arrears.

"Paternity testing" means blood testing or genetic tests of blood, tissue or bodily fluids. This is also called genetic testing.

"Payment services only" or **"PSO"** means a case on which the division of child support's activities are limited to recording and distributing child support payments, and maintaining case records. A PSO case is not a IV-D case.

"Permanently assigned arrears" means those arrears which the state may collect and retain up to the amount of unreimbursed assistance.

"Physical custodian" means custodial parent (CP).

"Plan administrator" means the person or entity which performs those duties specified under 29 USC 1002 (16)(A) for a health plan. If no plan administrator is specifically so designated by the plan's organizational documents, the plan's sponsor is the administrator of the plan. Sometimes an employer acts as its own plan administrator.

"Proportionate share" means an amount equal to a parent's percentage share of the combined monthly net income of both parents as computed on the worksheets when determining a parent's child support obligation under chapter 26.19 RCW.

"Putative father" includes all men who may possibly be the father of the child or children on whose behalf the application for assistance or support enforcement services is made.

"Reasonable efforts to locate" means any of the following actions performed by the division of child support:

- (1) Mailing a support establishment notice to the noncustodial parent in the manner described in WAC 388-14A-3105;
- (2) Referral to a sheriff or other server of process, or to a locate service or department employee for locate activities;
- (3) Tracing activity such as:
 - (a) Checking local telephone directories and attempts by telephone or mail to contact the custodial parent, relatives of the noncustodial parent, past or present employers, or the post office;
 - (b) Contacting state agencies, unions, financial institutions or fraternal organizations;
 - (c) Searching periodically for identification information recorded by other state agencies, federal agencies, credit bureaus, or other record-keeping agencies or entities; or
 - (d) Maintaining a case in the division of child support's automated locate program, which is a continuous search process.
- (4) Referral to the state or federal parent locator service;
- (5) Referral to the attorney general, prosecuting attorney, the IV-D agency of another state, or the Department of the Treasury for specific legal or collection action;
- (6) Attempting to confirm the existence of and to obtain a copy of a paternity acknowledgment; or
- (7) Conducting other actions reasonably calculated to produce information regarding the NCP's whereabouts.

"Required support obligation for the current month" means the amount set by a superior court order, tribal court

order, or administrative order for support which is due in the month in question.

"Resident" means a person physically present in the state of Washington who intends to make their home in this state. A temporary absence from the state does not destroy residency once it is established.

"Residential care" means foster care, either state or federally funded.

"Residential parent" means the custodial parent (CP), or the person with whom the child resides that majority of the time.

"Responsible parent" is a term sometimes used for a noncustodial parent.

"Responsible stepparent" means a stepparent who has established an in loco parentis relationship with the dependent child.

"Retained support" means a debt owed to the division of child support by anyone other than a noncustodial parent.

"Satisfaction of judgment" means payment in full of a court-ordered support obligation, or a determination that such an obligation is no longer enforceable.

"Secretary" means the secretary of the department of social and health services or the secretary's designee.

"State" means a state or political subdivision, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a federally recognized Indian tribe or a foreign country.

"Superior court order" means a judgment, decree or order of a Washington state superior court, or of another state's court of comparable jurisdiction.

"Support debt" means support which was due under a support order but has not been paid. This includes:

- (1) Delinquent support;
- (2) A debt for the payment of expenses for the reasonable or necessary care, support and maintenance including medical expenses, birth costs, child care costs, and special child rearing expenses of a dependent child or other person;
- (3) A debt under RCW 74.20A.100 or 74.20A.270; or
- (4) Accrued interest, fees, or penalties charged on a support debt, and attorney's fees and other litigation costs awarded in an action under Title IV-D to establish or enforce a support obligation.

"Support enforcement services" means all actions the Title IV-D agency is required to perform under Title IV-D of the Social Security Act and state law.

"Support establishment notice" means a notice and finding of financial responsibility under WAC 388-14A-3115, a notice and finding of parental responsibility under WAC 388-14A-3120, or a notice and finding of medical responsibility under WAC 388-14A-3125.

"Support money" means money paid to satisfy a support obligation, whether it is called child support, spousal support, alimony, maintenance, enforcement of medical expenses, health insurance, or birth costs.

"Support obligation" means the obligation to provide for the necessary care, support and maintenance of a dependent child or other person as required by law, including health insurance coverage, medical expenses, birth costs, and child care or special child rearing expenses.

"Temporarily assigned arrears" means those arrears which accrue prior to the family receiving assistance, for assistance applications dated on or after October 1, 1997, but before October 1, 2008. After the family terminates assistance, temporarily assigned arrears become conditionally assigned arrears.

"Temporary assistance for needy families," or "TANF" means cash assistance under the temporary assistance for needy families (TANF) program under Title IV-A of the Social Security Act.

"Title IV-A" means Title IV-A of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 USC.

"Title IV-A agency" means the part of the department of social and health services which carries out the state's responsibilities under the temporary assistance for needy families (TANF) program (and the aid for dependent children (AFDC) program when it existed).

"Title IV-D" means Title IV-D of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 USC.

"Title IV-D agency" or **"IV-D agency"** means the division of child support, which is the agency responsible for carrying out the Title IV-D plan in the state of Washington. Also refers to the Washington state support registry (WSSR).

"Title IV-D case" is a case in which the division of child support provides services which qualifies for funding under the Title IV-D plan.

"Title IV-D plan" means the plan established under the conditions of Title IV-D and approved by the secretary, Department of Health and Human Services.

"Title IV-E" means Title IV-E of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 U.S.C.

"Title IV-E case" means a foster care case.

"Tribal TANF" means a temporary assistance for needy families (TANF) program run by a tribe.

"Tribunal" means a state court, tribal court, administrative agency, or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage.

"Uninsured medical expenses":

~~((+))~~ For the purpose of establishing or enforcing support obligations ~~((under RCW 26.23.110.))~~ means:

~~((+))~~ (1) Medical expenses not paid by insurance for medical, dental, prescription and optometrical costs incurred on behalf of a child; and

~~((b))~~ (2) Premiums, copayments, or deductibles incurred on behalf of a child~~((; and~~

~~(2) Includes health insurance premiums that represent the only health insurance covering a dependent child when either:~~

~~(a) Health insurance for the child is not required by a support order or cannot be enforced by the division of child support (DCS); or~~

~~(b) The premium for covering the child exceeds the maximum limit provided in the support order).~~

"Unreimbursed assistance" means the cumulative amount of assistance which was paid to the family and which has not been reimbursed by assigned support collections.

"Unreimbursed medical expenses" means any amounts paid by one parent for uninsured medical expenses, which that parent claims the obligated parent owes under a child support order, which percentage share is stated in the child support order itself, not just in the worksheets.

"We" means the division of child support, part of the department of social and health services of the state of Washington.

"WSSR" is the Washington state support registry.

"You" means the reader of the rules, a member of the public, or a recipient of support enforcement services.

AMENDATORY SECTION (Amending WSR 06-03-120, filed 1/17/06, effective 2/17/06)

WAC 388-14A-2035 Do I assign my rights to support when I receive public assistance? (1) When you receive public assistance you assign your rights to support to the state. This section applies to all applicants and recipients of cash assistance under the state program funded under Title IV-A of the federal Social Security Act.

(2) As a condition of eligibility for assistance, a family member must assign to the state the right to collect and keep, subject to the limitation in subsection (3), any support owing to the family member or to any other person for whom the family member has applied for or is receiving assistance.

(3) Amounts assigned under this section may not exceed the lesser of the total amount of assistance paid to the family or the total amount of the assigned support obligation.

(4) When you receive medicaid or medical benefits, you assign your rights to medical support to the state. This applies to all recipients of medical assistance under the state program funded under Title XIX of the federal Social Security Act:

(a) If your children receive medicaid or other state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment and if your order provides for the payment of a monthly payment toward the premium when the obligated parent does not provide coverage, the division of child support (DCS) may serve a notice of support owed to establish the amount owed by the noncustodial parent as a monthly payment toward the premium paid for coverage by the state, as provided in WAC 388-14A-3312.

(b) Any amounts established under WAC 388-14A-3312 for periods while your children receive medicaid or other state-financed medical coverage are assigned to the state and are distributed as provided in WAC 388-14A-5011.

(c) Amounts assigned under this section may not exceed the lesser of the total amount of premiums paid by the state for your children or the total amount of the assigned monthly payment toward the premium.

(5) In addition to the assignment described in this section, there is an assignment of support rights under Title IV-E of the social security act when a child receives foster care services.

(a) The state provides foster care programs which may be federally-funded or state funded, or may place a child with a relative.

(b) As part of its state plan under Title IV-D of the social security act and 45 CFR 302.52, DCS provides child support

enforcement services for foster care cases as required by 45 CFR 302.33, RCW 74.20.330 and 74.20A.030.

AMENDATORY SECTION (Amending WSR 09-02-059, filed 1/5/09, effective 1/27/09)

WAC 388-14A-2036 What does assigning my rights to support mean? (1) As a condition of eligibility for assistance, a family member must assign to the state the right to collect and keep, subject to the limitation in WAC 388-14A-2035(3):

(a) Any support owing to the family member or to any other person for whom the family member has applied for or is receiving assistance if the family applied for cash public assistance before October 1, 2008.

(b) Support owing to the family member, or to any other person for whom the family member has applied for or is receiving cash public assistance, for any month during which the family receives assistance.

(2) While your family receives assistance, support is distributed and disbursed in accordance with WAC 388-14A-5000 through 388-14A-5015.

(3) After your family terminates from assistance, certain accrued arrears remain assigned to the state in accordance with the following rules:

(a) For assistance applications dated prior to October 1, 1997, you permanently assigned to the state all rights to support which accrued before the application date until the date your family terminated from assistance.

(b) For assistance applications dated on or after October 1, 1997, and before October 1, 2000:

(i) You permanently assigned to the state all rights to support which accrued while your family receives assistance; and

(ii) You temporarily assigned to the state all rights to support which accrued before the application date, until October 1, 2000, or when your family terminated from assistance, whichever date is later.

(c) For assistance applications dated on or after October 1, 2000, and before October 1, 2008:

(i) You permanently assigned to the state all rights to support which accrued while the family received assistance; and

(ii) You temporarily assigned to the state all rights to support which accrued before the application date, until the date your family terminated from assistance.

(d) For assistance applications dated on or after October 1, 2008, you permanently assign to the state all rights to support which accrue while the family receives assistance.

(4) When you assign your medical support rights to the state, you authorize the state on behalf of yourself and the children in your care to enforce the noncustodial parent's full duty to provide medical support.

(a) When you begin receiving medicaid or medical assistance, you do not assign to the state any accrued medical support arrears that may be owed to you by the noncustodial parent (NCP).

(b) If your support order provides for the payment of a monthly payment toward the premium when the obligated parent does not provide coverage, the division of child sup-

port (DCS) may serve a notice of support owed to establish the amount owed by the NCP as a monthly payment toward the premium paid for coverage by the state, as provided in WAC 388-14A-3312.

(c) After you terminate medicaid or medical assistance, any assigned medical arrears remain assigned to the state.

AMENDATORY SECTION (Amending WSR 06-09-015, filed 4/10/06, effective 5/11/06)

WAC 388-14A-3140 What can happen at a hearing on a support establishment notice? (1) When a parent requests a hearing on a notice and finding of financial responsibility (NFFR), notice and finding of parental responsibility (NFPR), or notice and finding of medical responsibility (NFMR), the hearing is limited to resolving the ((NCP's)) current and future support obligation and the accrued support debt of the noncustodial parent (NCP), and to establishing the medical support obligations of both the NCP and the custodial parent (CP), if the CP is the legal or biological parent of the child(ren). The hearing is not for the purpose of setting a payment schedule on the support debt.

(2) The ((noncustodial parent (NCP) has)) NCP and the CP each have the burden of proving any defenses to their own liability. See WAC 388-14A-3370.

(3) ((Both)) The NCP and/or the custodial parent (CP) must show cause why the terms in the NFFR, NFPR, or NFMR are incorrect.

(4) The administrative law judge (ALJ) has authority to enter a support obligation that may be higher or lower than the amounts set forth in the NFFR, NFPR, or NFMR, including the support debt, current support, and the future support obligation.

(a) The ALJ may enter an order that differs from the terms stated in the notice, including different debt periods, if the obligation is supported by credible evidence presented by any party at the hearing, without further notice to any nonappearing party, if the ALJ finds that due process requirements have been met.

(b) Any support order entered by the ALJ must comply with the requirements of WAC 388-14A-6300.

(5) The ALJ has no authority to determine custody or visitation issues, or to set a payment schedule for the arrears debt.

(6) When a party has advised the ALJ that they will participate by telephone, the ALJ attempts to contact that party on the record before beginning the proceeding or rules on a motion. The ALJ may not disclose to the other parties the telephone number or the location of the party appearing by phone.

(7) In most support establishment hearings, the NCP and CP may participate in the hearing. However, in certain cases, there is no "custodial parent" because the child or children are in foster care.

(a) If both the NCP ((fails)) and CP fail to appear for hearing, see WAC 388-14A-3131.

(b) If only one of the parties appears for the hearing, see WAC 388-14A-3132.

(c) If both the NCP ((appears)) and CP appear for hearing, see WAC 388-14A-3133.

(8) In ~~((certain))~~ some cases, there can be two NCPs, called "joint NCPs." This happens when DCS serves a joint support establishment notice on the marital community made up of a husband and wife ~~((are jointly served a support establishment notice))~~ who reside together, seeking to establish a support obligation for a ~~((common))~~ child in common who is not residing in their home.

(a) If both joint NCPs fail to appear for hearing, see WAC 388-14A-3131;

(b) If both joint NCPs appear for hearing, see WAC 388-14A-3133; or

(c) One joint NCP may appear and represent the other joint NCP.

(9) When the CP ~~((asserts))~~ is granted good cause level B (see WAC 388-422-0020), DCS notifies the CP that ~~((they))~~ the CP will ~~((continue to))~~ receive documents, notices and orders. The CP may choose to participate at any time. Failure to appear at hearing results in a default order but does not result in a sanction for noncooperation under WAC 388-14A-2041.

(10) If any party appears for the hearing and elects to proceed, ~~((absent the granting of a continuance))~~ the ALJ hears the matter and enters an initial decision and order based on the evidence presented, unless the ALJ grants a continuance. The ALJ includes a party's failure to appear in the initial decision and order as an order of default against that party. The direct appeal rights of the party who failed to appear ~~((shall be))~~ are limited to an appeal on the record made at the hearing.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-3205 How does DCS calculate my income? (1) The division of child support (DCS) calculates a parent's income using the best available information~~((s))~~. In the absence of records of a parent's actual earnings, DCS and/or the administrative law judge (ALJ) may impute a parent's income under RCW 26.19.071(6) in the following order of priority:

(a) ~~((Actual income))~~ Full-time earnings at the current rate of pay;

(b) ~~((Estimated income, if DCS has:~~

(i) Incomplete information;

(ii) Information based on the prevailing wage in the parent's trade or profession; or

(iii) Information that is not current.

(c) ~~Imputed income under RCW 26.19.071(6))~~ Full-time earnings at the historical rate of pay based on reliable information, such as employment security department data;

(c) Full-time earnings at a past rate of pay where information is incomplete or sporadic;

(d) Full-time earnings at minimum wage in the jurisdiction where the parent resides if the parent has a recent history of minimum wage earnings, is recently coming off public assistance, general assistance-unemployable, supplemental security income, or disability, has recently been released from incarceration, or is a high school student; or

(e) Median net monthly income of year-round full-time workers as derived from the United States bureau of census, current population reports.

(2) As an exception to the imputation process described in subsection (1) of this section, DCS and/or the ALJ imputes full time earnings at the minimum wage to a TANF recipient in the absence of actual income information((, DCS imputes full time earnings at the minimum wage to a TANF recipient)). You may rebut the imputation of income if you are excused from being required to work while receiving TANF, because:

(a) You are either engaged in other qualifying WorkFirst activities which do not generate income, such as job search; or

(b) You are excused or exempt from being required to work in order to receive TANF, because of other barriers such as family violence or mental health issues.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-3310 The division of child support serves a notice of support owed to establish a fixed dollar amount under an existing child support order. (1) The division of child support (DCS) may serve a notice of support owed under RCW 26.23.110 on either parent whenever it is necessary to establish a fixed dollar amount owed under a child support order. Situations when DCS may serve a notice of support owed include, but are not limited to:

(a) When the support obligation is not a fixed dollar amount;

(b) When DCS is implementing an adjustment or escalation provision of a court order; or

(c) When DCS is establishing the obligation of either the noncustodial parent (NCP) or custodial parent (CP) to contribute his or her proportionate share of medical support or medical expenses for the child(ren).

(2) DCS may serve a notice of support owed under RCW 26.23.110 on a noncustodial parent (NCP) ((under RCW 26.23.110)) to establish a fixed dollar amount of monthly support and accrued support debt, including day care costs:

(a) If the support obligation under an order is not a fixed dollar amount; or

(b) To implement an adjustment or escalation provision of a court order.

((2)) (3) The notice of support owed may include day care costs and medical support if the court order provides for such costs.

