

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, 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 johnsjl4@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

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

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

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

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

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

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

"**Administrative order**" means a determination, finding, decree or order for support issued under RCW 74.20A.-055, 74.20A.056, or 74.20A.059 or by another state's agency under an administrative process, establishing the existence of a support obligation (including medical support) and ordering the payment of a set or determinable amount of money for current support and/or a support debt. Administrative orders include:

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

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

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

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

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

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

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

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

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

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

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

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

"Cash medical support" is a term used in RCW 26.09.105 and certain federal regulations to refer to amounts paid by an obligated parent to the other parent or to the state in order to comply with the medical support obligation stated in a child support order.

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

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

"Consent order" means a support order that reflects the agreement of the noncustodial parent, the custodial parent and the division of child support. A consent order requires the approval of an administrative law judge.

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

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

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

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

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

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

"Dependent child" means a person:

- (1) Seventeen years of age or younger who is not self-supporting, married, or a member of the United States armed forces;
- (2) Eighteen years of age or older for whom a court order requires support payments past age eighteen;
- (3) Eighteen years of age or older, but under nineteen years of age, for whom an administrative support order exists

if the child is participating full-time in a secondary school program or the same level of vocational or technical training.

"Differentiated support amount" means an amount of child support that represents a parent's support obligation for more than one child and may justifiably be divided into "per child" amounts for each child covered by the support order, based on information contained in the support order.

"Differentiated support order" means a child support order which provides a monthly amount of child support for two or more children, and either provides a specific support obligation for each child or provides enough information in the order so that the monthly amount may justifiably be divided into a "per child" amount for each child covered by the support order.

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

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

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

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

- (1) Wages or salary;
- (2) Commissions and bonuses;
- (3) Periodic payments under pension plans, retirement programs, and insurance policies of any type;
- (4) Disability payments under Title 51 RCW;
- (5) Unemployment compensation under RCW 50.40.-020, 50.40.050 and Title 74 RCW;
- (6) Gains from capital, labor, or a combination of the two; and
- (7) The fair value of nonmonetary compensation received in exchange for personal services.

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

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

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

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

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

"Family arrears" means the amount of past-due support owed to the family, which has not been conditionally,

temporarily or permanently assigned to a state. Also called "nonassistance arrears."

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

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

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

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

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

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

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

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

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

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

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

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

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

"Income" includes:

- (1) All gains in real or personal property;

- (2) Net proceeds from the sale or exchange of real or personal property;

- (3) Earnings;

- (4) Interest and dividends;

- (5) Proceeds of insurance policies;

- (6) Other periodic entitlement to money from any source; and

- (7) Any other property subject to withholding for support under the laws of this state.

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

- (1) Asserting liens under RCW 74.20A.060;

- (2) Serving and enforcing liens under chapter 74.20A RCW;

- (3) Issuing orders to withhold and deliver under chapter 74.20A RCW;

- (4) Issuing notices of payroll deduction under chapter 26.23 RCW; and

- (5) Obtaining wage assignment orders under RCW 26.18.080.

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

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

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

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

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

- Prescribed medical equipment and prescribed pharmacy products;

- Health care coverage, such as coverage under a health insurance plan, including the cost of premiums for coverage of a child;

- Dental and optometrical costs incurred on behalf of a child; and

- Copayments and/or deductibles incurred on behalf of a child.

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

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

- (1) ~~(Medical expenses; and~~

- ~~(2))~~ Health insurance coverage for a dependent child;

- (2) Amounts owed by one parent to the other parent as a monthly payment toward the premium paid by the other parent for health insurance coverage for a dependent child;

- (3) Amounts owed by a noncustodial parent to the state as a monthly payment toward the cost of managed care coverage for the child by the state, if the child receives state-

financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment; and

(4) Amounts owed by one parent to the other parent as his or her proportionate share of uninsured medical expenses for a dependent child.

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

- Premiums paid by the other parent for insurance coverage for the child; or

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

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

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

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

"Nonmedical expenses" means amounts incurred on behalf of a child which are not medical expenses as defined in this chapter. Nonmedical expenses include, but are not limited to, day care or other special childrearing expenses such as tuition and long-distance transportation costs to and from the parents for visitation purposes.

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

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

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

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

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

"Past support" means support arrears.

"Paternity testing" means blood testing or genetic tests of blood, tissue or bodily fluids. This is also called genetic testing.

"Payment services only" or **"PSO"** means a case on which the division of child support's activities are limited to recording and distributing child support payments, and maintaining case records. A PSO case is not a IV-D case.

"Permanently assigned arrears" means those arrears which the state may collect and retain up to the amount of unreimbursed assistance.

"Physical custodian" means custodial parent (CP).

"Plan administrator" means the person or entity which performs those duties specified under 29 USC 1002 (16)(A) for a health plan. If no plan administrator is specifically so designated by the plan's organizational documents, the plan's sponsor is the administrator of the plan. Sometimes an employer acts as its own plan administrator.

"Private insurance" means accessible health insurance for a child provided by a parent without the need for service of a national medical support notice, and does not include health insurance provided by the state without a contribution from either parent.

"Proportionate share" or **"proportional share"** means an amount equal to a parent's percentage share of the combined monthly net income of both parents as computed on the worksheets when determining a parent's child support obligation under chapter 26.19 RCW.

"Putative father" includes all men who may possibly be the father of the child or children on whose behalf the application for assistance or support enforcement services is made.

