

**WSR 11-07-013**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Economic Services Administration)  
 [Filed March 8, 2011, 9:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-14-075 and 09-10-046.

Title of Rule and Other Identifying Information: The division of child support (DCS) proposes to adopt changes to chapter 388-14A WAC to implement statutory changes contained in two major bills from the 2009 legislative session: (1) SHB 1845 (chapter 476, Laws of 2009) regarding medical support obligations in child support orders; and (2) ESHB 1794 (chapter 84, Laws of 2009), which makes changes to chapter 26.19 RCW, the Washington state child support schedule, based on the recommendations of the 2007 child support schedule workgroup which was convened under 2SHB 1009 (chapter 313, Laws of 2007). This rule making includes new sections and/or amendments to existing sections to clarify, streamline or otherwise increase the efficiency and cost-effectiveness of DCS processes. ***DCS encourages interested parties to read these proposed rules carefully, as they differ from the emergency rules in several respects. Current emergency rules have been filed as WSR 11-06-034 effective February 26, 2011.***

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-3100 How does the division of child support establish a child support obligation when there is no child support order?, 388-14A-3115 The notice and finding of financial responsibility is used to set child support when paternity is not an issue, 388-14A-3120 The notice and finding of parental responsibility is used to set child support when the father's duty of support is based upon an affidavit of paternity which is not a conclusive presumption of paternity, 388-14A-3125 DCS may establish ~~((The notice and finding of medical responsibility is used to set))~~ a medical support obligation when the custodial parent receiving medical assistance declines full child support enforcement services, 388-14A-3140 What can happen at a hearing on a support establishment notice?, 388-14A-3200 How does DCS determine my support obligation?, 388-14A-3205 How does DCS calculate my income?, 388-14A-3300 How does the division of child support require me to make my support payments to the Washington state support registry when my support order says to pay someone else?, 388-14A-3310 What notice does the division of child support serve~~((s-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))~~ to establish a fixed dollar amount owed ~~((under a child support order))~~ by either parent for medical support, 388-14A-3315 When DCS serves a notice of support debt ~~((€))~~, notice of support owed ~~((€))~~, 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))~~ What happens if a parent makes a timely request for hearing on a notice of support owed?, 388-14A-3318 ~~((What is an annual review of a notice of support owed under WAC 388-14A-3312))~~ What happens if a parent makes an untimely request for hearing on a notice of support owed?, 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))~~ medicaid purchasing 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))~~ for a child in foster care ~~((are married and residing together))~~?, and new sections WAC 388-14A-3127 How does DCS ask to add a monthly financial obligation to an existing administrative order for medical support only?, 388-14A-3302 How does the division of child support decide what notice to serve when there is already an existing order for child support?, 388-14A-3311 How does DCS prepare a notice of support owed to determine amounts owed to establish a fixed dollar amount under an existing child support order?, 388-14A-3316 When can a notice of support owed become a final order?, 388-14A-3323 What happens in a hearing on a notice of support owed served under WAC 388-14A-3311?, 388-14A-3324 What happens in a hearing on a notice of support owed served under WAC 388-14A-3312?, 388-14A-3330 What are the procedures for the annual review of a notice of support owed?, 388-14A-3410 What amount does DCS use for the self-support reserve?, 388-14A-4111 When may DCS decline a request to enforce a medical support obligation?, 388-14A-4800 When does a child support order contain an undifferentiated amount of child support?, 388-14A-4810 How does DCS determine if a support order contains a differentiated or undifferentiated amount of support?, 388-14A-4820 What can I do if I don't agree with DCS' decision on whether my support order contains a differentiated or undifferentiated amount of support?, and 388-14A-4830 How does DCS divide support obligations between two

or more cases when a support order does not contain a differentiated amount of support?

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on May 10, 2011, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 11, 2011.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax (360) 664-6185, by 5 p.m. on May 10, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by April 26, 2011, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsj14@dshs.wa.gov](mailto:johnsj14@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SHB 1845 and ESHB 1794 both impact the establishment of child support obligations, and so DCS determined that it was necessary to adopt just one set of rules which covers both bills instead of two separate rule-making projects. These bills made significant changes to the child support laws of the state of Washington, with ESHB 1794 making the first major changes to the Washington state child support schedule in almost twenty years. This rule making includes new sections and/or amendments to existing sections to clarify, streamline or otherwise increase the efficiency and cost-effectiveness of DCS processes. For a list of section numbers and titles, see above. **Current emergency rules have been filed as WSR 11-06-034 effective February 26, 2011.**

Reasons Supporting Proposal: Implements legislation (SHB 1845 and ESHB 1794) and adopts new sections and/or amendments to existing sections to clarify, streamline or otherwise increase efficiency and cost-effectiveness.

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, 74.20A.055(9), and 74.20A.056(11).

Statute Being Implemented: RCW 26.09.105(17), 26.18.170(19), 26.23.050(8), 26.23.110(14), 74.20A.055(9), and 74.20A.056(11).

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nancy Koptur, DCS HQ, P.O. Box 9162, Olympia, WA 98507-9162, (360) 664-5065.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not have an economic impact on small businesses. It only affects individuals who have support obligations or individuals who are owed child support.

A cost-benefit analysis is not required under RCW 34.05.328. The rule does meet the definition of a significant legislative rule but DSHS/DCS rules relating to the care of

dependent children are exempt from preparing further analysis under RCW 34.05.328 (5)(b)(vii).

March 7, 2011

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 11-08 issue of the Register.

**WSR 11-07-016**  
**PROPOSED RULES**  
**SECRETARY OF STATE**

[Filed March 8, 2011, 2:35 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-03-061.

Title of Rule and Other Identifying Information: Washington registered profit corporations, limited liability companies, and limited partnerships that have lapsed registrations and must reinstate with the secretary of state's office.

Hearing Location(s): Office of the Secretary of State, Corporations and Charities Division, Dolliver Building, 801 South Capitol Way, Olympia, WA 98504, on April 26, 2011, at 10:00 a.m.

Date of Intended Adoption: May 24, 2011.

Submit Written Comments to: Kathy Kimbel, P.O. Box 40234, Olympia, WA 98504-0234, e-mail [kathy.kimbel@sos.wa.gov](mailto:kathy.kimbel@sos.wa.gov), fax (360) 586-4989, by April 26, 2011.

Assistance for Persons with Disabilities: Contact Sharon Baker by April 25, 2011, TTY (800) 422-8683 or (360) 725-0312.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To drop twenty-five percent reinstatement penalty from current rule, and charge a flat reinstatement fee of \$140 (WAC 434-112-085 and 434-130-090) to reduce customer confusion and employee time spent on calculations. Proposed effective date: July 1, 2011.

Reasons Supporting Proposal: Agency study determined that a flat reinstatement fee has a negligible reduction (less than \$10k per year) to GF-S revenue, yet provides a clearer, more concise method of payment for customers.

Statutory Authority for Adoption: RCW 23B.01.220, 25.15.805, 25.10.916.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: This rule change is estimated to have a negligible impact on GF-S, and will create efficiencies in the division by simplifying the reinstatement fee calculation. It is also anticipated to reduce customer confusion and rejections of customer's reinstatement applications that have been submitted for an incorrect fee.

Name of Proponent: Office of secretary of state, corporations and charities division, governmental.

Name of Agency Personnel Responsible for Drafting: Pam Floyd, 801 Capitol Way South, Olympia, WA 98504,

(360) 725-0310; Implementation and Enforcement: Kathy Kimbel, 801 Capitol Way South, Olympia, WA 98504, (360) 725-0330.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The impact to small businesses who have lapsed registrations will only be \$2.50 in additional fees (for single year reinstatements) or \$10 **less** (for multi-year reinstatements). Since this fee change impacts an estimated two percent of the total profit, LLC and LP entities on file with the secretary of state's office, and an even small percentage of small businesses, the impact is considered minimal.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Pam Floyd, Office of the Secretary of State, Corporations and Charities Division, P.O. Box 40234, Olympia, WA 98504-0234, phone (360) 725-0310, fax (360) 586-4989, e-mail Pam.floyd@sos.wa.gov.

March 8, 2011

Steve Excell

Assistant Secretary of State

AMENDATORY SECTION [(Amending WSR 10-20-150, filed 10/6/10, effective 11/6/10)]

**WAC 434-112-085 Fees and penalties.** (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:

<p>(a) Articles of incorporation</p> <p>(b) Certificates of formation</p> <p>(c) Applications for registration</p> <p>(d) Certificates of authority</p> <p>(e) Certificate of limited partnership</p>	<p>one hundred eighty dollars (includes heritage center fee of five dollars under RCW 43.07.128)</p> <p>one hundred eighty dollars (includes heritage center fee of five dollars under RCW 43.07.128)</p> <p>one hundred eighty dollars (includes heritage center fee of five dollars under RCW 43.07.128)</p> <p>one hundred eighty dollars (includes heritage center fee of five dollars under RCW 43.07.128)</p> <p>one hundred eighty dollars (includes heritage center fee of five dollars under RCW 43.07.128)</p>	<p>(f) Other original filings</p> <p>(g) Articles of amendment</p> <p>(h) Articles of restatement</p> <p>(i) Articles of correction</p> <p>(j) Revocation of dissolution or withdrawal</p> <p>(k) Delinquent license renewal</p> <p>(l) Limited partnership annual report</p> <p>(m) Limited liability partnership annual report</p> <p>(n) Limited liability limited partnership annual report</p> <p>(o) Cooperative association annual report</p> <p>(p) Reinstatement from administrative dissolution</p> <p>(q) Requalification from administrative revocation</p> <p>(r) Articles of merger or exchange</p> <p>(s) Resignation of registered agent</p> <p>(t) Resignation of officer or director</p> <p>(u) Initial report filed with formation</p> <p>(v) Amended annual report or initial report filed after formation</p> <p>(w) Change of registered agent</p> <p>(x) Change of registered office address</p> <p>(y) Registration, reservation, or transfer of name</p> <p>(z) Articles of dissolution or certificate of dissolution</p>	<p>one hundred eighty dollars (includes heritage center fee of five dollars under RCW 43.07.128)</p> <p>thirty dollars</p> <p>thirty dollars</p> <p>thirty dollars</p> <p>thirty dollars</p> <p>ninety-four dollars, including twenty-five dollars penalty, sixty dollars statutory fee, and nine dollars department of licensing handling fee, when applicable</p> <p>sixty dollars</p> <p>sixty dollars</p> <p>sixty dollars</p> <p>ten dollars</p> <p>one hundred <del>forty</del> dollars plus all delinquent license or annual fees <del>and a twenty-five percent penalty computed on the total amount</del></p> <p>one hundred eighty dollars plus all delinquent fees</p> <p>twenty dollars for each listed company</p> <p>twenty dollars</p> <p>ten dollars</p> <p>no fee</p> <p>ten dollars</p> <p>no fee</p> <p>no fee</p> <p>thirty dollars</p> <p>no fee</p>
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- (aa) Certificate of withdrawal no fee
- (bb) Certificate of cancellation no fee
- (cc) Agent's consent to act as agent no fee
- (dd) Agent's resignation if appointed without consent no fee
- (ee) Other statement or report ten dollars

(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:

- (a) Articles of incorporation thirty dollars
- (b) Certificates of authority thirty dollars
- (c) Other original filings thirty dollars
- (d) Articles of amendment twenty dollars
- (e) Restatement twenty dollars
- (f) Annual report ten dollars
- (g) Articles of dissolution, certificate of withdrawal no fee
- (h) Reinstatement from administrative dissolution thirty dollars plus all delinquent annual fees and five dollar penalty
- (i) Articles of merger or exchange twenty dollars for each listed corporation
- (j) Resignation of officer or director ten dollars
- (k) Amended annual report ten dollars
- (l) Change of registered agent no fee
- (m) Change of registered office address no fee
- (n) Resignation of registered agent twenty dollars
- (o) Registration, reservation, or transfer of reservation of name twenty dollars
- (p) Certificate of election adopting provisions of chapter 24.03 RCW thirty dollars
- (q) Other statement or report filed ten dollars

(3) For registering trademarks for use within the state, the fees are as follows:

- (a) Five year registration fifty-five dollars (includes five dollars heritage center fee) for each class registered
- (b) Five year renewal fifty dollars for each class registered

- (c) Recording assignment ten dollars (includes registration)
- (d) New certificate with name of assignee five dollars
- (e) Reservation of trademark thirty dollars for each class reserved, for one hundred eighty days
- (f) Amendment of trademark fifty dollars for each class
- (g) Cancellation of trademark no fee
- (h) Other statement or report filed ten dollars

(4) For filings related to state registered domestic partnership, the fees are:

- (a) Registration fifty dollars
- (b) Name change no fee
- (c) Address change no fee
- (d) Notice of termination by reason of death no fee

(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.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

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

AMENDATORY SECTION [(Amending WSR 10-15-035, filed 7/13/10, effective 8/13/10)]

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

- (1) Certificate of formation or application for registration, one hundred eighty;
- (2) Annual report license renewal, sixty dollars plus the department of licensing's handling fee of nine dollars;
- (3) Certificate of amendment, restated certificate, or amended and restated certificate, thirty dollars;
- (4) Delinquent annual report license renewal, penalty fee of twenty-five dollars, plus the renewal fee of sixty dollars plus the department of licensing's handling fee of nine dollars;
- (5) Reinstatement, one hundred ~~forty~~ forty dollars plus all delinquent license or annual fees ~~and a twenty-five percent penalty computed on the total amount;~~
- (6) Articles of merger, twenty dollars for each listed company;
- (7) Statement of change of registered agent, registered office address, or designation of new registered agent, no fee;
- (8) Resignation of registered agent, twenty dollars per entity name;
- (9) An initial report or amended annual report, ten dollars;
- (10) Registration, reservation, or transfer of name, thirty dollars;

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

(12) Revocation of certificate of dissolution, thirty dollars plus any possible missed license fees;

(13) Agent's resignation if appointed without consent, no fee; and

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

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

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

**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.

296-305-06006, 296-305-06007, 296-305-06008, 296-305-06501, 296-305-06503, 296-305-06505, 296-305-06507, 296-305-06511, 296-305-06513, 296-305-06515, 296-305-06517, 296-305-06519, 296-305-07001, 296-305-07002, 296-305-07003, 296-305-07004, 296-305-07005, 296-305-07006, 296-305-07007, 296-305-07008, 296-305-07009, 296-305-07010, 296-305-07011, 296-305-07012, 296-305-07013, 296-305-07014, 296-305-07015, 296-305-07016, 296-305-07017, 296-305-07018, 296-305-07019 and 296-305-08000, proposed by the department of labor and industries in WSR 10-18-078 appearing in issue 10-18 of the State Register, which was distributed on September 15, 2010, is withdrawn by the code reviser's office under RCW 34.05.335 (3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

### WSR 11-07-043

#### WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF EARLY LEARNING

(By the Code Reviser's Office)

[Filed March 15, 2011, 1:04 p.m.]

WAC 170-290-0005, 170-290-0075, 170-290-0085, 170-290-3520, and 170-290-3640, proposed by the department of early learning in WSR 10-18-064 appearing in issue 10-18 of the State Register, which was distributed on September 15, 2010, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

### WSR 11-07-044

#### WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF LABOR AND INDUSTRIES

(By the Code Reviser's Office)

[Filed March 15, 2011, 1:06 p.m.]

WAC 296-305-01002, 296-305-01003, 296-305-01005, 296-305-01007, 296-305-01009, 296-305-01501, 296-305-01503, 296-305-01505, 296-305-01507, 296-305-01509, 296-305-01513, 296-305-01517, 296-305-02001, 296-305-02002, 296-305-02003, 296-305-02004, 296-305-02005, 296-305-02007, 296-305-02009, 296-305-02011, 296-305-02012, 296-305-02013, 296-305-02015, 296-305-02017, 296-305-02019, 296-305-02501, 296-305-03001, 296-305-03002, 296-305-04001, 296-305-04501, 296-305-04503, 296-305-04505, 296-305-04507, 296-305-04509, 296-305-04510, 296-305-04511, 296-305-05000, 296-305-05001, 296-305-05002, 296-305-05003, 296-305-05004, 296-305-05005, 296-305-05007, 296-305-05009, 296-305-05011, 296-305-05013, 296-305-05101, 296-305-05103, 296-305-05105, 296-305-05107, 296-305-05109, 296-305-05111, 296-305-05113, 296-305-05501, 296-305-05502, 296-305-05503, 296-305-06001, 296-305-06003, 296-305-06005,

### WSR 11-07-047

#### WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF LABOR AND INDUSTRIES

(By the Code Reviser's Office)

[Filed March 15, 2011, 1:08 p.m.]

WAC 296-150C-0320, 296-150C-0495, 296-150C-0800, 296-150C-0810, 296-150C-1150, 296-150C-1330, 296-150C-1340, 296-150C-1470, 296-150C-1480, 296-150F-0020, 296-150F-0090, 296-150F-0230, 296-150F-0310, 296-150F-0320, 296-150F-0325, 296-150F-0495, 296-150F-0600, 296-150F-0605, 296-150M-0060, 296-150M-0306, 296-150M-0410, 296-150P-0020, 296-150R-0020, 296-150T-0200, 296-150T-0495, 296-150T-0600, 296-150V-0495, 296-150V-0800, 296-150V-1180, 296-150V-1185 and 296-150V-1330, proposed by the department of labor and industries in WSR 10-18-103 appearing in issue 10-18 of the State Register, which was distributed on September 15, 2010, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

### WSR 11-07-053

#### PROPOSED RULES PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed March 17, 2011, 10:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-08-102.

Title of Rule and Other Identifying Information: WAC 181-82A-208 Specialty endorsements, program requirements are waived for the orientation and mobility endorsement and requirements are clarified at request from the field.

Hearing Location(s): Holiday Inn Express, 4525 Convention Place, Pasco, WA 99301, on May 5, 2011, at 8:30 a.m.

Date of Intended Adoption: May 5, 2011.

Submit Written Comments to: David Brenna, Legislative and Policy Coordinator, P.O. Box 47236, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by April 28, 2011.

Assistance for Persons with Disabilities: Contact David Brenna by April 28, 2011, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Board originally created the orientation and mobility specialty endorsement to require approved program completion. No programs exist in this state. The endorsement will now be available for individuals that attend nationally recognized programs and have been certified through those programs.

Reasons Supporting Proposal: Assures professionals in our state can be endorsed.

Statutory Authority for Adoption: RCW 28A.410.210.

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

Name of Proponent: Professional educators [educator] standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 47236 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-3631, e-mail david.brenna@k12.wa.us.

March 17, 2011  
David Brenna  
Legislative and  
Policy Coordinator

AMENDATORY SECTION (Amending WSR 10-17-015, filed 8/5/10, effective 9/5/10)

**WAC 181-82A-208 Specialty endorsements.** The following specialty endorsements may be added to an existing endorsed teaching certificate:

(1) Deaf education (per RCW 28A.410.225).

(a) This specialty endorsement is required for teachers who will be working almost exclusively with students who are deaf or hard of hearing.

(b) Program requirements are waived and this specialty endorsement granted if a candidate possesses a baccalaureate or master's degree in deaf education from a teacher training program approved by the council on education of the deaf.

(2) Environmental and sustainability education.

(3) Teacher of the visually impaired.

(4) Orientation and mobility teacher.

(a) Program requirements are waived and this specialty endorsement granted if a teacher possesses a baccalaureate or master's degree in orientation and mobility from a teacher training program approved by the association for education and rehabilitation of the blind and visually impaired; or

(b) Possesses a certified orientation and mobility specialist certificate from the academy for certification of vision rehabilitation and education professionals.

(5) Gifted education.

**WSR 11-07-061**  
**PROPOSED RULES**  
**DEPARTMENT OF REVENUE**

[Filed March 21, 2011, 9:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-02-084.

Title of Rule and Other Identifying Information: WAC 458-20-102 Reseller permits and 458-20-102A Resale certificates.

Hearing Location(s): Capital Plaza Building, 4th Floor RLA Large Conference Room, 1025 Union Avenue S.E., Olympia, WA 98504 (copies of draft rules are available for viewing and printing on our web site at Rules Agenda), on April 26, 2011, at 1:30 p.m.

Date of Intended Adoption: May 6, 2011.

Submit Written Comments to: Gayle Carlson, P.O. Box 47453, Olympia, WA 98504-7453, e-mail GayleC@dor.wa.gov [GayleC@dor.wa.gov], by April 26, 2011.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499 or Renee Cosare, (360) 725-7514 no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Currently WAC 458-20-102 (Rule 102) explains the resale certificate and conditions under which a buyer may furnish a resale certificate to a seller. Effective January 1, 2010, reseller permits replaced resale certificates as the means to substantiate wholesale purchases. Chapter 563, Laws of 2009.

The department of revenue (department) is proposing an amendment to Rule 102 to explain the reseller permit and conditions under which a buyer may furnish a reseller permit to a seller. The department incorporated the information contained in the existing Rule 102 into a new Rule 102A. Rule 102A retains the information necessary for resale certificates that were used prior to January 1, 2010. The information incorporated into Rule 102A is necessary until the statute of limitation period for assessments and nonclaim period for refunds has run.

Reasons Supporting Proposal: WAC 458-20-102 Reseller permits is needed to explain that resale certificates can no longer be used after January 1, 2010, and that reseller permits, issued by the department, are used to substantiate wholesale sales made on or after January 1, 2010.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: RCW 82.32.780 and 82.32.783.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Gayle Carlson, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1576; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599; and Enforcement: Gilbert Brewer, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1595.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules do not impose any new performance requirements or administrative burden on any small business not required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are not significant legislative rules as defined by RCW 34.05.328.

March 21, 2011

Alan R. Lynn  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-21-103, filed 10/16/08, effective 11/16/08)

**WAC 458-20-102 ((Resale certificates-)) Reseller permits.** ~~((1) Introduction.~~ This section explains the conditions under which a buyer may furnish a resale certificate to a seller, and explains the information and language required on the resale certificate. This section also provides tax reporting information to persons who purchase articles or services for dual purposes (i.e., for both resale and consumption).

(a) **Legislation passed in 2003.** In 2003, the legislature enacted legislation conforming state law to portions of the national Streamlined Sales and Use Tax Agreement (chapter 168, Laws of 2003), which eliminates the good faith requirement when the seller takes from the buyer a resale certificate and also eliminates signature requirements for certificates provided in a format other than paper. These changes apply to resale certificates taken on and after July 1, 2004.

(b) **Legislation passed in 2007.** Additional Streamlined Sales and Use Tax Agreement legislation was enacted in 2007 (chapter 6, Laws of 2007). It eliminates the provision that resale certificates are only valid for four years from the date they are issued to the seller, as long as there is a recurring business relationship between the buyer and seller. This change is effective on July 1, 2008.

(2) **What is a resale certificate?** The resale certificate is a document or combination of documents that substantiates the wholesale nature of a sale. The resale certificate cannot be used for purchases that are not purchases at wholesale, or where a more specific certificate, affidavit, or other documentary evidence is required by statute or other section of chapter 458-20 WAC. While the resale certificate may come in different forms, all resale certificates must satisfy the language and information requirements of RCW 82.04.470.

(a) **What is the scope of a resale certificate?** Depending on the statements made on the resale certificate, the resale certificate may authorize the buyer to purchase at wholesale

all products or services being purchased from a particular seller, or may authorize only selected products or services to be purchased at wholesale. The provisions of the resale certificate may be limited to a single sales transaction, or may apply to all sales transactions as long as the seller has a recurring business relationship with the buyer. A "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months. Whatever its form and/or purpose, the resale certificate must be completed in its entirety and signed by a person who is authorized to make such a representation on behalf of the buyer.

~~(b) Who may issue and sign certificates?~~ The buyer may authorize any person in its employ to issue and sign resale certificates on the buyer's behalf. The buyer is, however, responsible for the information contained on the resale certificate. A resale certificate is not required to be completed by every person ordering or making the actual purchase of articles or services on behalf of the buyer. For example, a construction company that authorizes only its bookkeeper to issue resale certificates on its behalf may authorize both the bookkeeper and a job foreman to purchase items under the provisions of the resale certificate. The construction company is not required to provide, nor is the seller required to obtain, a resale certificate signed by each person making purchases on behalf of the construction company.

The buyer is responsible for educating all persons authorized to issue and/or use the resale certificate on the proper use of the buyer's resale certificate privileges.

(3) **Resale certificate renewal.** Prior to July 1, 2008, resale certificates must be renewed at least every four years. As of July 1, 2008, the requirement to renew resale certificates at least every four years has been eliminated. The buyer must renew its resale certificate whenever a change in the ownership of the buyer's business requires a new tax registration. (See WAC 458-20-101 Tax registration and tax reporting.) The buyer may not make purchases under the authority of a resale certificate bearing a tax registration number that has been cancelled or revoked by the department of revenue (department).

(4) **Sales at wholesale.** All sales are treated as retail sales unless the seller takes from the buyer a properly executed resale certificate. Resale certificates may only be used for sales at wholesale and may not be used as proof of entitlement to retail sales tax exemptions otherwise provided by law.

~~(a) When may a buyer issue a resale certificate?~~ The buyer may issue a resale certificate only when the property or services purchased are:

(i) For resale in the regular course of the buyer's business without intervening use by the buyer;

(ii) To be used as an ingredient or component part of a new article of tangible personal property to be produced for sale;

(iii) A chemical to be used in processing an article to be produced for sale (see WAC 458-20-113 on chemicals used in processing);

(iv) To be used in processing ferrosilicon that is subsequently used in producing magnesium for sale;

(v) Provided to consumers as a part of competitive telephone service, as defined in RCW 82.04.065;

(vi) Feed, seed, seedlings, fertilizer, spray materials, or agents for enhanced pollination including insects such as bees for use in the federal conservation reserve program or its successor administered by the United States Department of Agriculture; or

(vii) Feed, seed, seedlings, fertilizer, spray materials, or agents for enhanced pollination including insects such as bees for use by a farmer for producing for sale any agricultural product. (See WAC 458-20-210 on sales to and by farmers.)

~~(b) **Required information.** All resale certificates, whether paper or nonpaper format, must contain the following information:~~

~~(i) The name and address of the buyer;~~

~~(ii) The uniform business identifier or tax registration number of the buyer, if the buyer is required to be registered with the department;~~

~~(iii) The type of business;~~

~~(iv) The categories of items or services to be purchased at wholesale, unless the buyer is in a business classification that may present a blanket resale certificate as provided by the department by rule;~~

~~(v) The date on which the certificate was provided;~~

~~(vi) A statement that the items or services purchased either are purchased for resale in the regular course of business or are otherwise purchased at wholesale; and~~

~~(vii) A statement that the buyer acknowledges that the buyer is solely responsible for purchasing within the categories specified on the certificate and that misuse of the resale certificate subjects the buyer to a penalty of fifty percent of the tax due, in addition to the tax, interest, and any other penalties imposed by law.~~

~~(e) **Additional requirements for paper certificates.** In addition to the requirements stated in (b) of this subsection, paper certificates must contain the following:~~

~~(i) The name of the individual authorized to sign the certificate, printed in a legible fashion;~~

~~(ii) The signature of the authorized individual; and~~

~~(iii) The name of the seller. RCW 82.04.470.~~

~~(5) **Seller's responsibilities.** When a seller receives and accepts from the buyer a resale certificate at the time of the sale, or has a resale certificate on file at the time of the sale, or obtains a resale certificate from the buyer within one hundred twenty days after the sale, the seller is relieved of liability for retail sales tax with respect to the sale covered by the resale certificate. The seller may accept a legible fax, a duplicate copy of an original resale certificate, or a certificate in a format other than paper.~~

~~(a) If the seller has not obtained an appropriate resale certificate or other acceptable documentary evidence (see subsection (8) of this section), the seller is personally liable for the tax due unless it can sustain the burden of proving through facts and circumstances that the property was sold for one of the purposes set forth in subsection (4)(a) of this section. The department will consider all evidence presented by the seller, including the circumstances of the sales transaction itself, when determining whether the seller has met its burden of proof. It is the seller's responsibility to provide the information necessary to evaluate the facts and circumstances of all sales transactions for which resale certificates are not~~

~~obtained. Facts and circumstances that should be considered include, but are not necessarily limited to, the following:~~

~~(i) The nature of the buyer's business. The items being purchased at wholesale must be consistent with the buyer's business. For example, a buyer having a business name of "Ace Used Cars" would generally not be expected to be in the business of selling furniture;~~

~~(ii) The nature of the items sold. The items sold must be of a type that would normally be purchased at wholesale by the buyer; and~~

~~(iii) Additional documentation. Other available documents, such as purchase orders and shipping instructions, should be considered in determining whether they support a finding that the sales are sales at wholesale.~~

~~(b) If the seller is required to make payment to the department, and later is able to present the department with proper documentation or prove by facts and circumstances that the sales in question are wholesale sales, the seller may in writing request a refund of the taxes paid along with the applicable interest. Both the request and the documentation or proof that the sales in question are wholesale sales must be submitted to the department within the statutory time limitations provided by RCW 82.32.060. (See WAC 458-20-229 Refunds.) However, refer to (f) of this subsection in event of an audit situation.~~

~~(e) **Timing requirements for single orders with multiple billings.** If a single order or contract will result in multiple billings to the buyer, and the appropriate resale certificate was not obtained or on file at the time the order was placed or the contract entered, the resale certificate must be received by the seller within one hundred twenty days after the first billing. For example, a subcontractor entering into a construction contract for which it has not received a resale certificate must obtain the certificate within one hundred twenty days of the initial construction draw request, even though the construction project may not be completed at that time and additional draw requests will follow.~~

~~(d) **Requirements for resale certificates obtained after one hundred twenty days have passed.** If the resale certificate is obtained more than one hundred twenty days after the sale or sales in question, the resale certificate must be specific to the sale or sales. The certificate must specifically identify the sales in question on its face, or be accompanied by other documentation signed by the buyer specifically identifying the sales in question and stating that the provisions of the accompanying resale certificate apply. A nonspecific resale certificate that is not obtained within one hundred twenty days is generally not, in and of itself, acceptable proof of the wholesale nature of the sales in question. The resale certificate and/or required documentation must be obtained within the statutory time limitations provided by RCW 82.32.050.~~

~~(e) **Examples.** The following examples explain the seller's documentary requirements in typical situations when obtaining a resale certificate more than one hundred twenty days after the sale. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.~~



(i) Beginning in January of year 1, MN Company regularly makes sales to ABC Inc. In June of the same year, MN discovers ABC has not provided a resale certificate. MN requests a resale certificate from ABC and, as the resale certificate will not be received within one hundred twenty days of many of the past sales transactions, requests that the resale certificate specifically identify those past sales subject to the provisions of the certificate. MN receives a legible fax copy of an original resale certificate from ABC on July 1st of that year. Accompanying the resale certificate is a memo providing a list of the invoice numbers for all past sales transactions through May 15th of that year. This memo also states that the provisions of the resale certificate apply to all past and future sales, including those listed. MN Company has satisfied the requirement that it obtain a resale certificate specific to the sales in question.

(ii) XYZ Company makes three sales to MP Inc. in October of year 1 and does not charge retail sales tax. In the review of its resale certificate file in April of the following year, XYZ discovers it has not received a resale certificate from MP Inc. and immediately requests a certificate. As the resale certificate will not be received within one hundred twenty days of the sales in question, XYZ requests that MP provide a resale certificate identifying the sales in question. MP provides XYZ with a resale certificate that does not identify the sales in question, but simply states "applies to all past purchases." XYZ Company has not satisfied its responsibility to obtain an appropriate resale certificate. As XYZ failed to secure a resale certificate within a reasonable period of time, XYZ must obtain a certificate specifically identifying the sales in question or prove through other facts and circumstances that these sales are wholesale sales. (Refer to (a) of this subsection for information on how a seller can prove through other facts and circumstances that a sale is a wholesale sale.) It remains the seller's burden to prove the wholesale nature of the sales made to a buyer if the seller has not obtained a valid resale certificate within one hundred twenty days of the sale.

**(f) Additional time to secure documentation in audit situation.** If in event of an audit the department discovers that the seller has not secured, as described in this subsection (5), the necessary resale certificates and/or documentation, the seller will generally be allowed one hundred twenty days in which to obtain and present appropriate resale certificates and/or documentation, or prove by facts and circumstances the sales in question are wholesale sales. The time allotted to the seller shall commence from the date the auditor initially provides the seller with the results of the auditor's wholesale sales review. The processing of the audit report will not be delayed as a result of the seller's failure within the allotted time to secure and present appropriate documentation, or its inability to prove by facts and circumstances that the sales in question were wholesale sales.

**(6) Penalty for improper use.** Any buyer who uses a resale certificate to purchase items or services without payment of sales tax and who is not entitled to use the certificate for the purchase will be assessed a penalty of fifty percent of the tax due on the improperly purchased item or service. This penalty is in addition to all other taxes, penalties, and interest due, and can be imposed even if there was no intent to evade

the payment of retail sales tax. The penalty will be assessed by the department and applies only to the buyer. However, see subsection (12) of this section for situations in which the department may waive the penalty.

Persons who purchase articles or services for dual purposes (i.e., some for their own consumption and some for resale) should refer to subsection (11) of this section to determine whether they may give a resale certificate to the seller.

**(7) Resale certificate — suggested form.** While there may be different forms of the resale certificate, all resale certificates must satisfy the language and information requirements provided by RCW 82.04.470. The resale certificate is available on the department's internet site at <http://dor.wa.gov>, or can be obtained by calling the department's telephone information center at 1-800-647-7706 or by writing:

Taxpayer Services  
Department of Revenue  
P.O. Box 47478  
Olympia, WA 98504-7478

A resale certificate may be in any other form that contains substantially the same information and language, except that certificates provided in a format other than paper are not required to include the printed name of the person authorized to sign the certificate, the signature of the authorized individual, or the name of the seller.

Effective July 1, 2008, buyers also have the option of using a Streamlined Sales and Use Tax Agreement Certificate of Exemption, which has been modified for Washington state laws. It can also be found on the department's internet site at <http://dor.wa.gov>.

**(a) Buyer's responsibility to specify products or services purchased at wholesale.** RCW 82.04.470 requires the buyer making purchases at wholesale to specify the kinds of products or services subject to the provisions of the resale certificate. A buyer who will purchase some of the items at wholesale, and consume and pay tax on some other items being purchased from the same seller, must use terms specific enough to clearly indicate to the seller what kinds of products or services the buyer is authorized to purchase at wholesale.

(i) The buyer may list the particular products or services to be purchased at wholesale, or provide general category descriptions of these products or services. The terms used to describe these categories must be descriptive enough to restrict the application of the resale certificate provisions to those products or services that the buyer is authorized to purchase at wholesale. The following are examples of terms used to describe categories of products purchased at wholesale, and businesses that may be eligible to use such terms on their resale certificates:

(A) "Hardware" for use by a general merchandise or building material supply store, "computer hardware" for use by a computer retailer;

(B) "Paint" or "painting supplies" for use by a general merchandise or paint retailer, "automotive paint" for use by an automotive repair shop; and

(C) "Building materials" or "subcontract work" for use by prime contractors performing residential home construction, "wiring" or "lighting fixtures" for use by an electrical contractor.

(ii) The buyer must remit retail sales tax on any taxable product or service not listed on the resale certificate provided to the seller. If the buyer gave a resale certificate to the seller and later used an item listed on the certificate, or if the seller failed to collect the sales tax on items not listed on the certificate, the buyer must remit the deferred sales or use tax due directly to the department.

(iii) RCW 82.08.050 provides that each seller shall collect from the buyer the full amount of retail sales tax due on each retail sale. If the department finds that the seller has engaged in a consistent pattern of failing to properly charge sales tax on items not purchased at wholesale (i.e., not listed on the resale certificate), it may hold the seller liable for the uncollected sales tax.