(4) DCS may serve a notice of support owed under RCW 26.23.110 on either of the parties to a support order, whether the party being served is the noncustodial parent (NCP) or the custodial parent (CP), in order to establish that parent's share of medical expenses and/or medical support owed for the child or children covered by a support order. WAC 388-14A-3312 describes the use of a notice of support owed for this purpose.

(a) DCS may use the notice of support owed to collect unreimbursed medical expenses from either of the parties to a support order when the support order provides that a parent is responsible for his or her proportionate share of uninsured

medical expenses, no matter which one has custody of the child(ren).

((3)) (b) DCS may serve a notice of support owed to establish a parent's share of a health insurance premium paid by the other parent or DSHS for coverage for the child(ren), as provided in RCW 26.09.105 (1)(c). If the child support order provides that either or both parents are obligated to pay a monthly payment in the form of a proportionate share of the health insurance premium for the child(ren), and the obligated parent does not have health insurance available through his or her union or employer, DCS may serve a notice of support owed under RCW 26.23.110. DCS may serve the notice on:

(i) The NCP to establish and enforce the NCP's monthly payment toward the premium paid for coverage by the CP or by the state; or

(ii) The CP to establish and enforce the CP's monthly payment toward the premium paid for coverage by the NCP.

(5) DCS serves a notice of support owed under this section on ((an)) the NCP or the CP, as appropriate, like a summons in a civil action or by certified mail, return receipt requested.

((4)) (6) Following service of a notice of support owed under this section, DCS mails notice to the other party to the support order.

(a) After service on the NCP, DCS mails a notice to payee under WAC 388-14A-3315.

(b) After service on the CP, DCS mails the NCP a copy of the notice which was served on the NCP.

((5)) (7) In a notice of support owed, DCS includes the information required by RCW 26.23.110, and:

(a) The factors stated in the order to calculate monthly support or the amounts claimed for medical support;

(b) Any other information not contained in the order that was used to calculate monthly support or medical support and ((the)) any support debt; and

(c) Notice of the right to request an annual review of the order or a review on the date, if any, given in the order for an annual review.

((6)) (8) The NCP, or the CP as appropriate, must make all support payments after service of a notice of support owed to the Washington state support registry. DCS does not credit payments made to any other party after service of a notice of support owed except as provided in WAC 388-14A-3375.

((7)) (9) A notice of support owed becomes final and subject to immediate income withholding and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW unless the NCP (or CP as appropriate), within twenty days of service of the notice in Washington:

(a) Contacts DCS, and signs an agreed settlement;

(i) Files a request with DCS for a hearing under this section; or

(ii) Obtains a stay from the superior court.

(b) A notice of support owed served in another state becomes final according to WAC 388-14A-7200.

((8)) (10) DCS may enforce at any time:

(a) A fixed or minimum dollar amount for monthly support stated in the court order or by prior administrative order entered under this section;

(b) Any part of a support debt that has been reduced to a fixed dollar amount by a court or administrative order; and

(c) Any part of a support debt that neither party claims is incorrect.

~~((9))~~ (11) For the rules on a hearing on a notice of support owed, see WAC 388-14A-3320.

~~((10))~~ (12) A notice of support owed or a final administrative order issued under WAC 388-14A-3320 must inform the parties of the right to request an annual review of the order.

~~((11))~~ (13) If ~~((an))~~ either the NCP or ~~((custodial parent (CP)))~~ CP requests a late hearing, ~~((the party))~~ he or she must show good cause for filing the late hearing request if it is filed more than one year after service of the notice of support owed.

~~((12))~~ (14) A notice of support owed fully and fairly informs the ~~((NCP))~~ parties of the rights and responsibilities in this section.

~~((13))~~ (15) For the purposes of this section, WAC 388-14A-3312, 388-14A-3315 and 388-14A-3320, the term "payee" includes "physical custodian," "custodial parent," or "party seeking reimbursement."

(16) DCS serves a notice of support owed under this section only when the party on whose behalf the notice is served has:

(a) An open IV-D case; and

(b) A Washington child support order.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-3312 The division of child support serves a notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support to establish a fixed dollar amount owed under a child support order. (1) Depending on the specific requirements of the child support order, the division of child support (DCS) may serve a notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support under RCW 26.23.110 on either the noncustodial parent (NCP) or the custodial parent (CP), as appropriate, in order to:

(a) Establish as a sum certain and collect the obligated parent's proportionate share of uninsured medical expenses owed to the party seeking reimbursement;

(b) Establish as a sum certain and collect the obligated parent's monthly payment toward the premium paid by the other parent for insurance coverage for the child;

(c) Establish as a sum certain and collect the NCP's monthly payment toward the premium amounts paid for managed care coverage for the child by the state, if the child receives state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment; or

(d) Establish and collect amounts owed under both subsections (a) and (b) of this section.

(2) Either the NCP or the CP (if the CP is both a parent and a party to the support order) may ask DCS to serve a notice of support owed ~~((for))~~ on the other party to the support order in order to establish the obligated parent's proportionate share of unreimbursed medical expenses ~~((on the~~

~~other party to the support order, if that party is an obligated party under))~~ if the support order establishes such an obligation.

(a) If the CP is not both a parent and a party to the support order, DCS can not assist the CP in making a claim for unreimbursed medical expenses, but the CP may seek to recover such expenses by filing an action in court.

(b) DCS serves the notice if the party seeking reimbursement provides proof of payment of at least five hundred dollars in uninsured medical expenses.

(3) Either the NCP or the CP may ask DCS to serve a notice of support owed on the other parent when the support order provides that if health insurance is not available through the obligated parent's employer or union at a cost not to exceed twenty-five percent of the basic support obligation, the obligated parent must pay a monthly payment toward the premium paid for coverage which represents the obligated parent's proportionate share of the health insurance premium paid by the other parent or the state.

(a) DCS serves the notice to establish a monthly payment toward the premium paid by the other parent only if the obligated parent is not already providing coverage for the children.

(b) If the CP is not both a parent and a party to the support order DCS cannot assist the CP in making a claim for a monthly contribution toward any insurance coverage provided by the CP.

(4) Each parent's proportionate share of income and basic support obligation is found on the Washington state child support schedule worksheet that was completed as part of the support order.

(5) If the support order provides for the payment of a monthly amount as part of the parent's medical support obligation under RCW 26.09.105 (1)(c) but does not set that obligation as a sum certain, the division of child support (DCS) may serve a notice of support owed under RCW 26.23.110 to establish the amount owed by the obligated parent as a monthly payment toward the premium paid for coverage by the other parent or the state, when appropriate.

(6) When either parent asks DCS to serve a notice of support owed to establish the other parent's proportionate share of unreimbursed medical expenses and the expenses include premiums for health insurance for the child(ren) covered by the order, DCS reviews the order to determine whether it provides for a monthly payment toward the premium when the obligated parent does not have insurance available through his or her employer or union.

(a) If the order does not have such a requirement, DCS includes the health insurance premiums in the claim for reimbursement of uninsured medical expenses.

(b) If the order does have such a requirement, DCS serves a notice of support owed which:

(i) Includes the health insurance premiums in the claim for reimbursement of uninsured medical expenses; and

(ii) If appropriate, includes the provisions necessary to establish a monthly contribution which represents the obligated parent's proportionate share of the premium paid by the other parent (not to exceed twenty-five percent of the obligated parent's basic support obligation), if the obligated par-

ent is not already providing health insurance coverage for the child(ren).

(7) Once DCS serves a notice of support owed under this section that establishes a monthly payment toward the premium, which represents the obligated parent's proportionate share of the premium paid by the other parent or the state, the obligated parent is not required to reimburse the other parent or the state for any amounts of the obligated parent's proportionate share of the premium which are not paid because those amounts exceed twenty-five percent of the obligated parent's basic support obligation. The obligation to contribute a proportionate share of other uninsured medical expenses is not affected by the establishment of a monthly payment toward the premium under this section.

(8) If the child(ren) receive medicaid or other state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment, DCS may serve a notice of support owed under RCW 26.23.110 to establish the amount owed by the noncustodial parent as a monthly payment toward the premium paid for coverage by the state, which represents the obligated parent's proportionate share of the premium paid by the state (not to exceed twenty-five percent of the obligated parent's basic support obligation), if the obligated parent is not already providing health insurance coverage for the child(ren).

(9) A parent's request that DCS serve a notice of support owed to establish the other parent's obligation for ((unreimbursed)) medical ((expenses)) support:

(a) May be for a period of up to twenty-four consecutive months.

(b) May include only medical services provided after July 21, 2007.

(c) May include only health insurance coverage provided after September 30, 2009.

(d) May not include months which were included in a prior notice of support owed for ((unreimbursed)) medical ((expenses)) support or a prior judgment.

((4)) (e) Need not be for the twenty-four month period immediately following the period included in the prior notice of support owed for ((unreimbursed)) medical ((expenses)) support.

((4)) (10) The party seeking reimbursement must ask DCS to serve a notice of support owed for ((unreimbursed)) medical ((expenses)) support within two years of the date that the expense ((being)) or premium was incurred.

(a) The fact that a ((claim for unreimbursed)) request that DCS serve a notice of support owed for medical ((expenses)) support is ((rejected by DCS)) denied, either in whole or in part, does not mean that the parent cannot pursue reimbursement of those expenses by proceeding in court.

(b) If a parent obtains a judgment for ((unreimbursed)) reimbursement of medical ((expenses)) support, DCS enforces the judgment.

((5)) (11) DCS does not serve a notice of support owed ((for unreimbursed medical expenses)) under RCW 26.23.110 unless the party seeking reimbursement for medical support declares under penalty of perjury that he or she has asked the obligated party to pay his or her share of the medical expenses and/or medical support, or provides good cause for not asking the obligated party to pay.

(a) If the medical expenses have been incurred within the last twelve months, this requirement is waived.

(b) If the obligated party denies having received notice that the other party was seeking reimbursement for medical expenses or support, the service of the notice of support owed ((for unreimbursed medical expenses)) constitutes the required notice.

((6)) (12) The NCP must apply for full child support enforcement services before the NCP may ask DCS to enforce the CP's medical support obligation.

(a) DCS opens a separate case to enforce a CP's medical support obligation.

(b) The case where DCS is enforcing the support order and collecting from the NCP is called the main case.

(c) The case where DCS is acting on NCP's request to enforce CP's medical support obligation is called the medical support case.

((7)) (d) WAC 388-14A-4112 describes the circumstances under which DCS enforces a CP's obligation to provide medical support.

(13) DCS serves a notice of support owed for medical support on the obligated parent like a summons in a civil action or by certified mail, return receipt requested.

((8)) (14) Following service on the obligated parent, DCS mails a notice to the party seeking reimbursement under WAC 388-14A-3315.

((9)) (15) In a notice of support owed for ((unreimbursed)) medical ((expenses)) support, DCS includes the information required by RCW 26.23.110, and:

(a) The factors stated in the order regarding medical support;

(b) A statement of uninsured medical expenses and a declaration by the parent seeking reimbursement; and

(c) Notice of the right to request an annual review of the order, as provided in WAC 388-14A-3318.

((10)) (16) A notice of support owed for ((unreimbursed)) medical ((expenses)) support becomes final and subject to immediate income withholding and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW unless ((the obligated)) either parent, within twenty days of service of the notice in Washington:

(a) Contacts DCS, and signs an agreed settlement;

(b) Files a request with DCS for a hearing under this section; or

(c) Obtains a stay from the superior court.

((11)) (17) A notice of support owed for ((unreimbursed)) medical ((expenses)) support served in another state becomes final according to WAC 388-14A-7200.

((12)) (18) For the rules on a hearing on a notice of support owed for ((unreimbursed)) medical ((expenses)) support, see WAC 388-14A-3320.

((13)) (19) A notice of support owed for ((unreimbursed)) medical ((expenses)) support or a final administrative order issued under WAC 388-14A-3320 must inform the parties of the right to request an annual review of the order.

((14)) (20) If the obligated parent is the NCP, any amounts owing determined by the final administrative order are added to the debt on the main case.

(a) Amounts owed to the CP are added to the CP debt on the main case.

(b) Amounts owed to reimburse the state for medicaid or other state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment are added to the main case as permanently assigned arrears.

~~((15))~~ (21) If the obligated parent is the CP, any amounts owing determined by the final administrative order are paid in the following order:

(a) Any amount owed by the CP to the NCP is applied as an offset to any nonassistance child support arrears owed by the NCP on the main case only; or

(b) If there is no debt owed to the CP on the main case, payment of the amount owed by the CP is in the form of a credit against the NCP's future child support obligation:

(i) Spread equally over a twelve-month period starting the month after the administrative order becomes final, but not to exceed ten percent of the current support amount; or

(ii) When the future support obligation will end under the terms of the order in less than twelve months, spread equally over the life of the order, but not to exceed ten percent of the current support amount.

(c) If the amount owed by the CP exceeds the amount that can be paid off using the methods specified in subsections (a) and (b) of this section, DCS uses the medical support case to collect the remaining amounts owed using the remedies available to DCS for collecting child support debts.

~~((16))~~ (22) If either the obligated parent or the parent seeking reimbursement or payment toward the premium requests a late hearing, that party must show good cause for filing the late hearing request if it is filed more than one year after service of the notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support.

~~((17))~~ (23) A notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support fully and fairly informs the obligated parent of the rights and responsibilities in this section.

~~((18))~~ (24) A notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support under this section is subject to annual review as provided in WAC 388-14A-3318.

~~((19))~~ (25) If both CP and NCP request that DCS serve a notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support on the other party, those notices remain separate and may not be combined.

(a) The office of administrative hearings (OAH) may schedule consecutive hearings but may not combine the matters under the same docket number.

(b) The administrative law judge (ALJ) must issue two separate administrative orders, one for each obligated parent.

~~((20))~~ (26) DCS does not serve a second or subsequent notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support on an obligated parent until the party seeking reimbursement meets the conditions set forth in WAC 388-14A-3318.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-3315 When DCS serves a notice of support debt ~~((or))~~, notice of support owed ~~((or))~~, notice of support owed for ~~((unreimbursed))~~ medical

~~((expenses))~~ support, we notify the other party to the child support order. (1) The division of child support (DCS) sends a notice to the payee/obligee under a Washington child support order or a foreign child support order when DCS receives proof of service on the ~~((noncustodial))~~ obligated parent ~~((NCP))~~ of:

(a) A notice of support owed under WAC 388-14A-3310; ~~((or))~~

(b) A notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support under WAC 388-14A-3312; or

(c) A notice of support debt under WAC 388-14A-3304. (2) DCS sends the notice to payee by first class mail to the last known address of the payee and encloses a copy of the notice served on the ~~((NCP))~~ obligated parent.

(3) In a notice to payee, DCS informs the payee of the right to file a request with DCS for a hearing on a notice of support owed under WAC 388-14A-3310, a notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support under WAC 388-14A-3312, or a notice of support debt under WAC 388-14A-3304 within twenty days of the date of a notice to payee that was mailed to a Washington address.

(4) If the notice to payee was mailed to an out-of-state address, the payee may request a hearing within sixty days of the date of the notice to payee.

(5) The notice of support owed under WAC 388-14A-3312 informs both the CP and the NCP of the right to file a request for hearing on the notice within twenty days of the date of a notice to payee that was mailed to a Washington address, or within sixty days if the NCP copy is mailed to an out-of-state address.

(6) The effective date of a hearing request is the date DCS receives the request.

~~((6) When DCS serves a notice of support owed for unreimbursed medical expenses under WAC 388-14A-3312, DCS mails the notice to payee to the parent seeking reimbursement.)~~

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-3317 What is an annual review of a support order under RCW 26.23.110? (1) RCW 26.23.110 provides for an annual review of the ~~((support))~~ final administrative order which ~~((was previously the subject of))~~ resulted from a notice of support owed ~~((under that statute))~~, but only if ~~((the division of child support (DCS), the noncustodial parent (NCP), or the custodial parent (CP))~~ one of the parties to that administrative order requests a review.

(a) This ~~((type of annual review concerns))~~ section describes the annual review that ~~((takes place after service of))~~ occurs for a final administrative order that resulted from a notice of support owed that was served under WAC 388-14A-3310.

(b) ~~((For the definition of an annual review of a support order under RCW 26.23.110 that takes place after service of))~~ WAC 388-14A-3318 describes the annual review that for a final administrative order that results from a notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support that was served under WAC 388-14A-3312 ~~((see WAC 388-14A-3318)).~~

(2) For purposes of chapter 388-14A WAC, an "annual review of a support order" is defined as:

(a) The collection by DCS of necessary information from CP and NCP;

(b) The service of a notice of support owed under WAC 388-14A-3310; and

(c) The determination of arrears and current support amount with an effective date which is at least twelve months after the date the last notice of support owed, or the last administrative order or decision based on a notice of support owed, became a final administrative order.

(3) A notice of support owed may be prepared and served sooner than twelve months after the date the last notice of support owed, or the last administrative order or decision based on a notice of support owed, became a final administrative order, but the amounts determined under the notice of support owed may not be effective sooner than twelve months after that date.

(4) Either CP or NCP may request an annual review of the support order, even though ~~((the statute))~~ RCW 26.23.110 mentions only the NCP.

(5) DCS may ~~((request))~~ commence an annual review of the support order on its own initiative, but has no duty to ~~((do so))~~ commence an annual review unless either the CP or NCP requests a review.