"Reasonable efforts to locate" means any of the following actions performed by the division of child support:

- (1) Mailing a support establishment notice to the noncustodial parent in the manner described in WAC 388-14A-3105;

- (2) Referral to a sheriff or other server of process, or to a locate service or department employee for locate activities;

- (3) Tracing activity such as:

- (a) Checking local telephone directories and attempts by telephone or mail to contact the custodial parent, relatives of the noncustodial parent, past or present employers, or the post office;

- (b) Contacting state agencies, unions, financial institutions or fraternal organizations;

- (c) Searching periodically for identification information recorded by other state agencies, federal agencies, credit bureaus, or other record-keeping agencies or entities; or

- (d) Maintaining a case in the division of child support's automated locate program, which is a continuous search process.

- (4) Referral to the state or federal parent locator service;

- (5) Referral to the attorney general, prosecuting attorney, the IV-D agency of another state, or the Department of the Treasury for specific legal or collection action;

- (6) Attempting to confirm the existence of and to obtain a copy of a paternity acknowledgment; or

- (7) Conducting other actions reasonably calculated to produce information regarding the NCP's whereabouts.

"Required support obligation for the current month" means the amount set by a superior court order, tribal court order, or administrative order for support which is due in the month in question.

"Resident" means a person physically present in the state of Washington who intends to make their home in this state. A temporary absence from the state does not destroy residency once it is established.

"Residential care" means foster care, either state or federally funded.

"Residential parent" means the custodial parent (CP), or the person with whom the child resides that majority of the time.

"Responsible parent" is a term sometimes used for a noncustodial parent.

"Responsible stepparent" means a stepparent who has established an in loco parentis relationship with the dependent child.

"Retained support" means a debt owed to the division of child support by anyone other than a noncustodial parent.

"Satisfaction of judgment" means payment in full of a court-ordered support obligation, or a determination that such an obligation is no longer enforceable.

"Secretary" means the secretary of the department of social and health services or the secretary's designee.

"Self-support reserve" or "self support reserve" means an amount equal to one hundred twenty-five percent of the federal poverty guideline for a one-person family.

"State" means a state or political subdivision, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a federally recognized Indian tribe or a foreign country.

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

"Support debt" means support which was due under a support order but has not been paid. This includes:

- (1) Delinquent support;
- (2) A debt for the payment of expenses for the reasonable or necessary care, support and maintenance including medical expenses, birth costs, child care costs, and special child rearing expenses of a dependent child or other person;
- (3) A debt under RCW 74.20A.100 or 74.20A.270; or
- (4) Accrued interest, fees, or penalties charged on a support debt, and attorney's fees and other litigation costs awarded in an action under Title IV-D to establish or enforce a support obligation.

"Support enforcement services" means all actions the Title IV-D agency is required to perform under Title IV-D of the Social Security Act and state law.

"Support establishment notice" means a notice and finding of financial responsibility under WAC 388-14A-3115, a notice and finding of parental responsibility under WAC 388-14A-3120, or a notice and finding of medical responsibility under WAC 388-14A-3125.

"Support money" means money paid to satisfy a support obligation, whether it is called child support, spousal support, alimony, maintenance, enforcement of medical expenses, health insurance, or birth costs.

"Support obligation" means the obligation to provide for the necessary care, support and maintenance of a dependent child or other person as required by law, including health insurance coverage, medical expenses, birth costs, and child care or special child rearing expenses.

"Support order" means any determination, finding, decree or order that sets a child support obligation (including medical support) and orders the payment of a set or determinable amount of money for current support and/or a support debt. The term "support order" includes a court order, administrative order or tribal court order.

"Temporarily assigned arrears" means those arrears which accrue prior to the family receiving assistance, for assistance applications dated on or after October 1, 1997, but before October 1, 2008. After the family terminates assistance, temporarily assigned arrears become conditionally assigned arrears.

"Temporary assistance for needy families," or "TANF" means cash assistance under the temporary assistance for needy families (TANF) program under Title IV-A of the Social Security Act.

"Title IV-A" means Title IV-A of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 USC.

"Title IV-A agency" means the part of the department of social and health services which carries out the state's responsibilities under the temporary assistance for needy families (TANF) program (and the aid for dependent children (AFDC) program when it existed).

"Title IV-D" means Title IV-D of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 USC.

"Title IV-D agency" or "IV-D agency" means the division of child support, which is the agency responsible for carrying out the Title IV-D plan in the state of Washington. Also refers to the Washington state support registry (WSSR).

"Title IV-D case" is a case in which the division of child support provides services which qualifies for funding under the Title IV-D plan.

"Title IV-D plan" means the plan established under the conditions of Title IV-D and approved by the secretary, Department of Health and Human Services.

"Title IV-E" means Title IV-E of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 U.S.C.

"Title IV-E case" means a foster care case.

"Tribal TANF" means a temporary assistance for needy families (TANF) program run by a tribe.

"Tribunal" means a state court, tribal court, administrative agency, or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage.

"Underlying order" means an existing child support order for which DCS serves a notice of support owed under RCW 26.23.110 to determine a sum certain support obligation.

"Undifferentiated support amount" means an amount of child support that represents a parent's support obligation for more than one child which cannot justifiably be divided into "per child" amounts for each child covered by the support order.