(iv) Persons having specific questions regarding the use of terms to describe products or services purchased at wholesale may submit their questions to the department for ruling. The department may be contacted on the internet at <http://dor.wa.gov/> or by writing:

Taxpayer Services  
Department of Revenue  
P.O. Box 47478  
Olympia, WA 98504 7478

(b) **Blanket resale certificates.** A buyer who will purchase at wholesale all of the products or services being purchased from a particular seller will not be required to specifically describe the items or item categories on the resale certificate. If the certificate form provides for a description of the products or services being purchased at wholesale the buyer may specify "all products and/or services" (or make a similar designation). A resale certificate completed in this manner is often described as a blanket resale certificate.

(i) The resale certificate used by the buyer must, in all cases, be completed in its entirety. A resale certificate in which the section for the description of the items being purchased at wholesale is left blank by the buyer will not be considered a properly executed resale certificate.

(ii) As of July 1, 2008, renewal or updating of blanket resale certificates is not required as long as the seller has a recurring business relationship with the buyer. A "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months.

To effectively administer this provision during an audit, the department will accept a resale certificate as evidence for wholesale sales that occur within four years of the certificate's effective date without evidence of sales transactions being made once every twelve months. For sales transactions made more than four years after the date of the properly completed resale certificate, the seller must substantiate that a recurring business relationship with the buyer has occurred for any sales outside the period of more than four years after the effective date of the resale certificate.

(c) **Resale certificates for single transactions.** If the resale certificate is used for a single transaction, the language and information required of a resale certificate may be written or stamped upon a purchase order or invoice. The language contained in a "single use" resale certificate should be modified to delete any reference to subsequent orders or purchases.

(d) **Examples.** The following examples explain the proper use of types of resale certificates in typical situations. These examples should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances.

(i) ABC is an automobile repair shop purchasing automobile parts for resale and tools for its own use from DE Supply. ABC must provide DE Supply with a resale certificate limiting the certificate's application to automobile part purchases. However, should ABC withdraw parts from inventory to install in its own tow truck, deferred retail sales tax or use tax must be remitted directly to the department. The buyer has the responsibility to report deferred retail sales tax or use tax upon any item put to its own use, including items for which it gave a resale certificate and later used for its own use.

(ii) X Company is a retailer selling lumber, hardware, tools, automotive parts, and household appliances. X Company regularly purchases lumber, hardware, and tools from Z Distributing. While these products are generally purchased for resale, X Company occasionally withdraws some of these products from inventory for its own use. X Company may provide Z Distributing with a resale certificate specifying "all products purchased" are purchased at wholesale. However, whenever X Company removes any product from inventory to put to its own use, deferred retail sales tax or use tax must be remitted to the department.

(iii) TM Company is a manufacturer of electric motors. When making purchases from its suppliers, TM issues a paper purchase order. This purchase order contains the information required of a resale certificate and a signature of the person ordering the items on behalf of TM. This purchase order includes a box that, if marked, indicates to the supplier that all or certain designated items purchased are being purchased at wholesale.

When the box indicating the purchases are being made at wholesale is marked, the purchase order can be accepted as a resale certificate. As TM Company's purchase orders are being accepted as resale certificates, they must be retained by the seller for at least five years. (See WAC 458-20-254 Recordkeeping.)

(8) **Other documentary evidence.** Other documentary evidence may be used by the seller and buyer in lieu of the resale certificate form described in this section. However, this documentary evidence must collectively contain the information and language generally required of a resale certificate. The conditions and restrictions applicable to the use of resale certificates apply equally to other documentary evidence used in lieu of the resale certificate form in this section. The following are examples of documentary evidence that will be accepted to show that sales were at wholesale:

(a) **Combination of documentary evidence.** A combination of documentation kept on file, such as a membership card or application, and a sales invoice or "certificate" taken at the point of sale with the purchases listed, provided:

(i) The documentation kept on file contains all information required on a resale certificate, including, for paper certificates, the names and signatures of all persons authorized to make purchases at wholesale; and

(ii) The sales invoice or "certificate" taken at the point of sale must contain the following:

(A) Language certifying the purchase is made at wholesale, with acknowledgement of the penalties for the misuse of resale certificate privileges, as generally required of a resale certificate; and

(B) The name and registration number of the buyer/business, and, if a paper certificate, an authorized signature.

(b) ~~Contracts of sale.~~ A contract of sale that within the body of the contract provides the language and information generally required of a resale certificate. The contract of sale must specify the products or services subject to the resale certificate privileges.

(c) ~~Other preapproved documentary evidence.~~ Any other documentary evidence that has been approved in advance and in writing by the department.

(9) ~~Sales to nonresident buyers.~~ If the buyer is a non-resident who is not engaged in business in this state, but buys articles here for the purpose of resale in the regular course of business outside this state, the seller must take from the buyer a resale certificate as described in this section. The seller may accept a resale certificate from an unregistered nonresident buyer with the registration number information omitted, provided the balance of the resale certificate is completed in its entirety. The resale certificate should contain a statement that the items are being purchased for resale outside Washington.

(10) ~~Sales to farmers.~~ Farmers selling agricultural products only at wholesale are not required to register with the department. (See WAC 458-20-101 Tax registration and tax reporting.) When making wholesale sales to farmers (including farmers operating in other states), the seller must take from the farmer a resale certificate as described in this section. Farmers not required to be registered with the department may provide, and the seller may accept, resale certificates with the registration number information omitted, provided the balance of the certificates are completed in full. Persons making sales to farmers should also refer to WAC 458-20-210 (Sales of tangible personal property for farming—Sales of agricultural products by farmers).

(11) ~~Purchases for dual purposes.~~ A buyer normally engaged in both consuming and reselling certain types of tangible personal property, and not able to determine at the time of purchase whether the particular property purchased will be consumed or resold, must purchase according to the general nature of his or her business. RCW 82.08.130. If the buyer principally consumes the articles in question, the buyer should not give a resale certificate for any part of the purchase. If the buyer principally resells the articles, the buyer may issue a resale certificate for the entire purchase. For the purposes of this subsection, the term "principally" means greater than fifty percent.

(a) ~~Deferred sales tax liability.~~ If the buyer gives a resale certificate for all purchases and thereafter consumes some of the articles purchased, the buyer must set up in his or her books of account the value of the article used and remit to the department the applicable deferred sales tax. The deferred sales tax liability should be reported under the use tax classification on the buyer's excise tax return.

(i) Buyers making purchases for dual purposes under the provisions of a resale certificate must remit deferred sales tax

on all products or services they consume. If the buyer fails to make a good faith effort to remit this tax liability, the penalty for the misuse of resale certificate privileges may be assessed. This penalty will apply to the unremitted portion of the deferred sales tax liability.

A buyer will generally be considered to be making a good faith effort to report its deferred sales tax liability if the buyer discovers a minimum of eighty percent of the tax liability within one hundred twenty days of purchase, and remits the full amount of the discovered tax liability upon the next excise tax return. However, if the buyer does not satisfy this eighty percent threshold and can show by other facts and circumstances that it made a good faith effort to report the tax liability, the penalty will not be assessed. Likewise, if the department can show by other facts and circumstances that the buyer did not make a good faith effort in remitting its tax liability the penalty will be assessed, even if the eighty percent threshold is satisfied.

(ii) The following example illustrates the use of a resale certificate for dual-use purchases. This example should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances. BC Contracting operates both as a prime contractor and speculative builder of residential homes. BC Contracting purchases building materials from Seller D that are principally incorporated into projects upon which BC acts as a prime contractor. BC provides Seller D with a resale certificate and purchases all building materials at wholesale. BC must remit deferred sales tax upon all building materials incorporated into the speculative projects to be considered to be properly using its resale certificate privileges. The failure to make a good faith effort to identify and remit this tax liability may result in the assessment of the fifty percent penalty for the misuse of resale certificate privileges.

(b) ~~Tax paid at source deduction.~~ If the buyer has not given a resale certificate, but has paid retail sales tax on all articles of tangible personal property and subsequently resells a portion of the articles, the buyer must collect the retail sales tax from its retail customers as provided by law. When reporting these sales on the excise tax return, the buyer may then claim a deduction in the amount the buyer paid for the property resold.

(i) This deduction may be claimed under the retail sales tax classification only. It must be identified as a "taxable amount for tax paid at source" deduction on the deduction detail worksheet, which must be filed with the excise tax return. Failure to properly identify the deduction may result in the disallowance of the deduction. When completing the local sales tax portion of the tax return, the deduction must be computed at the local sales tax rate paid to the seller, and credited to the seller's tax location code.

(ii) The following example illustrates the tax paid at source deduction on or after July 1, 2008. This example should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances. Seller A is located in Spokane, Washington and purchases equipment parts for dual purposes from a supplier located in Seattle, Washington. The supplier ships the parts to Spokane. Seller A does not issue a resale certificate for the purchase, and remits retail sales tax to the sup-

plier at the Spokane tax rate. A portion of these parts are sold and shipped to Customer B in Kennewick, with retail sales tax collected at the Kennewick tax rate. Seller A must report the amount of the sale to Customer B on its excise tax return, compute the local sales tax liability at the Kennewick rate, and code this liability to the location code for Kennewick (0302). Seller A would claim the tax paid at source deduction for the cost of the parts resold to Customer B, compute the local sales tax credit at the Spokane rate, and code this deduction amount to the location code for Spokane (3210).

(iii) Claim for deduction will be allowed only if the taxpayer keeps and preserves records in support of the deduction that show the names of the persons from whom such articles were purchased, the date of the purchase, the type of articles, the amount of the purchase and the amount of tax that was paid.

(iv) Should the buyer resell the articles at wholesale, or under other situations where retail sales tax is not to be collected, the claim for the tax paid at source deduction on a particular excise tax return may result in a credit. In such cases, the department will issue a credit notice that may be used against future tax liabilities. However, a taxpayer may request in writing a refund from the department.

**(12) Waiver of penalty for resale certificate misuse.** The department may waive the penalty imposed for resale certificate misuse upon finding that the use of the certificate to purchase items or services by a person not entitled to use the certificate for that purpose was due to circumstances beyond the control of the buyer. However, the use of a resale certificate to purchase items or services for personal use outside of the business does not qualify for the waiver or cancellation of the penalty. The penalty will not be waived merely because the buyer was not aware of either the proper use of the resale certificate or the penalty. In all cases the burden of proving the facts is upon the buyer.

(a) **Considerations for waiver.** Situations under which a waiver of the penalty will be considered by the department include, but are not necessarily limited to, the following:

(i) The resale certificate was properly used to purchase products or services for dual purposes; or the buyer was eligible to issue the resale certificate; and the buyer made a good faith effort to discover all of its deferred sales tax liability within one hundred twenty days of purchase; and the buyer remitted the discovered tax liability upon the next excise tax return. (Refer to subsection (11)(a)(i) of this section for an explanation of what constitutes "good faith effort.")

(ii) The certificate was issued and/or purchases were made without the knowledge of the buyer, and had no connection with the buyer's business activities. However, the penalty for the misuse of resale certificate privileges may be applied to the person actually issuing and/or using the resale certificate without knowledge of the buyer.

(b) **One-time waiver of penalty for inadvertent or unintentional resale certificate misuse.** The penalty prescribed for the misuse of the resale certificate may be waived or cancelled on a one-time only basis if such misuse was inadvertent or unintentional, and the item was purchased for use within the business. If the department does grant a one-time waiver of the penalty, the buyer will be provided written notification at that time.

(c) **Examples.** The following are examples of typical situations where the fifty percent penalty for the misuse of resale privileges will or will not be assessed. These examples should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances.

(i) ABC Manufacturing purchases electrical wiring and tools from X Supply. The electrical wiring is purchased for dual purposes, i.e., for resale and for consumption, with more than fifty percent of the wiring purchases becoming a component of items that ABC manufactures for sale. ABC Manufacturing issues a resale certificate to X Supply specifying "electrical wiring" as the category of items purchased for resale. ABC regularly reviews its purchases and remits deferred sales tax upon the wiring it uses as a consumer.

ABC is subsequently audited by the department and it is discovered that ABC Manufacturing failed to remit deferred sales tax upon three purchases of wiring for consumption. The unreported tax liability attributable to these three purchases is less than five percent of the total deferred sales tax liability for wiring purchases made from X Supply. It is also determined that the failure to remit deferred sales tax upon these purchases was merely an oversight. The fifty percent penalty for the misuse of resale certificate privileges does not apply, even though ABC failed to remit deferred sales tax on these purchases. The resale certificate was properly issued, and ABC remitted to the department more than eighty percent of the deferred sales tax liability for wiring purchases from X Supply.

(ii) During a routine audit examination of a jewelry store, the department discovers that a dentist has provided a resale certificate for the purchase of a necklace. This resale certificate indicates that in addition to operating a dentistry practice, the dentist also sells jewelry. The resale certificate contains the information required under RCW 82.04.470.

Upon further investigation, the department finds that the dentist is not engaged in selling jewelry. The department will look to the dentist for payment of the applicable retail sales tax. In addition, the dentist will be assessed the fifty percent penalty for the misuse of resale certificate privileges. The penalty will not be waived or cancelled as the dentist misused the resale certificate privileges to purchase a necklace for personal use.

(iii) During a routine audit examination of a computer dealer, it is discovered that a resale certificate was obtained from a bookkeeping service. The resale certificate was completed in its entirety and accepted by the dealer. Upon further investigation it is discovered that the bookkeeping service had no knowledge of the resale certificate, and had made no payment to the computer dealer. The employee who signed the resale certificate had purchased the computer for personal use, and had personally made payment to the computer dealer.

The fifty percent penalty for the misuse of the resale certificate privileges will be waived for the bookkeeping service. The bookkeeping service had no knowledge of the purchase or unauthorized use of the resale certificate. However, the department will look to the employee for payment of the taxes and the fifty percent penalty for the misuse of resale certificate privileges.

(iv) ~~During an audit examination it is discovered that XYZ Corporation, a duplicating company, purchased copying equipment for its own use. XYZ Corporation issued a resale certificate to the seller despite the fact that XYZ does not sell copying equipment. XYZ also failed to remit either the deferred sales or use tax to the department. As a result of a previous investigation by the department, XYZ had been informed in writing that retail sales and/or use tax applied to all such purchases. The fifty percent penalty for the misuse of resale certificate privileges will be assessed. XYZ was not eligible to provide a resale certificate for the purchase of copying equipment, and had previously been so informed. The penalty will apply to the unremitted deferred sales tax liability.~~

(v) ~~AZ Construction issued a resale certificate to a building material supplier for the purchase of "pins" and "loads." The "pins" are fasteners that become a component part of the finished structure. The "load" is a powder charge that is used to drive the "pin" into the materials being fastened together. AZ Construction is informed during the course of an audit examination that it is considered the consumer of the "loads" and may not issue a resale certificate for its purchase thereof. AZ Construction indicates that it was unaware that a resale certificate could not be issued for the purchase of "loads," and there is no indication that AZ Construction had previously been so informed.~~

~~The failure to be aware of the proper use of the resale certificate is not generally grounds for waiving the fifty percent penalty for the misuse of resale certificate privileges. However, AZ Construction does qualify for the "one time only" waiver of the penalty as the misuse of the resale certificate privilege was unintentional and the "loads" were purchased for use within the business.))~~ (1) **Introduction.** This section provides information about reseller permits issued by the department of revenue (department). Effective January 1, 2010, reseller permits replaced resale certificates as the documentation necessary to substantiate the wholesale nature of a sales transaction. Reseller permits are issued to businesses that make wholesale purchases, such as retailers, wholesalers, manufacturers, and qualified contractors. The permits allow businesses to purchase certain items or services at wholesale without paying retail sales tax. Additional information can be found on the department's internet site: <http://dor.wa.gov>.

(a) **What other sections provide related information?** The following sections may contain additional relevant information:

- WAC 458-20-10201 (Application process and eligibility requirements for reseller permits) for more information about the application process and eligibility requirements for obtaining a reseller permit;
- WAC 458-20-10202 (Brief adjudicative proceedings for matters related to reseller permits) for more information about the procedures for appealing the denial of an application for a reseller permit; and
- WAC 458-20-102A (Resale certificates), which explains the resale certificate documentation requirements for wholesale sales occurring before January 1, 2010.

(b) **Examples.** This section contains examples which identify a number of facts and then state a conclusion. The

examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(2) **What is a reseller permit?** A reseller permit is a document issued to a business by the department that the business provides to a seller to substantiate a wholesale purchase. Each reseller permit contains a unique identifying number. Businesses should keep the original permit and make and distribute copies of the permit to sellers from whom they make wholesale purchases as described in subsection (6) of this section. Sellers can store copies of reseller permits in either paper or electronic format.

The reseller permit document issued by the department contains an optional, blank "Notes" section in which the permit holder can provide additional information, such as a description of the items or services the permit holder wishes to purchase at wholesale.

(3) **Who may use a reseller permit?** The buyer may authorize any person in its employ to use a copy of the buyer's reseller permit on the buyer's behalf. However, misuse of the reseller permit subjects the buyer to:

- Revocation of the reseller permit;
- Penalties as provided in RCW 82.32.290 and 82.32.-291; and
- Tax, interest, and any other penalties imposed by law.

The buyer is responsible for educating all persons authorized to use the reseller permit on the proper use of the buyer's reseller permit.

(4) **How long is a reseller permit effective?** Except as otherwise provided in this subsection, reseller permits are generally valid for a period of forty-eight months from the date of issuance, renewal, or reinstatement.

(a) **Conditions when permit is effective for twenty-four months.** A reseller permit is valid for a period of twenty-four months and may be renewed for a period of forty-eight months, effective July 1, 2010, if the permit is issued to a taxpayer who:

(i) Is not registered with the department under RCW 82.32.030;

(ii) Has been registered with the department under RCW 82.32.030 for a continuous period of less than one year as of the date that the department received the taxpayer's application for a reseller permit;

(iii) Was on nonreporting status as authorized under RCW 82.32.045(4) at the time that the department received the taxpayer's application for a reseller permit or to renew or reinstate a reseller permit;

(iv) Has filed tax returns reporting no business activity for purposes of sales and business and occupation taxes for the twelve-month period immediately preceding the date that the department received the taxpayer's application for a reseller permit or to renew or reinstate a reseller permit; or

(v) Has failed to file tax returns covering any part of the twelve-month period immediately preceding the department's receipt of the taxpayer's application for a reseller permit or to renew or reinstate a reseller permit.

(b) **Federally recognized Indian tribe.** The provisions of (a) of this subsection do not apply to reseller permits issued to any business owned by a federally recognized Indian tribe or by an enrolled member of a federally recog-

nized Indian tribe, if the business does not engage in any business activity that subjects the business to the B&O tax (chapter 82.04 RCW). Permits issued to such businesses are valid for forty-eight months from the date of issuance, renewal, or reinstatement.

**(c) Contractors.** Except as otherwise provided in this subsection (c), until June 20, 2013, a reseller permit issued, renewed, or reinstated to a "contractor" as defined in WAC 458-20-10201(302) will be valid for a period of twelve months from the date of issuance, renewal, or reinstatement.

**(i)** Beginning July 1, 2013, reseller permits issued, renewed, or reinstated to a contractor will be valid for a period of twenty-four months from the date of issuance, renewal, or reinstatement.

**(ii)** However, the department may issue, renew, or reinstate permits for a period of twenty-four months beginning July 1, 2011, if the department is satisfied that the contractor is entitled to make purchases at wholesale and that issuing or renewing the reseller permit in this manner is unlikely to jeopardize collection of sales taxes due based on the criteria discussed in WAC 458-20-10201(305).

**(d) Renewal of reseller permit.** Applications to renew a reseller permit cannot be made more than ninety days before the expiration of the reseller permit.

**(e) Business ownership change.** A new reseller permit is required whenever a change in the ownership of the buyer's business requires a new tax registration. (See WAC 458-20-101 Tax registration and tax reporting.) The new business may not make purchases under the authority of the reseller permit issued to the business before the change in ownership.

**(f) Revoked or invalid reseller permit.** Purchases may not be made under the authority of a reseller permit that has been revoked by the department or is otherwise invalid. For more information about reseller permit revocation or other invalidation of reseller permits, see subsection (14) of this section.

**(5) Sales at wholesale.** All sales are treated as retail sales unless the seller takes from the buyer a copy of a reseller permit, a uniform exemption certificate authorized by RCW 82.04.470, or obtains the data elements as described in subsection (7) of this section. Reseller permits may only be used for sales at wholesale and generally may not be used as proof of entitlement to retail sales tax exemptions otherwise provided by law.

**(6) When may a buyer use a reseller permit?** The buyer may use a reseller permit only when making wholesale purchases. (See RCW 82.04.060 for additional information.) The reseller permit may not be used when making tax-exempt retail purchases.

**(7) Seller's responsibilities.** The seller has the burden of proving that the buyer had a reseller permit at the time of sale. A seller may meet its burden by taking from the buyer, at the time of sale or within one hundred twenty days after the sale, a copy of a reseller permit issued to the buyer by the department under RCW 82.32.780 or 82.32.783.

**(a)** In lieu of a copy of a reseller permit issued by the department, pursuant to RCW 82.04.470 a seller may accept from a buyer that is **required** to be registered with the department under RCW 82.32.030:

**(i)** A properly completed uniform exemption certificate approved by the streamlined sales and use tax agreement governing board; or

**(ii)** Any other exemption certificate as may be authorized by the department and properly completed by the buyer.

**(b)** Certificates authorized in (a)(i) and (ii) of this subsection must include the reseller permit number issued by the department to the buyer.

**(c)** A seller who accepts exemption certificates authorized in (a) of this subsection is not required to verify with the department whether the buyer is required to be registered with the department under RCW 82.32.030. It must be noted, however, that nothing in this subsection (c) may be construed to modify any of the provisions of RCW 82.08.050.

**(d)** In lieu of a copy of a reseller permit issued by the department, pursuant to RCW 82.04.470 a seller may accept from a buyer that is **not required** to be registered with the department under RCW 82.32.030:

**(i)** A properly completed uniform sales and use tax exemption certificate developed by the multistate tax commission;

**(ii)** A properly completed uniform exemption certificate approved by the streamlined sales and use tax agreement governing board; or

**(iii)** Any other exemption certificate as may be authorized by the department and properly completed by the buyer.

The Streamlined Sales and Use Tax Agreement Certificate of Exemption and Multistate Tax Commission Uniform Sales and Use Tax Exemption Certificate can each be obtained on the department's internet site at <http://dor.wa.gov>.

**(e)** A seller who accepts a uniform exemption certificate authorized in (d) of this subsection is not required to verify with the department whether the buyer is required to be registered with the department under RCW 82.32.030. It must be noted, however, that nothing in this subsection (e) may be construed to modify any of the provisions of RCW 82.08.050.

**(f) Data elements.** In lieu of obtaining a reseller permit or the documentation in (a) or (d) of this subsection, RCW 82.08.050(7) authorizes a seller to capture the relevant data elements as allowed under the streamlined sales and use tax agreement. "Data elements" are the information required to be supplied on the actual Streamlined Sales and Use Tax Agreement Certificate of Exemption: Name, address, type of business, reason for exemption, identification number required by the state to which the sale is sourced, state and country issuing identification number, and if a paper form is used, a signature of the purchaser. See Streamlined Sales Tax Governing Board, Inc. Rule 317.1 (A) for more information.

**(g) The term "reseller permit."** For purposes of this section, unless otherwise specified, the term "reseller permit" hereinafter contemplates all of the following: A copy of a reseller permit, a uniform exemption certificate authorized by RCW 82.04.470 as described in (a) and (d) of this subsection, or data elements as described in (f) of this subsection.

**(h) Seller must provide documentation or information.** If the seller has not obtained a reseller permit or the documentation described in (a), (b), (d), or (f) of this subsection, the seller is liable for the tax due unless it can sustain the

burden of proving that a sale is a wholesale sale by demonstrating facts and circumstances that show the sale was properly made at wholesale. The department will consider all evidence presented by the seller, including the circumstances of the sales transaction itself, when determining whether the seller has met its burden of proof. It is the seller's responsibility to provide the information necessary to evaluate the facts and circumstances of all sales transactions for which reseller permits are not obtained. Facts and circumstances that should be considered include, but are not necessarily limited to, the following:

- The nature of the buyer's business. The items being purchased at wholesale must be consistent with the buyer's business. For example, a buyer having a business name of "Ace Used Cars" would generally not be expected to be in the business of selling furniture;

- The nature of the items sold. The items sold must be of a type that would normally be purchased at wholesale by the buyer; and

- Additional documentation. Other available documents, such as purchase orders and shipping instructions, should be considered in determining whether they support a finding that the sales are sales at wholesale.

(i) **Annual electronic verification.** Notwithstanding anything in RCW 82.04.470 to the contrary, a seller who maintains records establishing that it uses electronic means to verify, at least once per calendar year, the validity of its customers' reseller permits need not take a copy of a reseller permit or other documentation or the data elements as authorized in (a), (d), or (f) of this subsection for wholesale sales to those customers with valid reseller permits as confirmed by the department for all sales occurring within twelve months following the date that the seller last electronically verified the validity of its customers' reseller permits, using the department's reseller permit verification system. A seller that meets the requirements of this subsection will be deemed to have met its burden of proving a sale is a wholesale sale rather than a retail sale.

(j) **Can a seller request a refund for sales tax paid out-of-pocket after obtaining appropriate documentation?** If the seller is required to make payment to the department, and later is able to present the department with proper documentation or prove by facts and circumstances that the sales in question are wholesale sales, the seller may in writing request a refund of the taxes paid along with the applicable interest. Both the request and the documentation or proof that the sales in question are wholesale sales must be submitted to the department within the statutory time limitations provided by RCW 82.32.060. (See WAC 458-20-229 Refunds.) However, refer to (m) of this subsection in the event of an audit situation.

(k) **Timing requirements for single orders with multiple billings.** If a single order or contract will result in multiple billings to the buyer, and a reseller permit was not obtained or on file at the time the order was placed or the contract entered, a reseller permit must be received by the seller within one hundred twenty days after the first billing. For example, a subcontractor entering into a construction contract for which it has not received a reseller permit must obtain it within one hundred twenty days of the initial con-

struction draw request, even though the construction project may not be completed at that time and additional draw requests will follow.

(l) **Proof of wholesale sales obtained, from a buyer not required to be registered, after one hundred twenty days have passed from sale date.** If proof that a sale was a wholesale sale is obtained more than one hundred twenty days after the sale or sales in question, the nonregistered buyer must specifically identify the sale or sales to which it applies. Certificates, such as a uniform exemption certificate, used must be accompanied by other documentation signed by the buyer specifically identifying the sales in question and stating that the provisions of the accompanying certificate apply. A non-specific certificate that is not obtained within one hundred twenty days is generally not, in and of itself, acceptable proof of the wholesale nature of the sales in question. The certificate and/or required documentation must be obtained within the statutory time limitations provided by RCW 82.32.050.

(m) **Additional time to secure documentation in audit situation.** If in event of an audit the department discovers that the seller has not secured, as described in this subsection, the necessary certificates and/or documentation, the seller will generally be allowed one hundred twenty days in which to obtain and present appropriate certificates and/or documentation, or prove by facts and circumstances the sales in question are wholesale sales. The time allotted to the seller will commence from the date the auditor initially provides the seller with the results of the auditor's wholesale sales review. The processing of the audit report will not be delayed as a result of the seller's failure within the allotted time to secure and present appropriate documentation, or its inability to prove by facts and circumstances that the sales in question were wholesale sales.

(8) **Department's reseller permit verification system.** Pursuant to RCW 82.32.785, the department has developed a system available on its internet site that allows sellers to voluntarily verify whether their customers' reseller permits are valid. Sellers are under no obligation to use the verification system. The system is accessible at the department's internet site: <http://dor.wa.gov>. Information available on the system includes the name of the permit holder, the status of the reseller permit, and the expiration date of the permit.

(9) **Penalty for improper use of reseller permit.** If any buyer improperly uses a reseller permit number, reseller permit, or other documentation authorized under RCW 82.04.-470 to purchase items or services at retail without payment of sales tax that was legally due on the purchase, the department must assess against that buyer a penalty of fifty percent of the tax due on the improperly purchased item or service. See RCW 82.32.291. This penalty is in addition to all other taxes, penalties, and interest due, and can be imposed even if there was no intent to evade the payment of retail sales tax. The penalty will be assessed by the department and applies only to the buyer. However, see subsection (13) of this section for situations in which the department must waive the penalty.

(a) **Improper use of reseller permit.** A buyer that purchases items or services at retail without payment of sales tax legally due on the purchase is deemed to have improperly used a reseller permit number, reseller permit, or other documentation authorized under RCW 82.04.470 to purchase the

items or services without payment of sales tax and is subject to the penalty described above in this subsection if the buyer:

(i) Furnished to the seller a reseller permit number, a reseller permit or copy of a reseller permit, or other documentation authorized under RCW 82.04.470 to avoid payment of sales tax legally due on the purchase; or

(ii) Made the purchase from a seller that had previously used electronic means to verify the validity of the buyer's reseller permit with the department and, as a result, did not require the buyer to provide a copy of its reseller permit or furnish other documentation authorized under RCW 82.04.470 to document the wholesale nature of the purchase. In such cases, the buyer bears the burden of proving that the purchases made without payment of sales tax were qualified purchases or the buyer remitted deferred sales tax directly to the department. The buyer not realizing that sales tax was not paid at the time of purchase is not reason for waiving the penalty.

Persons who purchase articles or services for dual purposes (i.e., some for their own consumption and some for resale) should refer to subsection (12) of this section to determine whether they may furnish a reseller permit to the seller.

**(b) Examples.**

(i) During a routine audit examination of a jewelry store, the department discovers that a dentist has furnished a reseller permit for the purchase of a necklace. The "Notes" section of the reseller permit indicates that in addition to operating a dentistry practice, the dentist also sells jewelry. The jewelry store correctly accepted the reseller permit as appropriate documentation.

Upon further investigation, the department finds that the dentist is not engaged in selling jewelry. The department will impose the retail sales tax, interest, and the fifty percent penalty for improper use of the reseller permit against the dentist.

(ii) M&M Plumbing Supply (M&M) has several regular customers who make purchases at wholesale. M&M uses the department's reseller permit verification system to find all regular customers that have a reseller permit. M&M keeps the required data elements in its system and begins to make wholesale sales to all customers the system shows have a reseller permit. While it is best for sellers to ensure customers intend to purchase at wholesale, in this case, M&M has satisfied its requirement to ensure that customers making wholesale purchases have reseller permits. It is the customer's responsibility to review purchase invoices to ensure that deferred sales tax is paid if the purchase is not a valid wholesale purchase. If the customer does not pay the tax due on the next tax return, the misuse penalty will be assessed.

**(10) Sales to nonresident buyers.** If the buyer is a nonresident who is not engaged in business in this state and is not required to be registered with the department under RCW 82.32.030 but buys articles here for the purpose of resale in the regular course of business outside this state, the seller may accept the following from the buyer in lieu of a reseller permit:

(a) A properly completed uniform sales and use tax exemption certificate developed by the multistate tax commission; or

(b) A properly completed uniform exemption certificate approved by the streamlined sales and use tax agreement

governing board. Nonresident buyers who are not required to be registered with the department under RCW 82.32.030 are nonetheless eligible to apply for and receive a reseller permit. For more information about the application process and eligibility requirements for reseller permits, see WAC 458-20-10201 (Application process and eligibility requirements for reseller permits).

**(11) Sales to farmers.** Farmers selling agricultural products only at wholesale are generally not required to register with the department. (See WAC 458-20-101 Tax registration and tax reporting.)

**(a) Registered farmers.** Farmers who are required to be registered with the department must obtain a reseller permit to substantiate wholesale purchases. In lieu of a copy of a reseller permit issued by the department, a seller may accept from a farmer that is registered with the department a properly completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions as long as that certificate includes the reseller permit number issued by the department to the farmer.

**(b) Unregistered farmers.** Farmers not required to be registered with the department may provide, and the seller may accept, any of the following documents to substantiate the wholesale nature of a purchase in lieu of a reseller permit:

(i) A Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions;

(ii) A properly completed uniform sales and use tax exemption certificate developed by the multistate tax commission; or

(iii) A properly completed uniform exemption certificate approved by the streamlined sales and use tax agreement governing board.

Farmers who are not required to be registered with the department are nonetheless eligible to apply for and receive a reseller permit. For more information about the application process and eligibility requirements for reseller permits, see WAC 458-20-10201 (Application process and eligibility requirements for reseller permits).

**(12) Purchases for dual purposes.** A buyer normally engaged in both consuming and reselling certain types of tangible personal property, and not able to determine at the time of purchase whether the particular property purchased will be consumed or resold, must purchase according to the general nature of the buyer's business. RCW 82.08.130. If the buyer principally consumes the articles in question, the buyer should not give a reseller permit for any part of the purchase. If the buyer principally resells the articles, the buyer may furnish a reseller permit for the entire purchase. For the purposes of this subsection, the term "principally" means greater than fifty percent.

**(a) Deferred sales tax liability.** If the buyer gives a reseller permit for all purchases and thereafter consumes some of the articles purchased, the buyer must remit the deferred sales tax on the value of the article used to the department. The deferred sales tax liability should be reported under the use tax classification on the buyer's excise tax return.

(i) Buyers making purchases for dual purposes under the provisions of a reseller permit must remit deferred sales tax on all products or services they consume. If the buyer fails to



make a good faith effort to remit this tax liability, the penalty for the misuse of a reseller permit will be assessed. This penalty will apply to the unremitted portion of the deferred sales tax liability.

A buyer will generally be considered to be making a good faith effort to report its deferred sales tax liability if the buyer discovers a minimum of eighty percent of the deferred sales tax liability within one hundred twenty days of purchase, and remits the full amount of the discovered tax liability upon the next excise tax return. However, if the buyer does not satisfy this eighty percent threshold and can show by other facts and circumstances that it made a good faith effort to report the tax liability, the penalty will not be assessed. Likewise, if the department can show by other facts and circumstances that the buyer did not make a good faith effort in remitting its tax liability the penalty will be assessed, even if the eighty percent threshold is satisfied.

(ii) The following example illustrates the use of a reseller permit for dual-use purchases.

BC Contracting operates both as a prime contractor and speculative builder of residential homes. BC Contracting purchases building materials from seller that are principally incorporated into projects upon which BC acts as a prime contractor. BC provides seller with a reseller permit and purchases all building materials at wholesale. BC must remit deferred sales tax upon all building materials incorporated into the speculative projects to be considered to be properly using its reseller permit.

(b) Tax paid at source deduction. If the buyer has not provided a reseller permit to the seller but has paid retail sales tax on all articles of tangible personal property and subsequently resells a portion of the articles, the buyer must collect the retail sales tax from its retail customers as provided by law. When reporting these sales on the excise tax return, the buyer may then claim a deduction to recover the sales tax paid for the property resold.

(i) This deduction may be claimed under the retail sales tax classification only. It must be identified as a "taxable amount for tax paid at source" deduction on the deduction detail worksheet, which must be filed with the excise tax return. Failure to properly identify the deduction may result in the disallowance of the deduction. When completing the local sales tax portion of the tax return, the deduction must be computed at the local sales tax rate paid to the seller, and credited to the seller's tax location code.

(ii) The following example illustrates the tax paid at source deduction on or after July 1, 2008.

A seller is located in Spokane, Washington, and purchases equipment parts for dual purposes from a supplier located in Seattle, Washington. The supplier ships the parts to Spokane. The seller does not furnish a reseller permit for the purchase, and remits retail sales tax to the supplier at the Spokane tax rate. A portion of these parts are sold and shipped to a customer in Kennewick, with retail sales tax collected at the Kennewick tax rate. The seller must report the amount of the sale to the customer on its excise tax return and compute the local sales tax liability using the Kennewick location code (0302) and rate. The seller would claim the tax paid at source deduction for the cost of the parts resold to the

customer and compute the local sales tax credit using the Spokane location code (3210) and rate.