(6) For the purpose of this section, the terms "payee" and "CP" are interchangeable, and can mean either the payee under the order or the person with whom the child resides the majority of the time.

(7) The twelve-month requirement for an annual review under this section runs separately from the twelve-month requirement for an annual review under WAC 388-14A-3318.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-3318 What is an annual review of a notice of support owed under WAC 388-14A-3312? (1) RCW 26.23.110 provides for an annual review of the support order which was previously the subject of a notice of support owed under that statute if the noncustodial parent (NCP) or the custodial parent (CP) requests a review.

(2) For purposes of chapter 388-14A WAC, the following rules apply to an "annual review of a support order" for a notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support served under WAC 388-14A-3312:

(a) Either the CP or the NCP may be the party seeking reimbursement.

(b) The party seeking reimbursement of uninsured medical expenses must provide proof of payment of at least five hundred dollars in uninsured medical expenses for services provided in the last twenty-four months.

(c) There is no minimum dollar amount required when asking for an annual review concerning the monthly payment toward the premium paid by the other party or the state.

(d) At least twelve months must have passed since:

(i) The date the last notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support on behalf of the party seeking reimbursement became a final order; or

(ii) The last administrative order or decision based on a notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support on behalf of that party became a final administrative order.

(3) In the event that DCS has served both a notice of support owed under WAC 388-14A-3310 and a notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support under WAC 388-14A-3312 on the same case, each type of notice of support owed has its own twelve-month cycle for annual review.

(4) For purposes of this section, the twelve-month cycle for annual review runs separately for the NCP and for the CP, depending on which one is the party seeking reimbursement.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-3320 What happens at a hearing on a notice of support owed? (1) A hearing on a notice of support owed is only for interpreting the order for support and any modifying orders and not for changing or deferring the support provisions of the order.

(2) A hearing on a notice of support owed served under WAC 388-14A-3310 is only to determine:

(a) The amount of monthly support as a fixed dollar amount;

(b) Any accrued arrears through the date of hearing; and

(c) If a condition precedent in the order to begin or adjust the support obligation was met.

(3) A hearing on a notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support served under WAC 388-14A-3312 is only to determine:

(a) Issues regarding unreimbursed medical expenses, such as:

(i) Whether the parent on whom the notice was served is obligated under the support order to pay for uninsured medical expenses for the children covered by the order;

~~((b))~~ (ii) The total amount of uninsured medical expenses paid by the party seeking reimbursement;

~~((c))~~ (iii) The obligated parent's share of the uninsured medical expenses;

~~((d))~~ (iv) The amount, if any, the obligated parent has already paid to the party seeking reimbursement; and

~~((e))~~ (v) The amount owed by the obligated parent to the party seeking reimbursement for unreimbursed medical expenses.

(b) Issues regarding a monthly payment toward the premium paid for coverage for the children, such as:

(i) Whether the support order requires the obligated parent to pay when the obligated parent does not provide coverage;

(ii) Whether the obligated parent is currently providing coverage, or did so during the time period in question;

(iii) The amount of the premium paid by the other parent or by the state to cover the child(ren);

(iv) The obligated parent's proportionate share of the premium;

(v) The amount, if any, the obligated parent has already contributed toward health insurance premiums paid by the other parent or the state for the time period in question; and

(vi) The monthly amount to be paid by the obligated parent as his or her proportionate share of the health insurance premium.

(4) If the administrative law judge (ALJ) determines that the uninsured medical expenses claimed by the parent seeking reimbursement do not amount to at least five hundred dollars, the ALJ:

(a) May not dismiss the notice on this basis;

(b) Must make the determination listed in subsection (3) above.

(5) The hearing is not for the purpose of setting a payment schedule on the support debt.

(6) Either the noncustodial parent (NCP) or payee may request a hearing on a notice of support owed served under WAC 388-14A-3310.

(7) Either the obligated parent or the party seeking reimbursement may request a hearing on a notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support served under WAC 388-14A-3312.

(8) The party who requested the hearing has the burden of proving any defenses to liability that apply under WAC 388-14A-3370 or that the amounts stated in the notice of support owed are incorrect.

(9) The office of administrative hearings (OAH) sends a notice of hearing to the NCP, to the division of child support (DCS), and to the custodial parent (CP). The NCP and the CP each may participate in the hearing as an independent party.

(10) If only one party appears and wishes to proceed with the hearing, the administrative law judge (ALJ) holds a hearing and issues an order based on the evidence presented or continues the hearing. See WAC 388-14A-6110 and 388-14A-6115 to determine if the ALJ enters an initial order or a final order.

(a) An order issued under this subsection includes an order of default against the nonappearing party and limits the appeal rights of the nonappearing party to the record made at the hearing.

(b) If neither the NCP nor the CP appears or wishes to proceed with the hearing, the ALJ issues an order of default against both parties.

(11) If either party requests a late hearing on a notice of support owed, that party must show good cause for filing the late hearing request, as provided in WAC 388-14A-3500.

(12) For purposes of this section, the terms "payee" and "CP" are used interchangeably and can mean either the CP, the payee under the order or both, except that a CP who is not also the payee under the support order may not ask DCS to serve a notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support under WAC 388-14A-3312.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-3400 Are there limitations on how much of my income is available for child support? (1) There are two kinds of limitations based on your income when we set your child support obligation:

(a) The monthly basic child support ~~((amount))~~ obligation for all of your biological or legal children cannot exceed forty-five percent of your monthly net income, unless there

are special circumstances as provided in chapter 26.19 RCW; and

(b) The monthly basic child support ~~((amount))~~ obligation cannot reduce your net monthly income below ~~((the one person need standard (WAC 388-478-0015)))~~ one hundred twenty-five percent of the federal poverty level, unless there are special circumstances as provided in chapter 26.19 RCW.

(2) RCW 74.20A.090 limits the amount that can be withheld from your wages for child support to fifty percent of your net monthly earnings.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

WAC 388-14A-4100 How does the division of child support enforce my obligation to provide health insurance for my children? (1) If a child support order requires ~~((the noncustodial parent (NCP)))~~ a parent to provide health insurance for the children, the division of child support (DCS) attempts to enforce that requirement according to the terms of the order. ~~((The following subsections describe the different types of premium limitations that could apply to a support order))~~ A parent required to provide medical support or health insurance coverage for a child is called the obligated parent, and can be either the custodial parent (CP) or the non-custodial parent (CP).

(2) When DCS is enforcing a support order which contains a specific dollar limit for the cost of health insurance premiums or provides for coverage which is available at no cost to the ~~((NCP))~~ obligated parent, DCS does not require the ~~((NCP))~~ obligated parent to provide health insurance if coverage is not available within the limitations of the order.

(3) When DCS is enforcing a support order entered in Washington on or after October 1, 2009, which provides that either or both parents must provide coverage and/or a proportionate share of uninsured medical expenses as part of the medical support obligation under RCW 26.09.105, the rules in this subsection apply unless the support order specifies differently:

(a) The obligated parent must provide health insurance for dependent children covered by the order if coverage is:

(i) Available or becomes available through private insurance which is not provided through the obligated parent's employer or union; or

(ii) Available or becomes available through the obligated parent's employment or union at a cost of not greater than twenty-five percent of the obligated parent's basic support obligation.

(b) If the obligated parent does not provide proof of coverage or if coverage is not available, DCS may serve a notice of support owed under WAC 388-14A-3312 to determine the monthly amount that the obligated parent must pay as his or her proportionate share of any premium paid by the other parent or by the state on behalf of the child(ren).

(4) When DCS is enforcing a support order entered ~~((on or after))~~ in Washington between May 13, 1989 and September 30, 2009, unless the support order specifies differently, the ~~((NCP))~~ obligated parent must provide health insurance for dependent children if coverage is:

(a) Available or becomes available through the ((NCP's)) obligated parent's employment or union; and

(b) Available at a cost of not greater than twenty-five per cent of the ((NCP's)) obligated parent's basic support obligation.

((4)) (5) When DCS is enforcing a Washington support order entered prior to May 13, 1989, unless the support order specifies differently, the ((NCP)) obligated parent must provide health insurance for dependent children if coverage is available or becomes available through the ((NCP's)) obligated parent's employment or union:

(a) For a maximum of twenty-five dollars per month, if the order specifies that the ((NCP)) obligated parent must provide coverage only if it is available at a reasonable cost; or

(b) For any premium amount whatsoever, if the order does not specify reasonable cost.

((5)) (6) When DCS is enforcing a support order entered by a court or administrative tribunal that is not located in Washington, unless the order provides differently, DCS enforces the medical support obligation as provided in subsection (4) of this section.

(7) DCS serves a notice of intent to enforce a health insurance obligation if the support order:

(a) Requires the ((NCP)) obligated parent either to provide health insurance coverage or prove that coverage is not available; and

(b) Does not inform the ((NCP)) obligated parent that failure to provide health insurance or prove it is not available may result in enforcement of the order without notice to the ((NCP)) obligated parent.

((6)) (8) DCS serves the notice of intent to enforce a health insurance obligation on the ((NCP)) obligated parent by certified mail, return receipt requested, or by personal service.

((7)) (9) The notice advises the ((NCP)) obligated parent that ((the NCP)) he or she must submit proof of coverage, proof that coverage is not available, or proof that the ((NCP)) obligated parent has applied for coverage, within twenty days of the date of service of the notice.

((8)) (10) The notice advises the ((NCP)) obligated parent that, if health insurance is not yet available, the ((NCP)) obligated parent must immediately notify DCS if health insurance coverage becomes available through the ((NCP's)) obligated parent's employer or union.

((9)) (11) When DCS enforces an ((NCP's)) obligated parent's health insurance obligation, such enforcement may include asking the employer and the plan administrator to enroll the ((NCP)) obligated parent in a health insurance plan available through the employer.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-4110 If my support order requires me to provide ((health insurance)) medical support for my children, what do I have to do? (1) Once a support order is entered requiring ((health insurance)) medical support, the obligated parent must take the following actions within twenty days:

(a) Provide health insurance coverage; and

(b) Provide proof of coverage to the other parent and to the division of child support (DCS), such as:

(i) The name of the insurer providing the health insurance coverage;

(ii) The names of the beneficiaries covered;

(iii) The policy number;

(iv) That coverage is current; and

(v) The name and address of the obligated parent's employer.

(2) If health insurance coverage that is accessible to the children named in the order is available, the obligated parent must:

(a) Provide for coverage for the children without waiting for an open enrollment period, as provided under RCW 48.01.235 (4)(a); and

(b) Submit proof of coverage as outlined in subsection (1)(b) above.

(3) If health insurance is not immediately available to the obligated parent, as soon as health insurance becomes available, the obligated parent must:

(a) Provide for coverage for the children named in the order; and

(b) Submit proof of coverage as outlined in subsection (1)(b) above.

(4) Medical assistance provided by the department under chapter 74.09 RCW does not substitute for health insurance.

(5) DCS may serve a notice of support owed for medical support under WAC 388-14A-3312 to establish either or both of the following:

(a) Either parent's share of uninsured medical expenses owed to the other parent; or

(b) Either parent's monthly payment toward the premium paid for coverage by the other parent or the state, if:

(i) Health insurance coverage is not available through the parent's employer or union or is not otherwise provided; and

(ii) The support order provides for the payment of a monthly payment toward the premium when the obligated parent does not provide coverage.

(6) See WAC 388-14A-4165 for a description of what happens when the combined total of a noncustodial parent's current support obligation, arrears payment and health insurance premiums to be withheld by the employer exceeds the fifty per cent limitation for withholding.

(7) Both parents must notify DCS any time there is a change to the health insurance coverage for the children named in the order.

NEW SECTION

WAC 388-14A-4111 When may DCS decline a request to enforce a medical support obligation? The division of child support (DCS) may decline to enforce a medical support obligation using the remedies available under RCW 26.09.105, 26.18.170 and 26.23.110 if one or more of the following apply:

(1) The medical support obligation is imposed by a child support order that was not entered in a court or administrative forum of the state of Washington;

(2) The department of social and health services is not paying public assistance or providing foster care services;

(3) The party requesting enforcement of the medical support obligation does not have an open IV-D case with DCS for the child;

(4) The party requesting enforcement of the medical support obligation is not a parent of the child for whom the medical support obligation was established;

(5) The party requesting enforcement of the medical support obligation is not a former recipient of public assistance as described in WAC 388-14A-2000 (2)(d);

(6) DCS has not received a request for services from a child support agency in another state or a child support agency of an Indian tribe or foreign country;

(7) The party requesting enforcement of the medical support obligation has not applied for full support enforcement services;

(8) The party requesting enforcement of the medical support obligation does not qualify as a party who can receive child support enforcement services from DCS under WAC 388-14A-2000;

(9) The case does not meet the requirements for provision of support enforcement services from DCS under WAC 388-14A-2010;

(10) DCS denies the application under WAC 388-14A-2020; or

(11) The case meets one or more of the reasons set out in WAC 388-14A-4112(2) that DCS does not enforce a custodial parent's obligation to provide medical support.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-4112 When does the division of child support enforce a custodial parent's obligation to provide ~~(health insurance coverage)~~ medical support? (1) A non-custodial parent (NCP) may file an application for full child support enforcement services and specifically request that the division of child support (DCS) enforce the ~~((health insurance))~~ medical support obligation of the custodial parent (CP). DCS does not enforce the CP's medical support obligation unless the NCP files an application for services under WAC 388-14A-2000 (2)(c). The NCP must specify whether he or she is requesting that DCS enforce one or both parts of the CP's medical support obligation:

(a) The CP's proportionate share of uninsured medical expenses; or

(b) The CP's obligation to provide health insurance coverage (including the possibility of a monthly payment toward the premium paid for coverage when appropriate).

(2) A medical support obligation includes providing health insurance coverage or contributing a monthly payment toward the premium paid for coverage when appropriate, and paying a proportionate share of any uninsured medical expenses for the children.

(a) DCS may enforce the CP's obligation to pay a proportionate share of any uninsured medical expenses for the children under WAC 388-14A-3312.

(b) DCS may decide whether it is appropriate to enforce the CP's obligation to provide health insurance coverage or contribute a monthly payment toward the premium paid for coverage under subsection (3) of this section.

(3) DCS does not enforce a custodial parent's obligation to provide health insurance coverage or pay a monthly payment toward the premium paid for coverage when:

(a) The support order does not include a medical support obligation which includes providing health insurance ~~((obligation))~~ or paying monthly payment toward the premium paid for coverage for the CP.

(b) The NCP is already providing health insurance coverage for the children covered by the order.

(c) The amount that the CP would have to pay for the premium for health insurance exceeds the NCP's monthly support obligation for the children.

(d) The children are covered by health insurance provided by someone else.

(e) The children are receiving medicaid.

(f) The children are receiving TANF.

(g) The CP does not reside in Washington state.

(h) The CP is a tribal member living on or near the reservation.

(i) The CP is receiving child support enforcement services through a tribal IV-D program.

~~((3))~~ (4) If none of the conditions under subsection ~~((2))~~ (3) exist, DCS may enforce the CP's obligation to provide health insurance coverage when the CP has health insurance available at a reasonable cost through the CP's employer or union.

~~((4))~~ (5) A "reasonable cost" for health insurance coverage is defined as twenty-five percent of the basic support obligation for the children covered by the order, unless the support order provides a different limitation.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-4115 Can my support order reduce my support obligation if I pay for health insurance? (1) Some support orders reduce the noncustodial parent's ~~((support obligation))~~ transfer payment based on health insurance premiums paid by the noncustodial parent (NCP).

(2) An NCP is entitled to the reduction for premiums paid only if(=

~~((a))~~ the NCP submits proof of the cost of coverage ((as provided in WAC 388-14A-4110 (1)(b); and

~~((b))~~ NCP actually pays the required premium)) which is actually being provided at the time the support order is entered, so that the amounts can be included in the worksheet calculation.

~~((3))~~ If the NCP fails to submit proof or pay the premium, the division of child support (DCS) collects the NCP's adjusted basic support obligation without a reduction for health insurance premium payments.)

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-4120 DCS uses the National Medical Support Notice to enforce an obligation to provide health insurance coverage. (1) The division of child support (DCS) uses a notice of enrollment called the National Medical Support Notice (NMSN) to enforce an obligated parent's obliga-

tion to provide health insurance coverage under chapter 26.18 RCW.

(2) DCS sends the NMSN to the obligated parent's employer in one of the following ways:

- (a) In the same manner as a summons in a civil action,
- (b) By certified mail, return receipt requested,
- (c) By regular mail, or

(d) By electronic means as provided in WAC 388-14A-4040 (1)(d).

(3) DCS sends the NMSN without notice to the obligated parent, who could be either the noncustodial parent (NCP) or the custodial parent (CP) when:

(a) A court or administrative order requires the obligated parent to provide insurance coverage for a dependent child;

(b) The obligated parent fails to provide health insurance (either by not covering the child or by letting the coverage lapse) or fails to provide proof of coverage;

(c) The requirements of RCW 26.23.050 are met; and

(d) DCS has reason to believe that coverage is available through the obligated parent's employer or union.

(4) If sending the NMSN does not result in coverage for the child, DCS may seek to enforce the obligated parent's medical support obligation by other means, as provided in RCW 26.18.170 and WAC 388-14A-4110.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

WAC 388-14A-4165 What happens when a noncustodial parent does not earn enough to pay child support plus the health insurance premium? (1) Under RCW 26.23.060(3), a payroll deduction may not exceed fifty percent of the noncustodial parent's disposable earnings in each pay period.