"Undifferentiated support order" means a child support order which provides a monthly amount of child support for two or more children, but does not provide a specific support obligation for each child or does not contain enough information in either the order or the worksheets associated with the order to justify dividing the monthly amount into "per child" amounts for each child covered by the support order.

"Uninsured medical expenses":

~~((+))~~ For the purpose of establishing or enforcing support obligations (~~under RCW 26.23.110;~~) means:

~~((a))~~ (1) Medical expenses not paid by insurance for medical, dental, prescription and optometrical costs incurred on behalf of a child; and

~~((b))~~ (2) Premiums, copayments, or deductibles incurred on behalf of a child ~~(and~~

~~(2) Includes health insurance premiums that represent the only health insurance covering a dependent child when either:~~

~~(a) Health insurance for the child is not required by a support order or cannot be enforced by the division of child support (DCS); or~~

~~(b) The premium for covering the child exceeds the maximum limit provided in the support order).~~

"Unreimbursed assistance" means the cumulative amount of assistance which was paid to the family and which has not been reimbursed by assigned support collections.

"Unreimbursed medical expenses" means any amounts paid by one parent for uninsured medical expenses, which that parent claims the obligated parent owes under a child support order, which percentage share is stated in the child support order itself, not just in the worksheets.

"We" means the division of child support, part of the department of social and health services of the state of Washington.

"WSSR" is the Washington state support registry.

"You" means the reader of the rules, a member of the public, or a recipient of support enforcement services.

AMENDATORY SECTION (Amending WSR 06-03-120, filed 1/17/06, effective 2/17/06)

WAC 388-14A-2035 Do I assign my rights to support when I receive public assistance? (1) When you receive public assistance you assign your rights to support to the state. This section applies to all applicants and recipients of cash assistance under the state program funded under Title IV-A of the federal Social Security Act.

(2) As a condition of eligibility for assistance, a family member must assign to the state the right to collect and keep, subject to the limitation in subsection (3), any support owing to the family member or to any other person for whom the family member has applied for or is receiving assistance.

(3) Amounts assigned under this section may not exceed the lesser of the total amount of assistance paid to the family or the total amount of the assigned support obligation.

(4) When you receive medicaid or medical benefits, you assign your rights to medical support to the state. This applies to all recipients of medical assistance under the state program funded under Title XIX of the federal Social Security Act.

(a) If your children receive medicaid or other state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment and if your order provides for the payment of a monthly payment toward the premium when the obligated parent does not provide coverage, the division of child support (DCS) may serve a notice of support owed to establish the amount owed by the noncustodial parent as a monthly payment toward the premium paid for coverage by the state, as provided in WAC 388-14A-3312.

(b) Any amounts established under WAC 388-14A-3312 for periods while your children receive medicaid or other state-financed medical coverage are assigned to the state and are distributed as provided in WAC 388-14A-5001 through 388-14A-5050.

(c) Amounts assigned under this section may not exceed the lesser of the total amount of premiums paid by the state for your children or the total amount of the assigned monthly payment toward the premium.

(5) In addition to the assignment described in this section, there is an assignment of support rights under Title IV-E of the social security act when a child receives foster care services.

(a) The state provides foster care programs which may be federally-funded or state funded, or may place a child with a relative.

(b) As part of its state plan under Title IV-D of the social security act and 45 CFR 302.52, DCS provides child support enforcement services for foster care cases as required by 45 CFR 302.33, RCW 74.20.330 and 74.20A.030.

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

WAC 388-14A-2036 What does assigning my rights to support mean? (1) As a condition of eligibility for assistance, a family member must assign to the state the right to collect and keep, subject to the limitation in WAC 388-14A-2035(3):

(a) Any support owing to the family member or to any other person for whom the family member has applied for or is receiving assistance if the family applied for cash public assistance before October 1, 2008.

(b) Support owing to the family member, or to any other person for whom the family member has applied for or is receiving cash public assistance, for any month during which the family receives assistance.

(2) While your family receives assistance, support is distributed and disbursed in accordance with WAC 388-14A-5000 through 388-14A-5015.

(3) After your family terminates from assistance, certain accrued arrears remain assigned to the state in accordance with the following rules:

(a) For assistance applications dated prior to October 1, 1997, you permanently assigned to the state all rights to support which accrued before the application date until the date your family terminated from assistance.

(b) For assistance applications dated on or after October 1, 1997, and before October 1, 2000:

(i) You permanently assigned to the state all rights to support which accrued while your family receives assistance; and

(ii) You temporarily assigned to the state all rights to support which accrued before the application date, until October 1, 2000, or when your family terminated from assistance, whichever date is later.

(c) For assistance applications dated on or after October 1, 2000, and before October 1, 2008:

(i) You permanently assigned to the state all rights to support which accrued while the family received assistance; and

(ii) You temporarily assigned to the state all rights to support which accrued before the application date, until the date your family terminated from assistance.

(d) For assistance applications dated on or after October 1, 2008, you permanently assign to the state all rights to support which accrue while the family receives assistance.

(4) When you assign your medical support rights to the state, you authorize the state on behalf of yourself and the children in your care to enforce the noncustodial parent's full duty to provide medical support.

(a) When you begin receiving medicaid or medical assistance, you do not assign to the state any accrued medical support arrears that may be owed to you by the noncustodial parent (NCP).

(b) If your support order provides for the payment of a monthly payment toward the premium when the obligated parent does not provide coverage, the division of child support (DCS) may serve a notice of support owed to establish the amount owed by the NCP as a monthly payment toward the premium paid for coverage by the state, as provided in WAC 388-14A-3312.