(iii) Claim for deduction will be allowed only if the taxpayer keeps and preserves records in support of the deduction that include the names of the persons from whom such articles were purchased, the date of the purchase, the type of articles, the amount of the purchase and the amount of tax that was paid.

(iv) Should the buyer resell the articles at wholesale, or under other situations where retail sales tax is not to be collected, the claim for the tax paid at source deduction on a particular excise tax return may result in a credit. In such cases, the department will issue a credit notice that may be used against future tax liabilities. However, a taxpayer may request in writing a refund from the department.

(13) Waiver of penalty for misuse of reseller permits. The department will waive the penalty imposed for misuse of reseller permits upon finding that the use of the reseller permit number, reseller permit, or other documentation authorized under RCW 82.04.470 to purchase items or services by a person not entitled to use the reseller permit for that purpose was due to circumstances beyond the control of the buyer or if the reseller permit number, reseller permit, or other documentation authorized under RCW 82.04.470 was properly used for purchases for dual purposes and the buyer made a good faith effort to report deferred sales tax. However, the use of a reseller permit to purchase items or services for personal use outside of the business does not qualify for the waiver or cancellation of the penalty. The penalty will not be waived merely because the buyer was not aware of either the proper use of the reseller permit or the penalty. In all cases the burden of proving the facts is upon the buyer.

Example. During a routine audit examination of a computer dealer, it is discovered that a reseller permit was obtained from a bookkeeping service. Upon further investigation it is discovered that the bookkeeping service had no knowledge of the reseller permit, and had made no payment to the computer dealer. The employee who furnished the reseller permit had purchased the computer for personal use, and had personally made payment to the computer dealer.

The fifty percent penalty for the misuse of the reseller permit will be waived for the bookkeeping service. The bookkeeping service had no knowledge of the purchase or unauthorized use of the reseller permit. However, the department will impose the taxes, interest, and the fifty percent penalty for the misuse of the reseller permit against the employee.

(14) Reseller permit revocation or other invalidation. A reseller permit is no longer valid if the permit holder's certificate of registration is revoked, the permit holder's tax reporting account is closed by the department, or the permit holder otherwise ceases to engage in business.

(a) Closing of an account. A taxpayer who ceases to engage in business will have its tax reporting account closed by the department. The account can be closed per the request of the taxpayer or administratively by the department. The department will administratively close a tax reporting account if a taxpayer has not reported any gross income or filed a return within the last two years. For more information

about administrative closure and reopening of taxpayer accounts, see WAC 458-20-101.

**(b) Reseller permit revocation.** The department may revoke a reseller permit of a taxpayer for any of the following reasons:

(i) The taxpayer used or allowed or caused its reseller permit to be used to purchase any item or service without payment of sales tax, but the taxpayer or other purchaser was not entitled to use the reseller permit for the purchase;

(ii) The department issued the reseller permit to the taxpayer in error;

(iii) The department determines that the taxpayer is no longer entitled to make purchases at wholesale; or

(iv) The department determines that revocation of the reseller permit would be in the best interest of collecting taxes due under Title 82 RCW.

**(c) Use of invalidated or revoked reseller permit.** A taxpayer whose reseller permit has been revoked or whose tax reporting account has been administratively closed by the department as discussed in (a) of this subsection will receive notice of the revocation or invalidation in writing. The revocation or invalidation is effective on the date specified in the revocation or invalidation notice. Use of a revoked or invalidated permit will result in the fifty percent penalty for improper use of a reseller permit as discussed in subsection (9) of this section.

**(d) Reinstatement of reseller permit.** A taxpayer who wishes to have its reseller permit reinstated after invalidation or revocation must apply to the department. For more information about the application process for reseller permits, see WAC 458-20-10201 (Application process and eligibility requirements for reseller permits).

**(e) Requests for reinstatement.** The department may refuse to reinstate a reseller permit revoked under (b)(i) of this subsection until all taxes, penalties, and interest due on any improperly purchased item or service have been paid in full. In the event a taxpayer whose reseller permit has been revoked under (b)(i) of this subsection reorganizes, the new business resulting from the reorganization is not entitled to a reseller permit until all taxes, penalties, and interest due on any improperly purchased item or service have been paid in full.

**(f) Business reorganization.** For purposes of this subsection, "reorganize" or "reorganization" means:

(i) The transfer, however affected, of a majority of the assets of one business to another business where any of the persons having an interest in the ownership or management in the former business maintain an ownership or management interest in the new business, either directly or indirectly;

(ii) A mere change in identity or form of ownership, however affected; or

(iii) The new business is a mere continuation of the former business based on significant shared features such as owners, personnel, assets, or general business activity.

**(15) Request for copies.** A person must, upon request of the department, provide the department with paper or electronic copies of all reseller permits, or other documentation as authorized in RCW 82.04.470, accepted by that person during the period specified by the department to substantiate wholesale sales. If, instead of the documentation specified in

this subsection, the seller has retained the relevant data elements from such permits or other documentation authorized in RCW 82.04.470, as allowed under the streamlined sales and use tax agreement, the seller must provide such data elements to the department.

## NEW SECTION

**WAC 458-20-102A Resale certificates. (1) Introduction.** This section provides information regarding the use of resale certificates, which were the documents used to substantiate the wholesale nature of a sales transaction occurring prior to January 1, 2010. Resale certificates cannot be used to substantiate wholesale sales made after December 31, 2009.

This section provides information that applies to periods prior to January 1, 2010. It explains the conditions under which a buyer may furnish a resale certificate to a seller, and explains the information and language required on the resale certificate. This section also provides tax reporting information to persons who purchase articles or services for dual purposes (i.e., for both resale and consumption).

**(a) Legislation passed in 2009.** Effective January 1, 2010, reseller permits issued by the department of revenue (department) replace resale certificates as the documentation necessary to substantiate the wholesale nature of a sales transaction (chapter 563, Laws of 2009).

Businesses should consult:

- WAC 458-20-102 (Reseller permits) for more information about the use of reseller permits to substantiate wholesale sales beginning January 1, 2010;
- WAC 458-20-10201 (Application process and eligibility requirements for reseller permits) for more information about the application process and eligibility requirements for obtaining a reseller permit; and
- WAC 458-20-10202 (Brief adjudicative proceedings for matters related to reseller permits) for more information about the procedures for appealing the denial of an application for a reseller permit.

**(b) Legislation passed in 2003.** In 2003, the legislature enacted legislation conforming state law to portions of the national Streamlined Sales and Use Tax Agreement (chapter 168, Laws of 2003), which eliminates the good faith requirement when the seller takes from the buyer a resale certificate and also eliminates signature requirements for certificates provided in a format other than paper. These changes apply to resale certificates taken on and after July 1, 2004.

**(c) Legislation passed in 2007.** Additional Streamlined Sales and Use Tax Agreement legislation was enacted in 2007 (chapter 6, Laws of 2007). It eliminates the provision that resale certificates are only valid for four years from the date they are issued to the seller, as long as there is a recurring business relationship between the buyer and seller. This change is effective on July 1, 2008.

**(2) What is a resale certificate?** The resale certificate is a document or combination of documents that substantiates the wholesale nature of a sale. The resale certificate cannot be used for purchases that are not purchases at wholesale, or where a more specific certificate, affidavit, or other documentary evidence is required by statute or other section of chapter 458-20 WAC. While the resale certificate may come

in different forms, all resale certificates must satisfy the language and information requirements of RCW 82.04.470.

(a) **What is the scope of a resale certificate?** Depending on the statements made on the resale certificate, the resale certificate may authorize the buyer to purchase at wholesale all products or services being purchased from a particular seller, or may authorize only selected products or services to be purchased at wholesale. The provisions of the resale certificate may be limited to a single sales transaction, or may apply to all sales transactions as long as the seller has a recurring business relationship with the buyer. A "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months. Whatever its form and/or purpose, the resale certificate must be completed in its entirety and signed by a person who is authorized to make such a representation on behalf of the buyer.

(b) **Who may issue and sign certificates?** The buyer may authorize any person in its employ to issue and sign resale certificates on the buyer's behalf. The buyer is, however, responsible for the information contained on the resale certificate. A resale certificate is not required to be completed by every person ordering or making the actual purchase of articles or services on behalf of the buyer. For example, a construction company that authorizes only its bookkeeper to issue resale certificates on its behalf may authorize both the bookkeeper and a job foreman to purchase items under the provisions of the resale certificate. The construction company is not required to provide, nor is the seller required to obtain, a resale certificate signed by each person making purchases on behalf of the construction company.

The buyer is responsible for educating all persons authorized to issue and/or use the resale certificate on the proper use of the buyer's resale certificate privileges.

(3) **Resale certificate renewal.** Prior to July 1, 2008, resale certificates must be renewed at least every four years. As of July 1, 2008, the requirement to renew resale certificates at least every four years has been eliminated. The buyer must renew its resale certificate whenever a change in the ownership of the buyer's business requires a new tax registration. (See WAC 458-20-101 Tax registration and tax reporting.) The buyer may not make purchases under the authority of a resale certificate bearing a tax registration number that has been canceled or revoked by the department of revenue (department).

(4) **Sales at wholesale.** All sales are treated as retail sales unless the seller takes from the buyer a properly executed resale certificate. Resale certificates may only be used for sales at wholesale and may not be used as proof of entitlement to retail sales tax exemptions otherwise provided by law.

(a) **When may a buyer issue a resale certificate?** The buyer may issue a resale certificate only when the property or services purchased are:

(i) For resale in the regular course of the buyer's business without intervening use by the buyer;

(ii) To be used as an ingredient or component part of a new article of tangible personal property to be produced for sale;

(iii) A chemical to be used in processing an article to be produced for sale (see WAC 458-20-113 on chemicals used in processing);

(iv) To be used in processing ferrosilicon that is subsequently used in producing magnesium for sale;

(v) Provided to consumers as a part of competitive telephone service, as defined in RCW 82.04.065;

(vi) Feed, seed, seedlings, fertilizer, spray materials, or agents for enhanced pollination including insects such as bees for use in the federal conservation reserve program or its successor administered by the United States Department of Agriculture; or

(vii) Feed, seed, seedlings, fertilizer, spray materials, or agents for enhanced pollination including insects such as bees for use by a farmer for producing for sale any agricultural product. (See WAC 458-20-210 on sales to and by farmers.)

(b) **Required information.** All resale certificates, whether paper or nonpaper format, must contain the following information:

(i) The name and address of the buyer;

(ii) The uniform business identifier or tax registration number of the buyer, if the buyer is required to be registered with the department;

(iii) The type of business;

(iv) The categories of items or services to be purchased at wholesale, unless the buyer is in a business classification that may present a blanket resale certificate as provided by the department by rule;

(v) The date on which the certificate was provided;

(vi) A statement that the items or services purchased either are purchased for resale in the regular course of business or are otherwise purchased at wholesale; and

(vii) A statement that the buyer acknowledges that the buyer is solely responsible for purchasing within the categories specified on the certificate and that misuse of the resale certificate subjects the buyer to a penalty of fifty percent of the tax due, in addition to the tax, interest, and any other penalties imposed by law.

(c) **Additional requirements for paper certificates.** In addition to the requirements stated in (b) of this subsection, paper certificates must contain the following:

(i) The name of the individual authorized to sign the certificate, printed in a legible fashion;

(ii) The signature of the authorized individual; and

(iii) The name of the seller. RCW 82.04.470.

(5) **Seller's responsibilities.** When a seller receives and accepts from the buyer a resale certificate at the time of the sale, or has a resale certificate on file at the time of the sale, or obtains a resale certificate from the buyer within one hundred twenty days after the sale, the seller is relieved of liability for retail sales tax with respect to the sale covered by the resale certificate. The seller may accept a legible fax, a duplicate copy of an original resale certificate, or a certificate in a format other than paper.

(a) If the seller has not obtained an appropriate resale certificate or other acceptable documentary evidence (see subsection (8) of this section), the seller is personally liable for the tax due unless it can sustain the burden of proving through facts and circumstances that the property was sold

for one of the purposes set forth in subsection (4)(a) of this section. The department will consider all evidence presented by the seller, including the circumstances of the sales transaction itself, when determining whether the seller has met its burden of proof. It is the seller's responsibility to provide the information necessary to evaluate the facts and circumstances of all sales transactions for which resale certificates are not obtained. Facts and circumstances that should be considered include, but are not necessarily limited to, the following:

(i) The nature of the buyer's business. The items being purchased at wholesale must be consistent with the buyer's business. For example, a buyer having a business name of "Ace Used Cars" would generally not be expected to be in the business of selling furniture;

(ii) The nature of the items sold. The items sold must be of a type that would normally be purchased at wholesale by the buyer; and

(iii) Additional documentation. Other available documents, such as purchase orders and shipping instructions, should be considered in determining whether they support a finding that the sales are sales at wholesale.

(b) If the seller is required to make payment to the department, and later is able to present the department with proper documentation or prove by facts and circumstances that the sales in question are wholesale sales, the seller may in writing request a refund of the taxes paid along with the applicable interest. Both the request and the documentation or proof that the sales in question are wholesale sales must be submitted to the department within the statutory time limitations provided by RCW 82.32.060. (See WAC 458-20-229 Refunds.) However, refer to (f) of this subsection in event of an audit situation.

**(c) Timing requirements for single orders with multiple billings.** If a single order or contract will result in multiple billings to the buyer, and the appropriate resale certificate was not obtained or on file at the time the order was placed or the contract entered, the resale certificate must be received by the seller within one hundred twenty days after the first billing. For example, a subcontractor entering into a construction contract for which it has not received a resale certificate must obtain the certificate within one hundred twenty days of the initial construction draw request, even though the construction project may not be completed at that time and additional draw requests will follow.

**(d) Requirements for resale certificates obtained after one hundred twenty days have passed.** If the resale certificate is obtained more than one hundred twenty days after the sale or sales in question, the resale certificate must be specific to the sale or sales. The certificate must specifically identify the sales in question on its face, or be accompanied by other documentation signed by the buyer specifically identifying the sales in question and stating that the provisions of the accompanying resale certificate apply. A nonspecific resale certificate that is not obtained within one hundred twenty days is generally not, in and of itself, acceptable proof of the wholesale nature of the sales in question. The resale certificate and/or required documentation must be obtained within the statutory time limitations provided by RCW 82.32.050.

**(e) Examples.** The following examples explain the seller's documentary requirements in typical situations when obtaining a resale certificate more than one hundred twenty days after the sale. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(i) Beginning in January of year 1, MN Company regularly makes sales to ABC Inc. In June of the same year, MN discovers ABC has not provided a resale certificate. MN requests a resale certificate from ABC and, as the resale certificate will not be received within one hundred twenty days of many of the past sales transactions, requests that the resale certificate specifically identify those past sales subject to the provisions of the certificate. MN receives a legible fax copy of an original resale certificate from ABC on July 1st of that year. Accompanying the resale certificate is a memo providing a list of the invoice numbers for all past sales transactions through May 15th of that year. This memo also states that the provisions of the resale certificate apply to all past and future sales, including those listed. MN Company has satisfied the requirement that it obtain a resale certificate specific to the sales in question.

(ii) XYZ Company makes three sales to MP Inc. in October of year 1 and does not charge retail sales tax. In the review of its resale certificate file in April of the following year, XYZ discovers it has not received a resale certificate from MP Inc. and immediately requests a certificate. As the resale certificate will not be received within one hundred twenty days of the sales in question, XYZ requests that MP provide a resale certificate identifying the sales in question. MP provides XYZ with a resale certificate that does not identify the sales in question, but simply states "applies to all past purchases." XYZ Company has not satisfied its responsibility to obtain an appropriate resale certificate. As XYZ failed to secure a resale certificate within a reasonable period of time, XYZ must obtain a certificate specifically identifying the sales in question or prove through other facts and circumstances that these sales are wholesale sales. (Refer to (a) of this subsection for information on how a seller can prove through other facts and circumstances that a sale is a wholesale sale.) It remains the seller's burden to prove the wholesale nature of the sales made to a buyer if the seller has not obtained a valid resale certificate within one hundred twenty days of the sale.

**(f) Additional time to secure documentation in audit situation.** If in event of an audit the department discovers that the seller has not secured, as described in this subsection (5), the necessary resale certificates and/or documentation, the seller will generally be allowed one hundred twenty days in which to obtain and present appropriate resale certificates and/or documentation, or prove by facts and circumstances the sales in question are wholesale sales. The time allotted to the seller shall commence from the date the auditor initially provides the seller with the results of the auditor's wholesale sales review. The processing of the audit report will not be delayed as a result of the seller's failure within the allotted time to secure and present appropriate documentation, or its inability to prove by facts and circumstances that the sales in question were wholesale sales.

(6) **Penalty for improper use.** Any buyer who uses a resale certificate to purchase items or services without payment of sales tax and who is not entitled to use the certificate for the purchase will be assessed a penalty of fifty percent of the tax due on the improperly purchased item or service. This penalty is in addition to all other taxes, penalties, and interest due, and can be imposed even if there was no intent to evade the payment of retail sales tax. The penalty will be assessed by the department and applies only to the buyer. However, see subsection (12) of this section for situations in which the department may waive the penalty.

Persons who purchase articles or services for dual purposes (i.e., some for their own consumption and some for resale) should refer to subsection (11) of this section to determine whether they may give a resale certificate to the seller.

(7) **Resale certificate - suggested form.** While there may be different forms of the resale certificate, all resale certificates must satisfy the language and information requirements provided by RCW 82.04.470. The resale certificate is available on the department's internet site at <http://dor.wa.gov>, or can be obtained by calling the department's telephone information center at 1-800-647-7706 or by writing:

Taxpayer Services  
Department of Revenue  
P.O. Box 47478  
Olympia, WA 98504-7478

A resale certificate may be in any other form that contains substantially the same information and language, except that certificates provided in a format other than paper are not required to include the printed name of the person authorized to sign the certificate, the signature of the authorized individual, or the name of the seller.

Effective July 1, 2008, buyers also have the option of using a Streamlined Sales and Use Tax Agreement Certificate of Exemption, which has been modified for Washington state laws. It can also be found on the department's internet site at <http://dor.wa.gov>.

(a) **Buyer's responsibility to specify products or services purchased at wholesale.** RCW 82.04.470 requires the buyer making purchases at wholesale to specify the kinds of products or services subject to the provisions of the resale certificate. A buyer who will purchase some of the items at wholesale, and consume and pay tax on some other items being purchased from the same seller, must use terms specific enough to clearly indicate to the seller what kinds of products or services the buyer is authorized to purchase at wholesale.

(i) The buyer may list the particular products or services to be purchased at wholesale, or provide general category descriptions of these products or services. The terms used to describe these categories must be descriptive enough to restrict the application of the resale certificate provisions to those products or services that the buyer is authorized to purchase at wholesale. The following are examples of terms used to describe categories of products purchased at wholesale, and businesses that may be eligible to use such terms on their resale certificates:

(A) "Hardware" for use by a general merchandise or building material supply store, "computer hardware" for use by a computer retailer;

(B) "Paint" or "painting supplies" for use by a general merchandise or paint retailer, "automotive paint" for use by an automotive repair shop; and

(C) "Building materials" or "subcontract work" for use by prime contractors performing residential home construction, "wiring" or "lighting fixtures" for use by an electrical contractor.

(ii) The buyer must remit retail sales tax on any taxable product or service not listed on the resale certificate provided to the seller. If the buyer gave a resale certificate to the seller and later used an item listed on the certificate, or if the seller failed to collect the sales tax on items not listed on the certificate, the buyer must remit the deferred sales or use tax due directly to the department.

(iii) RCW 82.08.050 provides that each seller shall collect from the buyer the full amount of retail sales tax due on each retail sale. If the department finds that the seller has engaged in a consistent pattern of failing to properly charge sales tax on items not purchased at wholesale (i.e., not listed on the resale certificate), it may hold the seller liable for the uncollected sales tax.

(iv) Persons having specific questions regarding the use of terms to describe products or services purchased at wholesale may submit their questions to the department for ruling. The department may be contacted on the internet at <http://dor.wa.gov/> or by writing:

Taxpayer Services  
Department of Revenue  
P.O. Box 47478  
Olympia, WA 98504-7478

(b) **Blanket resale certificates.** A buyer who will purchase at wholesale all of the products or services being purchased from a particular seller will not be required to specifically describe the items or item categories on the resale certificate. If the certificate form provides for a description of the products or services being purchased at wholesale the buyer may specify "all products and/or services" (or make a similar designation). A resale certificate completed in this manner is often described as a blanket resale certificate.

(i) The resale certificate used by the buyer must, in all cases, be completed in its entirety. A resale certificate in which the section for the description of the items being purchased at wholesale is left blank by the buyer will not be considered a properly executed resale certificate.

(ii) As of July 1, 2008, renewal or updating of blanket resale certificates is not required as long as the seller has a recurring business relationship with the buyer. A "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months.

To effectively administer this provision during an audit, the department will accept a resale certificate as evidence for wholesale sales that occur within four years of the certificate's effective date without evidence of sales transactions being made once every twelve months. For sales transactions made more than four years after the date of the properly completed resale certificate, the seller must substantiate that a recurring business relationship with the buyer has occurred for any sales outside the period of more than four years after the effective date of the resale certificate.

(c) **Resale certificates for single transactions.** If the resale certificate is used for a single transaction, the language and information required of a resale certificate may be written or stamped upon a purchase order or invoice. The language contained in a "single use" resale certificate should be modified to delete any reference to subsequent orders or purchases.

(d) **Examples.** The following examples explain the proper use of types of resale certificates in typical situations. These examples should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances.

(i) ABC is an automobile repair shop purchasing automobile parts for resale and tools for its own use from DE Supply. ABC must provide DE Supply with a resale certificate limiting the certificate's application to automobile part purchases. However, should ABC withdraw parts from inventory to install in its own tow truck, deferred retail sales tax or use tax must be remitted directly to the department. The buyer has the responsibility to report deferred retail sales tax or use tax upon any item put to its own use, including items for which it gave a resale certificate and later used for its own use.

(ii) X Company is a retailer selling lumber, hardware, tools, automotive parts, and household appliances. X Company regularly purchases lumber, hardware, and tools from Z Distributing. While these products are generally purchased for resale, X Company occasionally withdraws some of these products from inventory for its own use. X Company may provide Z Distributing with a resale certificate specifying "all products purchased" are purchased at wholesale. However, whenever X Company removes any product from inventory to put to its own use, deferred retail sales tax or use tax must be remitted to the department.

(iii) TM Company is a manufacturer of electric motors. When making purchases from its suppliers, TM issues a paper purchase order. This purchase order contains the information required of a resale certificate and a signature of the person ordering the items on behalf of TM. This purchase order includes a box that, if marked, indicates to the supplier that all or certain designated items purchased are being purchased at wholesale.

When the box indicating the purchases are being made at wholesale is marked, the purchase order can be accepted as a resale certificate. As TM Company's purchase orders are being accepted as resale certificates, they must be retained by the seller for at least five years. (See WAC 458-20-254 Recordkeeping.)

(8) **Other documentary evidence.** Other documentary evidence may be used by the seller and buyer in lieu of the resale certificate form described in this section. However, this documentary evidence must collectively contain the information and language generally required of a resale certificate. The conditions and restrictions applicable to the use of resale certificates apply equally to other documentary evidence used in lieu of the resale certificate form in this section. The following are examples of documentary evidence that will be accepted to show that sales were at wholesale:

(a) **Combination of documentary evidence.** A combination of documentation kept on file, such as a membership card or application, and a sales invoice or "certificate" taken at the point of sale with the purchases listed, provided:

(i) The documentation kept on file contains all information required on a resale certificate, including, for paper certificates, the names and signatures of all persons authorized to make purchases at wholesale; and

(ii) The sales invoice or "certificate" taken at the point of sale must contain the following:

(A) Language certifying the purchase is made at wholesale, with acknowledgment of the penalties for the misuse of resale certificate privileges, as generally required of a resale certificate; and

(B) The name and registration number of the buyer/business, and, if a paper certificate, an authorized signature.

(b) **Contracts of sale.** A contract of sale that within the body of the contract provides the language and information generally required of a resale certificate. The contract of sale must specify the products or services subject to the resale certificate privileges.

(c) **Other preapproved documentary evidence.** Any other documentary evidence that has been approved in advance and in writing by the department.

(9) **Sales to nonresident buyers.** If the buyer is a nonresident who is not engaged in business in this state, but buys articles here for the purpose of resale in the regular course of business outside this state, the seller must take from the buyer a resale certificate as described in this section. The seller may accept a resale certificate from an unregistered nonresident buyer with the registration number information omitted, provided the balance of the resale certificate is completed in its entirety. The resale certificate should contain a statement that the items are being purchased for resale outside Washington.

(10) **Sales to farmers.** Farmers selling agricultural products only at wholesale are not required to register with the department. (See WAC 458-20-101 Tax registration and tax reporting.) When making wholesale sales to farmers (including farmers operating in other states), the seller must take from the farmer a resale certificate as described in this section. Farmers not required to be registered with the department may provide, and the seller may accept, resale certificates with the registration number information omitted, provided the balance of the certificates are completed in full. Persons making sales to farmers should also refer to WAC 458-20-210 (Sales of tangible personal property for farming—Sales of agricultural products by farmers).

(11) **Purchases for dual purposes.** A buyer normally engaged in both consuming and reselling certain types of tangible personal property, and not able to determine at the time of purchase whether the particular property purchased will be consumed or resold, must purchase according to the general nature of his or her business. RCW 82.08.130. If the buyer principally consumes the articles in question, the buyer should not give a resale certificate for any part of the purchase. If the buyer principally resells the articles, the buyer may issue a resale certificate for the entire purchase. For the purposes of this subsection, the term "principally" means greater than fifty percent.

(a) **Deferred sales tax liability.** If the buyer gives a resale certificate for all purchases and thereafter consumes some of the articles purchased, the buyer must set up in his or her books of account the value of the article used and remit to the department the applicable deferred sales tax. The deferred sales tax liability should be reported under the use tax classification on the buyer's excise tax return.

(i) Buyers making purchases for dual purposes under the provisions of a resale certificate must remit deferred sales tax on all products or services they consume. If the buyer fails to make a good faith effort to remit this tax liability, the penalty for the misuse of resale certificate privileges may be assessed. This penalty will apply to the unremitted portion of the deferred sales tax liability.

A buyer will generally be considered to be making a good faith effort to report its deferred sales tax liability if the buyer discovers a minimum of eighty percent of the tax liability within one hundred twenty days of purchase, and remits the full amount of the discovered tax liability upon the next excise tax return. However, if the buyer does not satisfy this eighty percent threshold and can show by other facts and circumstances that it made a good faith effort to report the tax liability, the penalty will not be assessed. Likewise, if the department can show by other facts and circumstances that the buyer did not make a good faith effort in remitting its tax liability the penalty will be assessed, even if the eighty percent threshold is satisfied.

(ii) The following example illustrates the use of a resale certificate for dual-use purchases. This example should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances. BC Contracting operates both as a prime contractor and speculative builder of residential homes. BC Contracting purchases building materials from Seller D that are principally incorporated into projects upon which BC acts as a prime contractor. BC provides Seller D with a resale certificate and purchases all building materials at wholesale. BC must remit deferred sales tax upon all building materials incorporated into the speculative projects to be considered to be properly using its resale certificate privileges. The failure to make a good faith effort to identify and remit this tax liability may result in the assessment of the fifty percent penalty for the misuse of resale certificate privileges.

(b) **Tax paid at source deduction.** If the buyer has not given a resale certificate, but has paid retail sales tax on all articles of tangible personal property and subsequently resells a portion of the articles, the buyer must collect the retail sales tax from its retail customers as provided by law. When reporting these sales on the excise tax return, the buyer may then claim a deduction in the amount the buyer paid for the property resold.

(i) This deduction may be claimed under the retail sales tax classification only. It must be identified as a "taxable amount for tax paid at source" deduction on the deduction detail worksheet, which must be filed with the excise tax return. Failure to properly identify the deduction may result in the disallowance of the deduction. When completing the local sales tax portion of the tax return, the deduction must be computed at the local sales tax rate paid to the seller, and credited to the seller's tax location code.

(ii) The following example illustrates the tax paid at source deduction on or after July 1, 2008. This example should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances. Seller A is located in Spokane, Washington and purchases equipment parts for dual purposes for a supplier located in Seattle, Washington. The supplier ships the parts to Spokane. Seller A does not issue a resale certificate for the purchase, and remits retail sales tax to the supplier at the Spokane tax rate. A portion of these parts are sold and shipped to Customer B in Kennewick, with retail sales tax collected at the Kennewick tax rate. Seller A must report the amount of the sale to Customer B on its excise tax return, compute the local sales tax liability at the Kennewick rate, and code this liability to the location code for Kennewick (0302). Seller A would claim the tax paid at source deduction for the cost of the parts resold to Customer B, compute the local sales tax credit at the Spokane rate, and code this deduction amount to the location code for Spokane (3210).

(iii) Claim for deduction will be allowed only if the taxpayer keeps and preserves records in support of the deduction that show the names of the persons from whom such articles were purchased, the date of the purchase, the type of articles, the amount of the purchase and the amount of tax that was paid.

(iv) Should the buyer resell the articles at wholesale, or under other situations where retail sales tax is not to be collected, the claim for the tax paid at source deduction on a particular excise tax return may result in a credit. In such cases, the department will issue a credit notice that may be used against future tax liabilities. However, a taxpayer may request in writing a refund from the department.

(12) **Waiver of penalty for resale certificate misuse.** The department may waive the penalty imposed for resale certificate misuse upon finding that the use of the certificate to purchase items or services by a person not entitled to use the certificate for that purpose was due to circumstances beyond the control of the buyer. However, the use of a resale certificate to purchase items or services for personal use outside of the business does not qualify for the waiver or cancellation of the penalty. The penalty will not be waived merely because the buyer was not aware of either the proper use of the resale certificate or the penalty. In all cases the burden of proving the facts is upon the buyer.

(a) **Considerations for waiver.** Situations under which a waiver of the penalty will be considered by the department include, but are not necessarily limited to, the following:

(i) The resale certificate was properly used to purchase products or services for dual purposes; or the buyer was eligible to issue the resale certificate; and the buyer made a good faith effort to discover all of its deferred sales tax liability within one hundred twenty days of purchase; and the buyer remitted the discovered tax liability upon the next excise tax return. (Refer to subsection (11)(a)(i) of this section for an explanation of what constitutes "good faith effort.")

(ii) The certificate was issued and/or purchases were made without the knowledge of the buyer, and had no connection with the buyer's business activities. However, the penalty for the misuse of resale certificate privileges may be

applied to the person actually issuing and/or using the resale certificate without knowledge of the buyer.

(b) **One time waiver of penalty for inadvertent or unintentional resale certificate misuse.** The penalty prescribed for the misuse of the resale certificate may be waived or canceled on a one time only basis if such misuse was inadvertent or unintentional, and the item was purchased for use within the business. If the department does grant a one time waiver of the penalty, the buyer will be provided written notification at that time.

(c) **Examples.** The following are examples of typical situations where the fifty percent penalty for the misuse of resale privileges will or will not be assessed. These examples should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances.

(i) ABC Manufacturing purchases electrical wiring and tools from X Supply. The electrical wiring is purchased for dual purposes, i.e., for resale and for consumption, with more than fifty percent of the wiring purchases becoming a component of items that ABC manufactures for sale. ABC Manufacturing issues a resale certificate to X Supply specifying "electrical wiring" as the category of items purchased for resale. ABC regularly reviews its purchases and remits deferred sales tax upon the wiring it uses as a consumer.

ABC is subsequently audited by the department and it is discovered that ABC Manufacturing failed to remit deferred sales tax upon three purchases of wiring for consumption. The unreported tax liability attributable to these three purchases is less than five percent of the total deferred sales tax liability for wiring purchases made from X Supply. It is also determined that the failure to remit deferred sales tax upon these purchases was merely an oversight. The fifty percent penalty for the misuse of resale certificate privileges does not apply, even though ABC failed to remit deferred sales tax on these purchases. The resale certificate was properly issued, and ABC remitted to the department more than eighty percent of the deferred sales tax liability for wiring purchases from X Supply.

(ii) During a routine audit examination of a jewelry store, the department discovers that a dentist has provided a resale certificate for the purchase of a necklace. This resale certificate indicates that in addition to operating a dentistry practice, the dentist also sells jewelry. The resale certificate contains the information required under RCW 82.04.470.

Upon further investigation, the department finds that the dentist is not engaged in selling jewelry. The department will look to the dentist for payment of the applicable retail sales tax. In addition, the dentist will be assessed the fifty percent penalty for the misuse of resale certificate privileges. The penalty will not be waived or canceled as the dentist misused the resale certificate privileges to purchase a necklace for personal use.

(iii) During a routine audit examination of a computer dealer, it is discovered that a resale certificate was obtained from a bookkeeping service. The resale certificate was completed in its entirety and accepted by the dealer. Upon further investigation it is discovered that the bookkeeping service had no knowledge of the resale certificate, and had made no payment to the computer dealer. The employee who signed

the resale certificate had purchased the computer for personal use, and had personally made payment to the computer dealer.

The fifty percent penalty for the misuse of the resale certificate privileges will be waived for the bookkeeping service. The bookkeeping service had no knowledge of the purchase or unauthorized use of the resale certificate. However, the department will look to the employee for payment of the taxes and the fifty percent penalty for the misuse of resale certificate privileges.

(iv) During an audit examination it is discovered that XYZ Corporation, a duplicating company, purchased copying equipment for its own use. XYZ Corporation issued a resale certificate to the seller despite the fact that XYZ does not sell copying equipment. XYZ also failed to remit either the deferred sales or use tax to the department. As a result of a previous investigation by the department, XYZ had been informed in writing that retail sales and/or use tax applied to all such purchases. The fifty percent penalty for the misuse of resale certificate privileges will be assessed. XYZ was not eligible to provide a resale certificate for the purchase of copying equipment, and had previously been so informed. The penalty will apply to the unremitted deferred sales tax liability.

(v) AZ Construction issued a resale certificate to a building material supplier for the purchase of "pins" and "loads." The "pins" are fasteners that become a component part of the finished structure. The "load" is a powder charge that is used to drive the "pin" into the materials being fastened together. AZ Construction is informed during the course of an audit examination that it is considered the consumer of the "loads" and may not issue a resale certificate for its purchase thereof. AZ Construction indicates that it was unaware that a resale certificate could not be issued for the purchase of "loads," and there is no indication that AZ Construction had previously been so informed.

The failure to be aware of the proper use of the resale certificate is not generally grounds for waiving the fifty percent penalty for the misuse of resale certificate privileges. However, AZ Construction does qualify for the "one time only" waiver of the penalty as the misuse of the resale certificate privilege was unintentional and the "loads" were purchased for use within the business.

**WSR 11-07-069**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed March 22, 2011, 9:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-19-112.

Title of Rule and Other Identifying Information: Chapter 296-46B WAC, Electrical safety standards, administration, and installation.



Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Room S117, Tumwater, WA 98501, on April 26, 2011, at 9:00 a.m.

Date of Intended Adoption: May 17, 2011.

Submit Written Comments to: Sally Elliott, P.O. Box 44400, Olympia, WA 98504-4400, e-mail [yous235@lni.wa.gov](mailto:yous235@lni.wa.gov), fax (360) 902-5292, by 5:00 p.m. on April 26, 2011.

Assistance for Persons with Disabilities: Contact Sally Elliott by April 12, 2011, at [yous235@lni.wa.gov](mailto:yous235@lni.wa.gov) or (360) 902-6411.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 33, Laws of 2010 (SHB 2546), which passed the 2010 legislature, requires the program to conduct rule making regarding electrical trainees. SHB 2546 increases the classroom education hours required for an electrical trainee to renew their electrical training certificate. The department needs to adopt rules implementing SHB 2546 by July 1, 2011.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: Chapter 19.28 RCW and chapter 33, Laws of 2010 (SHB 2546).