(2) When the division of child support (DCS) enforces a child support obligation through an income withholding action and also enforces a health insurance obligation, the noncustodial parent's employer often must withhold amounts for:

- (a) Current child support;
- (b) Child support arrears; and
- (c) Health insurance premiums.

(3) When the employer or plan administrator must enroll the noncustodial parent (NCP) in a health insurance plan in order to enroll the children (see WAC 388-14A-4140), the premium amount for the NCP's coverage is included in the amounts to withhold under subsection (2) above. If the NCP is already enrolled in a plan, the premium amount for the NCP's coverage is not included the amounts to withhold under that subsection.

(4) If the combined amounts for current support, support arrears and health insurance premiums are more than fifty percent of the noncustodial parent's disposable earnings, the employer must notify DCS immediately.

(5) In certain circumstances, DCS may adjust the amount to be withheld for support arrears so that the total amount withheld does not exceed fifty percent of the noncustodial parent's disposable earnings.

(6) If the noncustodial parent's current support obligation plus health insurance premiums exceeds fifty percent of the noncustodial parent's disposable earnings, DCS:

(a) Enforces the child support obligation through income withholding; but

(b) Is not able to enforce the noncustodial parent's health insurance obligation at that time.

(7) In the situation described in subsection (6), DCS may establish a monthly payment toward the premium, as described in WAC 388-14A-3312, even if the combined amount for the current support obligation and the monthly payment toward the premium exceeds fifty percent of the NCP's disposable earnings.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-4175 ((Is an employer) Who is required to notify the division of child support when insurance coverage for the children ends? (1) Once the division of child support (DCS) has notified an employer that a parent is obligated by a support order to provide health insurance coverage for the children named in the order, the National Medical Support Notice (NMSN) or other notice of enrollment remains in effect as specified in WAC 388-14A-4170.

(2) If coverage for the children is terminated, the employer must notify DCS within thirty days of the date coverage ends.

(3) A parent who is required by a child support order to provide health insurance coverage for his or her children must notify DCS and the other parent within thirty days of the date coverage for the children ends. This requirement applies whether the obligated parent is the custodial parent or the noncustodial parent.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-4180 When must the division of child support communicate with the DSHS health and recovery services administration? (1) The division of child support (DCS) must inform the DSHS health and recovery services administration (HRSA) of the existence of a new or modified court or administrative order for child support when the order includes a requirement for medical support. HRSA is the part of DSHS which provides services for the state of Washington under Title XIX of the federal Social Security Act.

(2) DCS must provide HRSA with the following information:

(a) Title IV-A case number, Title IV-E foster care case number, medicaid number or the individual's Social Security number;

(b) Name of the obligated parent;

(c) Social Security number of the obligated parent;

(d) Name and Social Security number of the child(ren) named in the order;

(e) Home address of the obligated parent;

(f) Name and address of the obligated parent's employer;

(g) Information regarding the obligated parent's health insurance policy; and

(h) Whether the child(ren) named in the order are covered by the policy.

(3) DCS must periodically communicate with HRSA to determine if there have been any lapses (stops and starts) in the obligated parent's health insurance coverage for medicaid applicants.

(4) Before DCS may serve a notice of support owed for medical support under WAC 388-14A-3312 to establish an obligated parent's monthly payment toward the premium paid by the state for coverage, HRSA must provide information regarding the premium paid for each child covered by the notice.

(a) DCS distributes to HRSA any collections based on the obligation established under WAC 388-14A-3312 when the child receives state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment.

(b) Such collections are retained by the department to reimburse the state, subject to the limitations in WAC 388-14A-2035(4).

AMENDATORY SECTION (Amending WSR 01-24-078, filed 12/3/01, effective 1/3/02)

WAC 388-14A-5007 If the paying parent has more than one case, can DCS apply support money to only one specific case? (1) The division of child support (DCS) applies amounts to a support debt owed for one family or household and distributes the amounts accordingly, rather than make a proportionate distribution between support debts (~~owed~~) owed to different families, when:

(a) Proportionate distribution is administratively inefficient; or

(b) The collection resulted from the sale or disposition of a specific piece of property against which a court awarded the custodial parent (CP) a judgment lien for child support; or

(c) The collection is the result of a contempt order which provides that DCS must distribute the amounts to a particular case.

(2) If the collection is the result of an automated enforcement of interstate (AEI) transaction under RCW 74.20A.188, DCS applies the payment as provided in WAC 388-14A-5006, even if the requesting state wants the payment applied to a specific case.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-6300 Duty of the administrative law judge in a hearing to determine the amount of a support obligation. (1) A support order entered under this chapter must conform to the requirements set forth in RCW 26.09-105 and 26.18.170, and in RCW 26.23.050 (3) and (5). The administrative law judge (ALJ) must comply with the DSHS rules on child support and include a Washington state child support schedule worksheet when entering a support order.

(2) In hearings held under this chapter to contest a notice and finding of financial responsibility or a notice and finding of parental responsibility or other notice or petition, the ALJ must determine:

(a) The noncustodial parent's obligation to provide support under RCW 74.20A.057;

(b) The names and dates of birth of the children covered by the support order;

(c) The net monthly income of the noncustodial parent (NCP) and any custodial parent (CP);

(d) The NCP's share of the basic support obligation and any adjustments to that share, according to his or her circumstances;

(e) If requested by a party, the NCP's share of any special child-rearing expenses in a sum certain amount per month;

(f) A statement that either or both parents are obligated to provide medical support under RCW 26.09.105 and 26.18.170, including but not limited to the following:

(i) A requirement that either or both parents are obligated to provide health insurance coverage for the child covered by the support order if coverage that can be extended to cover the child is or becomes available through the parent's employment or union;

(ii) Notice that if proof of health insurance coverage or proof that the coverage is unavailable is not provided to DCS within twenty days, DCS may seek direct enforcement through the obligated parent's employer or union without further notice to the parent; and

(iii) The reasons for not ordering health insurance coverage if the order fails to require such coverage;

(g) A provision which determines the mother and the father's proportionate share of uninsured medical expenses;

(h) The NCP's accrued debt and order payments toward the debt in a monthly amount to be determined by the division of child support (DCS);

(i) The NCP's current and future monthly support obligation as a per month per child amount and order payments in that amount; and

(j) The NCP's total current and future support obligation as a sum certain and order payments in that amount.

(3) Having made the determinations required in subsection (2) above, the ALJ must order the NCP to make payments to the Washington state support registry (WSSR).

(4) The ALJ must allow DCS to orally amend the notice at the hearing to conform to the evidence. The ALJ may grant a continuance, when necessary, to allow the NCP or the CP additional time to present rebutting evidence or argument as to the amendment.

(5) The ALJ may not require DCS to produce or obtain information, documents, or witnesses to assist the NCP or CP in proof of defenses to liability. However, this rule does not apply to relevant, nonconfidential information or documents that DCS has in its possession.

(6) In a hearing held on a notice of support owed for medical support issued under WAC 388-14A-3312, the ALJ must determine either or both of the following, depending on what was requested in the notice:

(a) The amount owed by the obligated parent to the other for unreimbursed medical expenses;

(b) The monthly amount to be paid by the obligated parent as his or her proportionate share of the health insurance premium paid by the other parent or the state.

((*) (7) The ALJ does not specify how the amounts owed by the obligated parent should be paid.

~~((b))~~ (8) In the event that DCS has served a notice under WAC 388-14A-3312 on both the NCP and the CP, the ALJ must issue a separate administrative order for each notice issued, and may not set off the debts against each other.

AMENDATORY SECTION (Amending WSR 06-16-073, filed 7/28/06, effective 8/28/06)

WAC 388-14A-8130 How does DCS complete the WSCSS worksheets when setting a joint child support obligation when the parents of a child in foster care are married and residing together? (1) When the division of child support (DCS) is setting a joint support obligation for married parents who reside together, DCS follows the steps set out in this section for completing the worksheets under the Washington state child support schedule (WSCSS).

(2) DCS calculates each parent's income under the rules set out in WAC 388-14A-3205, and then calculates the income of the marital community by combining both parents' income in ~~((the "Father"))~~ one column of the worksheet and does not put any income in the ~~(("Mother"))~~ other column.

(3) DCS calculates the joint support obligation using the limitations contained in RCW 26.19.065:

(a) The joint child support obligation may not exceed forty-five percent of the net income of the marital community except for good cause.

(b) Even ~~((with))~~ though there are two parents involved, DCS uses the one-person amount when determining the ~~((need standard))~~ one hundred twenty-five percent of federal poverty level limitation.

(c) Despite the application of any limitations, there is a presumptive minimum obligation of ~~((twenty-five))~~ fifty dollars per month per child.

~~((e))~~ (d) DCS or the administrative law judge (ALJ) may find reasons for deviation and must support those reasons with appropriate findings of fact in the support order.

(4) As described in subsection (2) of this section, the support obligation in the ~~(("Father"))~~ column of the WSCSS worksheet which contains information regarding both parents is the joint support obligation of the parents. ~~((The support obligation in the "Mother" column of the WSCSS worksheet is irrelevant for purposes of this particular support calculation.))~~

(5) DCS determines the joint support obligation of the parents without regard to the cost of foster care placement, as provided in WAC 388-14A-8105.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900M; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The run of sockeye in the Baker River is above the number needed for spawning and hatchery egg-take needs. Harvestable numbers remain to extend the fishery. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 21, 2010.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900M Exceptions to statewide rules—Baker and Skagit rivers Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) **Baker River** (Skagit County): Mouth to Highway 20 Bridge - Salmon: Open through July 31, 2010. Anti-snagging rule and night closure in effect. Daily limit 2 sockeye salmon.

(2) **Skagit River** (Skagit/Whatcom counties): From the Dalles Bridge at Concrete to the Highway 530 Bridge at Rockport - Salmon: Open through July 31, 2010, except closed from 200 feet above the mouth of Baker River up to the Highway 530 Bridge at Rockport. Daily limit two sockeye salmon. Release all salmon except sockeye salmon.

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

**WSR 10-16-006
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-185—Filed July 21, 2010, 3:16 p.m., effective July 21, 2010, 3:16 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 1, 2010:

WAC 232-28-61900M Exceptions to statewide rules—Baker and Skagit rivers.

WSR 10-16-022
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Economic Services Administration)

[Filed July 23, 2010, 9:43 a.m., effective August 1, 2010]

Effective Date of Rule: August 1, 2010.

Purpose: The department is amending WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits? This amendment will clarify which household members can be included in determining the assistance unit size for selecting the appropriate standard deduction in federally funded supplemental nutrition assistance program benefit calculation. This amendment will make WAC 388-450-0185 compliant with USDA Food and Nutrition Service final rules announcement for the Farm Security and Rural Investment Act (FSRIA) of 2002 (farm bill).

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0185.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, and 74.08.090.

Other Authority: 7 U.S.C. 2014 (a) and (e)(1); 7 C.F.R. §§ 273.1 and 273.9 (d)(1).

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: This amendment will allow the department to be in compliance with USDA final rule announcement for FSRIA of 2002 which requires implementation of rules and clarification by August 1, 2010. The department is concurrently working on the regular rule filing process. The preproposal statement of inquiry CR-101 was filed on February 25, 2010, as WSR 10-06-061, and proposed rule making CR-102 was filed on April 19, 2010, as WSR 10-09-060.

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

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

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

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

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

Date Adopted: July 8, 2010.

Katherine Vasquez
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-23-004, filed 11/5/09, effective 11/15/09)

WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits? We determine if your assistance unit (AU) is eligible for Basic Food and calculate your monthly benefits according to requirements of the Food and Nutrition Act of 2008 and federal regulations related to the supplemental nutrition assistance program (SNAP).

These federal laws allow us to subtract **only** the following amounts from your AU's total monthly income to determine your countable monthly income under WAC 388-450-0162:

(1) A standard deduction based on the number of eligible people in your AU under WAC 388-408-0035:

Eligible ((and ineligible)) AU members	Standard deduction
1	\$141
2	\$141
3	\$141
4	\$153
5	\$179
6 or more	\$205

(2) Twenty percent of your AU's gross earned income (earned income deduction);

(3) Your AU's expected monthly dependent care expense needed for an AU member to:

(a) Keep work, look for work, or accept work;

(b) Attend training or education to prepare for employment; or

(c) Meet employment and training requirements under chapter 388-444 WAC.

(4) Medical expenses over thirty-five dollars a month owed or anticipated by an elderly or disabled person in your AU as allowed under WAC 388-450-0200.

(5) A portion of your shelter costs as described in WAC 388-450-0190.

WSR 10-16-023
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-188—Filed July 23, 2010, 10:37 a.m., effective July 26, 2010,
 11:59 p.m.]

Effective Date of Rule: July 26, 2010, 11:59 p.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 220-52-05100G; and amending WAC 220-52-051.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The 2010 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule closes the spot shrimp season in Shrimp Management Area 2E, because the quota will be reached; and this rule opens the Catch Area 20A beam trawl season. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 23, 2010.

Joe Stohr
 for Philip Anderson
 Director

NEW SECTION

WAC 220-52-05100H Puget Sound shrimp pot and beam trawl fishery—Season. Notwithstanding the provisions of WAC 220-52-051, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) Effective immediately all waters of Shrimp Management Areas 1A, 1C, 2E, 2W, 3, 4, and 6 are open to the har-

vest of all shrimp species, until further notice, except as provided for in this section:

(i) All waters of Shrimp Management Area (SMA) 2E, Catch Area 23A-E and the Discovery Bay Shrimp District are closed.

(b) Effective immediately until further notice, only pots with a minimum mesh size of 1 inch may be pulled on calendar days when fishing for or retaining spot shrimp. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1-3/4 inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite knot of one mesh, when the mesh is stretched vertically.

(c) The shrimp accounting week is Tuesday through Monday.

(d) Effective immediately, until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, except in the following area:

i) In SMA 1C it is unlawful for the total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 300 pounds per week.

(e) It is unlawful to pull shellfish pots for commercial purposes in more than one Marine Fish-Shellfish Management and Catch Reporting Area per day. Fishers may move all of their shellfish pot gear from one Marine Fish-Shellfish Management and Catch Reporting Area to another Marine Fish-Shellfish Management and Catch Reporting Area if a harvest report is made before the shellfish pot gear is moved. The harvest activity report must be made consistent with the provisions of WAC 220-52-075 and must also include the following additional information:

(i) The number of pots being moved to a new area; and

(ii) The Marine Fish-Shellfish Management and Catch Reporting Area the pots are being moved to.

(f) It is unlawful to set or pull shellfish pots in one Marine Fish-Shellfish Management and Catch Reporting Area while in possession of shrimp harvested from another Marine Fish-Shellfish Management and Catch Reporting Area, except that shellfish pots may be set in a new fishing area subsequent to making a report as indicated in Section (1)(e) above.

(2) Shrimp beam trawl gear:

(a) SMA 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open immediately until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) Those portions of Catch Areas 20B, 21A, and 22A within SMA 1B are open immediately until further notice.

(c) Effective 7:00 a.m. August 1, 2010, until further notice, all waters of Catch Area 20A are open.

(3) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. July 26, 2010:

WAC 220-52-05100G Puget Sound shrimp pot and beam trawl fishery—Season. (10-183)

WSR 10-16-027
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-190—Filed July 23, 2010, 4:04 p.m., effective July 27, 2010, 6:00 a.m.]

Effective Date of Rule: July 27, 2010, 6:00 a.m.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100L; and amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Puget Sound Gillnetters Ass'n v. Moos*, 92 Wn.2d 939, 603 P.2d 819 (1979); *State v. James*, 72 Wn.2d 746, 435 P.2d 521 (1967); 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets the final weekly commercial fishing period for summer season treaty gillnet fisheries. Continues to allow sales of fish caught in areas above and below Bonneville Dam with platform hook-and-line gear. Continues to allow sales of fish from Yakama Nation tributary fisheries. Based on current forecasts, adult chinook, sockeye and steelhead remain available for treaty Indian harvest. Impact limits to ESA-listed salmonids remain available for treaty Indian fisheries. Harvest is expected to remain within the allocation and guidelines of the 2008-2017 management agreement. Rule is consistent with action of the Columbia River compact on June 10 and July 23, 2010. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

Regulations include fisheries that are described in the memorandum of agreement between Washington state and the Yakama Nation. Regulations also include fisheries that are described in individual memorandum of understandings

between Washington state and the Umatilla and Warm Springs tribes. The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 23, 2010.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-32-05100M Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, walleye, carp, yellow perch, catfish or bass for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1E, 1F, 1G, and 1H, and in the Wind River, White Salmon River, Klickitat River, Icicle River and Drano Lake, except as provided in the following subsections, and except that individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties

may fish for salmon, steelhead, walleye, shad, carp, yellow perch, catfish, bass, or sturgeon under the following provisions, pursuant to lawfully enacted tribal rules:

1. Mainstem Columbia River above Bonneville Dam

- a) SEASON: 6:00 a.m. July 27 to 6:00 p.m. July 29, 2010.
- b) AREA: Zone 6 (SMCRA 1F, 1G, 1H).
- c) GEAR: Gillnets. No mesh restriction.