(c) After you terminate medicaid or medical assistance, any assigned medical arrears remain assigned to the state.

AMENDATORY SECTION (Amending WSR 03-17-013, filed 8/12/03, effective 9/12/03)

WAC 388-14A-3100 How does the division of child support establish a child support obligation when there is no child support order? (1) When there is no order setting the amount of child support a noncustodial parent (NCP) should pay, the division of child support (DCS) serves a support establishment notice on the NCP and the custodial parent (CP). A support establishment notice is an administrative notice that can become an enforceable order for support if nobody requests a hearing on the notice.

(2) DCS may serve a support establishment notice when there is no order that:

(a) Establishes the ~~((noncustodial parent's))~~ NCP's support obligation for the child(ren) named in the notice; or

(b) Specifically relieves the ~~((noncustodial parent))~~ NCP of a support obligation for the child(ren) named in the notice.

(3) Whether support is based upon an administrative order or a court order, DCS may serve a support establishment notice when the parties to a paternity order subsequently marry each other and then separate, or parties to a decree of dissolution remarry each other and then separate. The remaining provisions of the paternity order or the decree of dissolution, including provisions establishing paternity, remain in effect.

(4) Depending on the legal relationship between the NCP and the child for whom support is being set, DCS serves one of the following support establishment notices:

(a) Notice and finding of financial responsibility (NFFR), see WAC 388-14A-3115. This notice is used when the NCP is either the mother or the legal father of the child. WAC 388-14A-3102 describes when DCS uses a NFFR to

set the support obligation of a father who has signed an acknowledgment or affidavit of paternity.

(b) Notice and finding of parental responsibility (NFPR), see WAC 388-14A-3120. This notice is used when the NCP was not married to the mother but has filed an affidavit or acknowledgment of paternity. WAC 388-14A-3102 describes when DCS uses a NFPR to set the support obligation of a father who has signed an acknowledgment or affidavit of paternity.

(c) "Medical support only" NFFR or NFPR, which as of October 1, 2009, replaced the notice and finding of medical responsibility (NFMR), see WAC 388-14A-3125. ((This notice)) A medical support only NFFR or NFPR, whichever is appropriate, is used when DCS seeks to set only a medical support obligation instead of a monetary child support obligation.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-3115 The notice and finding of financial responsibility is used to set child support when paternity is not an issue. (1) A notice and finding of financial responsibility (NFFR) is an administrative notice served by the division of child support (DCS) that can become an enforceable order for support, pursuant to RCW 74.20A.055.

(2) The NFFR:

(a) Advises the noncustodial parent and the custodial parent (who can be either a parent or the physical custodian of the child) of the support obligation for the child or children named in the notice. The NFFR fully and fairly advises the parents of their rights and responsibilities under the NFFR.

(b) Includes the information required by RCW 26.23.050 and 74.20A.055.

(c) Includes a provision that both parents are obligated to provide medical support, as required by RCW 26.09.105, 26.18.170 and 26.23.050. This requirement does not apply to the custodial parent when the custodial parent is not one of the parents of the child covered by the order.

(d) Includes a provision that apportions the share of uninsured medical expenses to both the mother and the father, pursuant to RCW 26.09.105, 26.18.170 and 26.23.050.

(e) May include an obligation for the noncustodial parent to ((provide support for)) contribute his or her proportionate share of the cost of day care or ((special child-rearing expenses)) childcare, ((pursuant to chapter 26.19 RCW)) which may be stated either as a sum certain amount per month, or as a proportion of the expenses incurred by the custodial parent.

(f) Warns the noncustodial parent (NCP) and the custodial parent (CP) that at an administrative hearing, the administrative law judge (ALJ) may set the support obligation in an amount higher or lower than, or different from, the amount stated in the NFFR, if necessary for an accurate support order.

(3) As provided in WAC 388-14A-3125, DCS may serve a notice and finding of financial responsibility that can become an enforceable order for support to establish and enforce a health insurance obligation.

(a) This type of NFFR is called "medical support only" NFFR.

(b) DCS uses a medical support only NFFR when the custodial parent has requested medical support enforcement services only and has asked DCS in writing not to collect monetary child support.

(c) A medical support only NFFR does not include a monthly financial support obligation, but may include:

(i) An obligation to pay a monthly payment toward the premium paid by the CP or the state for health insurance coverage for the child(ren); and

(ii) An obligation to pay a proportionate share of the child(ren)'s uninsured medical expenses.

(d) An administrative order resulting from a medical support only NFFR may later be modified to include a monthly financial support obligation, as provided in WAC 388-14A-3925(2).

(4) After service of the NFFR, the NCP and the CP must notify DCS of any change of address, or of any changes that may affect the support obligation.

~~((4))~~ (5) The NCP must make all support payments to the Washington state support registry after service of the NFFR. DCS does not give the NCP credit for payments made to any other party after service of a NFFR, except as provided by WAC 388-14A-3375.

~~((5))~~ (6) DCS may take immediate wage withholding action and enforcement action without further notice under chapters 26.18, 26.23, and 74.20A RCW when the NFFR is a final order. WAC 388-14A-3110 describes when the notice becomes a final order.

~~((6))~~ (7) In most cases, a child support obligation continues until the child reaches the age of eighteen. WAC 388-14A-3810 describes when the obligation under the NFFR can end sooner or later than age eighteen.