Statute Being Implemented: Chapter 19.28 RCW.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Ron Fuller, Tumwater, Washington, (360) 902-5249; Implementation and Enforcement: Steve McLain, Tumwater, Washington, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule is specifically exempt from the small business economic impact statement requirement because the proposed changes are required to reflect Washington state statutes (see RCW 34.05.328 (5)(b)(iii)).

A cost-benefit analysis is not required under RCW 34.05.328. This rule is specifically exempt from the cost-benefit analysis requirement because the proposed changes are required to reflect Washington state statutes (see RCW 34.05.310 (4)(c)).

March 22, 2011

Judy Schurke

Director

AMENDATORY SECTION (Amending WSR 09-20-032, filed 9/29/09, effective 10/31/09)

**WAC 296-46B-970 Continuing education and classroom education requirements. ((General requirements—continuing education classes requirements for administrator, master electrician, and electrician renewal.))**

(1) DEFINITIONS - for purposes of this section.

(a) "Applicant" means the entity submitting an application for review.

(b) "Application" means a submittal made by an applicant seeking instructor or class approval.

(c) "Calendar day" means each day of the week, including weekends and holidays.

(d) "Class" means continuing education class or course.

(e) "Contractor" means the entity who has contracted with the department to review and approve/deny continuing education classes and instructors.

(f) "Date of notification" means the date of a request for additional information from the contractor or the approval/denial letter sent to the applicant by the contractor.

(g) "Individual" means an administrator or electrician seeking credit for continuing education.

(h) "Instructor" means an individual who is authorized to instruct an approved continuing education class.

(i) "Working day" means Monday through Friday, excluding state of Washington holidays.

(2) GENERAL.

(a) The department and the electrical board have the right to monitor all approved classes without notice and at no charge.

If the department or electrical board determines that the class or instructor does not meet or exceed the minimum requirements for approval or course length or instructor qualifications, the department may revoke the class or instructor approval and reduce the number of credited hours for the class.

(b) Department-offered classes and the instructors used for those classes are automatically approved and do not need to be sent to the contractor for review.

(c) Instructors who meet the minimum requirements using subsection (5)(b)(i)(D) of this section may only instruct classes sponsored by the manufacturer(s) who verified the instructors' qualifications under subsection (5)(b)(i)(D) of this section.

(d) An individual will not be given credit for the same approved continuing education class taken more than once. A course sponsor may not submit an individual's name on a roster(s) for multiple classes (i.e., multiple class numbers) when the classes are given simultaneously (e.g., code update, industry related, and/or basic electrical classroom training class that have similar class content given during the same class session). No credit will be granted for any class not approved per this section.

(e) Telecommunications administrators do not require continuing educations.

(f) Other administrators, master electricians, and electricians:

(i) To be eligible for renewal of an administrator certificate, master electrician or electrician certificate of competency, the individual must have completed at least eight hours of approved continuing education for each year of the prior certification period. The individual is not required to take the classes in separate years.

(A) At least eight hours of the total required continuing education must be on the changes in the 2008 National Electrical Code. For certificate renewal, "currently adopted" means a valid course approved as code update by the department and taken by the applicant since their last renewal date.

(B) Four hours of the required continuing education must be on the currently adopted chapter 19.28 RCW and its related WAC(s).

(ii) An individual changing an electrical administrator and an electrician certificate of competency into a master electrician's certificate of competency as allowed in RCW

19.28.191 (1)(a) or (b) must have completed at least eight hours of approved continuing education for each year of the prior electrician certificate period. The individual is not required to take the classes in separate years.

(A) Eight hours of the required continuing education must be on the changes in the currently adopted National Electrical Code. For certificate renewal, "currently adopted" means a valid course approved as code update by the department and taken by the applicant since their last renewal date.

(B) Four hours of the required continuing education must be on the currently adopted chapter 19.28 RCW and its related WAC(s).

(iii) Any portion of a year of a prior administrator or electrician certificate period is equal to one year for the purposes of the required continuing educations.

(iv) An individual who has both an electrician certificate and an administrator certification may use the same class to fulfill the requirements for continuing education.

(g) Training certificates:

(i) To be eligible for renewal of a training certificate, the individual must have completed:

(A) Effective July 1, 2011, at least ((sixteen)) thirty-two hours of approved basic classroom electrical training classes and effective July 1, 2013, at least forty-eight hours of approved electrical training classes. The individual cannot use a basic classroom electrical training class as credit for the continuing education requirements for renewing an electrician or administrator certificate(s) when the class is also used to satisfy the training certificate renewal requirements; or

(B) Equivalent electrical training ((~~courses~~)) classes taken as a part of an approved:

- Apprenticeship program under chapter 49.04 RCW; or
- Electrical training program under RCW 19.28.191

(1)(h).

Equivalent classes must be submitted to and approved by the chief electrical inspector.

(ii) Note that only trainees seeking experience credit in the pump and irrigation **(03)** or domestic pumping **(03A)** specialties may take pumping industry basic classroom training classes;

In addition, trainees working in the pump and irrigation **(03)** or domestic pump **(03A)** specialties may be credited for courses approved as a part of the requirements for plumber trainees required in RCW 18.106.070(5).

(h) A continuing education class attended or completed by an individual before the class's effective date cannot be used to meet the certificate renewal requirements.

(i) If neither the electrical board nor the department has a contract in effect as described in this section, the department may, at its option, elect to act as the contractor. If a contractor is not in place and the department elects not to act as the contractor, the electrical board will act as the contractor. If either the electrical board or the department acts as the contractor, the following will apply:

(i) The fee for class or instructor submittal is as set in WAC 296-46B-909.

(ii) The electrical board or the department will:

(A) Review the application for completeness within fifteen working days after receipt.

(B) If the application is incomplete, notify the applicant within seven working days of the status of the review and what additional information is required.

(C) Complete the review and approval/denial process within fifteen working days upon receipt of a complete application or additional requested information.

(iii) An appeal of a denial by the department will be heard by the full electrical board in accordance with WAC 296-46B-995.

(3) CLASS AND INSTRUCTOR - GENERAL APPROVAL PROCESS.

(a) The contractor will review submitted class and instructor applications to determine whether the application meets the minimum requirements for approval.

(b) The contractor will deny approval of applications that do not meet the minimum requirements.

(c) All applications will be considered to be new applications (i.e., Classes and instructors may not be renewed. All applications must include all information necessary to show conformance with the minimum requirements).

(d) Minimum requirements:

(i) Application review fees:

(A) The contractor may charge a fee for review of an application. Such fees, paid by the applicant, are nonrefundable.

(B) The fee will be as set by contractor between the department and the contractor.

(C) The fee will be set for a minimum of one year.

(D) Upon mutual agreement between the department and the contractor, the fee may be raised or lowered.

(ii) Application:

(A) The applicant must submit a complete application to the contractor at least thirty calendar days prior to offering or instructing a class.

(B) The contractor will only consider material included with the application when reviewing an application.

(C) All applications will consist of:

- One copy of all material;
- Applicant's name, address, contact name, and telephone number;

- All required fees;

• Any other information the applicant wants to consider during the review; and

- Class applications will include:

– Sponsor's name, address, contact name, and telephone number;

– Class title;

– Number of continuing education hours requested for the class;

– Category of class for which approval is sought (i.e., code update, RCW/WAC update, industry related, basic classroom electrical training, pumping industry, or pumping industry basic classroom training);

– Any required examinations;

– Statement of whether the class is open to the public;

– Class syllabus (e.g., general description of the training, specific NEC articles referenced, time allowed for various subject matter, etc.). Note that for all pumping industry classes, curriculum must include fifty percent electrical and fifty percent plumbing instruction;

- List of resources (e.g., texts, references, etc.);
- Copies of all visual aids;
- Sample of the completion certificate.
- Instructor application will include:
  - Instructor's name, address, telephone number;
  - Copies of credentials or other information showing conformance with the instructor minimum qualifications.
  - The sponsor of a distance learning (i.e., correspondence and internet classes) class will provide the following information with the application:
    - How will the sponsor provide an orientation session with the instructor or an affiliated representative of the sponsor.
    - The application must include a complete description of any hardware, software, or other technology to be used by the provider and needed by the student to effectively engage in the delivery and completion of the class material. Provide an assessment of the availability and adequacy of the equipment, software, or other technologies. In the case of computer-based instruction, describe how the class software addresses automatic shutdown after a period of inactivity.
    - How will the sponsor provide security to ensure that the student who receives credit for the class is the student who enrolled in and completed the class. The approved sponsor and the student must certify that the student has completed the class and the required number of clock hours.
    - The application must describe the process and the acceptable methods of how students can contact approved instructors to answer questions regarding the class.
    - The application must describe the consistent and regular interactive events appropriate to the delivery method. The interactive elements must be designed to promote student involvement in the learning process and must directly support the student's achievement of the class learning objectives.
    - The application must demonstrate that the class includes the same or reasonably similar information content as a course that would otherwise qualify for the requisite number of clock hours of classroom-based instruction.
    - The application must demonstrate how you determined the number of clock hours requested.
    - The application must demonstrate how mastery of the material is provided by: Describing how the material is divided into major learning units and describing how these learning units are divided into modules of instruction, describing how the student's progress toward completion of the mastery requirement will be measured, and describing how the class will provide a mechanism of individual remediation to correct any deficiencies in each module of instruction.
- (e) Contractor's review process:
  - (i) When the application is received, the contractor must:
    - (A) Date stamp the application;
    - (B) Review the application for completeness within seven working days after receipt.
  - (ii) If the application is incomplete, the contractor must within two working days notify the applicant of the status of the review and what additional information is required.
    - (A) The applicant must provide any additional information requested by the contractor within five working days after the date of notification.

(B) The contractor will deny the application if the additional required information is not received within the five working days after the date of notification.

(iii) When the contractor has received a complete application, the contractor must review and evaluate the application for compliance with the minimum requirements.

The contractor must complete the review and approval/denial process within seven working days upon receipt of a complete application or additional requested information and within two working days notify:

- The applicant in writing; and
- The chief electrical inspector in writing and electronically. The contractor's electronic notification to the chief electrical inspector must be made in a format approved by the chief electrical inspector.

(iv) A notification of denial must include:

- (A) Applicant's name and telephone number;
- (B) Date of denial;
- (C) Sponsor's name and class title if applicable;
- (D) Instructor's name if applicable; and
- (E) The reason for denial.

(v) A notification of approval:

- (A) For classes must include:
  - Applicant's name and telephone number;
  - Sponsor's name and telephone number;
  - Class title;
  - Class number;
  - Number of hours approved for the class. Note that the contractor may reduce the hours requested in the application if the review shows that the requested number of hours is excessive;

- Effective date for this class;

- Expiration date of class;

- Category for which the class is approved (i.e., code update, RCW/WAC update, industry related, basic classroom electrical training, pumping industry, or pumping industry basic classroom training);

- Sample of written class roster and attendance sheet;

- Type of class (i.e., classroom, correspondence, internet); and

- Whether the class is open to the public.

(B) For instructors must include:

- Applicant's name and telephone number;
- Instructor's name and telephone number;
- Effective date for the approval; and
- Expiration date of the approval.

(vi) Applicant's request for review of the contractor's decision:

The applicant's may request a review of the contractor's decision to deny or modify an application:

- All requests for review must be:

- Made in writing;

- Received by the chief electrical inspector within twenty calendar days of the contractor's denial; and

- Accompanied by a review fee of \$109.50. The review fee is nonrefundable.

(4) CLASS APPROVAL PROCESS.

(a) Class approval will be valid for three years except:

- (i) If the class is "code update" and a new NEC is adopted by the department within the class approval period,

the class approval will be considered automatically revoked; or

(ii) If the class is modified after the application is approved, the class approval will be considered automatically revoked (i.e., change in syllabus, hours, examination, etc.).

(b) Minimum requirements:

(i) Class content:

(A) Industry-related classes must be based on:

- Codes or rules included in the NEC chapters 19.28 RCW or 296-46B WAC;

- Electrical theory based on currently published documents that are readily available for retail purchase; and/or

- Materials and methods that pertain to electrical construction, building management systems, electrical maintenance, or workplace health and safety such as *NFPA 70E - Handbook for Electrical Safety in the Workplace*. First aid type classes must be approved and will be limited to four hours of credit towards the individual's total continuing education requirement.

(B) Code update classes must be based on the latest adopted version of the NEC and must specify the NEC articles to be addressed in the class presentation.

(C) RCW/WAC update classes must be based on the latest adopted versions of chapter 19.28 RCW and/or chapter 296-46B WAC.

(D) All basic classroom electrical training classes and pumping industry basic classroom training classes must be classroom instruction only and based upon basic electrical theory, use of the NEC, and/or use of the electrical laws and rules. Correspondence and internet classes are not allowed. All basic classroom electrical training classes must include an appropriate written examination to ensure the participant understands the basic concepts of the class. To successfully complete the class, the participant must score at least seventy percent on the examination.

(E) In addition, for pumping industry classes, curriculum must include fifty percent electrical and fifty percent plumbing instruction.

(ii) Class length:

(A) The minimum allowed length of a class is two hours; however, the minimum length for a basic classroom electrical trainee classroom training or pumping industry basic classroom trainee classroom training is eight hours that can be delivered in multiple classroom sessions of not less than two hours each.

(B) The maximum allowed credit for a class is twenty-four hours.

(C) Class length must be based on two-hour increments (e.g., 2, 4, 6, 8, etc.).

(D) Class length must be based on the following:

- Classroom instruction will be based on the total hours the individual is in the classroom. A class may be divided into multiple sections so long as each section is not less than two hours in length and all sections are taken within a one month period.

- Distance learning (i.e., correspondence and internet classes) will be based on clock hours necessary to complete the class if it was presented in a classroom setting. See the application process in subsection (3)(d)(ii) of this section for distance learning classes for additional information.

(iii) Certificates of completion:

(A) The sponsor must award a completion certificate to each individual successfully completing the approved class. To successfully complete a correspondence or internet class, a participant must score at least 70% on the examination required for the class.

(B) The completion certificate must include the:

- Name of participant;

- Participant's Washington certificate number;

- Name of sponsor;

- Name of class;

- Date of class;

- Name of instructor;

- Location of the class:

- If a classroom-type class, the city and state in which the class was given;

- If a correspondence class, state the class is a correspondence class;

- If an internet class, state the class is an internet class;

- Class approval number;

- Number of continuing units; and

- Type of continuing education units.

(iv) Instructors:

(A) For classroom instruction except first-aid training, all instructors must be approved per this section; and

(B) For correspondence and internet instruction, the applicant must show that the sponsor regularly employs at least one staff member who meets the requirements for instructors in this section.

(5) INSTRUCTOR APPROVAL PROCESS:

(a) Instructor approval will be valid for three years except:

- (i) If the instructor's credentials are invalidated (e.g., suspension or revocation by the issuing entity) for any reason, approval will be automatically revoked.

- (ii) When the instructor approval expires or is revoked, a new application must be submitted to regain approved instructor status.

(b) Minimum requirements:

(i) The application must show that the instructor meets one of the following:

(A) Has a valid Washington administrator, master electrician, or electrician's certificate and has appropriate knowledge of and experience working as an electrical/electronic trainer; or

(B) Is an instructor in a two-year program in the electrical construction trade licensed by the Washington work force training and education coordinating board. The instructor's normal duties must include providing electrical/electronic education; or

(C) Is a high school vocational teacher, community college, college, qualified instructor with a state of Washington approved electrical apprenticeship program, or university instructor. The instructor's normal duties must include providing electrical/electronic education; or

(D) Works for and is approved by a manufacturer of electrical products to teach electrical continuing education.

(ii) Any other information the applicant wants to be considered during the review.

## (6) FORMS:

## (a) The contractor will:

Develop an appropriate form(s) for the applicant's use when submitting for instructor or class approval;

(b) Applicants must use the contractor's form when submitting an application for review.

## (7) PUBLICATIONS:

The contractor will provide the department with appropriate material for use by the department on the electrical program web site and may post the application process, review, and approval requirements on the contractor's web site.

## (8) CLASS ATTENDANCE:

(a) The contractor is not responsible for monitoring any individual's attendance or class completion.

(b) The department is not responsible for providing verification of an individual's continuing education or basic electrical classroom training history with the class sponsor;

(c) Electrical approved classes offered in Washington:

(i) The sponsor must provide the department with an accurate course attendance/completion roster for each class given. Class attendance will only be verified based on the attendance/completion roster provided by the sponsor. Completion certificates are not an acceptable method of verifying attendance at a class approved in Washington under this chapter.

(A) Within seven days of a student completing the class, the course sponsor must provide the attendance/completion roster in an internet format provided by the department.

(B) The attendance/completion roster must show each individual's name, Washington certificate number, class number, location of class, date of completion, and instructor's name.

(ii) The sponsor must provide the individual a certificate of completion within fifteen days after successful class completion for the individual's personal records. See subsection (4) of this section.

(iii) Individuals will not be granted credit for a class unless the sponsor's attendance/completion roster shows the individual successfully completed the class.

(d) For classes approved under chapter 18.106 RCW for the pumping industry, a class number will be created for electrical continuing education. Sponsors for these classes must verify attendance for the electrical credit using the format described in subsection (c) of this section.

## (9) Contractor requirements:

(a) The contractor cannot be a sponsor or instructor.

(b) The contractor cannot be an employee of the department.

(c) The contractor must:

(i) Be an independent entity with no organizational, managerial, financial, design, or promotional affiliation with any sponsor or instructor covered under the contractor's review and approval/denial process;

(ii) Employ at least one staff member having a valid 01-General Administrator or 01-General Master Electrician Certificate. This staff member:

(A) Is responsible for reviewing and determining an application's approval or denial; and

(B) Must sign the written notification provided to applicants for all approvals and denials:

(iii) Receive, review, and process all applications as required in this section;

(iv) Allow the department access to the contractor's facilities during normal working hours to audit the contractor's ability to conform to the contract requirements;

(v) Treat all applications as proprietary information;

(vi) Respond to and attempt to resolve complaints contesting the review or approval/denial process performed by the applicant;

(vii) Notify the department within ten working days of any change in business status or ability to conform to this section;

(viii) Maintain one copy, original or electronic, of all applications and associated materials for a period of three years from the date of receipt.

**WSR 11-07-075****PROPOSED RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed March 22, 2011, 10:16 a.m.]

## Original Notice.

Preproposal statement of inquiry was filed as WSR 10-05-085.

Title of Rule and Other Identifying Information: The department is amending WAC 388-450-0215 How does the department estimate my assistance unit's income to determine eligibility and benefits?

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington Street S.E., Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on April 26, 2011, at 10:00 a.m.

Date of Intended Adoption: Not earlier than April 27, 2011.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on April 26, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by April 5, 2011, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This amendment will eliminate the requirement for the department to budget actual income received, or expected to be received, by the assistance unit in the month of application using the anticipated monthly budgeting method. This amendment will allow the department to average the household's income in the month of application if the income is also averaged for the rest of [the] months in the certification period.

Reasons Supporting Proposal: This amendment is necessary to comply with the United States Department of Agri-

culture, Food and Nutrition Services (FNS), supplemental nutrition assistance program (SNAP) regulations under 7 C.F.R. 273.10 (c)(2).

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kim Chea, P.O. Box 45470, Olympia, WA 98504-5470, (360) 725-4653.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not have an economic impact on small businesses.

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

March 18, 2011

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-03-001, filed 1/5/11, effective 2/5/11)

**WAC 388-450-0215 How does the department estimate my assistance unit's income to determine my eligibility and benefits?** (1) We decide if your assistance unit (AU) is eligible for benefits and calculate your monthly benefits based on an estimate of your AU's gross monthly income and expenses. This is known as prospective budgeting.

(2) We use your current, past, and future circumstances for a representative estimate of your monthly income.

(3) We may need proof of your circumstances to ensure our estimate is reasonable. This may include documents, statements from other people, or other proof as explained in WAC 388-490-0005.

(4) We use one of two methods to estimate income:

(a) **Anticipating monthly income (AM):** With this method, we base the estimate on the actual income we expect your AU to receive in the month (see subsection ~~((5))~~ (6)); and

(b) **Averaging income (CA):** With this method, we add the total income we expect your AU to receive for a period of time and divide by the number of months in the period (see subsection ~~((6))~~ (7)).

(5) When determining eligibility for apple health for kids programs as listed in WAC 388-505-0210 or pregnancy medical as listed in WAC 388-462-0015, we can use the method most beneficial to your AU.

(6) Anticipating monthly income: We must use the anticipating monthly method:

(a) ~~((For the month you apply for benefits unless:~~

~~(i) We are determining eligibility for apple health for kids programs as listed in WAC 388-505-0210, or pregnancy medical as listed in WAC 388-462-0015. For apple health for kids and pregnancy medical we can use either method; or~~

~~(ii) You are paid less often than monthly (for example: you are paid quarterly or annually). If you are paid less often than monthly, we average your income for the month you apply. Section (6) explains how we average your income.~~

~~(b))~~ When we estimate income for anyone in your AU, if you or anyone in your AU receive SSI-related medical benefits under chapter 388-475 WAC.

~~((e))~~ (b) When we must allocate income to someone who is receiving SSI-related medical benefits under chapter 388-475 WAC.

~~((d))~~ (c) In the month of application, when you are a destitute migrant or destitute seasonal farmworker under WAC 388-406-0021. In this situation, we must use anticipating monthly (AM) for all your AU's income.

~~((e))~~ (d) To budget SSI or Social Security benefits even if we average other sources of income your AU receives.

~~((6))~~ (7) Averaging income: When we average your income, we consider changes we expect for your AU's income. We determine a monthly amount of your income based on how often you are paid:

(a) If you are paid weekly, we multiply your expected income by 4.3;

(b) If you are paid every other week, we multiply your expected income by 2.15;

(c) In most cases if you receive your income other than weekly or every other week, we estimate your income over your certification period by:

(i) Adding the total income for representative period of time;

(ii) Dividing by the number of months in the time frame; and

(iii) Using the result as a monthly average.

(d) If you receive your yearly income over less than a year because you are self employed or work under a contract, we average this income over the year unless you are:

(i) Paid on an hourly or piecework basis; or

(ii) A migrant or seasonal farmworker under WAC 388-406-0021.

~~((7))~~ (8) ~~((If we used the anticipating monthly income method for the month you applied for benefits, we may average your income for the rest of your certification period if we do not have to use this method for any other reason in section (5))~~ We use the same method for each month in your certification period, including the month of application, unless:

(a) A full month's income is not anticipated in the month of application. In this situation, we budget your income in the month of application using the anticipated monthly (AM) method and average your income (CA) for the rest of the months in your certification.

(b) You are a destitute migrant or destitute seasonal farmworker. We must budget your income in the month of application using the anticipated monthly method, as required by subsection (6). We may average your income for the rest of the months in your certification period.

~~((8))~~ (9) If you report a change in your AU's income, and we expect the change to last through the end of the next

month after you reported it, we update the estimate of your AU's income based on this change.

~~((9))~~ (10) If your actual income is different than the income we estimated, we don't make you repay an overpayment under chapter 388-410 WAC or increase your benefits unless you meet one of the following conditions:

- (a) You provided incomplete or false information; or
- (b) We made an error in calculating your benefits.

**WSR 11-07-076**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Medicaid Purchasing Administration)  
[Filed March 22, 2011, 10:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-20-160.

Title of Rule and Other Identifying Information: Chapter 388-547 WAC, Hearing aids.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on April 26, 2011, at 10:00 a.m.

Date of Intended Adoption: Not sooner than April 27, 2011.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on April 26, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by April 5, 2011, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of social and health services' medicaid purchasing administration (MPA) is adopting amendments to chapter 388-547 WAC, Hearing aids. Amendments to the hearing aids chapter are required upon order of the governor to reduce budget expenditures for the current fiscal year ending June 30, 2011, by 6.3 percent. To achieve this expenditure reduction, MPA eliminated the following optional medical service(s) for adults twenty-one years of age and older effective January 1, 2011: Hearing devices to include hearing aids, bone anchored hearing aids (BAHA), cochlear implants, and parts, and batteries for such equipment including repairs.

Reasons Supporting Proposal: Governor Gregoire issued Executive Order 10-04 on September 13, 2010, under the authority of RCW 43.88.110(7). In the executive order, the governor required DSHS and all other state agencies to reduce their expenditures in state fiscal year 2011 by approximately 6.3 percent. As a consequence of the executive

order, funding will no longer be available as of January 1, 2011, for the benefits that are being eliminated as part of these regulatory amendments.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting: Wendy L. Boedigheimer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1306; Implementation and Enforcement: Ellen Silverman, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1570.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rule amendments and determined that there are no new costs associated with these changes and they do not impose disproportionate costs on small businesses.

A cost-benefit analysis is required under RCW 34.05-328. A preliminary cost-benefit analysis may be obtained by contacting Ellen Silverman, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1570, fax (360) 586-9727, e-mail [Ellen.Silverman@dshs.wa.gov](mailto:Ellen.Silverman@dshs.wa.gov).

March 18, 2011

Katherine I. Vasquez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-12-034, filed 5/27/09, effective 7/1/09)

**WAC 388-547-0100 Hearing aids—General—For clients twenty-years of age and younger.** Unless otherwise defined in WAC 388-547-0200, the terms within this chapter are intended to correspond with the terms in chapter 18.35 RCW.

(1) The department covers the hearing aids ~~((services))~~ listed in this chapter, according to department rules and subject to the limitations and requirements in this chapter. See also WAC 388-531-0375 audiology services.

(2) The department pays for hearing aids ~~((and services))~~ when:

(a) Covered ~~((Refer to WAC 388-547-0400 for covered hearing aids and services for clients twenty-one years of age and older, and refer to WAC 388-547-0800 for covered hearing aids and services for clients twenty years of age and younger))~~;

(b) Within the scope of an eligible client's medical care program;

(c) Medically necessary as defined under WAC 388-500-0005;

(d) Authorized, as required within this chapter, chapters 388-501 and 388-502 WAC, and the department's published billing instructions and numbered memoranda; and

(e) Billed according to this chapter, chapters 388-501 and 388-502, and the department's published billing instructions and numbered memoranda; and

(f) The client ~~((=~~ is twenty years of age or younger and completes a hearing evaluation, including an audiogram and/or develop-

mentally appropriate diagnostic physiologic test results performed and/or interpreted by a hearing healthcare professional(;

(ii) ~~Is referred by a hearing healthcare professional for a hearing aid; and~~

(iii) ~~For clients twenty-one years of age and older only, has an average degree of hearing loss at forty-five decibels (dBHL) in the better ear based on a pure tone audiometric evaluation by a licensed audiologist or licensed hearing instrument fitter/dispenser at one thousand, two thousand, three thousand, and four thousand hertz (Hz) with effective masking as indicated).~~

(3) The department requires prior authorization for covered hearing aids ~~((services))~~ when the clinical criteria set forth in this chapter are not met. The department evaluates these requests on a case-by-case basis to determine whether they are medically necessary, according to the process found in WAC 388-501-0165.

AMENDATORY SECTION (Amending WSR 09-12-034, filed 5/27/09, effective 7/1/09)

**WAC 388-547-0700 Hearing aids—Eligibility—Clients twenty years of age and younger.** (1) Clients twenty years of age and younger who are receiving services under ~~((any))~~ a medical assistance program ~~((, except for the family planning only program and the TAKE CHARGE program))~~:

(a) Are eligible for covered hearing aids ~~((and services))~~ under this chapter and for the audiology services under WAC ~~((388-545-0700))~~ 388-531-0375;

(b) Must have a complete hearing evaluation, including an audiogram and/or developmentally appropriate diagnostic physiologic test results performed by a hearing healthcare professional; and

(c) Must be referred by a licensed audiologist, otorhinolaryngologist or otologist for a hearing aid.

(2) Clients who are enrolled in a department-contracted managed care ~~((plan))~~ organization (MCO) are eligible under fee-for-service for covered hearing aid services that are not covered by their plan, subject to the provisions of this chapter and other applicable WAC. However, clients enrolled in a department-contracted MCO must obtain replacement parts for cochlear implants and bone anchored hearing aids (BAHA) through their MCO.

AMENDATORY SECTION (Amending WSR 09-12-034, filed 5/27/09, effective 7/1/09)

**WAC 388-547-0800 Hearing aids—~~((Covered services))~~ Coverage—Clients twenty years of age and younger.** (1) The department covers new, nonrefurbished, monaural or binaural hearing aid(s), which includes the ear mold, for eligible clients twenty years of age and younger. In order for the provider to receive payment, the hearing aid must meet the client's specific hearing needs and be under warranty for a minimum of one year.

(2) The department pays for the following replacements as long as the need for replacement is not due to the client's carelessness, negligence, recklessness, or misuse in accordance with WAC 388-501-0050(8):

(a) ~~((Replacement))~~ Hearing aid(s), which includes the ear mold, when:

(i) The client's hearing aid(s) are:

(A) Lost;

(B) Beyond repair; or

(C) Not sufficient for the client's hearing loss; and

(ii) All warranties are expired.

(b) ~~((Replacement))~~ Ear mold(s) when the client's existing ear mold is damaged or no longer fits the client's ear.

~~((e))~~ (3) The department pays for repairs as follows:

(a) A maximum of two repairs, per hearing aid, per year, when the repair is less than fifty percent of the cost of a new hearing aid. To receive payment, all of the following must be met:

(i) All warranties are expired; and

(ii) The repair is under warranty for a minimum of ninety days.

~~((d))~~ (b) A rental hearing aid(s) for up to two months while the client's own hearing aid is being repaired. In the case of a rental hearing aid(s), the department pays separately for an ear mold(s).

(4) The department pays for unilateral cochlear implant and osseointegrated hearing aids (BAHA) replacement parts when:

(a) The manufacturer's warranty has expired;

(b) The part is for immediate use, not a back-up part;

(c) The part needs to be replaced due to normal wear and tear and is not related to misuse or abuse of the item (see WAC 388-502-0160); and

(d) The part is not an external speech processor.

(5) The department covers for one cochlear implant external speech processor, including maintenance and repair.

(6) The department covers one BAHA speech processor, including maintenance and repair.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-547-0300	Hearing aids—Eligibility—Clients twenty-one years of age and older.
WAC 388-547-0400	Hearing aids—Covered services—Clients twenty-one years of age and older.
WAC 388-547-0500	Hearing aids—Noncovered services—Clients twenty-one years of age and older.
WAC 388-547-0600	Hearing aids—Prior authorization—Clients twenty-one years of age and older.



**WSR 11-07-077**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Health and Recovery Services Administration)

[Filed March 22, 2011, 10:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-22-068.

Title of Rule and Other Identifying Information: The department is amending and creating new sections in chapter 388-500 WAC, Medical definitions.

The department is proposing amendments to WAC 388-500-0005 Medical definitions.

The department is proposing the following new WAC sections: WAC 388-500-0010 Medical definitions—A, 388-500-0015 Medical definitions—B, 388-500-0020 Medical definitions—C, 388-500-0025 Medical definitions—D, 388-500-0030 Medical definitions—E, 388-500-0035 Medical definitions—F, 388-500-0040 Medical definitions—G, 388-500-0045 Medical definitions—H, 388-500-0050 Medical definitions—I, 388-500-0065 Medical definitions—L, 388-500-0070 Medical definitions—M, 388-500-0075 Medical definitions—N, 388-500-0080 Medical definitions—O, 388-500-0085 Medical definitions—P, 388-500-0095 Medical definitions—R, 388-500-0100 Medical definitions—S, 388-500-0105 Medical definitions—T, and 388-500-0110 Medical definitions—U.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on May 10, 2011, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 11, 2011.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax (360) 664-6185, by 5 p.m. on May 10, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by April 26, 2011, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [jennisha.johnson@dshs.wa.gov](mailto:jennisha.johnson@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of social and health services (the department) is proposing new definitions relating to its medical assistance programs and at the same time is updating and clarifying current definitions found in WAC 388-500-0005. In addition, the department is placing definitions found in WAC 388-500-0005 into new individual alphabetical sections.

Reasons Supporting Proposal: The amendments to the definitions support recently filed rules that meet the Governor's Executive Order 10-06 exemption criteria for rule making because they are necessary to manage budget shortfalls, maintain fund solvency, or for revenue generating activities for fiscal year ending June 30, 2011. The new rules assure

consistency with how terms are used throughout department medical assistance program rules.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, P.O. Box 45505, Olympia, WA 98504-5504, (360) 725-1342; Implementation and Enforcement: Gail Kreiger, P.O. Box 45500, Olympia, WA 98504-5500, (360) 725-1949.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules do not impact small businesses.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Gail Kreiger, Health and Recovery Services Administration, P.O. Box 45500, Olympia, WA 98504-45500 [98504-5500], phone (360) 725-1949, fax (360) 725-9152, e-mail [gail.kreiger@dshs.wa.gov](mailto:gail.kreiger@dshs.wa.gov).

March 18, 2011

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 11-08 issue of the Register.

**WSR 11-07-080**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Disability Services Administration)  
(Division of Developmental Disabilities)  
[Filed March 22, 2011, 10:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-21-094.

Title of Rule and Other Identifying Information: The department is amending chapter 388-828 WAC, The division of developmental disabilities (DDD) assessment, to include the algorithm DDD will use in determining an individual's employment support level.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on April 26, 2011, at 10:00 a.m.

Date of Intended Adoption: Not earlier than April 27, 2011.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax (360) 664-6185, by 5 p.m. on April 26, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by April 5, 2011, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these proposed rules [is] to provide information to clients, families, providers, stakeholders, and the general public with information regarding the process DDD uses to determine an individual's employment support level. This information is essential in developing a consistent process to govern outcome-based vendor contracts.

Reasons Supporting Proposal: The 2009-11 operating budget (ESHB 1244), sections 103(7) and 205(c) requires DDD to develop and implement the use of a consistent outcome-based vendor contract for employment and day program services. In order to achieve this mandate, DDD must first implement a standardized methodology to promote consistency in determining an individual's employment support needs. DDD is proposing rules to govern the process to determine an individual's employment acuity score and support level, which is based on his/her assessed needs.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A 12.020(3) [71A.12.020(3)] and 71A 12.040(4) [71A.12.040(4)].

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

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

Name of Agency Personnel Responsible for Drafting: Mark Eliason, P.O. Box 45310, Olympia, WA 98504, (360) 725-2517; Implementation: Branda Matson, P.O. Box 45310, Olympia, WA 98504, (360) 725-3205; and Enforcement: Don Clintsman, P.O. Box 45310, Olympia, WA 98504, (360) 725-3426.

No small business economic impact statement has been prepared under chapter 19.85 RCW. DDD has analyzed the proposed rule amendments and has determined that these rules will not "have a disproportionate impact on the state's small businesses" as described in chapter 19.85 RCW. The proposed rule amendments establish a consistent methodology in determining a person's employment acuity score and employment support level.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Mark Eliason, P.O. Box 45310, Olympia, WA 98504-5310, phone (360) 725-2517, fax (360) 407-0955, e-mail mark.eliason@dshs.wa.gov.

March 15, 2011  
Katherine I. Vasquez  
Rules Coordinator

**DDD EMPLOYMENT ACUITY SCALE**

NEW SECTION

**WAC 388-828-9200 What is the DDD employment acuity scale?** The DDD employment acuity scale is an algorithm that determines your employment acuity score and employment support level.