2. Mainstem Columbia River above Bonneville Dam

- a) SEASON: Immediately until further notice.
- b) AREA: Zone 6 (SMCRA 1F, 1G, 1H).
- c) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line.

3. Columbia River Tributaries above Bonneville Dam

- a) SEASON: Immediately until further notice, but only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members, and have openings or allow platform gear and sales of fish in Zone 6 (SMCRA 1F, 1G, 1H).

b) AREA: Drano Lake, and the Wind, White Salmon, Klickitat, and Icicle rivers.

c) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line. Gill nets may only be used in Drano Lake (no mesh restriction, 150-foot length restriction).

4. Mainstem Columbia River below Bonneville Dam

a) PARTICIPANTS: Tribal members may participate under the conditions described in the 2007 Memo of Agreement (MOA) with the Yakama Nation (YN), in the 2010 MOU (Memo of Understanding) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), and the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS). Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

b) SEASON: Immediately until further notice, except closed Thursdays through Saturdays for the CTUIR and the CTWS when non-tribal salmon fishing is open in the MOU area. Sales allowed when platform gear and sales of fish are allowed in Zone 6 (SMCRA 1F, 1G, 1H).

c) AREA: SMCRA 1E, Yakama Nation MOA: on the Washington shoreline from 600 feet below the fish ladder at the Bonneville Dam North shore powerhouse, downstream to Beacon Rock (bank fishing only). Umatilla and Warm Springs MOU: Covers the banks of the Columbia River bounded by a deadline marker on the Oregon bank approximately four miles downstream of Bonneville Dam Powerhouse #1 in a straight line thorough the western tip of Pierce Island, to a deadline marker on the Washington bank at Beacon Rock, up the river to a point 600 feet below the Bonneville Dam, but excluding the following four areas:

1. Between the markers located 150 feet upstream and 450 feet downstream from the mouth of Tanner Creek, out to the center of the Columbia river, during the period from August 16, 2010, until further notice.

2. Inside the south navigation lock at Bonneville Dam from a marker on the western-most tip of Robins Island to a marker on the Oregon mainland shore.

3. From Bradford Island below Bonneville Dam from the south shore between the dam and a line perpendicular to the shore marker at the west end of rirap.

4. From the north shore between the fishway entrance and a line perpendicular to the shoreline marker 850 feet downstream. From Robins Island below Bonneville Dam downstream to a line perpendicular to the shoreline marker on the mooring cell.

d) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line, consistent with tribal regulations.

5. SANCTUARIES: Standard river mouth and dam sanctuaries are applicable to these gear types, except that the Spring Creek Hatchery sanctuary is not in effect.

6. ALLOWABLE SALES: Chinook, sockeye, steelhead, walleye, shad, carp, yellow perch, and bass. Sturgeon may not be sold. Sturgeon between 43-54 inches in fork length in The Dalles and John Day pools (SMCRA 1G, 1H) may be retained for subsistence. Sturgeon between 38-54 inches in fork length in the Bonneville pool (SMCRA 1F) may also be retained for subsistence. **Sturgeon caught below Bonneville Dam may NOT be retained and may NOT be sold.** Fish may NOT be sold on USACE Property below Bonneville Dam, but may be caught and transported off USACE Property for sale.

7. ADDITIONAL REGULATIONS: 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. July 27, 2010:

WAC 220-32-05100L	Columbia River salmon seasons above Bonneville Dam. (10-184)
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**WSR 10-16-028
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-168—Filed July 23, 2010, 4:22 p.m., effective July 24, 2010]

Effective Date of Rule: July 24, 2010.

Purpose: Amends WAC 232-36-051, which was filed on June 23, 2010, as part of WSR 10-13-182. Also repeals two rules that have been replaced by WACs filed on June 23, 2010, as part of WSR 10-13-182.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-12-086 and 232-12-423; and amending WAC 232-36-051.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: On June 4, 2010, the department adopted new rules for handling wildlife interactions and damage claims. This order amends one of those new rules, WAC 232-36-051, because the rule contains an error in subsection (2)(b) by referring to a subsection (7) that does not exist. This order also repeals two existing rules that have been rendered obsolete by adoption of the new rules. The department already has begun the normal rule-making process to amend WAC 232-36-051 and to repeal WAC 232-12-086 and 232-12-423. There is insufficient time to adopt a permanent rule prior to the new wildlife-interaction and damage-claim rules taking effect.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

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

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

Date Adopted: July 23, 2010.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-36-05100A Killing wildlife causing private property damage. Notwithstanding the provisions of WAC 232-36-051, effective July 24, 2010, until further notice:

(1) Except as specifically provided in a permit from the department or a rule of the commission, people taking wildlife under this rule are subject to the laws and rules of the state including, but not limited to, those found in Title 77 RCW and chapters 220 and 232 WAC.

(2) Subject to subsection (1) above, the following list of wildlife species may be killed with the express permission of the owner when such wildlife is causing damage to private property: Raccoon, fox, bobcat, beaver, muskrat, mink, river otter, weasel, hare, and cottontail rabbits.

REPEALER

The following sections of the Washington Administrative Code are repealed, effective July 24, 2010:

WAC 232-12-086	Director or his designee is empowered to issue nuisance wildlife control operator certifications to control nuisance or problem wildlife.
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WAC 232-12-423

Public hunting defined and access contracts.

WSR 10-16-035
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed July 26, 2010, 12:24 p.m., effective July 26, 2010, 12:24 p.m.]

Effective Date of Rule: Immediately.

Purpose: HB 2996, passed by the 2010 Washington state legislature directs the office of superintendent of public instruction (OSPI) to provide administrators of approved private schools in Washington state with access to OSPI's electronic record check data base.

Citation of Existing Rules Affected by this Order: Amending WAC 392-300-050 and 392-300-070.

Statutory Authority for Adoption: RCW 28A.400.305.

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

Reasons for this Finding: The house bill passed in the 2010 legislative session. OSPI plans to have private schools accessing the data base in early August, in preparation for the 2010-2011 school year. Without filing a CR-103E a hearing cannot be scheduled before August 24, 2010, not allowing private schools sufficient time to make hiring decisions for the next school year.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 392-300 [2], Repealed 0.

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

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

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

Date Adopted: July 26, 2010.

Randy Dorn
State Superintendent

AMENDATORY SECTION (Amending WSR 07-19-012, filed 9/7/07, effective 10/8/07)

WAC 392-300-050 Access to record check data base. School districts, the state school for the deaf, the state school for the blind, educational service districts, Bureau of Indian Affairs funded schools, approved private schools, colleges

and universities shall establish written policies or procedures to determine which employees are authorized to access the data base. Access to the superintendent of public instruction's record check data base shall be limited to:

(1) Employees of the superintendent of public instruction processing record check information including employees within the fingerprint records section, the office of professional practices, the legal services section, the certification section or their equivalents in case of future agency reorganization.

(2) Authorized employees of school districts.

(3) Authorized employees of educational service districts.

(4) Authorized employees of college or universities with state board of education approved certification programs.

(5) Authorized employees of the state school for the deaf.

(6) Authorized employees of the state school for the blind.

(7) Authorized employees of Bureau of Indian Affairs funded schools.

(8) Authorized employees of approved private schools.

(9) Other authorized individuals as determined by the superintendent of public instruction or designee.

Access to the data base will be controlled by a confidential password issued by the superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 09-04-031, filed 1/29/09, effective 3/1/09)

WAC 392-300-070 Private school fingerprint process. Fingerprinting of subject individuals employed by private schools.

(1) Definitions of private school terms.

(a) "Subject individual" means: Any person, certified or classified employed by a private school in a position having regularly scheduled, unsupervised access to children;

(b) "Regularly scheduled, unsupervised access to children" means contact with students that provides the person opportunity and probability for personal communication or touch when not under direct supervision;

(c) "Fee" means the total charges assessed to process fingerprint cards through the Washington state patrol and Federal Bureau of Investigation records check;

(d) "Information to be required" means all information requested by the office of the superintendent of public instruction;

(e) "Convictions of crimes" means, notwithstanding any other statutes or Washington administrative rule, conviction of a crime listed in WAC 180-86-013, or being under indictment for any of the crimes listed in WAC 180-86-013;

(f) "Private school" means a school that is approved with the Washington state board of education under chapter 180-90 WAC.

(2) The office of the superintendent of public instruction shall request criminal information from the Washington state patrol and the Federal Bureau of Investigation in the manner prescribed by law. A fee shall be charged for such services.

(3) Upon the private school's submission of the completed fingerprint cards and information form, the office of the superintendent of public instruction shall review the criminal records of subject individual.

(4) The office of the superintendent of public instruction shall not provide copies of criminal records to anyone except as provided by law. The private school will receive a copy of subject individual's record of arrest and prosecution (RAP) sheet from the Washington state patrol. The subject individual will be sent a copy of his or her personal criminal records.

(5) For the Federal Bureau of Investigation portion, the superintendent of public instruction or designee shall notify the private school if the subject individual has been convicted of a crime listed in WAC 180-86-013, or the substantial equivalent of any of those crimes if the conviction occurred in another jurisdiction or in Washington under a different statutory name or number; if the subject individual falsified information on the application form; or if the subject individual has no conviction of crimes as listed in WAC 180-86-013.

(6) The office of the superintendent of public instruction shall assure the destruction of all fingerprint cards, facsimiles or other materials from which fingerprints can be reproduced used by Washington state patrol or Federal Bureau of Investigation.

(7) Only cards and forms approved by the office of the superintendent of public instruction will be accepted. The office of the superintendent of public instruction will hold fingerprint cards on file and notify the private school and subject individual when there is no fee, an incorrect fee, when necessary information is missing from the fingerprint cards, or the information form was not received.

(8) The office of the superintendent of public instruction will return to the private school any fingerprint cards that the Washington state patrol or Federal Bureau of Investigation rejects for poor quality prints. The private school will be responsible for having the subject individual submit additional prints as required.

(9) The superintendent's office shall maintain a record of all properly submitted fingerprint cards in the current records data base for a period of at least two years. The record shall include at least the following:

(a) Card sequence number;

(b) Name of private school submitting the cards;

(c) Date cards received at the Washington state patrol;

(d) Date letter regarding incomplete card was sent to the subject individual with a copy to the private school (only if applicable);

(e) Date Washington state patrol received fingerprint cards;

(f) Date private school was notified of Washington state patrol criminal history record or clearance;

(g) Date private school was notified of Federal Bureau of Investigation record or lack of record.

This WAC will remain in effect through June 30, 2011.

WSR 10-16-047
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-191—Filed July 27, 2010, 2:03 p.m., effective July 28, 2010, 12:01 a.m.]

Effective Date of Rule: July 28, 2010, 12:01 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
 Amending WAC 220-48-015, 220-48-029, 220-48-032, 220-48-071, 220-49-056, and 220-52-069.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This change is needed to comply with provisions of the Endangered Species Act (ESA). On July 27, 2010, a federal decision to list two species of rockfish as threatened, and one species of rockfish as endangered in Puget Sound will become effective. The intent of this regulation is to comply with the ESA and to protect the listed species from capture in the specified fisheries. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 6, Amended 0, Repealed 0.

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

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

Date Adopted: July 27, 2010.

Lori Preuss
 for Philip Anderson
 Director

NEW SECTION

WAC 220-48-01500B Beam trawl and bottom trawl—Seasons. Notwithstanding the provisions of WAC 220-48-015, effective 12:01 a.m. July 28, 2010, until further notice, all waters of Puget Sound are closed to fishing using bottom trawl gear.

NEW SECTION

WAC 220-48-02900H Set net—Dogfish—Seasons. Notwithstanding the provisions of WAC 220-48-029, effective

12:01 a.m. July 28, 2010, until further notice, all waters of Puget Sound are closed to fishing using dogfish set net gear.

NEW SECTION

WAC 220-48-03200J Set line—Seasons. Notwithstanding the provisions of WAC 220-48-032, effective 12:01 a.m. July 28, 2010, until further notice, all waters of Puget Sound are closed to fishing using set line gear.

NEW SECTION

WAC 220-48-07100A Bottomfish pots—Gear and seasons. Notwithstanding the provisions of WAC 220-48-071, effective 12:01 a.m. July 28, 2010, until further notice, all waters of Puget Sound are closed to fishing using bottomfish pot gear.

NEW SECTION

WAC 220-49-05600E Smelt fishing—Seasons. Notwithstanding the provisions of WAC 220-49-056, effective 12:01 a.m. July 28, 2010, until further notice, all waters of Puget Sound are closed to smelt fishing using purse seine gear.

NEW SECTION

WAC 220-52-06900C Scallop fishery—Puget Sound. Notwithstanding the provisions of WAC 220-52-069, effective 12:01 a.m. July 28, 2010, until further notice, it is unlawful to fish for or possess any pink or spiny scallops taken with trawl gear in all waters of Puget Sound.

WSR 10-16-061
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-189—Filed July 29, 2010, 8:58 a.m., effective August 1, 2010]

Effective Date of Rule: August 1, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 232-28-61900N; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This emergency regulation provides fishing opportunity for the recreational angler. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: July 29, 2010.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900N Exceptions to statewide rules—Clarks Creek (Pierce Co.) Notwithstanding the provisions of WAC 232-28-619, effective August 1 through October 31, 2010, a person may fish for game fish in waters of Clarks Creek from the mouth of Clarks Creek upstream to 12th Ave. SW. Daily limit of two trout over 14 inches in length; statewide minimum size and daily limits apply for all other game fish. Release wild steelhead and selective gear rules in effect.

REPEALER

The following section of the Administrative Code is repealed effective November 1, 2010:

WAC 232-28-61900N Exceptions to statewide rules—Clarks Creek (Pierce Co.)

WSR 10-16-063 EMERGENCY RULES SECRETARY OF STATE

[Filed July 29, 2010, 9:12 a.m., effective July 29, 2010, 9:12 a.m.]

Effective Date of Rule: Immediately.

Purpose: To implement certain fee changes made in the 2010 legislative session, taking place before the regular rules process is completed.

Citation of Existing Rules Affected by this Order: Amending WAC 434-112-080 and 434-112-085.

Statutory Authority for Adoption: RCW 43.07.120.

Other Authority: RCW 23B.01.220, 24.03.405, 24.06.-450, 25.10.605, 25.15.805.

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

upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: 2SHB 2576 removed the corporations and charities division from the general fund and allowed certain changes to current user fees in rule. This change becomes effective July 12, 2010. These fees will be the only source of funding for the division and must be implemented by August 1, 2010. Regular rules are in the process of being filed and a public hearing on them will be later in the fall of 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

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

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

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

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

Date Adopted: July 29, 2010.

Steve Excell
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 09-06-036, filed 2/24/09, effective 3/27/09)

WAC 434-112-080 In-person or expedited service—Special fees. ~~((1) The corporations division counter is open for corporations and charities program services to in-person requests from 8:00 a.m. to 5:00 p.m. each business day.~~

~~(a) Staff provides expedited, same-day processing of documents or requests submitted in person prior to 4:30 p.m. on that day. The corporations division is unable to guarantee same-day processing of any filing or request submitted after 4:30 p.m. on that day.~~

~~(b) Expedited requests submitted by fax, mail or on-line will be completed within two working days of submission, or as soon thereafter as possible.~~

~~(2) Expedited services under this section are available for the following transactions:~~

~~(a) Business filing transactions:~~

~~(i) Charter document review and filing;~~

~~(ii) Name reservation review and filing;~~

~~(iii) Document certification;~~

~~(iv) Document copying or status certificates;~~

~~(v) Status change filings;~~

~~(vi) Reinstatements; and~~

~~(vii) Trademark filings.~~

~~(b) Charities program filings:~~

~~(i) Document review and filing including initial registration and renewals of charities, commercial fund-raisers and charitable trusts;~~

~~(ii) Document copying and status verification letters;~~

(iii) Status change filings.

(c) Apostille requests submitted at the corporations division counter.

(3) The fee for expedited service is twenty dollars for single or multiple transactions within each new or existing corporation program file, or charities program file. In addition, the filing fee for each transaction will apply.

(4) Except for on-line filings, the filing party shall indicate that expedited processing is requested by:

(a) Submitting a completed contact information cover sheet as described by WAC 434-112-040 indicating that the document is submitted for expedited filing; or

(b) Placing the word "expedite" conspicuously on either the face of the document to be filed, or on any cover letter submitted with the document.

(5) All documents submitted for filing on-line and corporations documents submitted via facsimile transmission are treated as expedited processing requests. Registrations with the charities program may not be submitted by facsimile. Documents transmitted via facsimile will receive expedited processing within two working days of submission, or as soon thereafter as possible when the documents are received between 8:00 a.m. and 5:00 p.m. Pacific time each business day. The fee for facsimile filings is twenty dollars for single or multiple transactions within each new or existing corporation or trademark file. In addition, the filing fee for each transaction will apply.

(6) There is no expedited fee for the following transactions, unless they are submitted via facsimile transmission or on-line:

(a) Registered agent or address change;

(b) Initial reports;

(c) License renewal and required annual report;

(d) Amended annual reports;

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

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

(g) A search for nonactive corporations less than twenty years old or trademark files less than six years old.

(7) If staff cannot complete the expedited service request before the end of the same day, or the second consecutive business day for facsimile filings, the transaction will be completed as soon as possible.