~~((7))~~ (8) If paternity has been established by an affidavit or acknowledgment of paternity, DCS attaches a copy of the acknowledgment, affidavit, or certificate of birth record information to the notice. A party wishing to challenge the acknowledgment or denial of paternity may only bring an action in court to rescind or challenge the acknowledgment or denial of paternity under RCW 26.26.330 and 26.26.335.

~~((8))~~ (9) If the parents filed a paternity affidavit or acknowledgment of paternity in another state, and by that state's law paternity is therefore conclusively established, DCS may serve a NFFR to establish a support obligation.

~~((9))~~ (10) A hearing on a NFFR is for the limited purpose of resolving the NCP's accrued support debt and current support obligation. The hearing is not for the purpose of setting a payment schedule on the support debt. The NCP has the burden of proving any defenses to liability.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 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. (1) A notice and finding of parental responsibility (NFPR) is an administrative notice served by the division of

child support (DCS) that can become an enforceable order for support, pursuant to RCW 74.20A.056.

(2) The NFPR differs from a notice and finding of financial responsibility (NFFR) (see WAC 388-14A-3115) because the parties may request genetic testing to contest paternity after being served with a NFPR.

(3) DCS serves a NFPR when:

(a) An affidavit acknowledging paternity is on file with the center for health statistics and was filed before July 1, 1997; or

(b) An affidavit acknowledging paternity is on file with the vital records agency of another state and the laws of that state allow the parents to withdraw the affidavit or challenge paternity.

(4) DCS attaches a copy of the acknowledgment of paternity or certification of birth record information to the NFPR.

(5) The NFPR advises the noncustodial parent (NCP) and the custodial parent (who is either the mother or the physical custodian of the child) of the support obligation for the child or children named in the notice. The NFPR fully and fairly advises the parents of their rights and responsibilities under the NFPR. The NFPR warns the NCP and the custodial parent (CP) that at an administrative hearing on the notice, the administrative law judge (ALJ) may set the support obligation in an amount higher or lower than, or different from, the amount stated in the NFPR, if necessary for an accurate support order.

(6) The NFPR includes the information required by RCW 26.23.050, 74.20A.055, and 74.20A.056.

(7) The NFPR includes a provision that both parents are obligated to provide medical support, pursuant to RCW 26.09.105, 26.18.170 and 26.23.050. This requirement does not apply to the custodial parent when the custodial parent is not one of the parents of the child covered by the order.

(8) The NFPR includes a provision that apportions the share of uninsured medical expenses to both the mother and the father, pursuant to RCW 26.09.105, 26.18.170 and 26.23.050.

(9) The NFPR may include an obligation for the noncustodial parent to ~~(provide support for)~~ contribute his or her proportionate share of the cost of day care expenses or ~~(special child-rearing expenses)~~ childcare, ~~(pursuant to chapter 26.19 RCW)~~ which may be stated either as a sum certain amount per month, or as a proportion of the expenses incurred by the custodial parent.

(10) DCS may not assess an accrued support debt for a period longer than five years before the NFPR is served. This limitation does not apply to the extent that the NCP hid or left the state of Washington for the purpose of avoiding service.

(11) As provided in WAC 388-14A-3125, DCS may serve a notice and finding of parental responsibility that can become an enforceable order for support to establish and enforce a health insurance obligation.

(a) This type of NFPR is called a "medical support only" NFPR.

(b) DCS uses a medical support only NFPR when the custodial parent has requested medical support enforcement services only and has asked DCS in writing not to collect monetary child support.

(c) A medical support only NFPR does not include a monthly financial support obligation, but may include:

(i) An obligation to pay a monthly payment toward the premium paid by the CP or the state for health insurance coverage for the child(ren); and

(ii) An obligation to pay a proportionate share of the child(ren)'s uninsured medical expenses.

(d) An administrative order resulting from a medical support only NFPR may later be modified to include a monthly financial support obligation, as provided in WAC 388-14A-3925(2).

(12) After service of the NFPR, the NCP and the CP must notify DCS of any change of address, or of any changes that may affect the support obligation.

((12)) (13) The NCP must make all support payments to the Washington state support registry after service of the NFPR. DCS does not give the NCP credit for payments made to any other party after service of the NFPR, except as provided by 388-14A-3375.

((13)) (14) DCS may take immediate wage withholding action and enforcement action without further notice under chapters 26.18, 26.23, and 74.20A RCW when the NFPR is a final order. See WAC 388-14A-3110 for when the notice becomes a final order.

((14)) (15) In most cases, a child support obligation continues until the child reaches the age of eighteen. WAC 388-14A-3810 describes when the obligation under the NFPR can end sooner or later than age eighteen.

((15)) (16) Either the NCP, or the mother, if she is also the CP, may request genetic tests. A mother who is not the CP may at any time request that DCS refer the case for paternity establishment in the superior court.

((16)) (17) DCS does not stop enforcement of the order unless DCS receives a timely request for hearing or a timely request for genetic tests. See WAC 388-14A-3110 for time limits. DCS does not refund any money collected under the notice if the NCP is later:

(a) Excluded from being the father by genetic tests; or

(b) Found not to be the father by a court of competent jurisdiction.

((17)) (18) If the NCP requested genetic tests and was not excluded as the father, he may request within twenty days from the date of service of the genetic tests in Washington, or sixty days from the date of service of the genetic tests outside of Washington:

(a) A hearing on the NFPR.