NEW SECTION

**WAC 388-828-9205 How does DDD determine your employment support level?** DDD determines your employment support level using the following table:

If your employment acuity score in WAC 388-828-9210 is:	Your employment support level is:
0 or less	None
Greater than 0 and less than 1.5	Low
1.5 to less than 2.5	Medium
2.5 or greater	High

NEW SECTION

**WAC 388-828-9210 How does DDD determine your employment acuity score?** DDD determines your employment acuity support score by combining your employment support scores for:

- (1) Activities of daily living (see WAC 388-828-9215);
  - (2) Behavioral support (see WAC 388-828-9220);
  - (3) Interpersonal support (see WAC 388-828-9225);
  - (4) Environmental support (see WAC 388-828-9230);
  - (5) Level of monitoring (see WAC 388-828-9240);
  - (6) Employment support (see WAC 388-828-9245);
  - (7) Completing tasks with acceptable speed (see WAC 388-828-9255);
  - (8) Completing tasks with acceptable quality (see WAC 388-828-9260);
  - (9) Medical support (see WAC 388-828-9265); and
  - (10) Seizure support (see WAC 388-828-9270).
- Example:

Acuity scales and questions used in determining employment acuity score:	If employment support scores are:
Activities of daily living	0.20607
Behavioral support	0.08372
Interpersonal support	0.47326
Environmental support	0.13596
Level of monitoring	0.7311
Employment support	0.43562
Completing tasks with acceptable speed	0.18855
Completing tasks with acceptable quality	0.10836
Medical support	0.135
Seizure support	-0.15393
Your employment acuity score is:	2.34371

NEW SECTION

**WAC 388-828-9215 How does DDD determine your employment acuity scale score for activities of daily living?** DDD determines your employment acuity score for

activities of daily living by multiplying your ADL support needs level score by 0.06869.

If your ADL support needs level in WAC 388-828-5480 is:	Then your ADL support needs level score is:
None	0
Low	1
Medium	2
High	3

Example: An ADL support needs level score of 3 is multiplied by 0.06869 resulting in an employment acuity scale score for activities of daily living of 0.20607.

**NEW SECTION**

**WAC 388-828-9220 How does DDD determine your employment acuity scale score for behavioral support?** DDD determines your employment acuity scale score for behavioral support by multiplying your behavioral acuity level score (see WAC 388-828-5640) by 0.04186.

If your behavioral acuity level in WAC 388-828-5640 is:	Then your behavioral acuity level score is:
None	0
Low	1
Medium	2
High	3

Example: A behavioral acuity level score of 2 is multiplied by 0.04186 resulting in an employment acuity scale score for behavioral support of 0.08372.

**NEW SECTION**

**WAC 388-828-9225 How does DDD determine your employment acuity scale score for interpersonal support?** DDD determines your employment acuity scale score for interpersonal support by multiplying your interpersonal support needs level score (see WAC 388-828-5820) by 0.23663.

If your interpersonal support needs level in WAC 388-828-5820 is:	Then your interpersonal support needs level score is:
None	0
Low	1
Medium	2
High	3

Example: An interpersonal support needs level score of 2 is multiplied by 0.23663 resulting in an employment acuity scale score for interpersonal support of 0.47326.

**NEW SECTION**

**WAC 388-828-9230 How does DDD determine your employment acuity scale score for environmental support?**

DDD determines your employment acuity scale score for environmental support by multiplying your environmental support level by 0.06798.

If your environmental support score from WAC 388-828-9235 is:	Then your environmental support level is:	
0	0	None
1 or 2	1	Low
3 or 4	2	Medium
5 or more	3	High

Example: An environmental support score of 3 equals an environmental support level of 2. The environmental support level of 2 is then multiplied by 0.06798 resulting in an employment acuity scale score for environmental support of 0.13596.

**NEW SECTION**

**WAC 388-828-9235 How does DDD determine your environmental support score?** DDD determines your environmental support score by adding the sum of your assessment responses to employment support limitations in the following table:

Response	Employment Support/Limitations	Score
1	Behaviors impact workplace	1
2	Employment goals too specific	1
3	Fearful/scared of new situations	0
4	Frequent job changes	1
5	High turnover of natural supports	1
6	Hygiene issues unresolved	1
7	Lacks social skills	1
8	Little work history	1
9	Narrow scope of job requirements	1
10	Needs support arranging childcare	1
11	Others not supportive of employment goals	1
12	Others unable to support employment goals	1
13	Transportation	1
14	Unable to regularly get to work on time	1
15	Uncertain about work	0
16	Uncooperative/lacks motivation	0
<b>Maximum employment support limitation score is:</b>		<b>13</b>

Example: If you have selected responses 1, 3, 8, 13, and 15, the sum of your scores for employment support limitations would be 3, resulting in an environmental support score of 3 for WAC 388-828-9230.

**NEW SECTION**

**WAC 388-828-9240 How does DDD determine your employment support score for level of monitoring?** DDD determines your employment support score for level of monitoring by multiplying your level of monitoring score in WAC 388-828-5060(1) by 0.14622.

Example: If you level of monitoring is "onsite (e.g., on property) your level of monitoring score is 5. Multiplying a

"level of monitoring score" of 5 by 0.14622 results in an employment support score for level of monitoring of 0.7311.

NEW SECTION

**WAC 388-828-9245 How does DDD determine your employment acuity scale score for employment support?** DDD determines your employment acuity score for employment support by multiplying your DDD employment support score in WAC 388-828-9250 by 0.21781.

Example: A DDD employment support score of 2 is multiplied by 0.21781 resulting in an employment acuity scale score for employment support of 0.43562.

NEW SECTION

**WAC 388-828-9250 How does DDD determine your DDD employment support score?** DDD determines your DDD employment support score using the following table:

If your total raw score for the SIS employment activities subscale in WAC 388-828-4260 is:	Then your DDD employment level is:	And your DDD employment support score is:
0	None	0
1 through 35	Low	1
36 through 59	Medium	2
60 or more	High	3

NEW SECTION

**WAC 388-828-9255 How does DDD determine your employment acuity score for completing tasks with acceptable speed?** DDD determines your employment acuity score for completing tasks with acceptable speed by using your "type of support" score for question "D5" in WAC 388-828-4260 and multiplying it by 0.06285.

Example: A "type of support" score of 3 (partial physical assistance) is multiplied by 0.06285 resulting in an employment acuity score for completing tasks with acceptable speed of 0.18855.

NEW SECTION

**WAC 388-828-9260 How does DDD determine your employment acuity score for completing tasks with acceptable quality?** DDD determines your employment acuity score for completing tasks with acceptable quality by using your "type of support" score for question "D6" in WAC 388-828-4260 and multiplying it by 0.05418.

Example: A "type of support" score of 2 (verbal/gestural prompting) is multiplied by 0.05418 resulting in an employment acuity score for completing tasks with acceptable quality of 0.10836.

NEW SECTION

**WAC 388-828-9265 How does DDD determine your employment acuity scale score for medical support?** DDD

determines your employment acuity scale score for medical support by multiplying your medical support needs level score (see WAC 388-828-5700) by 0.06750.

If your medical support needs level in WAC 388-828-5700 is:	Then your medical support needs level score is:
None	0
Low	1
Medium	2
High	3

Example: A medical support needs level score of 2 is multiplied by 0.06750 resulting in an employment acuity scale score for medical support of 0.135.

NEW SECTION

**WAC 388-828-9270 How does DDD determine your employment acuity scale score for seizure support?** DDD determines your employment acuity scale score for seizure support by multiplying your seizure support score in WAC 388-828-9275 by negative 0.05131.

Example: A seizure support score of 3 is multiplied by -0.05131 resulting in an employment acuity scale score for seizure support of -0.15393.

NEW SECTION

**WAC 388-828-9275 How does DDD determine your seizure support score?** DDD determines your seizure support score using the following table:

If your assessment indicates the following:	Your seizure support level is:	And your seizure support score is:
(1) Does the client have a history of seizures equals "no"	None	0
(2) Does the client have a history of seizures equals "yes"; and (3) Client does not meet requirements for seizure support level of "medium" or "high"	Low	1
(4) Client has convulsive seizures (tonic-clonic or atonic); and (5) Frequency is quarterly, monthly, weekly or multiple times per week; and (6) Seizure duration is 5 minutes or less	Medium	2
(7) Two ore more emergency room visits/911 calls in past year; or (8) Has convulsive seizures (tonic-clonic or atonic); and (9) Frequency is quarterly, monthly, weekly or multiple times per week; and (10) Seizure duration is greater than 5 minutes or requires medical intervention to stop	High	3

NEW SECTION

**WAC 388-828-9280 Why does DDD multiply your seizure support score by a negative factor?** DDD multiplies your seizure support score by a negative factor because the DDD employment acuity scale tends to over-predict employment support needs for persons with seizures. This is because seizures can often be controlled with medication and the relationship between a person's seizure acuity and employment support needs may have already been partially taken into account by other variables in the algorithm, such as the medical acuity scale.

**WSR 11-07-082**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Medicaid Purchasing Administration)  
[Filed March 22, 2011, 10:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-20-160.

Title of Rule and Other Identifying Information: Chapter 388-544 WAC, Vision care.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on April 26, 2011, at 10:00 a.m.

Date of Intended Adoption: Not sooner than April 27, 2011.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on April 26, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by April 5, 2011, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [jennisha.johnson@dshs.wa.gov](mailto:jennisha.johnson@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of social and health services' medicaid purchasing administration (MPA) is adopting amendments to chapter 388-544 WAC, Vision care. Amendments to the vision care chapter are required upon order of the governor to reduce budget expenditures for the current fiscal year ending June 30, 2011, by 6.3 percent. To achieve this budget reduction, MPA eliminated the following optional medical service(s) for adults twenty-one years of age and older effective January 1, 2011: Eyeglasses (frames and lenses), contact lenses, and low vision aids (e.g., magnifiers and telescopic eyeglass lenses), and repairs.

Reasons Supporting Proposal: Governor Gregoire issued Executive Order 10-04 on September 13, 2010, under the authority of RCW 43.88.110(7). In the executive order,

the governor required DSHS and all other state agencies to reduce their expenditures in state fiscal year 2011 by approximately 6.3 percent. As a consequence of the executive order, funding will no longer be available as of January 1, 2011, for the benefits that are being eliminated as part of these regulatory amendments.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting: Wendy L. Boedigheimer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1306; Implementation and Enforcement: Marlene Black, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1577.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rule amendments and determined that there are no new costs associated with these changes and they do not impose disproportionate costs on small businesses.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Marlene Black, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1577, fax (360) 586-9727, e-mail [Marlene.Black@dshs.wa.gov](mailto:Marlene.Black@dshs.wa.gov).

March 18, 2011

Katherine I. Vasquez

Rules Coordinator

**VISION CARE—CLIENTS TWENTY YEARS OF AGE  
AND YOUNGER**

AMENDATORY SECTION (Amending WSR 08-14-052, filed 6/24/08, effective 7/25/08)

**WAC 388-544-0100 Vision care—Eligible clients—Twenty years of age and younger.** This section applies to eligible clients who are twenty years of age and younger.

(1) Vision care ~~((services are))~~ is available to clients who are eligible for services under the following medical assistance programs ~~((only))~~:

- (a) Categorically needy program (CN or CNP);
- (b) Categorically needy program - state children's health insurance program (CNP-SCHIP);
- (c) Children's healthcare programs as defined in WAC 388-505-0210;
- (d) Limited casualty program - medically needy program (LCP-MNP);
- (e) Disability lifeline (formerly general assistance (GA-U/ADATSA)) (within Washington state or designated border cities); and
- (f) ~~((Emergency medical only programs when the services are directly related to an))~~ Alien emergency medical (AEM) as described in WAC 388-438-0115, when the medical services are necessary to treat a qualifying emergency medical condition only.

(2) Eligible clients who are enrolled in a department contracted managed care organization (MCO) are eligible under

fee-for-service for covered vision care (~~(services)~~) that are not covered by their plan and subject to the provisions of this chapter and other applicable WAC.

AMENDATORY SECTION (Amending WSR 08-14-052, filed 6/24/08, effective 7/25/08)

**WAC 388-544-0250 Vision care—Covered eye services (examinations, refractions, visual field testing, and vision therapy).** ~~((1) The department covers, without prior authorization, eye examinations and refraction services with the following limitations:~~

~~(a) Once every twenty-four months for asymptomatic clients twenty-one years of age or older;~~

~~(b) Once every twelve months for asymptomatic clients twenty years of age or younger; or~~

~~(c) Once every twelve months, regardless of age, for asymptomatic clients of the division of developmental disabilities.~~

~~(2) The department covers additional examinations and refraction services outside the limitations described in subsection (1) of this section when:~~

~~(a) The provider is diagnosing or treating the client for a medical condition that has symptoms of vision problems or disease;~~

~~(b) The client is on medication that affects vision; or~~

~~(c) The service is necessary due to lost or broken eye-glasses/contacts. In this case:~~

~~(i) No type of authorization is required for clients twenty years of age or younger or for clients of the division of developmental disabilities, regardless of age.~~

~~(ii) Providers must follow the department's expedited prior authorization process to receive payment for clients twenty-one years of age or older. Providers must also document the following in the client's file:~~

~~(A) The eyeglasses or contacts are lost or broken; and~~

~~(B) The last examination was at least eighteen months ago.~~

~~(3) The department covers visual field exams for the diagnosis and treatment of abnormal signs, symptoms, or injuries. Providers must document all of the following in the client's record:~~

~~(a) The extent of the testing;~~

~~(b) Why the testing was reasonable and necessary for the client; and~~

~~(c) The medical basis for the frequency of testing.~~

~~(4) The department covers orthoptics and vision training therapy. Providers must obtain prior authorization from the department.) See WAC 388-531-1000 Ophthalmic services.~~

AMENDATORY SECTION (Amending WSR 08-14-052, filed 6/24/08, effective 7/25/08)

**WAC 388-544-0300 Vision care—Covered eyeglasses (frames and/or lenses) and repair ~~((services))~~—Clients twenty years of age and younger. This section applies to eligible clients who are twenty years of age and younger.**

(1) The department covers eyeglasses, without prior authorization, ~~((as follows:~~

~~(a)) once every twelve months for eligible clients when the following clinical criteria are met:~~

~~((b)) (a) The eligible client has a stable visual condition;~~

~~((c)) (b) The eligible client's treatment is stabilized;~~

~~((d)) (c) The prescription is less than eighteen months old; and~~

~~((e)) (d) One of the following minimum correction needs in at least one eye is documented in the client's file:~~

~~((f)) (i) Sphere power equal to, or greater than, plus or minus 0.50 diopter;~~

~~((g)) (ii) Astigmatism power equal to, or greater than, plus or minus 0.50 diopter; or~~

~~((h)) (iii) Add power equal to, or greater than, 1.0 diopter for bifocals and trifocals.~~

~~((i) With the following limitations:~~

~~(i) Once every twenty-four months for clients twenty-one years of age or older;~~

~~(ii) Once every twelve months for clients twenty years of age or younger; or~~

~~(iii) Once every twelve months, regardless of age, for clients of the division of developmental disabilities.)~~

(2) The department covers eyeglasses (frames/lenses), ~~((without prior authorization,))~~ for eligible clients ~~((who are twenty years of age or younger))~~ with a diagnosis of accommodative esotropia or any strabismus correction, without prior authorization. In this case, the limitations of subsection (1) of this section do not apply.

(3) The department covers one pair of back-up eyeglasses for eligible clients who wear contact lenses as their primary visual correction aid (see WAC 388-544-0400(1)) ~~((with the following limitations:~~

~~(a) Once every six years for clients twenty years of age or older;~~

~~(b)) limited to once every two years for eligible clients twenty years of age or younger ((or regardless of age for clients of the division of developmental disabilities)).~~

AMENDATORY SECTION (Amending WSR 08-14-052, filed 6/24/08, effective 7/25/08)

**WAC 388-544-0325 Vision care—Covered eyeglass frames—Clients twenty years of age and younger. This section applies to eligible clients who are twenty years of age and younger.**

(1) The department covers durable or flexible frames, without prior authorization, when the eligible client has a diagnosed medical condition that has contributed to two or more broken eyeglass frames in a twelve-month period. To receive payment, the provider must:

(a) Follow the department's expedited prior authorization process; and

(b) Order the "durable" or "flexible" frames through the department's designated supplier.

(2) The department covers all of the following for eligible clients without prior authorization:

(a) Coating contract eyeglass frames to make the frames nonallergenic. Eligible clients must have a medically diagnosed and documented allergy to the materials in the available eyeglass frames.

(b) Incidental repairs to a client's eyeglass frames. To receive payment, all of the following must be met:

(i) The provider typically charges the general public for the repair or adjustment;

(ii) The contractor's one year warranty period has expired; and

(iii) The cost of the repair does not exceed the department's cost for replacement frames and a fitting fee(~~and~~

~~(iv) The frequency of the repair does not exceed two per client in a six-month period. This limit does not apply to clients twenty years of age or younger or to clients of the division of developmental disabilities, regardless of age.~~

~~(3) The department covers replacement eyeglass frames that have been lost or broken as follows:~~

~~(a) No type of authorization is required for clients twenty years of age or younger or for clients of the division of developmental disabilities, regardless of age.~~

~~(b) To receive payment for clients twenty-one years of age or older, excluding clients of the division of developmental disabilities, providers must follow the department's expedited prior authorization process).~~

~~(c) Replacement eyeglass frames that have been lost or broken.~~

AMENDATORY SECTION (Amending WSR 08-14-052, filed 6/24/08, effective 7/25/08)

**WAC 388-544-0350 Vision care—Covered eyeglass lenses (~~and services~~)—Clients twenty years of age and younger.** This section applies to eligible clients who are twenty years of age and younger.

(1) The department covers the following plastic scratch-resistant eyeglass lenses without prior authorization:

- (a) Single vision lenses;
- (b) Round or flat top D-style bifocals;
- (c) Flat top trifocals; and
- (d) Slab-off and prism lenses (including Fresnel lenses).

(2) Eyeglass lenses, as described in subsection (1) of this section must be placed into a frame that is, or was, purchased by the department.

(3) The department covers, without prior authorization, the following lenses for eligible clients when the clinical criteria are met:

(a) High index lenses. Providers must follow the department's expedited prior authorization process. The eligible client's medical need in at least one eye must be diagnosed and documented as:

(i) A spherical refractive correction of plus or minus six diopters or greater; or

(ii) A cylinder correction of plus or minus three diopters or greater.

(b) Plastic photochromatic lenses. The eligible client's medical need must be diagnosed and documented as ocular albinism or retinitis pigmentosa.

(c) Polycarbonate lenses. The eligible client's medical need must be diagnosed and documented as one of the following:

(i) Blind in one eye and needs protection for the other eye, regardless of whether a vision correction is required;

(ii) Infants and toddlers with motor ataxia;

(ii) Strabismus or amblyopia (~~for clients twenty years of age or younger; or~~

~~(iv) For clients of the division of developmental disabilities).~~

(d) Bifocal lenses to be replaced with single vision or trifocal lenses, or trifocal lenses to be replaced with bifocal or single vision lenses when:

(i) The eligible client has attempted to adjust to the bifocals or trifocals for at least sixty days; and

(ii) The eligible client is unable to make the adjustment; and

(iii) The trifocal lenses being replaced are returned to the provider.

(4) The department covers, without prior authorization, the tinting of plastic lenses when the eligible client's medical need is diagnosed and documented as one or more of the following chronic (expected to last longer than three months) eye conditions causing photophobia:

- (a) Blindness;
- (b) Chronic corneal keratitis;
- (c) Chronic iritis, iridocyclitis;
- (d) Diabetic retinopathy;
- (e) Fixed pupil;
- (f) Glare from cataracts;
- (g) Macular degeneration;
- (h) Migraine disorder;
- (i) Ocular albinism;
- (j) Optic atrophy and/or optic neuritis;
- (k) Rare photo-induced epilepsy conditions; or
- (l) Retinitis pigmentosa.

(5) The department covers replacement lenses for eligible clients without prior authorization when the lenses are lost or broken (~~as follows:~~

~~(a) No type of authorization is required for clients twenty years of age and younger or for clients of the division of developmental disabilities, regardless of age.~~

~~(b) Providers must follow the expedited prior authorization process to receive payment for clients twenty-one years of age or older).~~

(6) The department covers replacement lenses, without prior authorization, when the eligible client meets one of the clinical criteria. To receive payment, providers must follow the expedited prior authorization process. The clinical criteria are:

(a) Eye surgery or the effects of prescribed medication or one or more diseases affecting vision:

- (i) The client has a stable visual condition;
- (ii) The client's treatment is stabilized;

(iii) The lens correction must have a 1.0 or greater diopter change between the sphere or cylinder correction in at least one eye; and

(iv) The previous and new refraction are documented in the client's record.

(b) Headaches, blurred vision, or visual difficulty in school or at work. In this case, all of the following must be documented in the client's file:

(i) Copy of current prescription (less than eighteen months old);

(ii) Date of last dispensing, if known;

(iii) Absence of a medical condition that is known to cause temporary visual acuity changes (e.g., diabetes, pregnancy, etc.); and

(iv) A refractive change of at least .75 diopter or greater between the sphere or cylinder correction in at least one eye.

AMENDATORY SECTION (Amending WSR 08-14-052, filed 6/24/08, effective 7/25/08)

**WAC 388-544-0400 Vision care—Covered contact lenses ~~((and services))—Clients twenty years of age and younger.~~ This section applies to eligible clients who are twenty years of age and younger.**

(1) The department covers contact lenses, without prior authorization, as the eligible client's primary refractive correction method when the eligible client has a spherical correction of plus or minus 6.0 diopters or greater in at least one eye. See subsection (4) of this section for exceptions to the plus or minus 6.0 diopter criteria. The spherical correction may be from the prescription for the glasses or the contact lenses and may be written in either "minus cyl" or "plus cyl" form.

(2) The department covers the following contact lenses with limitations:

(a) Conventional soft contact lenses or rigid gas permeable contact lenses that are prescribed for daily wear; or

(b) Disposable contact lenses that are prescribed for daily wear and have a monthly or quarterly planned replacement schedule, as follows:

(i) Twelve pairs of monthly replacement contact lenses; or

(ii) Four pairs of three-month replacement contact lenses.

(3) The department covers soft toric contact lenses, without prior authorization, for eligible clients with astigmatism when the following clinical criteria are met:

(a) The eligible client's cylinder correction is plus or minus 1.0 diopter in at least one eye; and

(b) The eligible client meets the spherical correction listed in subsection (1) of this section.

(4) The department covers contact lenses, without prior authorization, when the following clinical criteria are met. In these cases, the limitations in subsection (1) of this section do not apply.

(a) For eligible clients diagnosed with high anisometropia.

(i) The eligible client's refractive error difference between the two eyes is at least plus or minus 3.0 diopters between the sphere or cylinder correction; and

(ii) Eyeglasses cannot reasonably correct the refractive errors.

(b) Specialty contact lens designs for eligible clients who are diagnosed with one or more of the following:

(i) Aphakia;

(ii) Keratoconus; or

(iii) Corneal softening.

(c) Therapeutic contact bandage lenses only when needed immediately after eye injury or eye surgery.

(5) The department covers replacement contact lenses ~~((limited to once every twelve months,))~~ for eligible clients when lost or damaged ((as follows:

~~(a) Authorization is not required for clients twenty years of age or younger or for clients of the division of developmental disabilities, regardless of age.~~

~~(b) Providers must follow the expedited prior authorization process to receive payment for clients twenty-one years of age or older.~~

~~(6) The department covers replacement contact lenses when all of the clinical criteria are met:~~

~~(a) The clinical criteria are:~~

~~(i) One of the following caused the vision change:~~

~~(A) Eye surgery;~~

~~(B) The effect(s) of prescribed medication; or~~

~~(C) One or more diseases affecting vision.~~

~~(ii) The client has a stable visual condition;~~

~~(iii) The client's treatment is stabilized; and~~

~~(iv) The lens correction has a 1.0 or greater diopter change in at least one eye between the sphere or cylinder correction. The previous and new refraction must be documented in the client's record.~~

~~(b) No type of authorization is required for clients twenty years of age and younger or for clients of the division of developmental disabilities, regardless of age.~~

~~(c) To receive payment for clients twenty-one years of age or older, providers must follow the expedited prior authorization process)).~~

AMENDATORY SECTION (Amending WSR 08-14-052, filed 6/24/08, effective 7/25/08)

**WAC 388-544-0500 Vision care—Covered ocular prosthetics.** ~~((The department covers ocular prosthetics when provided by any of the following:~~

~~(1) An ophthalmologist;~~

~~(2) An ocularist; or~~

~~(3) An optometrist who specializes in prosthetics))~~ See WAC 388-531-1000 Ophthalmic services.

AMENDATORY SECTION (Amending WSR 08-14-052, filed 6/24/08, effective 7/25/08)

**WAC 388-544-0550 Vision care—Covered eye surgery.** ~~((1) The department covers cataract surgery, without prior authorization, when the following clinical criteria are met:~~

~~(a) Correctable visual acuity in the affected eye at 20/50 or worse, as measured on the Snellen test chart; or~~

~~(b) One or more of the following conditions:~~

~~(i) Dislocated or subluxated lens;~~

~~(ii) Intraocular foreign body;~~

~~(iii) Ocular trauma;~~

~~(iv) Phacogenic glaucoma;~~

~~(v) Phacogenic uveitis;~~

~~(vi) Phacoanaphylactic endophthalmitis; or~~

~~(vii) Increased ocular pressure in a person who is blind and is experiencing ocular pain.~~

~~(2) The department covers strabismus surgery as follows:~~



~~(a) For clients seventeen years of age and younger. The provider must clearly document the need in the client's record. The department does not require authorization for clients seventeen years of age and younger; and~~

~~(b) For clients eighteen years of age and older, when the clinical criteria are met. To receive payment, providers must follow the expedited prior authorization process. The clinical criteria are:~~

~~(i) The client has double vision; and~~

~~(ii) The surgery is not being performed for cosmetic reasons.~~

~~(3) The department covers blepharoplasty or blepharoptosis surgery when all of the clinical criteria are met. To receive payment, providers must follow the department's expedited prior authorization process. The clinical criteria are:~~

~~(a) The client's excess upper eyelid skin is blocking the superior visual field; and~~

~~(b) The blocked vision is within ten degrees of central fixation using a central visual field test)) See WAC 388-531-1000 Ophthalmic services.~~

AMENDATORY SECTION (Amending WSR 08-14-052, filed 6/24/08, effective 7/25/08)

**WAC 388-544-0575 Vision care—Noncovered (~~services~~) eyeglasses(~~g~~) and contact lenses.** (1) The department does not cover the following:

(a) Executive style eyeglass lenses;

(b) Bifocal contact lenses;

(c) Daily and two week disposable contact lenses;

(d) Extended wear soft contact lenses, except when used as therapeutic contact bandage lenses or for aphakic clients;

(e) Custom colored contact lenses;

~~(f) ((Services for cosmetic purposes only;~~

~~(g))~~ Glass lenses;

~~((h) Group vision screening for eyeglasses;~~

~~(i))~~ (g) Nonglare or anti-reflective lenses;

~~((j))~~ (h) Progressive lenses;

~~((k) Refractive surgery of any type that changes the eye's refractive error. The intent of the refractive surgery procedure is to reduce or eliminate the need for eyeglass or contact lens corrections. This does not include intraocular lens implantation following cataract surgery.~~

~~(l))~~ (i) Sunglasses and accessories that function as sunglasses (e.g., "clip-ons");

~~((m))~~ (j) Upgrades at private expense to avoid the department's contract limitations (e.g., frames that are not available through the department's contract or noncontract frames or lenses for which the client or other person pays the difference between the department's payment and the total cost).

(2) An exception to rule (ETR), as described in WAC 388-501-0160, may be requested for a noncovered service.

## WSR 11-07-084

### PROPOSED RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed March 22, 2011, 10:45 a.m.]

Supplemental Notice to WSR 10-24-103.

Preproposal statement of inquiry was filed as WSR 10-14-052.

Title of Rule and Other Identifying Information: New WAC 388-71-06020 through 388-71-06420 home care referral registry.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on April 26, 2011, at 10:00 a.m.

Date of Intended Adoption: Not earlier than April 27, 2011.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m., April 26, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by April 6, 2011, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is adopting new WAC 388-71-06020 through 388-71-06420. As a result of the 2009-11 supplemental budget (ESSB 6444), the home care quality authority was eliminated and the home care referral registry (HCRR) program moved to the home and community services division effective July 1, 2010. Rules pertaining to the referral registry must be adopted by DSHS prior to the repeal of the home care quality's rules in Title 257 WAC. A CR-103 emergency rule was filed to meet the July 1, 2010, implementation date.

The purpose of this filing is to make an additional adjustment to the WAC in order to bring HCRR processes more closely into alignment with DSHS policy.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: ESSB 6444.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Susan Engels, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2554.

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

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically [specifically] dictated by statute.

March 7, 2011  
Katherine I. Vasquez  
Rules Coordinator

### Referral registry

#### NEW SECTION

**WAC 388-71-06020 What is the purpose of WAC 388-71-06020 through 388-71-06420?** The purpose of this chapter is to describe the operation of the home care referral registry.

#### NEW SECTION

**WAC 388-71-06040 What definitions apply to WAC 388-71-06020 through 388-71-06420?** The following definitions apply to WAC 388-71-06020 through 388-71-06420:

"AAA" means the local area agency on aging.

"ALJ" means administrative law judge.

"Consumer/employer" means an adult or child with functional or developmental disabilities who qualifies for and uses personal care or respite care paid for through medicaid or state-only funds.

"Consumer representative" means an individual who is acting on behalf of the consumer/employer.

"Department" or DSHS means the department of social and health services.

"Emergency provider" means an individual provider who is employed as a back-up for a provider who did not show up or who was unable to work due to unexpected circumstances.

"Employer" means the consumer.

"HCRR" means the home care referral registry.

"Home care referral registry operations" or "referral registry operations" means the activities carried out at the local level to recruit and register individual providers or prospective individual providers for the referral registry and assist consumers to utilize the referral registry to find qualified individual providers.

"Individual provider" means a person, regardless of relationship, including a personal aide working for a consumer under self-directed care, who has a contract with the department of social and health services to provide personal care or respite care services to adults or children with functional or developmental disabilities and is reimbursed for those services through medicaid or state-only funding.

"IP" means an individual provider.

"Malfeasance" means any unlawful act committed by the provider, whether in the course of employment or otherwise.

"Mandatory reporter" is an employee of DSHS; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home

health, home care, or hospice agency; county coroner or medical examiner; Christian science practitioner; or health care provider subject to chapter 18.130 RCW.

"Misfeasance" means performance of a workplace duty in an improper manner; including events which jeopardize the health and safety of persons, unresolved pattern of performance, issues related to truth or dishonesty, including failure to report a criminal conviction.

"OAH" means the office of administrative hearings.

"Prospective individual provider" means someone who is seeking employment with a consumer/employer.

"Provider" means an individual provider.

"Referral registry" is a data base that is designed to assist consumers with finding individual providers and to assist individual providers to find employment.

"Respite provider" means an individual provider who is employed on a prearranged short-term basis to fill in for a routine caregiver.

"Routine provider" means an individual provider who is employed on a regularly scheduled basis.

#### NEW SECTION

**WAC 388-71-06060 What is the purpose of the referral registry?** To increase consumer/employer choice while providing assistance in finding individual providers and prospective individual providers. In addition, the referral registry:

(1) Takes into account the consumer/employer needs and preferences when identifying potential individual providers;

(2) Provides for reasonable standards of accountability for providers and prospective individual providers listed on the registry;

(3) Is voluntary for individual providers and prospective individual providers and consumers/employers;

(4) Promotes job opportunities for individual providers and prospective individual providers;

(5) Provides access to the data base for consumer/employers who want to query a referral independently; and

(6) Increases a consumer/employer's choice of individual providers and prospective individual providers via an established pool of available individual providers and prospective individual providers on the registry.

#### NEW SECTION

**WAC 388-71-06080 Who is eligible to request a referral from the referral registry?** The following categories of persons are eligible to request a referral from the referral registry:

(1) Consumer/employers who are adults or children with functional or developmental disabilities who qualify for and use or will use personal care or respite care paid for through medicaid or state-only funds.

(2) Persons who are authorized to request a referral on behalf of a consumer including family members, area agency on aging case managers, department social workers and/or a consumer representative.

NEW SECTION

**WAC 388-71-06100 What is the difference between an individual provider and a prospective individual provider?** The difference between an individual provider and a prospective individual provider is

(1) An individual provider is someone who has a current individual provider contract with the department.

(2) A prospective individual provider is someone who is seeking employment with a consumer/employer and who does not have a current individual provider contract with the department.

NEW SECTION

**WAC 388-71-06120 What qualifies an individual provider or prospective individual provider to be listed on the referral registry?** An individual provider or prospective individual provider is qualified to be on the referral registry if he or she:

(1) Prior to January 1, 2012 satisfactorily completes a Washington state patrol background check and has not been convicted of a disqualifying crime or negative action based on the applicable department list of disqualifying crimes and negative actions; and

(2) Has completed an FBI fingerprint based background check if the person has lived in the state of Washington less than three consecutive years immediately before the background check. An individual provider or prospective individual provider who has lived in Washington state less than three consecutive years immediately before the background check may be included on the referral registry for a one hundred twenty-day provisional period as allowed by law or program rules when:

(a) A fingerprint based background check is pending; and

(b) The individual provider or prospective individual provider is not disqualified based on the immediate result of the Washington state patrol background check.

(3) Is not listed on any long-term care abuse and neglect registry used by the department;

(4) Is eighteen years of age or older;

(5) Provides a valid Washington state driver's license or other valid picture identification;

(6) Has a Social Security card or proof of authorization to work in the United States; and

(7) Complies with requirements listed in WAC 388-71-06180 and other applicable requirements in chapter 388-71 WAC.

(8) Effective January 1, 2012, has been screened through the department's fingerprint based background check, as required by RCW 74.39A.055.

NEW SECTION

**WAC 388-71-06130 When will an individual provider or prospective individual provider be denied placement on the referral registry?** When:

(1) A background check reveals that he or she has been convicted of a disqualifying crime or reveals the existence of

a negative action listed on an applicable department list of disqualifying crimes and/or negative actions;

(2) He or she is listed on any state abuse or neglect registry;

(3) He or she is subject to a current and valid protective order that was issued in the state of Washington barring or restricting contact with children, vulnerable adults or persons with disabilities;

(4) The department has denied or revoked his or her individual provider contract; or

(5) He or she is ineligible to be paid as an individual provider pursuant to WAC 388-71-0540.

NEW SECTION

**WAC 388-71-06135 When may an individual provider or prospective individual provider be denied placement on the referral registry?** An individual provider or prospective individual provider may be denied placement on the referral registry when:

(1) He or she has failed to disclose pending charges, or criminal convictions, or negative actions on a background authorization form;

(2) The department has a reasonable, good faith belief that he or she is unable to meet the care needs of consumers;

(3) A background check reveals that he or she has committed an offense or pattern of offenses, not listed on the applicable list of disqualifying crimes, that the department determines may put consumers at risk; or

(4) He or she is subject to denial of payment as an individual provider pursuant to WAC 388-71-0543.

NEW SECTION

**WAC 388-71-06140 How does an individual provider or prospective individual provider apply to be placed on the referral registry?** To apply to be placed on the registry an individual provider must:

(1) Contact the local referral registry operations office; and

(2) Request and complete an application packet.

NEW SECTION

**WAC 388-71-06160 Does an individual provider or prospective individual provider have any ongoing responsibilities in order to continue to be listed on the referral registry?** (1) Yes, he or she must:

(a) Verify their information is accurate and up-to-date whenever contact or availability information changes by contacting the local referral registry operations office or updating directly through the website; and

(b) Successfully complete the criminal history background check process as described in WAC 388-71-06130 and 388-71-0513.