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

(9) Service may be limited under extraordinary circumstances:

(a) Over-the-counter service hours may be shortened under extraordinary circumstances.

(b) Separate over-the-counter service requests by one person may be limited to those relating to three corporations per day.

(c) Documents submitted by courier services or document-handling companies may receive twenty-four-hour service or as soon thereafter as possible.

(d) 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.

(10) A person submitting a filing or request may submit a written request asking the secretary to waive emergency or penalty fees:

(a) The request must include the special circumstances justifying the fee waiver.

(b) Under special circumstances the secretary may waive emergency or penalty fees.

(11) Fees for expedited or in-person processing will not be refunded. (1) In-person service is available at the division's counter which is open for all program service requests from 8:00 a.m. to 5:00 p.m. each business day. The fee for in-person service is fifty dollars plus any transaction fee.

(a) The division is unable to guarantee same-day processing of any filing or request submitted in-person after 4:30 p.m. on that day.

(b) There is no in-person service fee for documents dropped off in-person for processing with nonexpedited documents received that day.

(c) There is no in-person service fee for photocopies requested in person.

(2) Expedited service requests, including on-line services, will be completed within two working days of submission or as soon thereafter as possible. Expedited service is available on:

(a) All paper documents submitted to our office by fax or mail for filing relating to any division program;

(b) Document copying;

(c) Certification and status certificates;

(d) Research requests for documents on-site.

(3) The fee for expedited service is fifty dollars for single or multiple transactions on paper within each new or existing division program file. In addition, the filing fee for each transaction will apply. If an on-line filing is subsequently filed in person, the paper expedite fee applies.

(4) The filing party may indicate that expedited processing is requested by placing the word "expedite" in bold letters on either the envelope, the face of the document to be filed, or on any cover letter submitted with the document.

(5) Documents submitted via fax will receive expedited processing if accompanied by the expedite service fee. Otherwise, it will be processed with nonexpedited documents received the same day.

(6) Services may be limited under extraordinary circumstances.

(a) Over-the-counter service hours may be shortened under extraordinary circumstances.

(b) Separate over-the-counter requests by one person may be limited to those relating to three corporations per transaction.

(7) Emergency services outside regular business hours requiring employee overtime are one hundred fifty dollars per hour plus transaction fees due on any filing. When the division receives a request for emergency services, staff will notify the customer of the service fee and any other reason-

able conditions set by the director. The customer must agree to pay the fees or have received a fee waiver before emergency services are provided.

(8) 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.

(9) A customer may submit a written request asking the secretary to waive emergency or penalty fees, which must include the special circumstances justifying the fee waiver. The secretary will make the determination to waive fees or not.

(10) In-person or expedited service fees are not refundable.

AMENDATORY SECTION (Amending WSR 09-06-036, filed 2/24/09, effective 3/27/09)

WAC 434-112-085 Fees and penalties. ~~((1) For Washington registered profit domestic and foreign corporations, including profit cooperative associations, employee cooperative associations, limited liability companies, limited partnerships, Massachusetts trusts and limited liability partnerships, fees and penalties are as follows:~~

~~(a) Articles of incorporation, certificates of formation, certificate of limited partnership and other original filings, one hundred eighty dollars;~~

~~(b) Articles of amendment, restatement, correction, or revocation of dissolution, thirty dollars; articles of amendment for limited partnerships are twenty-five dollars;~~

~~(c) License renewal with required annual report filed after due date and before administrative dissolution, penalty fee of twenty-five dollars, plus the statutory fee of fifty dollars and the department of licensing handling fee of nine dollars; limited partnership and limited liability partnership annual report statutory fee is fifty dollars;~~

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

~~(e) Articles of merger or exchange, twenty dollars for each listed company;~~

~~(f) Resignation of registered agent, twenty dollars;~~

~~(g) Resignation of officer or director, an initial report or amended annual report, and the appointment or change of registered agent or change of registered address, ten dollars;~~

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

~~(i) Articles of dissolution, certificate of withdrawal, dissolution by judicial decree, or revocation of certificate of authority by either failure to renew or judicial decree, no fee;~~

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

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

~~(2) For Washington registered domestic and foreign non-profit corporations, nonprofit miscellaneous and mutual corporations, building corporations, and other associations and corporations under Title 24 RCW, fees and penalties are as follows:~~

~~(a) Articles of incorporation and other original filings, thirty dollars;~~

~~(b) Articles of amendment, restatement, twenty dollars;~~
~~(e) Articles of dissolution or certificate of withdrawal, no fee;~~

~~(d) Revocation of dissolution, twenty dollars;~~

~~(e) Reinstatement following administrative dissolution, thirty dollars plus all delinquent annual fees and a five-dollar penalty;~~

~~(f) Articles of merger or exchange, twenty dollars for each listed corporation;~~

~~(g) Resignation of officer or director, an initial report or amended annual report, the appointment or change of registered agent, or change of registered address, ten dollars;~~

~~(h) Resignation of registered agent, twenty dollars;~~

~~(i) Registration, reservation, or transfer of reservation of name, twenty dollars;~~

~~(j) Certificate of election adopting provisions of chapter 24.03 RCW as described in RCW 24.03.017, thirty dollars; and~~

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

~~(3) For registering trademarks for use within the state, the fees are as follows:~~

~~(a) For a five year registration or renewal, fifty dollars for each class in which the trademark is registered;~~

~~(b) For recording the assignment of a trademark and its registration or application for registration, ten dollars;~~

~~(c) For a new certificate with the name of the new assignee, five dollars;~~

~~(d) For reservation of a trademark for one hundred eighty days, thirty dollars for each class in which the trademark is reserved;~~

~~(e) For amendment of a trademark to add new classes of goods or services, fifty dollars for each class added by the amendment;~~

~~(f) Cancellation of trademark, no fee; and~~

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

~~(4) For registration of a declaration of state registered domestic partnership, or registration of a notice of termination of state registered domestic partnership, fifty dollars each.~~

~~(5) Fees paid under WAC 434-112-085 are not refundable. Under special circumstances, the filing party may petition the secretary in writing to request a waiver of emergency or penalty fees-)) (1) For Washington registered profit domestic and foreign corporations, including employee cooperative associations, limited liability companies, limited partnerships, Massachusetts trusts, and limited liability partnerships, fees and penalties are:~~

(a) Articles of incorporation one hundred eighty dollars (includes heritage center fee of five dollars under RCW 43.07.128)

(b) Certificates of formation one hundred eighty dollars (includes heritage center fee of five dollars under RCW 43.07.128)

<u>(c) Applications for registration</u>	<u>one hundred eighty dollars (includes heritage center fee of five dollars under RCW 43.07.128)</u>	<u>(w) Change of registered office address</u>	<u>no fee</u>
<u>(d) Certificates of authority</u>	<u>one hundred eighty dollars (includes heritage center fee of five dollars under RCW 43.07.128)</u>	<u>(x) Registration, reservation, or transfer of name</u>	<u>thirty dollars</u>
<u>(e) Certificate of limited partnership</u>	<u>one hundred eighty dollars (includes heritage center fee of five dollars under RCW 43.07.128)</u>	<u>(y) Articles of dissolution or certificate of dissolution</u>	<u>no fee</u>
<u>(f) Other original filings</u>	<u>one hundred eighty dollars (includes heritage center fee of five dollars under RCW 43.07.128)</u>	<u>(z) Certificate of withdrawal</u>	<u>no fee</u>
<u>(g) Articles of amendment</u>	<u>thirty dollars</u>	<u>(aa) Certificate of cancellation</u>	<u>no fee</u>
<u>(h) Articles of restatement</u>	<u>thirty dollars</u>	<u>(bb) Revocation of certificate of authority</u>	<u>no fee</u>
<u>(i) Articles of correction</u>	<u>thirty dollars</u>	<u>(cc) Agent's consent to act as agent</u>	<u>no fee</u>
<u>(j) Revocation of dissolution or withdrawal</u>	<u>thirty dollars</u>	<u>(dd) Agent's resignation if appointed without consent</u>	<u>no fee</u>
<u>(k) Delinquent license renewal</u>	<u>ninety-four dollars, including twenty-five dollars penalty, sixty dollars statutory fee, and nine dollars department of licensing handling fee</u>	<u>(ee) Other statement or report</u>	<u>ten dollars</u>
<u>(l) Limited partnership annual report</u>	<u>sixty dollars</u>	<u>(2) For Washington registered domestic and foreign non-profit corporations, cooperative associations, nonprofit miscellaneous and mutual corporations, building corporations, and other associations and corporations under Title 24 RCW, fees and penalties are:</u>	
<u>(m) Limited Liability partnership annual report</u>	<u>sixty dollars</u>	<u>(a) Articles of incorporation</u>	<u>thirty dollars</u>
<u>(n) Limited liability limited partnership annual report</u>	<u>sixty dollars</u>	<u>(b) Certificates of authority</u>	<u>thirty dollars</u>
<u>(o) Cooperative association annual report</u>	<u>ten dollars</u>	<u>(c) Other original filings</u>	<u>thirty dollars</u>
<u>(p) Reinstatement from administrative dissolution</u>	<u>one hundred dollars plus all delinquent license or annual fees and a twenty-five percent penalty computed on the total amount</u>	<u>(d) Articles of amendment</u>	<u>twenty dollars</u>
<u>(q) Articles of merger or exchange</u>	<u>twenty dollars for each listed company</u>	<u>(e) Restatement</u>	<u>twenty dollars</u>
<u>(r) Resignation of registered agent</u>	<u>twenty dollars</u>	<u>(f) Annual report</u>	<u>ten dollars</u>
<u>(s) Resignation of officer or director</u>	<u>ten dollars</u>	<u>(g) Articles of dissolution, certificate of withdrawal</u>	<u>no fee</u>
<u>(t) Initial report filed with formation</u>	<u>no fee</u>	<u>(h) Reinstatement from administrative dissolution</u>	<u>thirty dollars plus all delinquent annual fees and five dollar penalty</u>
<u>(u) Amended annual report</u>	<u>ten dollars</u>	<u>(i) Articles of merger or exchange</u>	<u>twenty dollars for each listed corporation</u>
<u>(v) Change of registered agent</u>	<u>no fee</u>	<u>(j) Resignation of officer or director</u>	<u>ten dollars</u>
		<u>(k) Amended annual report</u>	<u>ten dollars</u>
		<u>(l) Change of registered agent</u>	<u>no fee</u>
		<u>(m) Change of registered office address</u>	<u>no fee</u>
		<u>(n) Resignation of registered agent</u>	<u>twenty dollars</u>
		<u>(o) Registration, reservation, or transfer of reservation of name</u>	<u>twenty dollars</u>
		<u>(p) Certificate of election adopting provisions of chapter 24.03 RCW</u>	<u>thirty dollars</u>
		<u>(q) Other statement or report filed</u>	<u>ten dollars</u>

(3) For registering trademarks for use within the state, the fees are as follows:

- | | |
|--|---|
| <u>(a) Five year registration</u> | <u>fifty-five dollars (includes five dollars heritage center fee) for each class registered</u> |
| <u>(b) Five year renewal</u> | <u>fifty dollars for each class registered</u> |
| <u>(c) Recording assignment</u> | <u>ten dollars (includes registration)</u> |
| <u>(d) New certificate with name of assignee</u> | <u>five dollars</u> |
| <u>(e) Reservation of trademark</u> | <u>thirty dollars for each class reserved, for one hundred eighty days</u> |
| <u>(f) Amendment of trademark adding classes</u> | <u>fifty dollars for each class</u> |
| <u>(g) Cancellation of trademark</u> | <u>no fee</u> |
| <u>(h) Other statement or report filed</u> | <u>ten dollars</u> |

(4) For filings related to state registered domestic partnership, the fees are:

- | | |
|---|----------------------|
| <u>(a) Registration</u> | <u>fifty dollars</u> |
| <u>(b) Name change</u> | <u>no fee</u> |
| <u>(c) Address change</u> | <u>no fee</u> |
| <u>(d) Notice of termination by reason of death</u> | <u>no fee</u> |

(5) Fees paid under this section are not refundable. Under special circumstances, the filing party may petition the secretary in writing to request a waiver of emergency or penalty fees.

WSR 10-16-067
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Special Commitment Center)

[Filed July 29, 2010, 12:37 p.m., effective August 1, 2010]

Effective Date of Rule: August 1, 2010.

Purpose: To amend WAC 388-885-005 Purpose, 388-885-010 Definitions, 388-885-013 Limitations on reimbursement costs related to expert evaluations, 388-885-025 Billing procedures, 388-885-030 Exceptions, and 388-885-035 Reimbursement rate schedule.

To add the following to chapter 388-885 WAC, WAC 388-885-016 Matters for which reimbursement is not available.

To implement cost saving measures directed in ESB 6870 (containing costs for services to sexually violent predators) and ESSB 6444 (2009-11 revised omnibus operating budget (2010 supp.)).

Citation of Existing Rules Affected by this Order: Amending WAC 388-885-005, 388-885-010, 388-885-013, 388-885-025, 388-885-030, and 388-885-035.

Statutory Authority for Adoption: Chapter 71.09 RCW, RCW 72.01.090 and 34.05.350.

Other Authority: Washington state 2009-11 revised omnibus operating budget (2010 supp.) ESSB 6444 - Section 211, Agency 300, Program 135, and Washington State Supreme Court decision No. 80570-9 re Detention of John L. Strand, filed October 8, 2009.

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

Reasons for this Finding: The emergency changes apply to matters within the special commitment center's (SCC) scope of operations under chapter 71.09 RCW and RCW 72.01.090 and is essential to implement ESB 6870 (containing costs for services to sexually violent predators), ESSB 6444 (2009-11 revised omnibus operating budget (2010 supp.)), and Washington State Supreme Court decision No. 80570-9 re Detention of John L. Strand, filed October 8, 2009.

These emergency rule changes are necessitated in order to implement the requirements and reductions in appropriations enacted in the budget for fiscal years 2010 and 2011 which necessitates the need for this immediate adoption and amendment of the current rules. SCC has filed a CR-101 and CR-102 related to these changes, but the current time requirements of notice and opportunity to comment upon adoption of a permanent rule is contrary to the fiscal needs and requirements of this agency and will delay the implementation of needed cost savings. SCC will parallel the submission of this emergency rule filing by continuing with the CR-102 and CR-103P process and following the standard notice and comment process.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 6, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 6, Repealed 0.

Date Adopted: July 27, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-19-042, filed 9/11/08, effective 10/12/08)

WAC 388-885-005 Purpose. These rules establish the standards and procedures for reimbursing counties for the cost incurred during civil commitment trial, annual evaluation, and review processes and release procedures related to chapter 71.09 RCW and apply to reimbursement for defense and prosecution activities.

These rules further establish reasonable limitations on expert expenditures consistent with due process when the state funds an expert for the prosecution or defense under chapter 71.09 RCW.

The department's reimbursement to counties is limited to appropriated funds and is intended to minimize primary or direct costs to counties for proceedings and related to civil commitment of sexually violent predators.

Indirect costs and costs incurred in excess of or different from those allowed by the itemized schedule of reimbursements as described in WAC 388-885-035 are the responsibility of the county.

These rules do not preclude an agency or person from spending their own funds beyond what is subject to reimbursement under this chapter.

AMENDATORY SECTION (Amending WSR 08-19-042, filed 9/11/08, effective 10/12/08)

WAC 388-885-010 Definitions. (1) "Attorney cost" means the fully documented itemized hourly cost directly related to the violent sexual predator civil commitment process for:

- (a) A single assigned prosecuting attorney;
 - (b) When the person is indigent, a single court-appointed attorney;
 - (c) Additional counsel, for the defense or prosecution, when additional defense counsel is approved by the trial judge for good cause; and
 - (d) Paralegal services and other costs, itemized based on a schedule of reimbursements as described in WAC 388-885-035.
- (2) "Civil commitment process" as used in this chapter refers to the following distinct phases of chapter 71.09 RCW commitments.
- (a) Investigation and preparation of an RCW 71.09.030 filing (by the prosecution only).
 - (b) Completion of a seventy-two hour probable cause hearing under RCW 71.09.040.
 - (c) Completion of an initial civil commitment trial under RCW 71.09.060.
 - (d) Completion of annual review proceedings under RCW 71.09.090 which commences with the filing of an annual review report under RCW 71.09.070 and ends with a waiver of a show cause hearing by the resident or completion of the show cause hearing.
 - (e) Completion of a post-commitment conditional or unconditional release trial under RCW 71.09.090.

(3) "Department" means the department of social and health services.

~~((3))~~ (4) "Deposition" means the legal fact finding interview of a person under force of subpoena or by agreement of the parties.

(5) "Evaluation(s)" means the different types of evaluations that occur related to a person's commitment or detention under chapter 71.09 RCW are as follows:

(a) The "initial evaluation performed by the state" occurs under RCW 71.09.025 and happens before the person is detained at the SCC, usually occurring while the person is in prison, juvenile rehabilitation administration (JRA), a state mental hospital, a county jail, or in the community following commission of a recent overt act.

(b) The "initial evaluation performed by the defense" occurs under RCW 71.09.050 and occurs when authorized by the court.

(c) "Supplemental evaluations", as required by RCW 71.09.040, are performed for civil commitment trial purposes after there has been a finding of probable cause by the court.