(b) That DCS initiate a parentage action in superior court under chapter 26.26 RCW.

((18)) (19) If the NCP was not excluded as the father, the CP (or the mother, if she is also the CP), may within twenty days of the date of service of the genetic tests request:

(a) A hearing on the NFPR; or

(b) That DCS initiate a parentage action in superior court under chapter 26.26 RCW.

((19)) (20) If the NCP is excluded by genetic testing, DCS may refer the case for paternity establishment in the superior court.

((20)) (21) A hearing on a NFPR is for the limited purpose of resolving the NCP's current support obligation, accrued support debt and amount of reimbursement to DCS

for paternity-related costs. The hearing is not for the purpose of setting a payment schedule on the support debt. The NCP has the burden of proving any defenses to liability.

AMENDATORY SECTION (Amending WSR 03-20-072, filed 9/29/03, effective 10/30/03)

WAC 388-14A-3125 ((The notice and finding of medical responsibility is used to set)) DCS may establish a medical support obligation when the custodial parent receiving medical assistance declines full child support enforcement services. (1) ((A notice and finding of medical responsibility (NFMR) is an administrative notice served by the division of child support (DCS) that can become an enforceable order for support pursuant to chapter 74.20A RCW to establish and enforce a health insurance obligation)) When a custodial parent (CP) has requested medical support enforcement services only and has asked in writing that the department not collect monetary child support, the division of child support (DCS) serves either a notice and finding of financial responsibility (NFFR) under RCW 74.20A.055, or a notice and finding of parental responsibility (NFPR) under RCW 74.20A.056, as appropriate, on the noncustodial parent (NCP) to establish an administrative support order that can become an enforceable order for support to establish and enforce a health insurance obligation.

(a) A NFFR or NFPR served to establish an administrative support order that can become an enforceable order for support to establish and enforce a health insurance obligation is called a "medical support only" NFFR or NFPR.

(b) Prior to October 1, 2009, DCS used another notice, called the notice and finding of medical responsibility (NFMR), for this purpose.

(c) DCS uses the medical support only NFFR or NFPR as of October 1, 2009.

(2) DCS may serve a ((NFMR)) medical support only NFFR or a medical support only NFPR when:

(a) The custodial parent (who is either a parent or the physical custodian of the child) or a dependent child receives or is certified eligible to receive medical assistance and is not receiving cash grant public assistance under 74.12 RCW; and

(b) The custodial parent has requested medical support enforcement services only and has asked DCS in writing not to collect monetary child support.

(3) The ((NFMR)) medical support only NFFR or medical support only NFPR advises the noncustodial parent (NCP) and the CP (when appropriate) of ((the)) their respective medical support obligations for the children named in the notice. The ((NFMR)) medical support only NFFR or medical support only NFPR fully and fairly advises the parties of their rights and responsibilities under the ((NFMR)) medical support only NFFR or medical support only NFPR.

(4) The ((NFMR)) medical support only NFFR or medical support only NFPR warns the ((noncustodial parent and the custodial parent)) NCP and the CP that at an administrative hearing on the notice, the administrative law judge (ALJ) may set the support obligation in an amount higher or lower than, or different from, the amount stated in the ((NFMR)) notice, if necessary for an accurate support order.

(5) The ~~((NFMR))~~ medical support only NFFR or medical support only NFPR includes:

(a) The information required by RCW 26.23.050;

(b) The ~~((noncustodial parent's health insurance))~~ medical support obligation of both parents, pursuant to RCW 26.18.170;

(c) The maximum premium amount ~~((the noncustodial parent))~~ each obligated parent must pay; and

(d) The income basis used to calculate the maximum premium amount, pursuant to WAC 388-14A-3200.

(6) The income basis for an obligation established by DCS for a ~~((NFMR))~~ medical support only NFFR or medical support only NFPR is not binding on any party in any later action to establish a ~~((each))~~ monthly financial child support obligation.

(7) After service of the ~~((NFMR))~~ medical support only NFFR or medical support only NFPR, both the ~~((noncustodial parent (NCP) and the custodial parent))~~ NCP and CP must notify DCS of any change of address, or of any changes that may affect the support obligation.

(8) DCS may take enforcement action under RCW 26.18.170 and chapter 388-14A WAC without further notice when the ~~((NFMR))~~ medical support only NFFR or medical support only NFPR is a final order. See WAC 388-14A-3110 for how a notice becomes a final order.

(9) In most cases, a child support obligation continues until the child reaches the age of eighteen. WAC 388-14A-3810 describes when the obligation under the ~~((NFMR))~~ medical support only NFFR or medical support only NFPR can end sooner or later than age eighteen.

(10) If the ~~((custodial parent))~~ CP applies for full enforcement services or if a TANF grant opens while a hearing on a ~~((NFMR))~~ medical support only NFFR or medical support only NFPR is pending, DCS may, at any time before the hearing record is closed, convert the hearing to a hearing on a notice and finding of financial responsibility (NFFR) under WAC 388-14A-3115 or a notice and finding of parental responsibility (NFPR) under WAC 388-14A-3120. To convert the hearing, DCS serves a NFFR or NFPR on the parents and files a copy with the administrative law judge (ALJ). The ALJ may grant a continuance if a party requests additional time to respond to the claim for monetary child support.