(2) Failure to comply with these ongoing responsibilities will result in placing the individual provider or prospective individual provider in an "inactive" status. The provider will not be referred to a consumer/employer when in "inactive" status. An individual provider or prospective individual pro-

vider will be taken off inactive status when he or she meets the requirements of subsections (1) and (2).

#### NEW SECTION

**WAC 388-71-06180 Are there training requirements for being placed on the referral registry?** Yes, an individual provider must complete the "Becoming a Professional IP" unless the person has already worked as an individual provider for more than three months. All other mandatory training requirements for long-term care workers set forth in chapter 388-71 WAC are applicable.

#### NEW SECTION

**WAC 388-71-06200 When will an individual provider or prospective individual provider be removed from the referral registry?** When he or she:

- (1) Fails to meet the qualifications set forth in WAC 388-71-06120 and 388-71-06180;
- (2) Has committed misfeasance in the performance of his or her duties as an individual provider;
- (3) Has committed malfeasance in the performance of his or her duties as an individual provider;
- (4) Requests that his or her name be removed from the referral registry;
- (5) Has his or her individual provider contract terminated;
- (6) Is subject to being denied placement on the referral registry pursuant to WAC 388-71-06130, exists; or
- (7) Fails to meet qualifications set forth in WAC 388-71-0510 and 388-71-0540.

#### NEW SECTION

**WAC 388-71-06220 What is the procedure for removing an individual provider or prospective individual provider from the referral registry?** The department and/or its designee, will review all incidents of which it becomes aware that may warrant removal from the referral registry and:

- (1) For those incidents that fall under the legal jurisdiction of law enforcement, adult protective services (APS) or child protective services (CPS), an immediate referral will be made to the appropriate agency or agencies.
  - (a) The department may initiate an emergency proceeding to inactivate the individual provider or prospective individual provider on the registry pending the investigation.
  - (b) If APS, CPS, and/or law enforcement declines to take action in response to the referral, the matter will proceed to internal review pursuant to subsection (2) of this section.
  - (c) If APS, CPS, and/or law enforcement accepts the matter, then action process per RCW 34.05.479 will be stayed pending APS, CPS, and/or law enforcement action.
- (2) For those incidents not forwarded to APS, CPS, or law enforcement, the department will conduct an internal review. After the internal review is completed, a decision will be made whether or not to remove the individual provider or prospective individual provider from the referral registry. If the decision is to remove the individual provider or prospective individual provider from the referral registry,

written notification will be served on the individual provider or prospective individual provider.

(3) An individual provider or prospective individual provider has the right to appeal a decision to remove him or her from the referral registry.

(a) The appeal must be received in writing by the office of administrative hearings (OAH) as designated on the written notice within twenty-eight days of the date the written notice was mailed by the department.

(b) OAH will send the parties a notice containing the hearing date, time and place.

(c) Before the hearing is held:

(i) The department may contact you and try to resolve your dispute; and

(ii) You are encouraged to contact the department and try to resolve your dispute.

(d) An administrative law judge (ALJ) from OAH will act as presiding officer for the adjudicative proceeding.

(e) The ALJ will render an initial decision that will include all matters required by RCW 34.05.461(3). If no party seeks review of the ALJ's initial decision within the time limits set forth in chapter 388-02 WAC, the initial decision will become the final order.

(f) The board of appeals will issue a written order announcing its decision to either adopt, modify, or reverse the initial decision. The board of appeals' order will include, or incorporate by reference to the initial order, all matters required by RCW 34.05.461(3). The board of appeals' decision is the final order.

(g) The final order is the final department action and will be provided to all interested parties and to the individual provider or prospective individual provider along with information regarding the right to seek judicial review in superior court when applicable.

#### NEW SECTION

**WAC 388-71-06240 By what procedures will the department deny an individual provider or prospective individual provider's application to be placed on the referral registry?** Upon receipt of an application to be on the referral registry, the department will utilize the following procedure to determine whether the individual provider or prospective individual provider meets the minimum qualifications, and whether he or she will be able to appropriately meet the care needs of consumers:

(1) An internal review will be conducted and a decision will be made whether to accept or deny the individual provider or prospective individual provider's application to be listed on the referral registry. If the decision is to deny the individual provider or prospective individual provider's application to be listed on the referral registry, written notice will be served on the individual provider or prospective individual provider.

(2) The individual provider or prospective individual provider has the right to appeal a decision to deny his or her application to be listed on the referral registry.

(a) The appeal must be received in writing by the office of administrative hearings (OAH) as designated on the writ-

ten notice within twenty-eight days of the date the written notice was mailed by DSHS.

(b) OAH will send the parties a notice containing the hearing date, time and place.

(c) Before the hearing is held:

(i) The department may contact you and try to resolve your dispute; and

(ii) You are encouraged to contact the department and try to resolve your dispute.

(d) An administrative law judge from OAH will act as presiding officer for the adjudicative proceeding.

(e) The ALJ will render an initial decision that will include all matters required by RCW 34.05.461(3). If no party seeks review of the ALJ's initial decision within the time limits set forth in chapter 388-02 WAC, the initial decision will become the final order.

(f) The board of appeals will issue a written order announcing its decision to either adopt, modify, or reverse the initial decision. The board of appeals' order will include, or incorporate by reference to the initial order, all matters required by RCW 34.05.461(3). The board of appeals' decision is the final order.

(g) The final order is the final department action and will be provided to all interested parties and to the individual provider or prospective individual provider along with information regarding the right to seek judicial review in superior court when applicable.

#### NEW SECTION

**WAC 388-71-06260 Who must be notified if a complaint is received about an individual provider?** If, in the course of carrying out its duties, the department or its designee, identifies concerns regarding the services being provided by an individual provider, including, but not limited to, when it receives a complaint, the department, or its designee, must notify the appropriate area agency on aging case manager or DSHS social worker regarding such concerns.

#### NEW SECTION

**WAC 388-71-06280 Are referral registry staff considered mandatory reporters?** Any department staff, or subcontracted staff working for the referral registry are considered mandatory reporters.

#### NEW SECTION

**WAC 388-71-06300 What is reasonable cause for mandatory reporting?** RCW 74.34.035 sets forth reasonable cause for mandatory reporting.

#### NEW SECTION

**WAC 388-71-06340 How does a consumer/employer apply to use the referral registry services?** In order to use the referral registry, a consumer/employer or consumer representative must complete the registration process. The registration process conducted by the local referral registry operations office must confirm that the consumer/employer is

qualified to receive personal care or respite care paid for through medicaid or state-only funds.

#### NEW SECTION

**WAC 388-71-06360 How does a consumer/employer obtain a list of names from the referral registry?** He or she must complete and submit a request application to the local referral registry operations office. The completed application may indicate the days and times an individual provider is needed, the personal care tasks that need to be performed, and any preferences the consumer/employer may have. Upon completion of the application, a registry coordinator will conduct a query that will generate a list of names that best match the consumer/employer's specific criteria. The list will be given to the consumer/employer via mail, phone, fax, or email, depending on the consumer/employer's preference, within a reasonable time.

Upon successful submission of a request application, a consumer/employer or consumer representative may request a user name and password to access the registry independently to generate a list of names.

#### NEW SECTION

**WAC 388-71-06380 Who hires an individual provider or prospective individual provider?** It is the consumer/employer or consumer representative's responsibility to interview, screen, hire, supervise, and terminate an individual provider or prospective individual provider.

#### NEW SECTION

**WAC 388-71-06400 Does a consumer/employer who is eligible to have his or her individual provider paid through medicaid or state-only funds from DSHS need to gain approval from his/her case manager, social worker or nurse?** Yes, they must receive approval from his/her case manager, social worker or nurse. Pursuant to WAC 388-71-0540 through 388-71-0551, the department or the AAA may deny payment to the client's choice of an individual provider or prospective individual provider when:

(1) The individual provider or prospective individual does not meet the requirements to contract with DSHS; or

(2) The case manager has a reasonable, good faith belief that the person will be unable to appropriately meet the consumer/employer needs.

#### NEW SECTION

**WAC 388-71-06420 How can a consumer/employer use the referral registry to get an individual provider in an emergency or as a critical personal care back-up?** A consumer/employer must complete an application with the local referral registry operations office. Registry applications can be completed by contacting the local referral registry operations office. Although a consumer/employer must complete the application process, he/she is not required to have previously used the registry prior to requesting a back-up referral.

**WSR 11-07-086**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed March 22, 2011, 10:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-02-070.

Title of Rule and Other Identifying Information: The community services division (CSD) is proposing to amend WAC 388-410-0035 Alien and alien sponsor cash, and food assistance overpayments.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on April 26, 2011, at 10:00 a.m.

Date of Intended Adoption: Not earlier than April 27, 2011.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m., April 26, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by April 5, 2011, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend its rules covering collection of overpayments for supplemental nutrition assistance program (SNAP) benefits to comply with federal SNAP recipient claim establishment and collection regulations by removing alien sponsor liability for SNAP food assistance overpayments received by aliens they have sponsored.

Reasons Supporting Proposal: On December 15, 2010, the USDA Food and Nutrition Service published the final regulation, "Supplemental Nutrition Assistance Program (SNAP): Clarifications and Corrections to Recipient Claim Establishment and Collection Standards" to correct and clarify provisions of the final rule on recipient claims published at 65 F.R. 41752 on July 6, 2000.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Statute Being Implemented: RCW 74.04.005, 74.04.-050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. §273.18(a).

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Robert Thibodeau, 712 Pear Street S.E., Olympia, WA 98504, (360) 725-4634.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendments only affect certain DSHS clients by

removing alien sponsor liability for repayment of federal SNAP benefits received by their sponsored aliens under the Basic Food program.

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

March 7, 2011

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

**WAC 388-410-0035 Are alien and alien sponsors jointly responsible for cash((s)) and food assistance overpayments((+))?** (1) ~~((A#))~~ The following applies to cash assistance overpayments:

~~(a) When a cash overpayment to a sponsored alien results from incorrect information provided by the alien's sponsor, both the alien and their sponsor are jointly and individually liable for ((any)) the cash assistance overpayment ((of cash or food assistance)) made to the sponsored alien during the three years after the alien's entry into the United States.~~

~~((2) When an overpayment to a sponsored alien results from incorrect information provided by the alien's sponsor, both the alien and the sponsor are liable for repayment.~~

~~(3) When the alien's sponsor had good cause for reporting the incorrect information, the sponsored alien is solely liable for an inadvertent household error overpayment.~~

~~(4) When good cause does not exist, collection action is initiated against:~~

~~(a) The alien's sponsor; or~~

~~(b) The sponsored alien's assistance unit; or~~

~~(e) Of the two, the one considered most likely to repay first.~~

~~(5) Collection action is initiated against an alien's sponsor for an inadvertent household error when:~~

~~(a) A department representative contacts the sponsor in person or by phone; and~~

~~(b) The sponsor is informed in writing there will be no responsibility for repayment if good cause for reporting incorrect information causing the overpayment can be demonstrated.~~

~~((6)) (b) Collection action is initiated against the sponsored alien's cash assistance unit for an inadvertent household error when:~~

~~((#)) (i) Collection action is taken first against the alien's sponsor; and~~

~~((b)) (ii) The alien's sponsor does not respond within thirty days; or~~

~~((e)) (iii) The sponsored alien provides incorrect information concerning the sponsor or sponsor's spouse through misunderstanding or unintended error.~~

(2) The following applies to food assistance overpayments:

(a) Responsibility for food assistance overpayments under WAC 388-410-0025 also apply to sponsored alien assistance units.

(b) A sponsored alien is individually liable for any food assistance overpayments made to the sponsored alien. The alien's sponsor cannot be held liable for food assistance overpayments.

**WSR 11-07-087**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**  
 [Filed March 22, 2011, 11:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-23-124.

Title of Rule and Other Identifying Information: WAC 392-121-182 Alternative learning experience requirements.

Hearing Location(s): Brouillet Conference Room, Office of the Superintendent of Public Instruction (OSPI), Old Capitol Building, 600 South Washington, Olympia, WA, on April 26, 2011, at 10:00 a.m.

Date of Intended Adoption: April 26, 2011.

Submit Written Comments to: Becky McLean, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, e-mail becky.mclean@k12.wa.us, fax (360) 664-3683, by April 25, 2011.

Assistance for Persons with Disabilities: Contact Wanda Griffin, by April 25, 2011, TTY (360) 664-3631 or (360) 725-6132.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OSPI has worked with stakeholders of alternative learning experience (ALE) with the goal of reviewing the existing ALE rules (WAC 392-121-182) and providing input, guidance and recommendations for amending these rules in order to:

- Update ALE requirements,
- Provide flexibility in program design and implementation,
- And continue fostering individualized learning.

The result is OSPI's proposed rule change.

Reasons Supporting Proposal: This rule change updates district requirements and responsibilities, defines the key terms related to ALE, and addresses a number of issues that were highlighted by the workgroup.

Statutory Authority for Adoption: RCW 28A.150.305.

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

Name of Proponent: OSPI, governmental.

Name of Agency Personnel Responsible for Drafting: Becky McLean, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6306; Implementation: Calvin W. Brodie, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6301; and Enforcement: Shawn Lewis, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

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

March 22, 2011

Randy Dorn  
State Superintendent

AMENDATORY SECTION (Amending WSR 09-06-038, filed 2/25/09, effective 3/28/09)

**WAC 392-121-182 Alternative learning experience requirements.** (1) ~~((A\*))~~ **Purposes:** The purposes of this section are the following:

(a) To ensure that students enrolled in an alternative learning experience ~~((may be counted as a course of study-))~~ offered by a school district have available to them educational opportunities designed to meet their individual needs;

(b) To provide general program requirements for alternative learning experiences ~~((may make))~~ offered by or through school districts;

(c) To provide a method for determining full-time equivalent enrollment and a process school districts must use ~~((of digital and/or on-line curricula, and may be delivered over the internet or using other electronic means.))~~ when claiming state funding for alternative learning experiences.

(2) **General requirements:** A school district must meet the requirements of this section to count an alternative learning experience as a course of study pursuant to WAC 392-121-107. This section applies solely to school districts claiming state funding pursuant to WAC 392-121-107 for an alternative learning experience ~~((may also include significant participation by students, parents, and families in the design and implementation of a student's learning experience. This section provides an alternative method of determining full-time equivalent enrollment and claiming state funding for public school learning experiences that are:~~

~~((a) Individual)), including an alternative learning experience on-line program as defined in RCW 28A.150.262. It is not intended to apply to alternative learning experiences funded exclusively with federal or local resources.~~

(3) **Definitions:** For the purposes of this section the following definitions apply:

(a) "Alternative learning experience" means:

(i) A course or a set of courses ~~((of study for students))~~ developed by a certificated teacher and documented in an individual written student learning plan for any student who meets the definition for enrollment specified by WAC 392-121-106. A student(s) may enroll part-time in an alternative learning experience(s). Such enrollment ~~((shall be))~~ is subject to the provisions of RCW 28A.150.350 and chapter 392-134 WAC; and

~~((b))~~ (ii) The student pursues the requirements of the written student learning plan in whole or in part independently from a regular attendance-based instructional classroom setting, although the learning plan may include direct instructional components; and

(iii) The student's learning is supervised, monitored, ~~((assessed, and))~~ evaluated ~~((by school staff. As used in this~~

section, "school staff"), and documented by a certificated teacher.

(b) "Certificated teacher" means ~~((certificated instructional staff of the))~~ an employee of a school district, or of a school district contractor pursuant to WAC 392-121-188, who is assigned and endorsed according to the provisions of chapter 181-82 WAC ~~((, or a contractor pursuant to WAC 392-121-188))~~;

(c) ~~((Provided in accordance with))~~ "Written student learning plan" means a written plan for learning that is developed by a certificated teacher that defines the requirements of an individual student's alternative learning experience ~~((plan that is implemented pursuant to))~~. The written student learning plan must include at least the following elements:

(i) A beginning and ending date for the student's alternative learning experience;

(ii) An estimate by a certificated teacher of the average number of hours per week the student will engage in learning activities to meet the requirements of the written student learning plan. This estimate must consider only the time the student will engage in learning activities necessary to accomplish the learning goals and performance objectives specified in the written student learning plan.

(iii) A description of how weekly direct personal contact requirements will be fulfilled;

(iv) A description of each alternative learning experience course included as part of the learning plan, including specific learning goals, performance objectives, and learning activities for each course, written in a manner that facilitates monthly evaluation of student progress. This requirement may be met through the use of individual course syllabi or other similarly detailed descriptions of learning requirements. The description must clearly identify the requirements a student must meet to successfully complete the course or program. Courses must be identified using course names, codes, and designators specified in the most recent *Comprehensive Education Data and Research System* data manual published by the office of superintendent of public instruction;

(v) Identification of the certificated teacher responsible for each course included as part of the plan;

(vi) Identification of all instructional materials that will be used to complete the learning plan; and

(vii) A description of the timelines and methods for evaluating student progress toward the learning goals and performance objectives specified in the learning plan;

(viii) Identification of whether each alternative learning experience course meets one or more of the state essential academic learning requirements or grade-level expectations and any other academic goals, objectives, and learning requirements defined by the school district ~~((board's policy for))~~. For each high school alternative learning ~~((experiences; and~~

(d) ~~Provided in whole or part, outside the regular classroom setting, including those learning experiences provided digitally via the internet or other electronic means.~~

This section sets forth the standards, procedures, and requirements for state funded alternative learning experiences. This section is not intended to prevent or limit alterna-

tive education programs provided by a school district with federal or local resources.

An alternative learning experience may be counted as a course of study pursuant to WAC 392-121-107 if the following requirements are met:

~~(2))~~ experience course, the written student learning plan must specify whether the course meets state and district graduation requirements.

(d) "Direct personal contact" means a one-to-one meeting between a certificated teacher and the student, or, where appropriate, between the certificated teacher, the student, and the student's parent. Direct personal contact can be accomplished in person or through the use of telephone, e-mail, instant messaging, interactive video communication, or other means of digital communication. Direct personal contact must be for the purposes of instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan, and must at minimum include a two-way exchange of information between a certificated teacher and the student. All required direct personal contact must be documented.

(e) "Satisfactory progress" means a certificated teacher has determined that a student's progress toward achieving the specific learning goals and performance objectives specified in the written student learning plan is satisfactory. The evaluation of satisfactory progress is conducted in a manner consistent with school district student evaluation or grading procedures, and is based on the professional judgment of a certificated teacher;

(f) "Intervention plan" means a plan designed to improve the progress of students determined to be not making satisfactory progress. An intervention plan must be developed, documented, and implemented by a certificated teacher in conjunction with the student and, for students in grades K-8, the student's parent(s). At minimum, the intervention plan must include at least one of the following interventions:

(i) Increasing the frequency or duration of direct personal contact for the purposes of enhancing the ability of the certificated teacher to improve student learning;

(ii) Modifying the manner in which direct personal contact is accomplished;

(iii) Modifying the student's learning goals or performance objectives;

(iv) Modifying the number of or scope of courses or the content included in the learning plan.

(g) "Parent" has the same definition as "parent" in WAC 392-172A-01125.

#### (4) Alternative learning experience program requirements:

(a) Each student participating in an alternative learning experience must have a written student learning plan developed by a certificated teacher that is designed to meet the student's individual educational needs. A certificated teacher must have responsibility and accountability for each course specified in the plan, including supervision and monitoring, and evaluation and documentation of the student's progress. The written student learning plan may be developed with assistance from the student, the student's parents, or other interested parties.



(b) Each student enrolled in an alternative learning experience must have direct personal contact with a certificated teacher at least once a week, until the student completes all course objectives or otherwise meets the requirements of the learning plan.

(c) The educational progress of each student enrolled in an alternative learning experience must be evaluated at least once each calendar month of enrollment by a certificated teacher and the results of each evaluation must be communicated to the student or, if the student is in grades K-8, both the student and the student's parent. Educational progress must be evaluated according to the following requirements:

(i) Each student's educational progress evaluation must be based on the learning goals and performance objectives defined in the written student learning plan.

(ii) The progress evaluation conducted by a certificated teacher must include direct personal contact with the student.

(iii) Based on the progress evaluation, a certificated teacher must determine and document whether the student is making satisfactory progress reaching the learning goals and performance objectives defined in the written student learning plan.

(iv) If it is determined that the student failed to make satisfactory progress or that the student failed to follow the written student learning plan, an intervention plan must be developed for the student.

(v) If after no more than three consecutive calendar months in which it is determined the student is not making satisfactory progress despite documented intervention efforts, a course of study designed to more appropriately meet the student's educational needs must be developed and implemented by a certificated teacher in conjunction with the student and where possible, the student's parent. This may include removal of the student from the alternative learning experience and enrollment of the student in another educational program offered by the school district.

**(5) Required school district board policies for alternative learning experiences:** The board of directors of a school district claiming state funding for alternative learning experiences ~~((shall))~~ must adopt and annually review written policies ~~((for))~~ authorizing such alternative learning experiences, including each alternative learning experience program and program provider ~~((that~~

~~(a) Require a written plan for each student participating in an alternative learning experience that meets the minimum criteria pursuant to subsection (4) of this section;~~

~~(b) Require that the overall ratio of certificated instructional staff to full-time equivalent students enrolled in alternative learning experience programs and courses, including those that rely primarily on digital curriculum, be identified and approved by the school district board of directors in a public meeting;~~

~~(c) Describe how student performance will be supervised, monitored, assessed, evaluated, and recorded by school staff. Such description shall include methods for periodic grade reporting, if different from existing school district). The policy(;~~

~~(d) Require each student enrolled in an alternative learning experience to have direct personal contact with school staff at least weekly, until the student completes the course~~

~~objectives or the requirements of the learning plan. Direct personal contact shall be for the purposes of instruction, review of assignments, testing, reporting of student progress, or other learning activities. Direct personal contact means a face-to-face meeting with the student and, where appropriate, the student's parent or guardian. In establishing policies for alternative learning experience programs and program providers, the school district board of directors may determine that direct personal contact can be accomplished through the use of telephone, e-mail, instant messaging, interactive video communication, or other means of digital communication, instead of a face-to-face meeting, if in the judgment of the board such contact methods do not compromise educational quality, student health and safety, or the fiscal integrity of the district;~~

~~(e) Require that each student's educational progress be reviewed at least monthly and that the results of each review be communicated to the student and if the student is in grades K-8, the student's parent or guardian;~~

~~(f) At the discretion of the school district board, the policy may describe responsibilities of the student's parent(s) or guardian including, but not limited to:~~

~~(i) Approval of the written alternative learning experience plan;~~

~~(ii) Responsibility for the parent(s) or guardian to provide or implement a portion of the student's alternative learning experience under the supervision of school staff, if the parent(s) or guardian agrees; and~~

~~(iii) Requirements to meet with school staff for purposes of evaluating the student's performance and/or receiving instructions on assisting with the student's alternative learning experience. The school district board may also prescribe requirements for appointing a person to provide or supervise a portion of the student's alternative learning experience in the event the student's parent(s) or guardian will not or cannot be a participant in the student's alternative learning experience;~~

~~(g) Designate) must designate, by title, one or more school district official(s) responsible for ((approving specific)) overseeing the district's alternative learning experience courses or programs ((or courses)), including monitoring compliance with this section, and reporting at least annually to the school district board of directors on the program. This annual report shall include at least the following:~~

~~((i)) (a) Documentation of alternative learning experience student headcount and full-time equivalent enrollment claimed for basic education funding;~~

~~((ii) A description) (b) Identification of ((how certificated and classified staff are assigned program management and instructional responsibilities that maximize student learning, including)) the overall ratio of certificated instructional staff to full-time equivalent students enrolled in each alternative learning experience program;~~

~~((iii) A description of how a written student learning plan pursuant to subsection (4) of this section, is developed, and student performance supervised and evaluated, by certificated staff;~~

~~((iv)) (c) A description of how the program supports the district's overall goals and objectives for student academic achievement; and~~

~~((v))~~ (d) Results of any self-evaluations conducted pursuant to subsection ~~((7))~~ (9) of this section;

~~(h)~~ Satisfy the office of superintendent of public instruction's requirements for courses of study and equivalencies (chapter 392-410 WAC);

~~(i)~~ For alternative learning experience courses offering credit, or for alternative learning experience programs issuing a high school diploma, satisfy the state board of education's high school graduation requirements (chapter 180-51 WAC); and

~~(j)~~ Identify what, if any, expenditures which are directly related to the written student learning plan and are paid by participants of an alternative learning experience may be subject to reimbursement by the district).

~~((3))~~ **(6) Alternative learning experience implementation ((standards)) requirements:**

(a) School districts that offer alternative learning experiences ~~((shall be))~~ must ensure that they are accessible to all students, including ~~((those))~~ students with disabilities. Alternative learning experiences for special education students ~~((shall))~~ must be provided in accordance with chapter 392-172 WAC.

(b) Contracting for alternative learning experiences is subject to the provisions of WAC 392-121-188.

~~(c)~~ It is the responsibility of the school district or school district contractor to ensure that students have all curricula, course content, instructional materials ~~((, and other learning resources essential to successfully complete the requirements of the written student learning plan. Curricula, course content, instructional materials, and other learning resources for alternative learning experiences shall at minimum be consistent in quality with those available to the district's overall student population. Instructional materials shall be provided in accordance with RCW 28A.320.230))~~ and learning activities that are identified in the alternative learning experience written student learning plan.

~~((e) Work-based learning as a component of)~~ (d) School districts must ensure that no student or parent is provided any compensation, reimbursement, gift, reward, or gratuity related to the student's enrollment or participation in, or related to another student's recruitment or enrollment in, an alternative learning experience unless otherwise required by law.

(e) Curricula, course ~~((of study shall be subject to the provisions of WAC 392-410-315))~~ content, instructional materials, learning activities, and ~~((392-121-124.~~

~~(d) Contracting))~~ other learning resources for alternative learning experiences ~~((shall be subject))~~ must be consistent in quality with those available to the ~~((provisions of WAC 392-121-188 and))~~ district's overall student population.

(f) Instructional materials used in alternative learning experiences must be approved pursuant to school board policies adopted in accordance with RCW ~~((28A.150.305))~~ 28A.320.230.

~~((e))~~ ~~(g)~~(i) A school district that provides one or more alternative learning experiences to a student ~~((shall))~~ must provide the parent(s) ~~((or guardian))~~ of the student, prior to the student's enrollment, with a description of the difference between home-based instruction pursuant to chapter 28A.200 RCW and the enrollment option selected by the student. The

parent ~~((or guardian shall))~~ must sign documentation attesting to his or her understanding of the difference ~~((and the))~~. Such documentation ~~((shall))~~ must be retained by the district and made available for audit.

~~((f) The school district shall)~~ (ii) In the event a school district cannot locate a student's parent within three days of a student's request for enrollment in an alternative learning experience, the school district may enroll the student for a conditional period of no longer than thirty calendar days. The student must be disenrolled from the alternative learning experience if the school district does not obtain the documentation required under this subsection before the end of the thirty day conditional enrollment period.

(h) The school district or school district contractor is prohibited from advertising, marketing, and otherwise providing unsolicited information about learning programs offered by the school district including, but not limited to, digital learning programs, part-time enrollment opportunities, and other alternative learning programs, to students and their parents who have filed a declaration of intent to cause a child to receive home-based instruction under RCW 28A.200.010. School districts may respond to requests for information that are initiated by a parent. This prohibition does not apply to general mailings, newsletters, or other general communication distributed by the school district or the school district contractor to all households in the district.

(i) Work-based learning as a component of an alternative learning experience course of study is subject to the provisions of WAC 392-410-315 and 392-121-124.

(j) The school district must institute reliable methods to verify a student is doing his or her own work. The methods may include proctored examinations or projects, including the use of web cams or other technologies. "Proctored" means directly monitored by an adult authorized by the school district.

~~((g))~~ (k) State funded alternative learning experience on-line programs must be accredited by the Northwest Accreditation Commission or another national, regional, or state accreditation program listed by the office of superintendent of public ~~((schools or public))~~ instruction on its web site.

(l) School districts may accept nonresident students under the school ~~((programs whose primary purpose is to provide))~~ choice enrollment provisions of RCW 28A.225.-200 through 28A.225.230 and chapter 392-137 WAC for enrollment in alternative learning experiences ~~((using digital or on-line means shall be accredited through the state accreditation program or through the regional accreditation program.~~

~~(4) Written student learning plan:~~ Each student enrolled in an alternative learning experience course of study shall have a written student learning plan designed to meet the student's individual educational needs. The written student learning plan may be developed in partnership with the student, the student's parents, and other interested parties, with recognition that school staff has the primary responsibility and accountability for the plan, including supervision and monitoring, and evaluation and assessment of the student's progress. The written student learning plan shall include, but not be limited to, the following elements:

~~(a) A beginning and ending date for the learning experience;~~

~~(b) An estimate of the average number of hours per week that the student will engage in learning activities to meet the requirements of the student learning plan. This estimate may be used in reporting enrollment in compliance with subsection (5) of this section and must be based upon the criteria in subsection (6) of this section;~~

~~(c) A description of how weekly contact requirements will be fulfilled;~~

~~(d) A description of the specific learning goals and performance objectives of the)). School districts enrolling such students in alternative learning experiences are subject to all school district duties and liabilities pertaining to such students for the full school year, including ensuring the student's compulsory attendance pursuant to chapter 28A.225 RCW, until such time as the student has actually enrolled in another school district, or has otherwise met the mandatory attendance requirements specified by RCW 28A.225.010.~~

~~(m) The alternative learning experience must satisfy the office of superintendent of public instruction's requirements for courses of study and equivalencies as provided in chapter 392-410 WAC;~~

~~(n) Alternative learning experience((—This requirement may be met through the use of course syllabi or other similarly detailed descriptions of learning requirements. The description shall clearly identify the requirements a student must meet to successfully complete the course or program;~~

~~(e) Identification of instructional materials essential to successful completion of the learning plan; and~~

~~(f) A description of the timelines and methods for evaluating student progress toward the learning goals and performance objectives specified in the learning plan.~~

The written student learning plan shall identify whether the alternative learning experience meets one or more of the state essential academic learning requirements or any other academic goals, objectives, and learning requirements defined by the school district. For) courses offering credit or alternative learning experience programs issuing a high school ((alternative learning experience;)) diploma must satisfy the ((plan shall specify whether the experience meets)) state board of education's high school credit and ((district)) graduation requirements as provided in chapter 180-51 WAC.

~~((5)) (7) Enrollment reporting procedures:~~ Effective the ~~((2005-06)) 2011-12~~ school year, the full-time equivalency of students enrolled in an alternative learning experience ~~((programs shall)) must~~ be determined as follows:

(a) ~~((Using))~~ The school district must use the definition of full-time equivalent student in WAC 392-121-122 and the number of hours the student is expected to engage in learning activities as follows:

(i) On the first enrollment count date on or after the start date specified in the written student learning plan, subject to documented evidence of student participation as required by WAC 392-121-106(4), the student's full-time equivalent must be based on the estimated average weekly hours of learning activity described in the student's written student learning plan((;)).

(ii) On any subsequent monthly count date((s)), the student's full-time equivalent must be based on the estimated average weekly hours of learning activity described in the written student learning plan if:

(A) The student's progress ((review)) evaluation pursuant to subsection (((6))) (4)(c) of this section indicates satisfactory progress((; the student's full-time equivalent shall be based on the estimated average weekly hours of learning activity identified in the student learning plan)); or

(B) The student's prior month progress evaluation pursuant to subsection (4)(c) of this section indicates a lack of satisfactory progress, and an intervention plan designed to improve student progress has been developed, documented, and implemented within five school days of the date of the prior month's progress evaluation.

(iii) ~~((If the student's progress review indicates a lack of satisfactory progress, the student's full-time equivalent shall be based on the estimated average weekly hours of learning activity described in the student learning plan, and the actual number of hours the student engages in learning activity pursuant to))~~ On any subsequent monthly count date if an intervention plan has not been developed, documented, and implemented within five days of the ((written student learning plan shall be documented during)) prior month's progress evaluation, the ((ensuing month. Documented hours shall encompass only time spent on those learning activities intended to accomplish the learning goals and performance objectives identified in the written student learning plan, shall meet the following criteria and shall be verified)) student's full-time equivalent must not be included by the school district ((staff.

~~(A) Those hours of classroom instruction provided by school staff;~~

~~(B) Those hours of work-based learning calculated in accordance with WAC 392-121-107(1)(f);~~

~~(C) Those hours of learning activity other than those specified in (a)(iii)(A), (B) and (D) of this subsection)) in that ((are conducted and supervised by the student's parent(s) or guardian, or other person as designated by the written plan; and)) month's enrollment count.~~

~~((D) Those hours that the student participates in learning activities other than those specified in (a)(iii)(A), (B) and (C) of this subsection. If the student is in grades K-8, such learning activity shall be supervised by the student's parent(s) or guardian or other person designated by the written student learning plan;))~~

(iv) ~~((On subsequent monthly count dates, if the student's progress review indicates a lack of satisfactory progress, the student's full-time equivalent shall be based on the actual average weekly hours of learning activity documented during the prior month;~~

~~((+)) Enrollment of part-time students ((shall be)) is subject to the provisions of RCW 28A.150.350, and ((shall generate the)) generates a pro rata share of full-time funding.~~

(b) The enrollment count ~~((shall)) must~~ exclude students meeting the definition of enrollment exclusions in WAC 392-121-108 or students who have not had direct personal contact with ~~((school staff)) a certificated teacher~~ for twenty consecutive school days. Any such student ~~((shall)) must~~ not be counted as an enrolled student until the student has met with

~~((appropriate school staff)) a certificated teacher and resumed participation in their alternative learning experience or ((participated)) is participating in another course of study as defined in WAC 392-121-107;~~

~~(c) The enrollment count must exclude students who are not residents of Washington state as defined by WAC 392-137-115.~~

~~(d) The enrollment count must exclude students who as of the enrollment count date have completed the requirements of the written student learning plan prior to ending date specified in the plan and who have not had a new written student learning plan established with a new beginning and ending date that encompasses the count date:~~

~~(e) School districts providing alternative learning experiences to nonresident students ((shall)) must document the district of the student's physical residence, and shall establish procedures that address, at a minimum, the coordination of student counting for state funding so that no student is counted for more than one full-time equivalent in the aggregate((-~~

~~(6) **Accountability for student performance:**~~

~~(a) At minimum, students enrolled in)) including, but not limited to:~~

~~(i) When a resident district and one or more nonresident district(s) will each be claiming basic education funding for a student in the same month or months, the districts shall execute a written agreement that at minimum identifies the maximum aggregate basic education funding each district may claim for the duration of the agreement. A nonresident district may not claim funding for a student until after the effective date of the agreement.~~

~~(ii) When a district is providing alternative learning experiences ((shall have their educational performance evaluated according to the following process and schedule:~~

~~(i) Each student's educational progress shall be reviewed at least once per month. The progress review shall be based on the learning goals and performance objectives defined in the written student learning plan.~~

~~(ii) The progress review shall be conducted by)) to nonresident students under the school ((staff and shall include direct personal contact with the student. If allowed by district policy, direct personal contact may include the use of telephone, e-mail, instant messaging, interactive video communication, or other means of digital communication. The results of the review shall be communicated to the student and, where possible, the student's parent(s) or guardian.~~

~~(iii) Based on)) choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and 392-137 WAC the ((progress review, school staff shall determine and document whether)) district may not claim funding for the student ((is making satisfactory progress in completing)) until after the ((learning activities and reaching)) release date documented by the ((learning goals and performance objectives defined in the written plan)) resident district.~~

~~((iv) If the student fails to make satisfactory progress for no more than two consecutive evaluation periods or if the student fails to follow the written student learning plan, an intervention plan designed to improve student progress shall be developed and implemented. This intervention plan shall be developed by school staff in conjunction with the student~~

~~and, for students in grades K-8, the student's parent(s) or guardian.~~

~~(v) If, after no more than three subsequent evaluation periods, the student still is not making satisfactory progress, a plan designed to more appropriately meet the student's educational need shall be developed and implemented by school staff in conjunction with the student and, for students in grades K-8, the student's parent(s) or guardian.~~

~~(b) The educational progress of)) (8) **Assessment requirements:**~~

~~(a) All students enrolled in alternative learning experiences ((shall)) must be assessed at least annually, using, for full-time students, the state assessment for the student's grade level and using any other annual assessments required by the school district. Part-time students ((shall)) must also be assessed at least annually. However, part-time students who are either receiving home-based instruction under chapter 28A.200 RCW or who are enrolled in an approved private school under chapter 28A.195 RCW are not required to participate in the assessments required under chapter 28A.655 RCW.~~

~~(b) Any student whose alternative learning experience enrollment is claimed as greater than 0.8 full-time equivalent in any one month through the January count date must be included by the school district in any required state or federal accountability reporting for that school year, subject to existing state and federal accountability rules and procedures.~~

~~(c) Students enrolled ((full-time)) in nonresident alternative learning experience schools, programs, or courses ((shall)) who are unable to participate in required annual state assessments at the nonresident district must have the opportunity to participate in ((any)) such required annual state assessments at the district of physical residence, subject to that district's planned testing schedule. It is the responsibility of the nonresident enrolling district to ((facilitate)) establish a written agreement with the district of physical residence that facilitates all necessary coordination ((with)) between the districts ((of residence)) and with the student and, where appropriate, the student's parent(s) ((or guardian)) to fulfill this requirement. Such coordination may include arranging for appropriate assessment ((booklets,)) materials, notifying the student ((notification)) of assessment administration schedules, ((arrangements)) arranging for the forwarding of completed assessment ((booklets)) materials to the enrolling district for submission for scoring and reporting, and other steps as may be necessary. The agreement may include rates and terms for payment of reasonable fees by the enrolling district to the district of physical residence to cover costs associated with planning for and administering the assessments to students not enrolled in the district of physical residence. Assessment results for students assessed according to these provisions ((shall)) must be included in the enrolling district's accountability measurements, and not in the district of physical residence's accountability measurements.~~

~~((7)) (9) **Program evaluation requirements:** School districts offering alternative learning experiences ((shall)) must engage in periodic self-evaluation of these learning experiences in a manner designed to objectively measure their effectiveness, including the impact of the experiences on student learning and achievement. Self-evaluation~~

~~((shall))~~ must follow a continuous improvement model, and may be implemented as part of the school district's school improvement planning efforts.