(d) "Post commitment evaluations", as required by RCW 71.09.070, 71.09.090, and 71.09.098, occur when the person qualifies for a conditional or unconditional release trial.

(e) "Partial evaluations performed by the defense" means an evaluation performed by the same evaluator less than twelve months after performing an initial evaluation or post commitment evaluation.

(6) "Evaluation by expert cost" is as described in WAC 388-885-013.

~~((4))~~ (7) "Incidental cost" means county-incurred efforts or costs that are not otherwise covered and are exclusively attributable and necessary to the trial of a person alleged to be a "sexually violent predator."

~~((5))~~ (8) "Investigative cost" means a cost incurred by a police agency or other investigative service in the course of investigating issues specific to:

- (a) Filing or responding to a petition alleging a person is a "sexually violent predator;" or
- (b) Testifying at a hearing to determine if a person is a "sexually violent predator."

~~((6))~~ (9) "Medical cost" means a county-incurred extraordinary medical expense beyond the routine services of a jail.

~~((7))~~ (10) "Secretary" means the secretary of the department of social and health services.

~~((8))~~ (11) "Transportation cost" means the cost a county incurs when transporting a person alleged to be, or having been found to be, a "sexually violent predator," to and from a sexual predator program facility.

~~((9))~~ (12) "Trial cost" means the costs a county incurs as the result of filing a petition for the civil commitment of a person alleged to be a "sexually violent predator" under chapter 71.09 RCW. This cost is limited to fees for:

- (a) Judges;
- (b) Court clerk;
- (c) Bailiff services;
- (d) Court reporter services;
- (e) Transcript typing and preparation;
- (f) Expert and nonexpert witnesses;
- (g) Jury; and
- (h) Jail facilities.

AMENDATORY SECTION (Amending WSR 08-19-042, filed 9/11/08, effective 10/12/08)

WAC 388-885-013 Limitations on reimbursement costs related to expert evaluations. (1) "Evaluation by expert cost" means a county-incurred itemized hourly service rate directly resulting from the completion of a single comprehensive examination and/or a records review as defined in RCW 71.09.025, 71.09.040, 71.09.050, 71.09.070, 71.09.090 and 71.09.098 and other costs, itemized based on the schedule of reimbursements as described in WAC 388-885-035, by a single examiner selected and appointed by the court of a person who is indigent or selected by the prosecution, when:

(a) Investigated for "sexually violent predator" probable cause;

(b) Alleged to be a "sexually violent predator" and who has had a petition filed; or

(c) Committed as a "sexually violent predator" and under review for release.

(2) The department will reimburse a county for costs related to the evaluation of an indigent person by an additional examiner only upon a finding by the superior court that such appointment is for good cause.

(a) The department shall be provided notice of any request and have an opportunity to respond in writing and to be heard at a hearing to determine good cause for expert funding in excess of amounts allowed in WAC 388-885-035.

(b) Failure to provide the department with adequate notice of additional amounts or services greater than authorized in this chapter shall be grounds to deny bills received in excess of amounts allowed in WAC 388-885-035.

(c) The court may order that records supporting the determination of good cause be given to the department under conditions that safeguard them from disclosure to the prosecution or public disclosure.

(d) Any claim of privilege made to the information covered herein is not waived by providing the documentation to DSHS.

(e) In making its finding of good cause the superior court shall consider and issue written findings on whether:

~~((a))~~ (i) Any previous expert(s) appointed to assist the indigent person lack expertise to address a new area of concern;

~~((b))~~ (ii) The request for an additional expert is being requested merely because the opinion of a prior expert was not favorable to respondent's position;

~~((c))~~ (iii) The request is being interposed for the purpose of delaying the proceeding; or

~~((d))~~ (iv) The previously appointed expert is unavailable for testimony at trial.

(3) The department will not reimburse a county for expert evaluation costs under the following circumstances:

(a) Where the appointed expert lacks appropriate qualifications as provided for in WAC 388-880-033; ~~((a))~~

(b) For any charges related to international travel by an expert to or from a destination outside of North America, including but not limited to, airfare, meals, hourly rates, and accommodations;

(c) For an updated evaluation where the prior evaluation is less than twelve months old; or

(d) Evaluator costs associated with mental health or sex offender treatment services rendered to a resident.

AMENDATORY SECTION (Amending WSR 08-19-042, filed 9/11/08, effective 10/12/08)

WAC 388-885-015 Limitation of funds. The department shall:

(1) Reimburse funds to a county when funds are available;

(2) Limit a county's reimbursement to costs of civil commitment ~~((trials or hearings))~~ proceedings as ~~((described under this chapter))~~ defined in WAC 388-885-010(2);

(3) Restrict a county's reimbursement to documented investigation, expert evaluation, attorney, transportation, trial, incidental, and medical costs;

(4) Not ~~((pay))~~ reimburse a county for a cost under the rules of this section when said cost is otherwise reimbursable under law;

(5) Pay a county's claim for a trial or hearing occurring during each biennium in the order in which the claim is received, until the department's biennial appropriation is expended.

NEW SECTION

WAC 388-885-016 Matters for which reimbursement is not available. The department will not reimburse under chapter 388-885 WAC for the costs of the following:

(1) Investigation or legal representation challenging the conditions of confinement at SCC.

(2) Investigation, legal representation, or reimbursement for the costs of making requests under the Public Records Act, chapter 42.56 RCW, and for the costs of records procured subject to the Public Records Act.

(3) Legal representation or advice provided regarding a grievance filed pursuant to SCC policy 204.

(4) Legal representation or advice provided regarding a behavioral management report pursuant to SCC policy 235 or 238.

(5) Investigation, legal representation, advice and associated costs regarding residents who have been criminally charged.

(6) Depositions conducted without a subpoena or by agreement of counsel, unless authorized by the court.

(7) A new full evaluation on a resident when the evaluator has previously conducted a full evaluation on the same individual within the past twelve months, unless authorized by the court.

(8) After the appeal of the initial commitment proceeding, SCC will not reimburse for appeal costs, SCC does not pay for the costs associated with the appeal of the order of commitment or an appeal resulting from any proceeding thereafter as these costs are reimbursed by the State Office of Public Defense.

(9) Costs associated with finding or developing a different less restrictive alternative other than what the department supports, unless authorized by the court for good cause.

(10) Any form of training for attorneys, expert witnesses, or other persons including continuing legal education or workshops.

(11) Legal representation during a period not covered as part of the civil commitment process.

(12) For expert evaluation services performed by any party who does not fully qualify as a "professionally qualified person" WAC 388-880-010.

(13) For mental health or sex offender treatment provider service, treatment or consultation rendered to a resident at the total confinement facility or a secure community transition facility or other less restrictive alternative setting by anyone licensed under title 18 RCW unless approved in advance, in writing, by the SCC superintendent.

(14) For the presence of more than a single attorney at any evaluation or interview unless the presence of a second attorney is specifically authorized by order of the court.

(15) Standby attorneys for pro se litigants are only compensated in so far as allowed for specific activities set forth in the court order which appointed them and for reimbursement purposes, that appointment may only be for matters defined in WAC 388-885-010(2) "civil commitment process".

AMENDATORY SECTION (Amending WSR 08-19-042, filed 9/11/08, effective 10/12/08)

WAC 388-885-025 Billing procedure. (1) When a county requests the department reimburse a county's cost, the county shall:

(a) Make a claim using the state of Washington invoice voucher, Form A 19 1-A;

(b) Attach to the claim necessary documentation, support, and justification materials (~~((the department may require use of an itemized invoice))~~);

(c) (~~Report expenses billed by the hour in one quarter hour increments unless smaller increments are provided to the county by the vendor~~) The department requires use of an auditable, itemized, detailed invoice billed in no more than a one-tenth of an hour increment detailing specific services rendered by attorneys, paralegals, investigators and experts including what documents were created; if interviews were conducted, who was interviewed and how; ((and))

(d) Work product information provided to the department as required under this subsection shall not be disclosed to the prosecutor unless upon proper showing to and order of the court;

(e) Any claim of privilege made to the information covered herein is not waived by providing the documentation to DSHS; and

(f) The invoice shall include the name of the person for whom the costs were incurred and the cause number when it exists, and identify for which stage of the civil commitment process this service was rendered per WAC 388-885-010(2).

(2) The department may subject a county's claim documentation to periodic audit at the department's discretion.

(3) Only an authorized administrator, or the county administrator's designee, may submit to the department a request for a county's cost reimbursement.

(4) A county shall submit a reimbursement claim to the department within thirty days of receipt of itemized expenditures for services incurred to assure proper handling of the claim.

(5) When a county submits a reimbursement claim on a state invoice voucher (Form A-19 1-A) sent to the Special Commitment Center, Attn: Business Office, P.O. Box 88450, Steilacoom, WA 98388-0646.

(6) If the department's reimbursement appropriation becomes exhausted before the end of a biennium, a county may continue to make a claim for reimbursement. The department may use the reimbursement claim to justify a request for adequate department funding during future biennia.

(7) Claims for reimbursement of costs associated with the subject of this rule will not be accepted if the span of time between the time the services were rendered and the bill was submitted is greater than twelve months.

(8) When the reimbursement fee schedule in WAC 388-885-035 changes following legislative approval there is a transitional period where bills are being received for services rendered prior to the approved increase to the reimbursement schedule rates, such as, bills received for services rendered shall be paid based on the reimbursement schedule rate that existed at the time services were rendered, not the rate that exists at the time the bill is submitted to SCC.

(9) In submitting bills for reimbursement under this rule, the billing entity agrees to maintain records of their billed services and make those records available for auditing by DSHS, or other state auditing service, for a period of thirty-six months following the submission of the bill.

AMENDATORY SECTION (Amending WSR 08-19-042, filed 9/11/08, effective 10/12/08)

WAC 388-885-030 Exceptions. (1) The secretary may grant exceptions to the rules of this chapter. Exceptions granted by the secretary may not include exceptions to the biennial reimbursement rate schedule which is set by legislative mandate.

(2) Exceptions may be allowed by the secretary on a case-by-case basis for:

(a) Unanticipated expenditures;

(b) (~~For a rate or cost increase~~) Evaluation related cap relief, related to a single commitment proceeding deemed truly unique in nature; or

(c) For a new type or class of expenditure.

(3) A request for exception may only be made by a county administration or an entity of county government that has been independently elected, not from a sub-agency of a county or contractor to a county. A county seeking an exception from the secretary shall request the exception, in writing, to the secretary, through the chief financial officer of the special commitment center.

(4) The department shall deny a claim which does not follow the rules of this chapter unless the secretary or secretary's designee granted an exception before the claim was filed.

AMENDATORY SECTION (Amending WSR 08-19-042, filed 9/11/08, effective 10/12/08)

WAC 388-885-035 Reimbursement rate schedule. When a county submits a reimbursement claim according to this chapter, the claim shall be only for costs incurred as

defined in this chapter and for the rates provided in this schedule. This schedule of reimbursement rates is effective as of July 1, 2007.

(1) Attorney per hour rate of eighty-five dollars and sixty-five cents (travel and per diem per state schedule).

(2) Legal assistant/paralegal per hour rate of forty-six dollars (travel and per diem per state schedule).

(3) Investigator per hour rate of forty-six dollars (travel and per diem per state schedule).

(4) Expert service:

(a) Evaluation by expert ((actual cost (travel and per diem per state schedule))), the reimbursement for an evaluation, including professional fees, travel, per diem, etc., is capped at ten thousand dollars; and shall be reimbursed at an hourly reimbursement rate of not more than two hundred dollars per hour for evaluation activities including client interviews, document review, report preparations, pre-trial discovery activities (including additional document review, compelled interviews and declarations and consultation).

(b) Partial evaluations are capped at five thousand five hundred dollars and shall be reimbursed at an hourly reimbursement rate of not more than two hundred dollars per hour for evaluation activities including client interviews, document review, report preparations, pre-trial discovery activities (including additional document review, compelled interviews and declarations and consultation).

(c) Court testimony or depositions by the opposing party is capped at an hourly reimbursement rate of two hundred fifty dollars per hour or fraction thereof.

(d) Travel time related to court testimony or depositions by the opposing party, is capped at an hourly reimbursement rate of one hundred fifty dollars per hour or fraction thereof.

(e) Exclusive of testimony at trial or depositions, any expert services subsequent to or apart from the evaluation, in addition to the hourly rate caps, is capped at six thousand dollars.

(5) Judge per hour rate of forty-six dollars and five cents.

(6) Court clerk actual hourly salary.

(7) Bailiff actual hourly salary.

(8) Court reporter per hour rate of twenty dollars and seventy-one cents (transcript preparation per page rate of four dollars and thirteen cents).

(9) Expert witnesses actual cost (travel and per diem per state schedule).

(10) Nonexpert witnesses actual cost (travel and per diem per state schedule).

(11) Juror's actual compensation (travel and per diem per state schedule).

(12) Jail facilities daily rate of thirty dollars.

(13) Incidentals - actual costs based on receipts.

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

**WSR 10-16-068
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-194—Filed July 29, 2010, 1:47 p.m., effective July 29, 2010, 1:47 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100H; and amending WAC 220-52-051.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The 2010 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule closes the spot shrimp season in Catch Area 23B and the beam trawl season in Catch Area 20B, as the quotas will be reached, and lowers the spot shrimp weekly limits in some areas to prevent over-harvest of the area quotas. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 29, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-52-05100I Puget Sound shrimp pot and beam trawl fishery—Season. Notwithstanding the provisions of WAC 220-52-051, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) Effective immediately, all waters of Shrimp Management Areas 1A, 1C, 2W, 3, 4, and 6 are open to the harvest of

all shrimp species until further notice, except as provided for in this section:

(i) All waters of Catch Area 23A-E and the Discovery Bay Shrimp District are closed.

(ii) Effective 11:59 p.m. August 2, 2010, all waters of Catch Area 23B are closed to the harvest of spot shrimp.

(b) Effective immediately until further notice, only pots with a minimum mesh size of 1 inch may be pulled on calendar days when fishing for or retaining spot shrimp. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1-3/4 inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite knot of one mesh, when the mesh is stretched vertically.

(c) The shrimp accounting week is Tuesday through Monday.

(d) Effective immediately, until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, except in the following areas:

i) It is unlawful for the total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 300 pounds per week in Shrimp Management Area (SMA) 1C, or to exceed 350 lbs per week in Catch Area 26B-1.

ii) Effective 11:59 p.m. August 2, 2010, in it is unlawful for the total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 300 pounds per week in SMA 1A and Catch Area 23A-C.

(e) It is unlawful to pull shellfish pots for commercial purposes in more than one Marine Fish-Shellfish Management and Catch Reporting Area per day. Fishers may move all of their shellfish pot gear from one Marine Fish-Shellfish Management and Catch Reporting Area to another Marine Fish-Shellfish Management and Catch Reporting Area if a harvest report is made before the shellfish pot gear is moved. The harvest activity report must be made consistent with the provisions of WAC 220-52-075 and must also include the following additional information:

(i) The number of pots being moved to a new area; and

(ii) The Marine Fish-Shellfish Management and Catch Reporting Area the pots are being moved to.

(f) It is unlawful to set or pull shellfish pots in one Marine Fish-Shellfish Management and Catch Reporting Area while in possession of shrimp harvested from another Marine Fish-Shellfish Management and Catch Reporting Area, except that shellfish pots may be set in a new fishing area subsequent to making a report as indicated in Section (1)(e) above.

(2) Shrimp beam trawl gear:

(a) SMA 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open immediately until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) Those portions of Catch Areas 21A and 22A within SMA 1B are open immediately until further notice.

(c) Effective 7:00 a.m. August 1, 2010, until further notice, all waters of Catch Area 20A are open.

(3) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100H Puget Sound shrimp pot and beam trawl fishery—Season. (10-188)

WSR 10-16-069 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 10-192—Filed July 29, 2010, 2:00 p.m., effective August 6, 2010]

Effective Date of Rule: August 6, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25500Z; and amending WAC 220-56-255.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: A portion of the Columbia River subarea quota is reserved to provide for a summer recreational halibut fishery in Marine Area 1. There are 4,885 pounds of quota available (including eight hundred fifty-four pounds not harvested during the early season) for the late season fishery. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 29, 2010.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-56-25500A Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-56-250 and WAC 220-56-255, effective August 6, 2010, until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(1) **Catch Record Card Area 1** - Open August 6 through September 26, 2010, Fridays through Sundays only. It is unlawful during any vessel trip to bring into port or land bottomfish except sablefish or Pacific Cod when halibut are on board.

(2) **Catch Record Card Area 2 (Northern Nearshore fishery)** - Those waters from 47° 31.70'N. latitude south to 46° 58.00'N. latitude and east of a line approximating the 30-fathom depth contour as defined by the following coordinates: Open seven days per week until further notice:

47° 31.70 N. lat, 124° 37.03 W. long

47° 25.67 N. lat, 124° 34.79 W. long

47° 12.82 N. lat, 124° 29.12 W. long

46° 58.00 N. lat, 124° 24.24 W. long

(3) Daily limit one halibut, no minimum size limit. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

(4) All other permanent rules remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 6, 2010:

WAC 220-56-25500Z Halibut—Seasons—Daily and possession limits. (10-162)

**WSR 10-16-071
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-193—Filed July 29, 2010, 4:31 p.m., effective August 1, 2010]

Effective Date of Rule: August 1, 2010.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900P; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of

notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The 2010 return of sockeye will be sufficient to provide for the Lake Wenatchee spawning escapement goal, and additional sockeye will be present to provide for sport fishing opportunity. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 29, 2010.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900P Exceptions to statewide rules—Lake Wenatchee. Notwithstanding the provisions of WAC 232-28-619, effective August 1 through August 3, 2010, a person may fish for salmon in Lake Wenatchee. Daily limit two sockeye, minimum size 12 inches in length. Selective Gear Rules in effect for all species. Release bull trout, steelhead, Chinook salmon and sockeye with one or more holes punched in the tail. Night closure in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 4, 2010:

WAC 232-28-61900P Exceptions to statewide rules—Lake Wenatchee.