(11) In a ~~((NFMR))~~ hearing on a medical support only NFFR or medical support only NFPR, the ALJ must determine the:

(a) Basic support obligation, without deviations; and

(b) Maximum premium amount for both parents under chapter 26.19 RCW.

(12) A hearing on a ~~((NFMR))~~ medical support only NFFR or medical support only NFPR is for the limited purpose of resolving the ~~((NCP's))~~ parents' medical support responsibility. The ~~((NCP has))~~ parties each have the burden of proving defenses to their own liability.

(13) If the CP later applies for full enforcement services or if a child covered by the order receives public assistance, DCS may add a monthly financial support obligation to an administrative child support order for medical support only. The procedure required to add the monthly financial support obligation depends on whether DCS serve a medical support

only NFFR or medical support only NFPR to establish the administrative support order. See WAC 388-14A-3127.

NEW SECTION

WAC 388-14A-3127 How does DCS ask to add a monthly financial obligation to an existing administrative order for medical support only? (1) The division of child support (DCS) may ask to add a monthly financial support obligation to an administrative child support order for medical support only, if:

(a) The custodial parent who previously requested medical support only services, files an application for full support enforcement services; or

(b) A child covered by the order receives public assistance.

(2) The procedure required to add the monthly financial support obligation depends on whether DCS served a NFMR, medical support only NFFR or medical support only NFPR to establish the administrative support order:

(a) If the medical support obligation was established through service of a NFMR, DCS serves a NFFR under WAC 388-14A-3115 or a NFPR under WAC 388-14A-3120 which requests a monthly financial obligation.

(b) If the medical support obligation was established through service of a NFFR or a NFPR, DCS files a petition to modify the previous administrative order under WAC 388-14A-3925.

AMENDATORY SECTION (Amending WSR 06-09-015, filed 4/10/06, effective 5/11/06)

WAC 388-14A-3140 What can happen at a hearing on a support establishment notice? (1) When a ~~((parent))~~ party requests a hearing on a notice and finding of financial responsibility (NFFR), notice and finding of parental responsibility (NFPR), or notice and finding of medical responsibility (NFMR), the hearing is limited to:

(a) Resolving the ~~((NCP's))~~ current and future support obligation and the accrued support debt of the noncustodial parent (NCP); and

(b) Establishing the medical support obligations of both the NCP and the custodial parent (CP), if the CP is the legal or biological parent of the child(ren).

(2) The hearing is not for the purpose of setting a payment schedule on the support debt.

~~((2))~~ (3) The ~~((noncustodial parent (NCP) has))~~ NCP and the CP each have the burden of proving any defenses to their own liability. See WAC 388-14A-3370.

~~((3))~~ (4) ~~((Both))~~ The NCP and/or the ~~((custodial parent))~~ CP must show cause why the terms in the NFFR, NFPR, or NFMR are incorrect.

~~((4))~~ (5) The administrative law judge (ALJ) has authority to enter a support obligation that may be higher or lower than the amounts set forth in the NFFR, NFPR, or NFMR, including the support debt, current support, and the future support obligation.

(a) The ALJ may enter an order that differs from the terms stated in the notice, including different debt periods, if the obligation is supported by credible evidence presented by any party at the hearing, without further notice to any nonap-

pearing party, if the ALJ finds that due process requirements have been met.

(b) Any support order entered by the ALJ must comply with the requirements of WAC 388-14A-6300.

~~((5))~~ (6) The ALJ has no authority to determine custody or visitation issues, or to set a payment schedule for the arrears debt.

~~((6))~~ (7) When a party has advised the ALJ that they will participate by telephone, the ALJ attempts to contact that party on the record before beginning the proceeding or rules on a motion. The ALJ may not disclose to the other parties the telephone number or the location of the party appearing by phone.

~~((7))~~ (8) In support establishment hearings, both the NCP and CP may participate in the hearing. However, in certain cases, there is no "custodial parent" because the child or children are in foster care.

(a) If the NCP ~~((fails))~~ and CP both fail to appear for hearing, see WAC 388-14A-3131.

(b) If only one of the parties appears for the hearing, see WAC 388-14A-3132.

(c) If the NCP ~~((appears))~~ and CP both appear for hearing, see WAC 388-14A-3133.

~~((8))~~ (9) In ~~((certain))~~ some cases, there can be two NCPs, called "joint NCPs." This happens when DCS serves a joint support establishment notice on the marital community made up of a husband and wife ~~((are jointly served a support establishment notice))~~ who reside together, or on the domestic partnership community made up of two registered domestic partners who reside together, seeking to establish a support obligation for a ~~((common))~~ child in common who is not residing in their home.

(a) If both of the joint NCPs fail to appear for hearing, see WAC 388-14A-3131;

(b) If both of the joint NCPs appear for hearing, see WAC 388-14A-3133; or

(c) One joint NCP may appear and represent the other joint NCP.

~~((9))~~ (10) When ~~((the))~~ a CP ~~((asserts))~~ is granted good cause level B (see WAC 388-422-0020), DCS notifies the CP that ~~((they))~~ the CP will ~~((continue to))~~ receive documents, notices and orders. The CP may choose to participate at any time. Failure to appear at hearing results in a default order but does not result in a sanction for noncooperation under WAC 388-14A-2041.