~~((8) Annual reporting\*)~~ **(10) Reporting requirements:** Each school district offering alternative learning experiences ~~((shall))~~ must report monthly to the superintendent of public instruction accurate monthly headcount and full-time equivalent enrollment for students enrolled in alternative learning experiences as well as information about the resident and serving districts of such students. Each school district offering alternative learning experiences must also report annually to the superintendent of public instruction on the types of programs and course offerings subject to this section~~((, including student headcount and full-time equivalent enrollment claimed for basic education funding))~~. The annual report shall identify the ratio of certificated instructional staff to full-time equivalent students enrolled in alternative learning experience courses or programs. The annual report shall separately identify alternative learning experience enrollment of students provided under contract pursuant to RCW 28A.150.305 and WAC 392-121-188.

~~((9))~~ **(11) Documentation**~~((In accordance with required records))~~ **and record retention** ~~((schedules, a school district))~~ **requirements:** School districts claiming state funding for alternative learning experiences ~~((shall))~~ must retain all documentation required in this section in accordance with established records retention schedules and must make such documentation available upon request for purposes of state monitoring and audit. School districts must maintain the following written documentation ~~((available for audit))~~:

(a) School board policy for alternative learning experiences pursuant to this section;

(b) Annual reports to the school district board of directors as required by subsection ~~((2)(g))~~ (5) of this section;

(c) Monthly and Annual reports to the superintendent of public instruction as required by subsection ~~((8))~~ (10) of this section;

(d) The written student learning plans required by subsection (4) of this section~~((, including documentation of required weekly direct personal contact))~~;

(e) Evidence of direct personal contact required by subsection (4) of this section;

(f) Student progress ~~((reviews,))~~ evaluations~~((;))~~ and intervention plans required by subsection (4) of this section;

(g) The results of any assessments required by subsection ~~((6))~~ (8) of this section;

~~((f))~~ (h) Student enrollment detail substantiating full-time equivalent enrollment reported to the state~~((, including estimated total hours of participation in educational activities, and any actual documentation of hours of learning for those students failing to make satisfactory progress))~~; and

~~((g))~~ (i) Signed parent enrollment disclosure documents required by subsection ~~((3)(e))~~ (6)(g) of this section.

## WSR 11-07-088

### PROPOSED RULES

#### DEPARTMENT OF HEALTH

[Filed March 22, 2011, 11:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-18-016.

Title of Rule and Other Identifying Information: WAC 246-940-005 through 246-940-990, creating a new chapter for certified animal massage practitioners.

Hearing Location(s): Washington State Department of Health, 310 Israel Road S.E., Room 153, Tumwater, WA 98310 [98501], on April 27, 2011, at 2:00 p.m.

Date of Intended Adoption: April 27, 2011.

Submit Written Comments to: Judy Haenke, Program Manager, P.O. Box 47852, Olympia, WA 98504-7852, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by April 27, 2011.

Assistance for Persons with Disabilities: Contact Judy Haenke by April 20, 2011, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules implement ESB 5403 (chapter 70, Laws of 2007) codified as chapter 18.240 RCW, and establish the eligibility, certification, and practice requirements for individuals who limit their practice only to animal massage. The proposed rules do not apply to licensed health care providers whose scope of practice already allows for the practice of animal massage. ESSB 6444 (chapter 37, Laws of 2010) authorized the secretary to establish the fees for animal massage practitioners.

Reasons Supporting Proposal: ESB 5403 (chapter 70, Laws of 2007) directs the secretary to adopt rules necessary to implement a program for certification of animal massage practitioners. The proposed rules will provide for animal patient safety and client confidence.

Statutory Authority for Adoption: RCW 18.240.050.

Statute Being Implemented: Chapter 18.240 RCW.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Judy Haenke, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4947.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Judy Haenke, Program Manager, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4947, fax (360) 236-2901, e-mail [judy.haenke@doh.wa.gov](mailto:judy.haenke@doh.wa.gov).

March 22, 2011

Mary C. Selecky

Secretary

## Chapter 246-940 WAC

## CERTIFIED ANIMAL MASSAGE PRACTITIONER

NEW SECTION

**WAC 246-940-005 Definitions.** The definitions in this section apply throughout the chapter unless the context clearly requires otherwise.

- (1) "Client" means the owner of the animal or the owner's agent.
- (2) "Department" means the department of health.
- (3) "Didactic instruction" means instructor led classroom instruction.
- (4) "Distance learning" includes instruction completed through written correspondence courses, video instruction, or provided electronically through web-based instruction.
- (5) "Large animals" includes equine, food animals, camels-ruminants, nonruminants, and large exotics.
- (6) "Client information form" means a form provided to the large or small animal's client informing them of the practitioner's scope of practice and qualifications.
- (7) "Practical or hands-on instruction" means in-person instruction, or demonstration under the direction of a qualified instructor.
- (8) "Secretary" means the secretary of the department of health.
- (9) "Small animals" includes cats, dogs, pocket pets, avian and small exotics.

NEW SECTION

**WAC 246-940-010 Scope of practice.** (1) A certified animal massage practitioner is an individual who provides external manipulation or pressure of soft tissues by use of the hands, body, or device designed and limited to providing massage. Animal massage may include techniques such as stroking, percussions, compressions, friction, Swedish gymnastics or movements, gliding, kneading, range of motion or stretching, and fascial or connective tissue stretching, with or without the aid of superficial heat, cold, water, lubricants, or salts.

(2) A certified animal massage practitioner may not diagnose, prognose, or treat diseases, deformities, defects, wounds, or injuries of animals; attempt to adjust or manipulate any articulations of the animal's body or spine or mobilization of these articulations by the use of a thrusting force; perform acupuncture involving the use of needles; or perform mechanical therapies that are restricted to the field of veterinary medicine.

(3) A certified animal massage practitioner may provide animal massage solely for purposes of the animal's well-being.

NEW SECTION

**WAC 246-940-020 Certification requirements.** To qualify for certification, a candidate must:

- (1) Successfully complete a three hundred hour training program approved by the secretary, that includes instruction

in general animal massage techniques, kinesiology, anatomy, physiology, behavior, first-aid care and handling techniques:

(a) To practice animal massage on large animals, the three hundred hours of instruction must be related to the performance of animal massage on large animals;

(b) To practice animal massage on small animals, the three hundred hours of instruction must be related to the performance of animal massage on small animals;

(c) For certification in both small animal massage and large animal massage, the candidate must complete the training described in (a) and (b) of this subsection.

(2) Successfully complete a qualifying examination approved by the secretary:

(a) To practice animal massage on large animals, successfully complete the National Certifying Examination for Equine Massage administered by the National Board of Certification for Animal Acupressure and Massage;

(b) To practice animal massage on small animals, successfully complete the National Certification Examination for Canine Massage administered by the National Board of Certification for Animal Acupressure and Massage.

Candidates seeking certification in both small animal massage and large animal massage must meet all requirements in (a) and (b) of this subsection.

(3) Successfully complete the animal massage Washington state jurisprudence examination; and

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

NEW SECTION

**WAC 246-940-030 Washington state animal massage jurisprudence examination.** (1) The Washington state animal massage jurisprudence examination consists of multiple choice questions relating to state laws and administrative regulations in the practice of animal massage.

(2) The passing score on the examination is ninety percent.

(3) An applicant who does not successfully complete the examination may request to retake the examination by submitting a written request to the department.

NEW SECTION

**WAC 246-940-040 Application requirements.** An applicant for certification as an animal massage practitioner shall submit or cause to be submitted to the department of health:

(1) A completed application and fee;

(2) Proof of successful completion of the training required in WAC 246-940-050 received directly from the program where the applicant completed the training;

(3) Proof of successful completion of a certification examination required in WAC 246-940-020;

(4) Proof of successful completion of the Washington state jurisprudence examination as required in WAC 246-940-020;

(5) Verification of four clock hours of AIDS education as required in WAC 246-940-020;

(6) Verification from all states in which the applicant holds or has held a credential to practice animal massage,

indicating that the applicant has or has not been subject to charges or disciplinary action for unprofessional conduct or impairment; and

(7) Additional documentation as required by the secretary to determine whether an applicant is qualified for certification.

#### NEW SECTION

**WAC 246-940-050 Approval of animal massage practitioner educational programs.** (1) The secretary recognizes as approved those animal massage programs that:

(a) Are accredited by a recognized regional or state accrediting body or vocational or technical accrediting body; and

(b) Meet the requirements of subsection (3)(a) through (f) of this section.

(2) Methods of instruction may include didactic instruction, distance learning, and practical or hands-on instruction.

(3) Approved animal massage programs must include a minimum of three hundred hours of instruction related to either large animals or small animals as follows:

(a) A minimum of seventy-five hours of instruction in general animal massage techniques. At least thirty-five of those hours must be practical or hands-on instruction. The instruction must include, but not be limited to, the following subjects:

(i) Technique:

(A) Stroking including effleurage, and gliding;

(B) Percussions, including tapotement;

(C) Compressions;

(D) Friction, including rubbing, and gliding with pressure;

(E) Swedish gymnastics or movements;

(F) Kneading;

(G) Range of motion or stretching;

(H) Fascial or connective tissue stretching;

(ii) Contraindications in zoonotic diseases;

(iii) Documentation and recordkeeping;

(iv) Physiological benefits;

(v) Palpation; and

(vi) Body mechanics of the practitioner.

(b) A minimum of sixty hours of instruction in kinesiology. At least twenty-one of those hours must be practical or hands-on instruction. The instruction must include the following subjects:

(i) Biomechanics, including range of motion, gait analysis, and muscle actions;

(ii) Confirmation analysis; and

(iii) Observation.

(c) A minimum of seventy-five hours of instruction in anatomy and physiology. At least twenty-one of those hours must be practical or hands-on instruction.

(i) The instruction in anatomy and physiology must include the function and structure of the following systems:

(A) Skeletal system;

(B) Muscular system;

(C) Nervous system;

(D) Digestive system; and

(E) Circulatory system.

(ii) The instruction in anatomy and physiology must include the relationship and effect of massage on the following systems:

(A) Endocrine system;

(B) Integumentary; and

(C) Fascial anatomy.

(d) A minimum of seventy-five hours of instruction in animal behavior and handling. At least twenty-one of those hours must be practical or hands-on instruction. The instruction must include the following subjects:

(i) Breed characteristics;

(ii) Body language;

(iii) Social dynamics;

(iv) Signs of stress;

(v) Communication;

(vi) Methods of restraints;

(vii) Situations with specially trained animals; and

(viii) Environment.

(e) A minimum of ten hours of instruction in business practices. The instruction must include the following subjects:

(i) Ethics;

(ii) File management;

(iii) Documentation of care;

(iv) Liability; and

(v) Multicultural education as described in RCW 43.70.615.

(f) A minimum of five hours of instruction in first aid. At least two of those hours must be practical or hands-on instruction. The instruction must include the following subjects:

(i) Vitals, including respiration, pulse, heart rate, temperature, and capillary refill;

(ii) Recognizing emergencies;

(iii) Emergency first-aid care;

(iv) Hydration test; and

(v) Ethics and responsibilities.

#### NEW SECTION

**WAC 246-940-060 Client information form.** The information form is to advise the client of the practitioner's qualifications and authorized scope of practice. The following information must be furnished to the client in writing prior to or at the time of the initial visit and signed by the client.

(1) Practitioner's qualifications, including:

(a) Education; and

(b) State certification number and date of issue.

(2) A statement that the practitioner is limited to providing massage solely for purposes of animal well-being.

(3) A statement that the practitioner may not:

(a) Diagnose, prognose, or treat diseases, deformities, defects, wounds, or injuries;

(b) Adjust or manipulate any articulations of the animal's body or spine;

(c) Perform acupuncture; or

(d) Perform mechanical therapies that are restricted to the field of veterinary medicine.

(4) A copy of the signed information form must be maintained in the animal's record.

NEW SECTION

**WAC 246-940-070 Display of certification.** (1) Certified as animal massage practitioners who practice in this state shall display their certification at all times, in a conspicuous place within their primary place of practice.

(2) Practitioners must keep a copy of their certification with them when practicing at locations other than their primary place of practice.

NEW SECTION

**WAC 246-940-080 Maintenance and retention of records.** (1) Every certified animal massage practitioner shall maintain written records of all animal massage services he or she provides.

(2) A separate record shall be kept for each animal.

(3) All records shall be legible, readily retrievable and shall be kept for a period of three years following the last treatment.

(4) The records shall include, but not be limited to, the following:

(a) Name, address, and telephone number of the client;

(b) Name or other identification of the animal;

(c) Description of the animal's condition and the nature of the massage services provided;

(d) The client information form;

(e) If the certified animal massage practitioner suspects that the animal has an injury or condition that may require veterinary care, he or she must advise the client and make a notation in the animal's record.

NEW SECTION

**WAC 246-940-090 Expired certification.** (1) If the certification has expired, the animal massage practitioner must meet the requirements of WAC 246-12-040.

(2) If the certification has expired for more than five years, the animal massage practitioner must also submit verification of active practice in any other state or jurisdiction, or retake and successfully pass the examinations required in WAC 246-940-020. For the purpose of this section, active practice means at least two hundred hours of practice in each of the previous three years.

NEW SECTION

**WAC 246-940-100 Nonaccredited education.** (1) Applicants who have not completed an accredited program as required in WAC 246-940-050 (1)(a) may submit proof of instruction from a nonaccredited program.

(2) Proof of instruction submitted under this section must include three hundred hours of instruction related to either large animals or small animals and must include the content areas described in WAC 246-940-050 (3)(a) through (f).

(3) The applicant must meet all certification requirements except the training may be from a nonaccredited program.

(4) Applications under this section must be submitted by December 31, 2011, including all supporting documentation.

NEW SECTION

**WAC 246-940-990 Certified animal massage practitioner—Fees and renewal cycle.** (1) Certification must be renewed every year on or before the animal massage practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged for certification:

Title of Fee	Fee
Application for large animal certification	\$200.00
Application for small animal certification	200.00
Renewal of certification for large animal certification	150.00
Renewal of certification for small animal certification	150.00
Late renewal penalty fee per certification	75.00
Expired credential reissuance fee per certification	75.00
Duplicate credential per certification	30.00
Certification of credential per certification	30.00

**WSR 11-07-089**

**PROPOSED RULES**

**DEPARTMENT OF HEALTH**

[Filed March 22, 2011, 11:57 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 246-358-990 and 246-361-990, amending sections to increase fees for temporary worker housing (TWH).

Hearing Location(s): Department of Health, Point Plaza East, Rooms 152 and 153, 310 Israel Road S.E., Tumwater, WA 98501, on April 26, 2011, at 9:00.

Date of Intended Adoption: May 24, 2011.

Submit Written Comments to: John Hilger, P.O. Box 47852, Olympia, WA, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by April 26, 2011.

Assistance for Persons with Disabilities: Contact John Hilger by April 21, 2011, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules increase fees for TWH.

Reasons Supporting Proposal: RCW 43.70.340 requires the department to collect fees to pay costs of administering and regulating construction and operation of TWH. ESSB



6444 (chapter 37, Laws of 2010) reduced general fund state dollars for the TWH program and gave the department the authority to increase fees to cover the loss of funding. In order to maintain the viability of the TWH program, the department must increase fees.

Statutory Authority for Adoption: RCW 43.70.340, ESSB 6444 (chapter 37, Laws of 2010).

Statute Being Implemented: RCW 43.70.340, ESSB 6444 (chapter 37, Laws of 2010).

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Debra Fisher, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-2942; Implementation and Enforcement: Lisa Hodgson, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-2927.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(f), a small business economic impact statement is not required for proposed rules that set or adjust fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b)(vi) of the Administrative Procedure Act, a cost-benefit analysis is not required for rules that set or adjust fees or rates pursuant to legislative standards.

March 22, 2011  
Mary C. Selecky  
Secretary

**AMENDATORY SECTION** (Amending WSR 99-24-095, filed 11/30/99, effective 12/31/99)

**WAC 246-358-990 Fees.** ~~((1) License fees. An operator must submit to the department a license fee of twenty-five dollars and an on-site survey fee as specified in Table 990.~~

Note: A separate on-site survey fee will be charged for each housing site owned or managed by an operator which is more than thirty minutes or twenty-five miles apart.

~~(2) Self-survey program fee. An operator who meets the self-survey program requirements of WAC 246-358-027 must pay:~~

- ~~(a) An annual licensing fee, according to Table 990; and~~
- ~~(b) An on-site survey fee every third year.~~

~~(3) Follow-up surveys. An operator will be charged an additional on-site survey fee for any follow-up surveys, when the department determines additional on-site surveys are necessary to confirm compliance with this chapter.~~

~~(4) Complaint investigation fees. An operator will be charged for each on-site survey conducted by the department when a complaint investigation results in the complaint being found valid. This fee will be charged according to Table 990 for on-site survey.~~

~~(5) Water test fees. An operator who cannot provide written proof that the water system serving the camp is in compliance with WAC 246-358-055 at the time of survey will be:~~

~~(a) Directly billed for the cost of each required water sample collected by department staff;~~

~~(b) Cited for noncompliance with WAC 246-358-055; and~~

~~(c) If substantiated, cited for operating an unlicensed camp.~~

~~(6) Late fees. An operator who does not submit the fee and application as required by WAC 246-358-025, Licensing, may be charged a late fee of one-half the cost of the license fee. If the license fee and the application are not received by the time of the pre-occupancy survey, an additional late fee of one-half the cost of the license fee may be charged. If the fee and application are not received within ten days of the pre-occupancy survey the TWH may be considered unlicensed and subject to fines according to WAC 246-358-900.~~

~~(7) Refunds. The license and on-site survey fee may be refunded when the operator submits:~~

- ~~(a) A written request to the department; and~~
- ~~(b) Provides documentation that the housing was not occupied during the license period.~~

Table 990

Number of Units or Occupants- Whichever is Greater	On-Site Survey Fee (Includes: Initial, Annual Licensing, Follow-Up, and Complaint Investigation Surveys)	License Fee	Total Fee Survey + License
1 to 4 units or 9 occupants or less*	\$45.00	\$25.00	\$70.00
5 to 10 units or 10 to 50 occupants	\$70.00	\$25.00	\$95.00
11 to 20 units or 51 to 100 occupants	\$120.00	\$25.00	\$145.00
21 to 50 units or 101 to 150 occupants	\$150.00	\$25.00	\$175.00
over 50 units or over 150 occupants	\$175.00	\$25.00	\$200.00

Note: The on-site survey fee includes two surveys per year (one pre-occupancy and one occupancy). Any additional visits (follow-up and/or complaint investigation) will be considered an additional service and will be billed separately at the rates established in Table 990.

\*Operators with four or less units or nine or less occupants are not required to be licensed except when licensure is required by WAC 246-358-025.)

**(1) License fee.** The license fee covers initial licenses and renewals. An operator must submit to the department an

annual license fee for maximum occupancy according to Table 1 of this section. For purposes of licensing, maximum occupancy is the total number of occupants that the amount of space and fixtures of the temporary worker housing (TWH) can support.

(2) **Technical assistance fee.** An operator may be charged for each technical assistance visit conducted by the department when requested or approved by the operator or their designee. This fee will be charged according to WAC 246-359-990 Table 1, Part G.

(3) **Late fees.** A late fee may be charged according to Table 1 of this section when:

(a) The initial application and licensing fee, as required by WAC 246-358-025(2), are not received by the department at least forty-five days prior to the TWH opening operation date;

(b) The renewal application and licensing fee, as required by WAC 246-358-025(2), are not received by the department by the TWH renewal due date.

(4) **TWH civil fine.** An operator may be assessed a civil fine for failure or refusal to obtain a license prior to occupancy of TWH. Civil fines for TWH are provided for in RCW 43.70.335.

(5) **Refunds.**

(a) The department will refund fees paid by the operator if:

(i) The operator submits a written request to the department for a refund; and

(ii) The operator provides documentation to the department that the housing was not occupied during the license period.

(b) The department will refund two-thirds of the licensing fees paid, less a fifty dollar processing fee, if an application has been received but no preoccupancy survey has been performed by the department.

(c) The department will refund one-third of the licensing fees paid, less a fifty dollar processing fee, if an application has been received and a preoccupancy survey has been performed by the department.

(d) The department will not refund applicant licensing fees under the following conditions:

(i) The department has performed more than one on-site survey for any purpose; or

(ii) One year has elapsed since a license application was received by the department, but no license was issued because the applicant failed to complete requirements for licensure.

**Table 1  
Fees, Regular Temporary Worker Housing**

<b>Fee Type</b>	<b>Fee</b>
License fee	\$11 per occupant, at maximum occupancy (\$110 minimum fee)
Late fee	\$100

AMENDATORY SECTION (Amending WSR 00-06-082, filed 3/1/00, effective 3/1/00)

**WAC 246-361-990 Fees for cherry harvest camps.**

~~((1) **License and survey fees.** A cherry camp operator must submit to the department a license fee of twenty-five dollars and an on-site survey fee as specified in Table 990.~~

~~Note: The on-site survey fee for licensing includes four surveys (one prior to camp being occupied, two while camp is occupied, and one to verify the camp has been closed).~~

~~(2) **Additional survey fees.** An operator will be charged an additional on-site survey fee for any follow-up surveys, when the department determines additional on-site surveys are necessary to confirm compliance with this chapter. The additional survey will be one-half the cost of the on-site survey fee as stated in Table 990.~~

~~(3) **Complaint investigation fees.** Operators will be charged for each on-site survey conducted by the department when a complaint investigation results in the complaint being found valid. This fee will be charged according to Table 990 for on-site survey.~~

~~(4) **Water test fees.** An operator will be directly billed for each water sample collected by the department when the operator has not submitted the water tests as required by WAC 246-361-025 and 246-361-055.~~

~~(5) **Refunds.** The license and on-site survey fee may be refunded when the operator submits:~~

~~(a) A written request to the department; and~~

~~(b) Provides documentation that the housing was not occupied during the license period.~~

**TABLE 990**

NUMBER OF UNITS	ON-SITE SURVEY FEE (includes cost of all survey types: Initial, annual, follow-up, complaint)	LICENSE FEE	TOTAL
0 to 9 persons	\$45.00	\$25.00	\$70.00
10 to 50 persons	70.00	25.00	95.00
51 to 100 persons	100.00	25.00	125.00
101 to 150 persons	125.00	25.00	150.00
for each additional 50 persons over 150 add \$25	125.00+ \$25.00 for each 50 persons	25.00))	

(1) **License fee.** The license fee covers initial licenses and renewals. An operator must submit to the department an annual license fee for maximum occupancy according to Table 1 of this section. For purposes of licensing, maximum occupancy is the total number of occupants that the amount of space and fixtures of the temporary worker housing (TWH) can support.

(2) **Technical assistance fee.** An operator may be charged for each technical assistance visit conducted by the department when requested or approved by the operator or their designee. This fee will be charged according to WAC 246-359-990 Table 1, Part G.

(3) **Late fees.** A late fee may be charged according to Table 1 of this section when:

(a) The initial application and licensing fee, as required by WAC 246-361-025(2), are not received by the department

at least forty-five days prior to the TWH opening operation date:

(b) The renewal application and licensing fee, as required by WAC 246-361-025(2), are not received by the department by the TWH renewal due date.

(4) TWH civil fine. An operator may be assessed a civil fine for failure or refusal to obtain a license prior to occupancy of TWH. Civil fines for TWH are provided for in RCW 43.70.335.

(5) Refunds.

(a) The department will refund fees paid by the operator if:

(i) The operator submits a written request to the department for a refund; and

(ii) The operator provides documentation to the department that the housing was not occupied during the license period.

(b) The department will refund two-thirds of the licensing fees paid, less a fifty dollar processing fee, if an application has been received but no preoccupancy survey has been performed by the department.

(c) The department will refund one-third of the licensing fees paid, less a fifty dollar processing fee, if an application has been received and a preoccupancy survey has been performed by the department.

(d) The department will not refund applicant licensing fees under the following conditions:

(i) The department has performed more than one on-site survey for any purpose; or

(ii) One year has elapsed since a license application was received by the department, but no license was issued because the applicant failed to complete requirements for licensure.

**Table 1**  
**Fees, Cherry Harvest Camps**

<u>Fee Type</u>	<u>Fee</u>
<u>License fee</u>	<u>\$11 per occupant, at maximum occupancy (\$110 minimum fee)</u>
<u>Late fee</u>	<u>\$100</u>

**WSR 11-07-090**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**  
[Filed March 22, 2011, 1:10 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-03-058 on January 14, 2011.

Title of Rule and Other Identifying Information: WAC 220-47-307, 220-47-311, 220-47-325, 220-47-401, 220-47-411, 220-47-427 and 220-47-428, rules for commercial salmon fishing in Puget Sound.

Hearing Location(s): Natural Resources Building, Room 682, 1111 Washington Street S.E., Olympia, WA

98504, on Tuesday, April 26, 2011, at 10:30 a.m. to 12:00 p.m.

Date of Intended Adoption: On or after April 26, 2011.

Submit Written Comments to: Rules Coordinator, WDFW Enforcement, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Lori.preuss@dfw.wa.gov, fax (360) 902-2155, by Tuesday, April 15, 2011.

Assistance for Persons with Disabilities: Contact Susan Galloway by April 15, 2011, at (360) 902-2267 or TTY 1-800-833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules will incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable numbers of fish in commercial salmon fisheries in Puget Sound while protecting species of fish listed as endangered.

Reasons Supporting Proposal: This rule will protect species of fish listed as endangered while supporting commercial salmon fishing in Puget Sound.

Statutory Authority for Adoption: RCW 77.04.020 and 77.12.047.

Statute Being Implemented: RCW 77.04.020 and 77.12.047.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Jeremy Jording, 1111 Washington Street, Olympia, (360) 902-2171; Implementation: Jim Scott, 1111 Washington Street, Olympia, (360) 902-2651; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

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

Small Business Economic Impact Statement

**1. Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule:**

These rules will incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable salmon while protecting species of fish, marine mammals, and sea birds listed as endangered. The rules include legal gear requirements, area restrictions, and open periods for commercial salmon fisheries occurring in Puget Sound. The only record-keeping requirements contained in these rules are for reef-net fishermen, in the form of logbooks that are required if the fishermen decide to retain hatchery chinook salmon during legal openings.

**2. Kinds of Professional Services That a Small Business Is Likely to Need in Order to Comply with Such Requirements:** None. These rule changes clarify dates for anticipated open periods, areas closed in Puget Sound to commercial harvest methods, and legal gear requirements.

**3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs:** Less than \$1 per small business, for return postage costs.

**4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue?** No.

**5. Cost of Compliance for the Ten Percent of Businesses That Are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs:**

1. Cost per employee;
2. Cost per hour of labor; or
3. Cost per one hundred dollars of sales.

The reef-net and purse-seine commercial fishermen compose the largest ten percent of businesses required to comply with these rules. For purse-seines and reef-net boats, crews range from three to six people, and the cost of labor is generally paid through crew shares. This cost will vary widely, based on an individual vessel's success during a fishery. Because the department has no authority to set the price of fish, and the price fluctuates greatly with other market factors, these rules shouldn't drive labor costs up or down.

**6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So:** The department issues an annual pamphlet and mails it out to all license holders to alert them to anticipated open periods, closed areas, and gear requirements.

**7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule:** The department cosponsors the annual North of Falcon process, which is a series of public meetings over a period of several months from February through April every year, which allows constituents to participate in formulating these rules.

**8. A List of Industries That Will Be Required to Comply with the Rule:** All licensed fishers using legal commercial gear types and seeking to harvest salmon in the all-citizen commercial salmon fisheries occurring in Puget Sound.

A copy of the statement may be obtained by contacting Lori Preuss, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail [Lori.preuss@dfw.wa.gov](mailto:Lori.preuss@dfw.wa.gov).

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not affect hydraulics.

March 22, 2011

Lori Preuss  
Rules Coordinator

AMENDATORY SECTION (Amending Order 10-137, filed 7/7/10, effective 8/7/10)

**WAC 220-47-307 Closed areas—Puget Sound salmon.** It is unlawful at any time, unless otherwise provided, to take, fish for, or possess salmon taken for commercial purposes with any type of gear from the following portions of Puget Sound Salmon Management and Catch Reporting Areas, except that closures listed in this section do not apply to reef net fishing areas listed in RCW 77.50.050:

Areas 4B, 5, 6, 6B, and 6C - The Strait of Juan de Fuca Preserve as defined in WAC 220-47-266.

Area 6D - That portion within 1/4-mile of each mouth of the Dungeness River.

Area 7 - (1) The San Juan Island Preserve as defined in WAC 220-47-262.

(2) Those waters within 1,500 feet of shore on Orcas Island from Deer Point northeasterly to Lawrence Point, thence west to a point intercepting a line projected from the northernmost point of Jones Island, thence 90° true to Orcas Island.

(3) Those waters within 1,500 feet of the shore of Cypress Island from Cypress Head to the northernmost point of Cypress Island.

(4) Those waters easterly of a line projected from Iceberg Point to Iceberg Island, to the easternmost point of Charles Island, then true north from the northernmost point of Charles Island to the shore of Lopez Island.

(5) Those waters northerly of a line projected from the southernmost point of land at Aleck Bay to the westernmost point of Colville Island, thence from the easternmost point of Colville Island to Point Colville.

(6) Those waters easterly of a line projected from Biz Point on Fidalgo Island to the Williamson Rocks Light, thence to the Dennis Shoal Light, thence to the light on the westernmost point of Burrows Island, thence to the southwestern-most point of Fidalgo Head, and including those waters within 1,500 feet of the western shore of Allan Island, those waters within 1,500 feet of the western shore of Burrows Island, and those waters within 1,500 feet of the shore of Fidalgo Island from the southwestern-most point of Fidalgo Head northerly to Shannon Point.

(7) Additional Fraser sockeye and pink seasonal closure: Those waters within 1,500 feet of the shore of Fidalgo Island from the Initiative 77 marker northerly to Biz Point.

(8) Those waters within 1,500 feet of the eastern shore of Lopez Island from Point Colville northerly to Lopez Pass, and those waters within 1,500 feet of the eastern shore of Decatur Island from the southernmost point of land northerly to Fautleroy Point, and including those waters within 1,500 feet of the shore of James Island.

Area 7A - The Drayton Harbor Preserve as defined in WAC 220-47-252.

Area 7B - That portion south and east of a line from William Point on Samish Island to Saddlebag Island to the southeastern tip of Guemes Island, and that portion northerly of the railroad trestle in Chuckanut Bay.

Area 7C - That portion southeasterly of a line projected from the mouth of Oyster Creek 237° true to a fishing boundary marker on Samish Island.

Area 8 - (1) That portion of Skagit Bay easterly of a line projected from Brown Point on Camano Island to a white monument on the easterly point of Ika Island, thence across the Skagit River to the terminus of the jetty with McGlenn Island.

(2) Those waters within 1,500 feet of the western shore of Camano Island south of a line projected true west from Rocky Point.

Area 8A - (1) Those waters easterly of a line projected from ~~(Mission Point to Buoy C1, excluding the waters of)~~ the southernmost point of Area 8D, that point which begins from a line projected 225° from the pilings at Old Bower's Resort to a point 2,000 feet offshore, thence through the green light at the entrance jetty of the Snohomish River and across the mouth of the Snohomish River to landfall on the

eastern shore, and those waters northerly of a line from Camano Head to the northern boundary of Area 8D.

(2) Additional pink and coho seasonal closure prior to October 3: Those waters southerly of a line projected from the Clinton ferry dock to the Mukilteo ferry dock.

Area 8D - Those waters easterly of a line projected from Mission Point to Hermosa Point.

Area 9 - Those waters lying inside and westerly of a line projected from the Point No Point light to Sierra Echo buoy, thence to Forbes Landing wharf east of Hansville.

Area 10 - (1) Those waters easterly of a line projected from Meadow Point to West Point.

(2) Those waters of Port Madison westerly of a line projected from Point Jefferson to the northernmost portion of Point Monroe.

(3) Additional coho seasonal closure: Those waters of Elliott Bay east of a line from Alki Point to the light at Four-mile Rock, and those waters northerly of a line projected from Point Wells to "SF" Buoy, then west to President's Point.

Area 10E - Those waters of Liberty Bay north of a line projected due east from the southernmost Keyport dock, those waters of Dyes Inlet north of the Manette Bridge, and those waters of Sinclair Inlet southwest of a line projected true east from the Bremerton ferry terminal.

Area 11 - (1) Those waters northerly of a line projected true west from the light at the mouth of Gig Harbor, and those waters south of a line from Browns Point to the northernmost point of land on Point Defiance.

(2) Additional coho seasonal closure: Those waters south of a line projected from the light at the mouth of Gig Harbor to the Tahlequah ferry dock, then south to the Point Defiance ferry dock, and those waters south of a line projected from the Point Defiance ferry dock to Dash Point.

Area 12 - Those waters inside and easterly of a line projected from Lone Rock to the navigation light off Big Beef Creek, thence southerly to the tip of the outermost northern headland of Little Beef Creek.

Area 12A - Those waters north of a line projected due east from Broad Spit.

Area 12B - Those waters within 1/4-mile of the mouths of the Dosewallips, Duckabush, and Hamma Hamma rivers and Anderson Creek.

Areas 12, 12A, and 12B - (1) Those waters within 1,000 feet of the mouth of the Quilcene River.