**WSR 10-16-072
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-195—Filed July 29, 2010, 4:31 p.m., effective July 29, 2010, 4:31 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-24-04000X and 220-24-04000Y; and amending WAC 220-24-040.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: It is projected that there remains sufficient harvestable quota of salmon for the troll fleet that remains to be caught. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

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

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

Date Adopted: July 29, 2010.

Philip Anderson
Director

NEW SECTION

WAC 220-24-04000Y All-citizen commercial salmon troll. Notwithstanding the provisions of WAC 220-24-040, effective immediately until further notice, it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons provided for in this section:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude, open:

July 30 through August 3, 2010.

August 6 through August 10, 2010.

August 13 through August 17, 2010.

August 20 through August 24, 2010.

August 27 through August 31, 2010.

September 3 through September 7, 2010.

September 10 through September 14, 2010.

(2) Landing and possession limit of 75 Chinook and 50 coho per boat per each entire open period for the entire catch areas 1, 2, 3 and 4 through September 14.

(3) The Cape Flattery and Columbia River Control Zones are closed. Mandatory Yelloweye Rockfish Conservation Area is closed.

(4) Minimum size for Chinook salmon is 28 inches in length. Minimum size for Coho salmon is 16 inches in length. No minimum size for pink, sockeye or chum salmon except no chum retention north of cape Alava, Washington in

August and September. It is unlawful to possess wild coho salmon and Halibut.

(5) Lawful troll gear is restricted to all legal troll gear with single point, single shank barbless hooks.

(6) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section, and vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and North of Leadbetter point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point.

(7) The Cape Flattery Control Zone is defined as the area from Cape Flattery (48°23'00" N latitude) to the northern boundary of the U.S. Exclusive Economic Zone, and the area from Cape Flattery south to Cape Alava, 48°10'00" N latitude, and west of 125°05'00" W longitude.

(8) The Columbia Control Zone is defined as the area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13'35" N. Lat., 124°06'50" W. long.) and the green lighted Buoy #7 (46°15'09" N. lat., 124°06'16" W. long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14'00" N. lat., 124°03'07" W. long. to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°14'48" N. lat., 124°05'20" W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat., 124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

(9) The Mandatory Yelloweye Rockfish Conservation Area is defined as the area in Washington Marine Catch Area 3 from 48°00.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°16.50' W longitude to 48°00.00' N latitude; 125°16.50' W longitude and connecting back to 48°00.00' N latitude; 125°14.00' W longitude.

(10) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2, 3 or 4 with fish on board taken south of Cape Falcon, Oregon; and all fish taken from Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 must be landed before fishing south of Cape Falcon, Oregon.

(11) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279, or faxing the information to (360) 902-2949, or e-mailing to trollfishtickets@dfw.wa.gov. Report the dealer name, the dealer license number, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-24-04000X All-citizen commercial salmon troll. (10-182)

The following section of the Washington Administrative Code is repealed effective September 16, 2010:

WAC 220-24-04000Y All-citizen commercial salmon troll.

WSR 10-16-097
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-196—Filed July 30, 2010, 3:33 p.m., effective August 6, 2010, 12:01 a.m.]

Effective Date of Rule: August 6, 2010, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62100I; and amending WAC 232-28-621.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Based on state-tribal test fisheries, the number of chinook returning to the Green River system appears to be well below the preseason forecast and additional fishing could result in not meeting the escapement goal. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 30, 2010.

Philip Anderson
Director

NEW SECTION

WAC 232-28-62100I Puget Sound salmon seasons—Elliott Bay. Notwithstanding the provisions of WAC 232-28-621, effective August 6 through August 8, 2010, it is unlawful to fish for salmon in waters of Elliott Bay east of a line from West Point to Alki Point, including the Duwamish Waterway upstream to the 1st Avenue South Bridge.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 9, 2010:

WAC 232-28-62100I Puget Sound salmon seasons—Elliott Bay.

WSR 10-16-103
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-197—Filed August 2, 2010, 2:12 p.m., effective August 3, 2010, 7:00 p.m.]

Effective Date of Rule: August 3, 2010, 7:00 p.m.

Purpose: The purpose of this rule making is to allow nontreaty commercial fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000F; and amending WAC 220-33-010.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets mainstem and select area fall commercial seasons. The seasons are consistent with the 2008-2017 interim management agreement, the 2010 non-Indian salmon allocation agreement and the 2010 sturgeon accord. Salmon and sturgeon are available for harvest during fall season fisheries. The regulation is consistent with com-

pact action of July 29, 2010. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: August 2, 2010.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-33-01000G Columbia River season below Bonneville. Notwithstanding the provisions of WAC 220-33-010, and WAC 220-33-020, it is unlawful for a person to take

or possess salmon or sturgeon for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1A, 1B, 1C, 1D, and 1E, except as provided in the following subsections.

1. Mainstem Columbia River

a. SEASON: 7:00 p.m. August 3 to 7:00 a.m. August 4, 2010

7:00 p.m. August 5 to 7:00 a.m. August 6, 2010

7:00 p.m. August 8 to 7:00 a.m. August 9, 2010

7:00 p.m. August 10 to 7:00 a.m. August 11, 2010

b. AREA: August 3-9: SMCRA 1A, 1B, 1C, 1D, 1E (Zones 1-5)

August 10-11: SMCRA 1B, 1C, 1D, 1E (Zones 2-5)

c. GEAR: Drift gillnets only. 9-inch minimum mesh size. Monofilament gear is allowed.

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. SANCTUARIES: Grays River, Elochoman-A, Abernathy, Cowlitz, Kalama-A, Lewis-B, Washougal and Sandy Rivers as applicable

e. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of six (6) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit applies only to mainstem fisheries.

2. Blind Slough/Knappa Slough Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights from August 30 through October 29, 2010. Open hours are 7 PM to 7 AM from August 30 through September 17 and 6 PM to 8 AM thereafter.

b. AREA: Blind Slough and Knappa Slough. An area closure of an approximately 100-foot radius at the mouth of Big Creek is defined by markers. Concurrent jurisdiction waters include all areas in Knappa Slough and downstream of the Railroad Bridge in Blind Slough.

c. GEAR: Gillnet. Monofilament gear is allowed. 9 3/4-inch maximum mesh size. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of two white sturgeon may be possessed or sold by

each vessel participating each calendar week (Sunday through Saturday). The white sturgeon possession and sales limit includes Select Area fisheries only.

3. Tongue Point/South Channel Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights from August 31 through October 30, 2009. Open 7 PM - 7 AM from August 31 - September 18 and 4 PM - 8 AM thereafter.

b. AREA: Tongue Point and South Channel. All waters in this fishing area are concurrent jurisdiction waters.

c. GEAR: Gillnet. Monofilament gear is allowed. 6-inch maximum mesh

Tongue Point fishing area: Net length 250 fathoms maximum. Weight not to exceed two pounds on any one fathom.

South Channel area: Net length 100 fathoms maximum. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of two white sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday through Saturday). The white sturgeon possession and sales limit includes Select Area fisheries only.

4. Deep River Select Area.

a. SEASON: Monday and Thursday nights from August 16 through August 27, 2010. Open hours are 7 PM to 9 AM. And Monday, Tuesday, Wednesday and Thursday nights from August 30 through October 29, 2010. Open 7 PM - 9 AM from August 30 through September 17 and 4 PM - 8 AM thereafter

b. AREA: The Deep River Select Area. Concurrent jurisdiction waters extend downstream of the Highway 4 Bridge.

c. GEAR: Gill net. Monofilament gear is allowed. 6-inch maximum mesh. Net length 100 fathoms maximum. No weight restriction on the lead line. Use of additional weights or anchors attached directly to the lead line is allowed. Nets may not be tied off to stationary structures. Nets may not fully cross the navigation channel.

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of two white sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday

through Saturday). The white sturgeon possession and sales limit includes Select Area fisheries only.

5. Quick Report: 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 24 hours of the closure of each fishing period. This Quick report requirement applies to all seasons described above (Columbia River and Select Areas).

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:00 p.m. August 3, 2010:

WAC 220-33-01000F Columbia River season
below Bonneville. (10-157)

WSR 10-16-125 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 10-198—Filed August 3, 2010, 1:09 p.m., effective August 3, 2010,
1:09 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 232-28-61900R; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The Yakama Nation and Washington department of fish and wildlife are continuing the pilot study for reintroduction of anadromous sockeye salmon in the upper Cle Elum Basin that began in 2009. In July 2000, adult sockeye salmon trapped at Priest Rapids Dam on the Columbia River were released into Cle Elum Lake. An additional five hundred sockeye were transported to Cooper Lake near Salmon La Sac. The outlet of Cooper Lake (Cooper River) flows into the Cle Elum River upstream to Lake Cle Elum. A percentage of the fish will be released with radio tags so they can be tracked to understand their pre-spawning behavior and their migration patterns as they travel into the upper Cle Elum River and upper Cooper River to select spawning habitat. There is insufficient time to adopt permanent rules.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: August 3, 2010.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900R Exceptions to statewide rules—Cooper Lake and Cle Elum Lake (Reservoir). Notwithstanding the provisions of WAC 232-28-619, effective immediately through October 31, 2010, in waters of Cle Elum and Cooper Lakes, the maximum size for kokanee is 14 inches in length.

REPEALER

The following section of the Washington Administrative Code is repealed effective November 1, 2010:

WAC 232-28-61900R Exceptions to statewide rules—Cooper Lake and Cle Elum Lake (Reservoir).

WSR 10-16-136
EMERGENCY RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
(Division of Consumer Services)

[Filed August 4, 2010, 8:21 a.m., effective August 4, 2010, 8:21 a.m.]

Effective Date of Rule: Immediately. This emergency rule will be superseded by permanent rules adopted under the rule making initially filed under WSR 10-07-099.

Purpose: The general welfare of the public who use unsecured consumer loans must be protected from unreasonable fees. Some licensees formerly operating under chapter 31.45 RCW (the payday lending law) have begun offering products under the Consumer Loan Act that mirror small loans, but with unconscionable terms that fail to provide the protections of the payday lending law. Under the payday lending law, new consumer protections begin in January that limit the fees on payday loans. They also provide consumers with a free installment plan option. In amending the payday lending law, the legislature specifically sought to limit fees and provide a mechanism for borrowers with multiple loans

to pay off the loans over a period of time without having to reloan, continuing their cycle of debt. This emergency rule would serve as a stopgap to allow the department of financial institutions (DFI) to protect the welfare of the public while seeking a more permanent solution through rule making or the legislature. DFI has begun rule making to permanently adopt the rule on this topic. See WSR 10-07-099.

Citation of Existing Rules Affected by this Order: Amending WAC 208-620-515.

Statutory Authority for Adoption: RCW 31.04.165, 43.320.040.

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

Reasons for this Finding: Due to changes in chapter 31.45 RCW some licensees have obtained a license under chapter 31.04 RCW, the Consumer Loan Act, in order to use a specific provision within that act, RCW 31.04.115(3), to charge exorbitant fees to borrowers. In one example, a consumer loan of \$600 generated a participation fee of \$1,980, payable over twelve months, in addition to the statutorily allowed interest rate. This is equivalent to an APR of over four thousand percent. Additionally, the participation fee is charged monthly if the small loan is paid off but the line of credit account is kept open. If this rule were amended by the notice and negotiated rule-making process, great harm could occur to the borrowers who need the consumer loan now. Consumer demand is presently high due to the economic downturn causing both increased unemployment and the tightening of normal credit sources, which increases the necessity of immediate action. DFI has begun a notice and negotiated rule making (filed March 19, 2010, under WSR 10-07-099) but in the interim needs to be able to protect the welfare of the consumers and prevent lenders from circumventing the will of the legislature.

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

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

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

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

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

Date Adopted: August 4, 2010.

Deborah Bortner, Director
Division of Consumer Services

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

WAC 208-620-515 What authority do I have as a licensee? As a licensee you may:

(1) Lend money with a note rate that does not exceed twenty-five percent per annum as determined by the simple interest method of calculating interest owed. This applies only to nonmortgage loans, junior lien mortgage loans, and to lenders that are not "creditors" under the Depository Institutions Deregulatory and Monetary Control Act when making first lien mortgage loans. The requirement for the simple interest method of calculating interest does not apply to reverse mortgages.

(2)(a) Make open-end loans as provided in RCW 31.04.115.

(b) The annual fee allowed in RCW 31.04.115(3) may not exceed fifty dollars.

(c) The fee must be charged in advance and must be charged as a lump sum. It must not be charged monthly and must not be financed.

(3) In accordance with Title 48 RCW, sell insurance covering real and personal property, covering the life or disability or both of the borrower, covering the involuntary unemployment of the borrower, or other insurance products approved by the Washington state office of the insurance commissioner.

**WSR 10-16-141
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 10-200—Filed August 4, 2010, 9:03 a.m., effective August 8, 2010, 5:00 a.m.]

Effective Date of Rule: August 8, 2010, 5:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-50100V; and amending WAC 220-47-501.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation provides for Pacific Salmon Commission authorized fisheries in Areas 7 and 7A. These emergency rules are necessary to initiate fisheries targeting a harvestable amount of sockeye salmon available. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 4, 2010.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-47-50100V Puget Sound all-citizen commercial salmon fishery—Open periods. Notwithstanding the provisions of Chapter 220-47 WAC, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas 7 and 7A:

(1) **Purse Seines** - Open to purse seine gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5:00 AM - 9:00 PM	8/8

(a) It is unlawful to retain rockfish, Chinook, coho, and chum.

(b) Purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

(c) It is unlawful to bring salmon aboard a vessel unless all salmon captured in the seine net are removed from the seine net using a brailer or dip net meeting the specifications in WAC 220-47-325, prior to the seine net being removed from the water. All salmon and rockfish must be immediately sorted, and those required to be released must be placed in an operating recovery box or released into the water before the next haul may be brought on the deck. However, small numbers of fish may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

(d) It is unlawful to fish for salmon with purse seine gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(2) **Gill Nets** - Open to gill net gear with 5 inch minimum and 5 1/2 inch maximum mesh size according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
8:00 AM - Midnight	8/8

(a) It is unlawful to retain rockfish.

(b) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(3) **Reef Nets** - Open to reef net gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5:00 AM - 9:00 PM	8/8

(a) It is unlawful to retain rockfish, unmarked Chinook, unmarked coho, and chum.

(b) It is unlawful to retain marked Chinook unless the reef net operator is in immediate possession of a Puget Sound Reef Net Logbook.

(c) It is unlawful to fish for salmon with reef net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in immediate possession of a department issued certification card.

(4) **"Quick Reporting Fisheries":**

All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-22-030), are designated as "Quick Reporting Required" per WAC 220-47-001.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 9, 2010:

WAC 220-47-50100V Puget Sound all-citizen commercial salmon fishery—
Open periods.

WSR 10-16-148
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed August 4, 2010, 9:28 a.m., effective August 4, 2010, 9:28 a.m.]

Effective Date of Rule: Immediately.

Purpose: The department is extending the emergency rule filed as WSR 10-10-112 amending sections of chapter 388-448 WAC repealing changes to disability lifeline incapacity criteria, including how the department uses social and vocational factors to determine eligibility filed as WSR 10-08-036. These amendments will repeal changes to the disability lifeline incapacity criteria [and] are required in order for the department to comply with ESSB 6444 as passed by the legislature April 12, 2010. As passed, the bill limits the department's ability to make any changes to the incapacity determination and progressive evaluations process regulations until at least September 30, 2010, except for provisions related to the use of administrative review teams may be amended, and obsolete terminology and functional assessment language may be updated.

Citation of Existing Rules Affected by this Order: Amending WAC 388-448-0050, 388-448-0080, 388-448-0090, 388-448-0100, and 388-448-0110.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.04.005.

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

Reasons for this Finding: The bill limits the department's ability to make any changes to the incapacity determination and progressive evaluations process regulations until at least September 30, 2010, except for provisions related to the use of administrative review teams may be amended, and obsolete terminology and functional assessment language may be updated. This filing continues the emergency rule filed as WSR 10-10-112 while the department continues the permanent rule-making process. The department has filed a preproposal statement of inquiry (WSR 10-09-074) and a proposed rule-making notice (WSR 10-13-158). The permanent rule-filing process is anticipated to be completed in September 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 5, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Date Adopted: July 28, 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 10-17 issue of the Register.

WSR 10-16-157
RESCISSION OF EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

[Filed August 4, 2010, 12:00 p.m.]

Please rescind the CR-103E regarding chapter 388-885
WAC, filed as WSR 10-16-067.

Katherine I. Vasquez
Rules Coordinator