(2) Additional Chinook seasonal closure: Those waters north and east of a line projected from Tekiu Point to Triton Head.

Areas 12, 12B and 12C - Those waters within 1,000 feet of the eastern shore.

Area 12C - (1) Those waters within 2,000 feet of the western shore between the dock at Glen Ayr R.V. Park and the Hoodport marina dock.

(2) Those waters south of a line projected from theushman Powerhouse to the public boat ramp at Union.

(3) Those waters within 1/4-mile of the mouth of the Dewatto River.

Areas 12 and 12D - Additional coho and chum seasonal closure: Those waters of Area 12 south and west of a line projected 94 degrees true from Hazel Point to the light on the

opposite shore, bounded on the west by the Area 12/12B boundary line, and those waters of Area 12D.

Area 13A - Those waters of Burley Lagoon north of State Route 302; those waters within 1,000 feet of the outer oyster stakes off Minter Creek Bay, including all waters of Minter Creek Bay; those waters westerly of a line drawn due north from Thompson Spit at the mouth of Glen Cove; and those waters within 1/4-mile of Green Point.

AMENDATORY SECTION (Amending Order 10-137, filed 7/7/10, effective 8/7/10)

**WAC 220-47-311 Purse seine—Open periods.** It is unlawful to take, fish for, or possess salmon taken with purse seine gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas and during the periods provided for in each respective Management and Catch Reporting Area:

AREA	TIME	DATE
7, 7A:	7AM - 6PM	- 10/10, 10/11, 10/14, 10/15, 10/18, 10/19, 10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2, 11/3, 11/4, 11/5, 11/6
	7AM - 5PM	- 11/7, 11/8, 11/9, 11/10, 11/11, 11/12, 11/13

Note: In Areas 7 and 7A, it is unlawful to fail to brail when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

7B, 7C:	6AM - 8PM	- ((8/18, 8/25, 9/1)) <u>8/17, 8/24, 8/31</u>
7B:	7AM - 8PM	- ((9/8)) <u>9/7</u>
	7AM - 7PM	- ((9/13, 9/15, 9/17)) <u>9/12, 9/14, 9/16</u>
	7AM ((9/19))	- 6PM ((10/30)) <u>10/29</u>
	<u>9/18</u>	
	7AM ((11/4))	- 4PM ((11/5)) <u>11/4</u>
	<u>10/31</u>	
	7AM ((11/8))	- 4PM ((11/12)) <u>11/11</u>
	<u>11/7</u>	
	7AM ((11/15))	- 4PM ((11/19)) <u>11/18</u>
	<u>11/14</u>	
	7AM ((11/22))	- 4PM ((11/26)) <u>11/25</u>
	<u>11/21</u>	
	8AM ((11/29))	- 4PM ((12/3)) <u>12/2</u>
	<u>11/28</u>	

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to purse seines beginning at 12:01 a.m. on the last Monday in October and until 4:00 p.m. on the first Friday in December.

8:	<u>6AM - 8PM</u>	- 8/16, 8/18, 8/22, 8/24
8A:	<u>6AM - 8PM</u>	- 8/15, 8/17, 8/23, 8/25

AREA	TIME	DATE
	7AM - 7PM	- Limited participation - two boats (9/27, 10/4).
	7AM - 6PM	- <del>((10/11))</del> 10/10
8D:	7AM - 7PM	- <del>((9/20, 9/27, 10/4))</del> 9/19, 9/26, 10/3
	7AM - 6PM	- <del>((10/11, 10/18, 10/25, 10/27, 11/3))</del> 10/10, 10/17, 10/24, 10/26, 11/2
	7AM - 5PM	- <del>((11/9, 11/11, 11/17))</del> 11/8, 11/10, 11/16
	7AM - 4PM	- <del>((11/22, 11/24))</del> 11/28, 11/30
10	6AM - 8PM	- Limited participation - four boats (8/22, 8/23, 8/29)
10, 11:	7AM - 6PM	- 10/18, 10/24, 10/26, 10/28, 11/1
	7AM - 5PM	- 11/7, 11/9, <del>((11/11,))</del> 11/15
	7AM - 4PM	- <del>((11/23))</del> 11/22
12, 12B:	7AM - 6PM	- 10/18, 10/24, 10/26, 10/28, 11/1
	7AM - 5PM	- 11/7, 11/9, <del>((11/11,))</del> 11/15
12C:	7AM - 5PM	- 11/7, 11/9, <del>((11/11,))</del> 11/15
	7AM - 4PM	- <del>((11/23))</del> 11/22

Note: In Area 10 during any open period occurring from 8/25 through 8/31 it is unlawful to fail to brail when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f). During limited participation fisheries it is unlawful for vessels to take or fish for salmon with department observers on board. In Areas 12, 12B, and 12C, it is unlawful to take or fish for salmon during any open period with purse seine gear unless purse seine fishers are using a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

It is unlawful to retain the following salmon species taken with purse seine gear within the following areas during the following periods:

Chinook salmon - at all times in Areas 7, 7A, 8, 8A, 8D, 10, 11, 12, 12B, and 12C, and after October ~~((23))~~ 22 in Area 7B.

**AMENDATORY SECTION** (Amending Order 10-137, filed 7/7/10, effective 8/7/10)

**WAC 220-47-411 Gill net—Open periods.** It is unlawful to take, fish for, or possess salmon taken with gill net gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided for in each respective fishing area:

AREA	TIME	DATE(S)	MINIMUM MESH
6D: Skiff gill net only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM	- 7PM 9/19, 9/20, 9/21, 9/22, 9/23, <del>((9/24))</del> 9/26, 9/27, 9/28, 9/29, 9/30, <del>((10/1))</del> 10/3, 10/4, 10/5, 10/6, 10/7, <del>((10/8))</del> 10/10, 10/11, 10/12, 10/13, <del>((10/14, 10/15))</del> 10/17, 10/18, 10/19, 10/20, 10/21 <del>((10/22))</del>	5"
	7AM	- Midnight; use of recovery box required	6 1/4"
	7AM	- Midnight	6 1/4"
7, 7A:		10/10, 10/11, 10/14, 10/15	
		10/18, 10/19, 10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2, 11/3, 11/4, 11/5, 11/6, 11/7, 11/8, 11/9, 11/10, 11/11, 11/12, 11/13	

Note: In Area 6D, it is unlawful to use other than 5-inch minimum mesh in the skiff gill net fishery. It is unlawful to retain Chinook taken in Area 6D at any time, or any chum salmon taken in Area 6D prior to October 16. In Area 6D, any Chinook or chum salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

Coho salmon - at all times in Areas 7, 7A, 10, and 11, prior to September ~~((5))~~ 4 in Area 7B, and wild coho in Areas 12, 12B, and 12C.

Chum salmon - prior to October 1 in Areas 7 and 7A, and after September 25 in 8A.

All other saltwater and freshwater areas - closed.

**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 Order 10-137, filed 7/7/10, effective 8/7/10)

**WAC 220-47-401 Reef net open periods.** (1) It is unlawful to take, fish for, or possess salmon taken with reef net gear for commercial purposes in Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas, during the periods provided for in each respective area:

AREA	TIME	DATE(S)
7, 7A	5AM - 9PM Daily	<del>((9/12))</del> 9/26 - 11/13

(2) It is unlawful at all times to retain wild Chinook salmon taken with reef net gear, and it is unlawful prior to October 1 to retain chum or wild coho salmon taken with reef net gear.

(3) It is unlawful to retain marked Chinook after September 30.

(a) It is unlawful to retain marked Chinook with reef net gear if the fisher does not have in his or her immediate possession a department-issued Puget Sound Reef Net Logbook with all retained Chinook accounted for in logbook. Marked Chinook are those with a clipped adipose fin and a healed scar at the site of the clipped fin.

(b) Completed logs must be submitted and received within six working days to: Puget Sound Commercial Salmon Manager, Department of Fish & Wildlife, 600 Capitol Way N, Olympia WA, 98501-1091.

(4) All other saltwater and freshwater areas - closed.

AREA	TIME		DATE(S)	MINIMUM MESH
Note: In Areas 7 and 7A after September 26 but prior to October 17, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 45 minutes. Net soak time is defined as the time elapsed from when the first of the gill net web enters the water, until the gill net is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f).				
7B, 7C:	7PM	-	8AM NIGHTLY ((8/15, 8/17, 8/18, 8/22, 8/24, 8/25, 8/29, 8/31, 9/1)) 8/14, 8/16, 8/17, 8/21, 8/23, 8/24, 8/28, 8/30, 8/31	7"
7B:	7AM	-	7 AM the day following 9/4, 9/5, 9/6, ((9/7,)) 9/8, ((9/9)) 9/11, 9/12, 9/13, ((9/14, 9/16)) 9/15	5"
	7AM ((9/19)) 9/18	-	Midnight ((10/23)) 10/22	5"
	12:01AM ((10/24)) 10/23	-	Midnight ((10/30)) 10/29	6 1/4"
	7AM ((11/1)) 10/31	-	4PM ((11/5)) 11/4	6 1/4"
	6AM ((11/8)) 11/7	-	4PM ((11/12)) 11/11	6 1/4"
	6AM ((11/15)) 11/14	-	4PM ((11/19)) 11/18	6 1/4"
	7AM ((11/22)) 11/21	-	4PM ((11/26)) 11/25	6 1/4"
	8AM ((11/29)) 11/28	-	4PM ((12/3)) 12/2	6 1/4"

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to gill nets using 6 1/4-inch minimum mesh beginning 12:01 AM on the last day in October and until 4:00 PM on the first Friday in December.

8:	6AM	=	10PM	8/15, 8/17, 8/23, 8/25	5" minimum and 5 1/2" maximum
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Note: In Area 8 it is unlawful to take or fish for pink salmon with drift gill nets greater than 60 mesh maximum depth.

8A:	6AM	=	10PM	8/16, 8/18, 8/22, 8/24	5" minimum and 5 1/2" maximum
((8A:))	6PM	-	8AM	NIGHTLY ((10/4)) 10/3	5"
	7AM	-	8PM	10/11, 10/12, 10/13((10/14))	5"
8D:	6PM	-	8AM	NIGHTLY 9/18, 9/19, 9/20, 9/21, 9/22, ((9/23)) 9/25, 9/26, 9/27, 9/28, 9/29, ((9/30)) 10/2, 10/3, 10/4, 10/5, 10/6((10/7))	5"
	5PM	-	8AM	10/9, 10/10, 10/11, 10/12, 10/13((10/14))	5"
	7AM	-	9PM	9/20, 9/21, ((9/22)) 9/27, 9/28, ((9/29)) 10/4, 10/5((10/6))	5"
	7AM	-	8PM	10/11, 10/12, ((10/13, 10/21, 10/28, 11/4)) 10/20, 10/27, 11/3	5"
	7AM	-	4PM	((10/22, 10/29, 11/5)) 10/21, 10/28, 11/4	5"
	6AM	-	6PM	((11/10, 11/18)) 11/9, 11/17	6 1/4"
	7AM	-	6PM	((11/25)) 11/24	6 1/4"
	6AM	-	4PM	((11/12, 11/19)) 11/11, 11/18	6 1/4"
	7AM	-	4PM	((11/26)) 11/25	6 1/4"
9A: Skiff gill net only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM 9/21	-	7PM 10/29	((8/22 through 10/30 daily))	5"

Note: It is unlawful to retain chum salmon taken in Area 9A prior to October 1, and it is unlawful to retain Chinook salmon at any time. Any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

10	6AM	=	10PM	Limited participation - four boats (8/23, 8/25, 8/30)	5" minimum and 5 1/2" maximum
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AREA	TIME		DATE(S)	MINIMUM MESH	
<p>Note: In Area 10 during September coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 45 minutes. Net soak time is defined as the time elapsed from when the first of the gill net web enters the water, until the gill net is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f).</p>					
10, 11:	5PM	-	9AM	NIGHTLY (( <del>10/19, 10/24, 11/2</del> ) <u>10/16, 10/27, 10/30</u> )	6 1/4"
	5PM	-	8AM	NIGHTLY (( <del>10/27</del> ) <u>10/25</u> )	6 1/4"
	4PM	-	8AM	NIGHTLY (( <del>11/7</del> ) <u>11/8, 11/10, (<del>11/16</del>) 11/13</u> )	6 1/4"
	3PM	-	8AM	NIGHTLY (( <del>11/21</del> ) <u>11/20</u> )	6 1/4"
	4PM	-	Midnight	NIGHTLY (( <del>10/20, 11/3, 11/17, 11/24</del> ) <u>10/19, 11/2, 11/16, 11/23</u> )	6 1/4"
12A: Skiff gill net only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM	-	7PM	Dates determined per agreement with tribal comanagers in-season if Summer Chum Salmon Conservation Initiative goals are met allowing for openings of gill net gear.	5"
<p>Note: In Area 12A, it is unlawful to use other than 5-inch minimum mesh in the skiff gill net fishery. It is unlawful to retain Chinook or chum salmon taken in Area 12A at any time, and any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.</p>					
12, 12B:	7AM	-	8PM	<u>10/17, 10/19, (<del>10/21,</del>) 10/25, 10/27, 10/31, 11/2(<del>, 11/4</del>)</u>	6 1/4"
	6AM	-	6PM	11/8, 11/10, <u>11/14, 11/16(<del>, 11/18</del>)</u>	6 1/4"
12C:	6AM	-	6PM	11/8, 11/10, <u>11/14, 11/16(<del>, 11/18</del>)</u>	6 1/4"
	7AM	-	6PM	11/22, ( <del>11/25</del> ) <u>11/24</u>	6 1/4"

All other saltwater and freshwater areas - closed.

Nightly openings refer to the start date.

Within an area or areas, a mesh size restriction remains in effect from the first date indicated until a mesh size change is shown, and the new mesh size restriction remains in effect until changed.

AMENDATORY SECTION (Amending Order 10-137, filed 7/7/10, effective 8/7/10)

**WAC 220-47-427 Puget Sound—Beach seine—Emerging commercial fishery—Eligibility—Lawful gear.**

(1) The Puget Sound beach seine salmon fishery is designated as an emerging commercial fishery for which a vessel is required. An emerging commercial fishery license and an experimental fishery permit are required to participate in this fishery.

(2) The department will issue four salmon beach seine experimental fishery permits.

(3) The following is the selection process the department will use to offer a salmon beach seine experimental permit.

(a) Persons who held a salmon beach seine experimental fishery permit in the previous management year will be eligible for a permit in the current management year.

(b) The department (~~established a pool of applicants by drawing on August 13, 2002~~) will work with the advisory board, per RCW 77.70.160(1), to establish criteria by which applicants would qualify to enter the pool. The pool established by this drawing will be maintained to replace any permit(s) which may be voided.

(4) Permit holders are required to participate in the salmon beach seine experimental fishery.

(a) For purposes of this section, "participation" means the holder of the salmon beach seine experimental permit being aboard the designated vessel in the open fishery.

(b) If the salmon beach seine experimental permit holder fails to participate, the salmon beach seine experimental permit issued to that fisher will be void and a new salmon beach

seine experimental permit will be issued through a random drawing from the applicant pool (~~established in 2002~~).

(c) The department may require proof of participation by maintaining a department approved log book or registering with state officials each day the salmon beach seine experimental permit holder participates.

(d) Persons who participate, but violate conditions of a salmon beach seine experimental permit, will have the permit voided and a new salmon beach seine experimental permit will be reissued through a random drawing from the pool of the voided permit holder.

(5) In Quilcene Bay, chum salmon may not be retained by a salmon beach seine experimental permit holder. Chum salmon in Quilcene Bay must be released alive.

(6) Any person who fails to purchase the license, fails to participate, or violates the conditions of a salmon beach seine experimental permit will have his or her name permanently withdrawn from the pools.

(7) It is unlawful to take salmon with beach seine gear that does not meet the requirements of this subsection.

(a) Beach seine salmon nets in Puget Sound shall not exceed 600 feet in length or 100 meshes in depth, or contain meshes of a size less than 3 inches or greater than 4 inches.

(b) Mesh webbing must be constructed with a twine size no smaller than 210/30d nylon, 12 thread cotton, or the equivalent diameter in any other material.



AMENDATORY SECTION (Amending Order 10-137, filed 7/7/10, effective 8/7/10)

**WAC 220-47-428 Beach seine—Open periods.** It is unlawful to take, fish for, or possess salmon taken with beach seine gear for commercial purposes from Puget Sound except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided hereinafter in each respective Management and Catch Reporting Area:

All areas:

AREA	TIME	DATE(S)
12A:	7AM - 7PM	<u>8/22</u> , 8/23, 8/24, 8/25, 8/26, <u>8/29</u> , 8/30, 8/31, 9/1, 9/2, <u>9/5</u> , 9/6, 9/7, 9/8, 9/9, <u>9/12</u> , 9/13, 9/14, 9/15, 9/16, <u>9/19</u> , 9/20, 9/21, 9/22, 9/23, <u>9/26</u> , 9/27, 9/28, 9/29, 9/30
12H:	7AM - 7PM	November (dates determined per agreement with tribal comanagers in-season if harvestable surplus of salmon remain).

It is unlawful to retain Chinook taken with beach seine gear in all areas, and unlawful to retain chum from Area 12A.

AMENDATORY SECTION (Amending Order 09-108, filed 7/9/09, effective 8/9/09)

**WAC 220-47-325 Purse seine—Release of incidentally caught fish.** (1) It is unlawful for any purse seine vessel operator landing salmon to do so directly into the hold. All salmon must be landed onto the deck or sorting tray or table of the harvesting vessel with the hold hatch cover(s) closed until all salmon that cannot be retained are released; and additionally:

(2) In Areas 7 and 7A, and prior to the Fraser Panel relinquishing management control in Areas 7B and 7C, it is unlawful for any purse seine vessel operator to bring salmon aboard a vessel unless all salmon captured in the seine net are removed from the seine net using a brailing bunt, brailer or dip net meeting the specifications in this section prior to the seine net being removed from the water, unless otherwise provided for in this section.

(3) The brailer must be constructed in the following manner and with the following specifications:

(a) A bag of web hung on a rigid hoop attached to a handle;

(b) The bag must be opened by releasing a line running through rings attached to the bottom of the bag; and

(c) The web must be of soft knotless construction, and the mesh size cannot exceed 57 mm (2.25 inches) measured along two contiguous sides of a single mesh.

(4) Hand-held dip nets must be constructed of a shallow bag of soft, knotless web attached to a handle.

(5) Fish may be brought on board without using a brailer or dip net as specified in this section if the number of fish in the net is small enough that the crew can hand-pull the bunt onto the vessel without the use of hydraulic or mechanical assistance.

(6) In order for fishers to participate in openings where brailing is required, fishers must use a recovery box and oper-

ate the box in compliance with the provisions of WAC 220-47-301 (7)(a) through (f). It is unlawful to fail to do so.

**WSR 11-07-095**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Filed March 22, 2011, 4:49 p.m.]

The Washington department of fish and wildlife is withdrawing some of the WACs filed as part of WSR 10-21-117 on October 20, 2010. These are WAC 220-16-890, 220-16-900, 220-16-910, 220-16-920, 220-16-930, 220-16-940, and 220-20-100.

The above WACs will not be included in the CR-103P for this project because the Washington fish and wildlife commission and the department of fish and wildlife are complying with the governor's moratorium on noncritical rule making.

Lori Preuss  
 Rules Coordinator

**WSR 11-07-096**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Filed March 22, 2011, 4:57 p.m.]

The Washington department of fish and wildlife is withdrawing some of the WACs filed as part of WSR 10-21-118 on October 20, 2010. These are WAC 220-48-041 Commercial jig—Gear, 220-48-051 Troll lines—Bottomfish gear, 220-48-052 Bottomfish troll—Seasons, 220-49-012 Herring, anchovy and smelt fishing—Purse seine, and 220-49-020 Herring and anchovy—Seasons—Lawful gear—Purpose.

The above WACs will not be included in the CR-103P for this project because the Washington fish and wildlife commission and the department of fish and wildlife are complying with the governor's moratorium on noncritical rule making.

Lori Preuss  
 Rules Coordinator

**WSR 11-07-098**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed March 23, 2011, 8:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-03-067.

Title of Rule and Other Identifying Information: Medical aid rules, conversion factors, WAC 296-20-135.

Hearing Location(s): Department of Labor and Industries, Room S117, 7273 Linderson Way S.W., Tumwater, WA 98501, on April 26, 2011, at 1:00 p.m.

Date of Intended Adoption: May 24, 2011.

Submit Written Comments to: Tom Davis, P.O. Box 44322, Olympia, WA 98504-4322, e-mail dato235@LNI.wa.gov, fax (360) 902-4249, by 5 p.m. on May 2, 2011.

Assistance for Persons with Disabilities: Contact Tom Davis by April 15, 2011, TTY (360) 902-5797 or fax (360) 902-4249.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the rule is to update the department's payment rates for health care services by changing the conversion factor used to calculate payment levels for services payable through the resource based relative value scale (RBRVS) fee schedule.

WAC 296-20-135(2), change the RBRVS conversion factor from \$60.78 to \$55.34.

Reasons Supporting Proposal: This rule will provide budget neutral medical aid updates regarding rate setting for most professional health care services for injured workers.

Statutory Authority for Adoption: RCW 51.04.020(1) and 51.04.030.

Statute Being Implemented: RCW 51.36.080.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: (1) Change the conversion factor used to calculate maximum payment for services paid with the RBRVS fee schedule.

(2) Failure to adjust the conversion factor would result in an estimated increase in RBRVS payments of \$19.4 million.

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Tom Davis, Tumwater, Washington, (360) 902-6687; Implementation and Enforcement: Beth Dupre, Assistant Director, Tumwater, Washington, (360) 902-4209.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule adoption is exempt under RCW 34.05.328 (5)(b)(vi) and 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply because the content of this rule is explicitly dictated by statute and fits within the exceptions listed in RCW 34.05.328 (5)(b)(vi).

March 23, 2011

Judy Schurke

Director

AMENDATORY SECTION (Amending WSR 10-10-107, filed 5/4/10, effective 7/1/10)

**WAC 296-20-135 Conversion factors.** (1) Conversion factors are used to calculate payment levels for services reimbursed under the Washington resource based relative value scale (RBRVS), and for anesthesia services payable with base and time units.

(2) **Washington RBRVS** services have a conversion factor of (~~(\$60.78)~~) \$55.34. The fee schedules list the reimbursement levels for these services.

(3) **Anesthesia services** that are paid with base and time units have a conversion factor of \$3.19 per minute, which is equivalent to \$47.85 per 15 minutes. The base units and payment policies can be found in the fee schedules.

## WSR 11-07-101

### PROPOSED RULES

#### OFFICE OF

#### INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2010-16—Filed March 23, 2011, 9:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-01-138.

Title of Rule and Other Identifying Information: Guaranteed issue enrollment of persons under age nineteen.

Hearing Location(s): Office of the Insurance Commissioner, 5000 Capitol Way South, Tumwater, WA, on April 27, 2011, at 10:00 a.m.

Date of Intended Adoption: May 25, 2011.

Submit Written Comments to: Meg Jones, P.O. Box 40258, Olympia, WA 98504-0258, e-mail megj@oic.wa.gov, fax (360) 586-3109, by April 26, 2011.

Assistance for Persons with Disabilities: Contact Lorrie [Lorie] Villaflores by April 24, 2011, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Under this rule making, the commissioner proposes rules providing guidance to carriers, and those who seek insurance for persons under age nineteen regarding how the new federal law, P.L. 111-148 and the interim final regulations issued June 28, 2010, found at Vol. 75 F.R. 37187-37241, and codified in 45 C.F.R. Parts 144, 146 and 147 will be implemented in Washington's individual health insurance market.

Reasons Supporting Proposal: Open enrollment periods were requested by several health carriers to implement this federal requirement, to mitigate the risk of adverse selection in the individual market. The proposed rules provide for this. In addition, consumer information and protections are included to ensure that there is access and information about the under nineteen enrollment requirements during both open and special enrollment periods.

Statutory Authority for Adoption: RCW 48.02.060, 48.18.120(2), 48.20.450, 48.44.050, 48.46.200.

Statute Being Implemented: RCW 48.18.120(2), 48.20.-450, 48.43.012, 48.43.015, 48.43.018; P.L. 111-148, sec. 2704.

Rule is necessary because of federal law, P.L. 111-148 and the interim final regulations issued June 28, 2010, found at Vol. 75 F.R. 37187-37241, and codified in 45 C.F.R. Parts 144, 146 and 147.

Name of Proponent: Office of the insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Meg Jones, P.O. Box 40528 [40258], Olympia, WA, (360) 725-7170; Implementation: Beth Berendt, P.O. Box 40255, Olympia, WA, (360) 725-7117; and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA, (360) 725-7047.

No small business economic impact statement has been prepared under chapter 19.85 RCW. None of the entities affected by the proposed rule qualify as small business entities.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Meg Jones, P.O. Box 40258, Olympia, WA 98504, phone (360) 725-7170, fax (360) 586-3109, e-mail megj@oic.wa.gov.

March 23, 2011  
Mike Kreidler  
Insurance Commissioner

## SUBCHAPTER J HEALTH PLAN ENROLLMENT AND COVERAGE REQUIREMENTS

### NEW SECTION

**WAC 284-43-970 Purpose and scope.** These rules explain the requirements in effect in Washington governing the issue of individual health insurance or health benefit plans to persons under age nineteen, based on section 2704 of the Public Health Service Act, as amended by section 1201 of the Patient Protection and Affordable Care Act, P.L. 111-148 and the interim final regulations interpreting it, 45 CFR 145.103 and 147.108 (2010), which provide that a carrier may not apply preexisting condition exclusions or coverage limitations for persons under age nineteen.

### NEW SECTION

**WAC 284-43-975 Definitions.** As used in this section, unless the context requires otherwise:

(1) "Applicant" means a person who applies for enrollment in an individual health plan as a subscriber or an enrollee, or the dependent or spouse of a subscriber or enrollee. For purposes of this subchapter J, a legal guardian is an applicant if they apply for an individual coverage on behalf of a person under age nineteen.

(2) "Carrier" has the same meaning as its definition in RCW 48.43.005(18) and includes "issuers" as that term is used in the Patient Protection and Affordable Care Act, P.L. 111-148.

(3) "Open enrollment" means a period of time as defined in these rules, held at the same time each year, during which applicants may enroll in the carrier's individual health benefit plan without being subject to health screening or otherwise required to provide evidence of insurability as a condition for enrollment.

(4) "Special enrollment" means a defined period of time of not less than thirty-one days, triggered by a specific qualifying event experienced by the applicant, during which applicants may enroll in the carrier's individual health benefit plan without being subject to health screening or otherwise

required to provide evidence of insurability as a condition for enrollment.

(5) "Standard health questionnaire" means the standard health questionnaire designated under chapter 48.41 RCW.

### NEW SECTION

**WAC 284-43-980 Preexisting conditions.** For any individual health benefit plan, a carrier must waive any exclusion of benefits, including a denial of coverage, and may not otherwise limit coverage based upon a preexisting condition waiting period if the applicant or enrollee is a person under age nineteen. This requirement:

(1) Does not apply to an individual grandfathered plan as defined under P.L. 111-148 (2010), the Patient Protection and Affordable Care Act;

(2) Includes those persons under age nineteen with a preexisting condition who seek coverage as the primary insured or as a dependent or as a spouse under individual health benefit plans that permit the enrollment of dependents, and enrolled persons under age nineteen who seek benefits for which they are otherwise eligible.

### NEW SECTION

**WAC 284-43-985 Enrollment of persons under age nineteen.** (1) For any individual health benefit plan offered after January 1, 2011, a carrier must conduct an open enrollment period for persons under age nineteen during two time periods each year. The first open enrollment period must occur from March 15th through April 30th of each year, and the second open enrollment period must occur from September 15th through October 31st.

(2) A carrier must use the same method to establish the effective date of coverage for persons under age nineteen enrolled during the open enrollment periods set forth in this rule that they use for any other individual health benefit plan enrollee.

(3) A carrier must make a special enrollment period of not less than thirty-one days available to any person under age nineteen who experiences a qualifying event. A qualifying event means the occurrence of one of the following:

(a) The discontinuation for any reason of employer sponsored insurance coverage of a person under age nineteen or the person under whose policy they were enrolled;

(b) The loss of eligibility of person under age nineteen for medicaid or a public program providing health benefits;

(c) The loss of coverage for a person under age nineteen as the result of dissolution of marriage;

(d) The person under age nineteen or the person under whose policy they were enrolled changes residence, and the health plan under which they were covered does not provide coverage in that person's new service area;

(e) The person for whom coverage is sought was born, placed for adoption or adopted within sixty days of the application for enrollment. For newborns enrolled under an individual policy, coverage must be effective as of the moment of birth. The requirements of RCW 48.20.430, 48.44.212, and 48.46.250 continue to apply outside an open enrollment period;

(f) Nothing in this rule is intended to alter or affect the application of RCW 48.43.517.

(4) A carrier must use the same method to determine the effective date of coverage for persons under age nineteen enrolled during a special enrollment period set forth in this rule that they use for any other individual health benefit plan enrollee.

(5) During the enrollment periods described in subsections (1) through (4) of this section, or any other enrollment period, a carrier must not require a person under age nineteen applying for an individual health benefit plan to complete the standard health questionnaire designated under chapter 48.41 RCW or otherwise provide evidence of insurability.

(6) A carrier may offer enrollment in an individual health benefit plan outside the open or special enrollment period, but must not require any evidence of insurability or completion of the standard health questionnaire if the applicant is a person under age nineteen.

(7) A carrier must not limit the choice of individual plan for which a person under age nineteen may apply based on the applicant's age.

(8) A carrier must prominently display on its web site information about open enrollment periods and special enrollment periods for persons under age nineteen.

(a) If a carrier elects to limit enrollment for persons under nineteen to the open enrollment periods, the carrier must:

- (i) Explain that fact on its web site;
- (ii) Promptly make application packets available to interested persons upon request, including outside the open enrollment periods; and
- (iii) Provide contact information for the Washington state high risk pool and the federally sponsored preexisting condition insurance pool - Washington.

(b) The web site information about special enrollment periods must include the ability to access or request and receive an application packet for enrollment at any time. The displayed information must also include details written in plain language explaining what constitutes a qualifying event for special enrollment.

#### WSR 11-07-104

#### PROPOSED RULES

#### UNIVERSITY OF WASHINGTON

[Filed March 23, 2011, 10:31 a.m.]

Continuance of WSR 11-05-010.

Preproposal statement of inquiry was filed as WSR 09-05-014.

Title of Rule and Other Identifying Information: Chapter 478-116 WAC, Parking and traffic rules of the University of Washington, Seattle.

Date of Intended Adoption: June 9, 2011.

March 23, 2011

Rebecca Goodwin Deardorff  
Director of Rules Coordination

#### WSR 11-07-105

#### PROPOSED RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Office of the Secretary)

[Filed March 23, 2011, 11:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-07-059.

Title of Rule and Other Identifying Information: WAC 388-885-005 Purpose, 388-885-010 Definitions, 388-885-013 Limitations on reimbursement costs related to expert evaluations, 388-885-015 Limitations of funds, 388-885-025 Billing procedures, 388-885-030 Exceptions and 388-885-035 Reimbursement rate schedule; and proposed new section WAC 388-885-016 Matters for which reimbursement is not available.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on April 26, 2011, at 10:00 a.m.

Date of Intended Adoption: Not earlier than April 27, 2011.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington, Olympia, WA 98504, e-mail DSH-SRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on April 26, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by April 5, 2011, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These existing rules require updating to better reflect current practices as they relate to the reimbursement of local agencies for their costs associated with the civil commitment process of sexually violent predators, and 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.)).

Reasons Supporting Proposal: 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.

Statutory Authority for Adoption: Chapter 71.09 RCW, RCW 72.01.090 and 34.05.350.

Rule is necessary because of state court decision, Washington State Supreme Court decision No. 80570-9 re Detention of John L. Strand, Filed October 8, 2009, does not mandate this change, but it establishes criteria that require inclusion to this proposal.

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

Name of Agency Personnel Responsible for Drafting: Mark Davis, P.O. Box 88450, Steilacoom, WA 98388-0646, (253) 617-6283; Implementation: Cath Repp, P.O. Box

88450, Steilacoom, WA 98388-0646, (253) 583-5927; and Enforcement: Kelly Cunningham, P.O. Box 88450, Steilacoom, WA 98388-0646, (253) 583-5933.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rules and concluded that they pertain to state reimbursement paid to county governments and they do not impact small businesses. The preparation of a comprehensive small business economic impact statement is not required under RCW 19.85.030.

A cost-benefit analysis is not required under RCW 34.05.328. No cost-benefit analysis was prepared because these rules are an "interpretive rule" under RCW 34.05.328 for which a violation of which does not subject a person to a penalty or sanction, and serves only to set forth the agency's interpretation of statutory provisions it administers.

March 18, 2011

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 when the state fund an expert for the prosecution, or defense for persons found indigent subject to 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 and for a period encompassing the ninety days before the phases denominated in subsections (d) and (e) of this section.

(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 a court finding of probable cause.

(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))~~ his or her place of confinement.

~~((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 clerks;
- (c) Bailiff services;
- (d) Court reporter services;
- (e) Transcript typing and preparation;
- (f) Expert and nonexpert witnesses;
- (g) ~~((Jury))~~ Juries; 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))~~ for 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) If the respondent makes a claim of privilege regarding the information to be provided to support the finding of good cause the court may order that records supporting the determination of good cause be produced in camera for determination of the applicability of any claims of privilege and to decide the issue of good cause.

(c) Any claim of privilege made to the information covered herein is not waived by providing the documentation to DSHS.

(d) 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))~~ made 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))~~ if:

(a) ~~((Where))~~ The appointed expert lacks appropriate qualifications ((as provided for in)) under WAC 388-880-033; ~~((or))~~

(b) For any charges related to an expert's 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 person committed or detained under chapter 71.09 RCW.

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 appropriated 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 as defined in WAC 388-885-010 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 of a resident when the evaluator has previously conducted a full evaluation of the same person within the past twelve months, unless authorized by the court.

(8) After the appeal of the initial commitment proceeding, the department will not reimburse for appeal costs, the department does not pay for the costs associated with the appeal of the order of commitment or an appeal resulting from any proceeding thereafter. 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 as defined in WAC 388-885-010(2).

(12) For expert evaluation services performed by any party who does not qualify as a "professionally qualified person" WAC 388-880-010.

(13) For mental health or sex offender treatment provider services, 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 compensated only 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 costs, 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~~) Comply with the department's required use of an auditable, itemized, detailed invoice billed in no more than a one-tenth of an hour increment. Records supporting the billed hours shall be maintained by attorneys, paralegals, investigators and experts for a period of five years after the service is rendered. Such documentation shall include what documents were created, if interviews were conducted, who was interviewed and how; ((and))

(d) (~~Include the name of the person for whom the costs were incurred and the cause number when it exists~~) In the event of a dispute over billed services, produce in camera the records supporting the billed hours to the court for determination of the applicability of any claims of privilege to the records and to decide the issue of payments if the claim of privilege is sustained; and

(e) Include in the invoice the name of the person by whom the costs were incurred and the cause number, when it exists, and identify at which state 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 for all items as defined in WAC 388-885-010 or otherwise 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))~~ before 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))~~ the department, or other state auditing service, for

a period of (~~(thirty-six)~~) sixty 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 grants may not include exceptions to the biennial reimbursement rate schedule which is set by legislative mandate.

(2) (~~(Exceptions may be allowed)~~) The secretary may allow exceptions 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)~~) Only a county administration or an entity of county government that has been independently elected, and not (~~(from)~~) a sub-agency (~~(of a county)~~) or contractor to a county may request an exception. 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)~~) that 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, and all other costs, 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, docu-

ment 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)~~) Jurors 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.