~~((10))~~ (11) If any party appears for the hearing and elects to proceed, ~~((absent the granting of a continuance))~~ the ALJ hears the matter and enters ~~((an initial decision and))~~ a final order based on the evidence presented, unless the ALJ grants a continuance. The ALJ includes a party's failure to appear in the initial decision and order as an order of default against that party. The direct appeal rights of the party who failed to appear ~~((shall be))~~ are limited to an appeal on the record made at the hearing.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-3200 How does DCS determine my support obligation? (1) The division of child support (DCS)

determines support obligations using the Washington state child support schedule (the WSCSS), ~~((which is found in))~~ chapter 26.19 RCW, for the establishment and modification of support orders.

(2) When calculating child support obligations, DCS must use the WSCSS worksheets developed by the administrative office of the courts (AOC).

(3) RCW 26.23.050 provides that every child support order must state the monthly child support obligation as a sum certain amount, but does not require that the support obligation be stated in a "per month per child" amount when more than one child is covered by the order. DCS sets support obligations in a per month per child amount whenever possible.

(4) When DCS is calculating a support obligation for more than one child in an administrative support establishment notice, DCS may set the monthly support obligation as an undifferentiated amount, as defined in WAC 388-14A-4800. DCS may do this if one or more of the following are true:

(a) The calculation involves a deviation from the standard calculation based on the existence of children from other relationships;

(b) The support obligation is subject to the "forty-five percent limitation" provided in RCW 26.19.065(1) and described in WAC 388-14A-3400 (1)(a);

(c) The support obligation is subject to the self-support reserve limitation, and the monthly support obligation is greater than the presumptive minimum obligation of fifty dollars per month per child; or

(d) Part III of the worksheets includes health care or day care expenses.

(5) See WAC 388-14A-8100 for rules on completing the worksheets under the WSCSS for cases where DCS is determining support for a child in foster care.

~~((3))~~ (6) DCS does not have statutory authority to set the child support obligations of both the noncustodial parent (NCP) and custodial parent (CP) in the same administrative proceeding, except that RCW 26.09.105, 26.18.170 and 26.23.050 provide that an administrative order that sets the NCP's child support obligation can also determine the CP's medical support obligation.

(a) DCS orders can not set off the support obligation of one parent against the other.

(b) Therefore, the method set forth in Marriage of Arvey, 77 Wn. App 817, 894 P.2d 1346 (1995), must not be applied when DCS determines a support obligation.

~~((4))~~ (7) The limitations in this section apply to DCS staff and to administrative law judges (ALJs) who are setting child support obligations.

(8) See WAC 388-14A-4800 through 388-14A-4830 for more information on differentiated and undifferentiated support amounts.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-3205 How does DCS calculate my income? (1) The division of child support (DCS) calculates a parent's income using the best available information~~((:)).~~ In

the absence of records of a parent's actual earnings, DCS and/or the administrative law judge (ALJ) may impute a parent's income under RCW 26.19.071(6) in the following order of priority:

(a) ~~((Actual income))~~ Full-time earnings at the current rate of pay;

(b) ~~((Estimated income, if DCS has:~~

(i) ~~Incomplete information;~~

(ii) ~~Information based on the prevailing wage in the parent's trade or profession; or~~

(iii) ~~Information that is not current.~~

(c) ~~Imputed income under RCW 26.19.071(6))~~ Full-time earnings at the historical rate of pay based on reliable information, such as employment security department data;

(c) Full-time earnings at a past rate of pay where information is incomplete or sporadic;

(d) Full-time earnings at minimum wage in the jurisdiction where the parent resides if the parent has a recent history of minimum wage earnings, is recently coming off public assistance, disability lifeline benefits, supplemental security income, or disability, has recently been released from incarceration, or is a high school student or recent high school graduate; or

(e) Median net monthly income of year-round full-time workers as derived from the United States bureau of census, current population reports.

(2) DCS and the ALJ impute full time earnings at the minimum wage to a TANF recipient in the absence of actual income information(, DCS imputes full time earnings at the minimum wage to a TANF recipient). You may rebut the imputation of income if you are excused from being required to work while receiving TANF, because:

(a) You are either engaged in other qualifying WorkFirst activities which do not generate income, such as job search; or

(b) You are excused or exempt from being required to work in order to receive TANF, because of other barriers such as family violence or mental health issues.

AMENDATORY SECTION (Amending WSR 03-20-072, filed 9/29/03, effective 10/30/03)

WAC 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? (1) If a support order requires the noncustodial parent (NCP) to pay support to anywhere other than the Washington state support registry (WSSR), the division of child support (DCS) may serve a notice on the NCP telling the NCP to make all future payments to the WSSR.

(2) ~~((DCS may serve a notice of support debt on a non-custodial parent (NCP) as provided in RCW 74.20A.040. See WAC 388-14A-3304.~~

(3) ~~DCS may serve a notice of support owed on an NCP as provided in RCW 26.23.110. See WAC 388-14A-3310.~~

(4) ~~When DCS serves a notice of support debt or a notice of support owed, DCS sends a notice to the payee under the order. See WAC 388-14A-3315))~~ DCS determines which

notice to serve on the NCP as provided in WAC 388-14A-3302 and elsewhere in this chapter.

(3) When DCS serves a notice of support debt or a notice of support owed under RCW 26.23.110, DCS notifies the other party to the order. See WAC 388-14A-3315.

NEW SECTION

WAC 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? (1) When the division of child support (DCS) serves a notice under WAC 388-14A-3300 to advise a noncustodial parent (NCP) that DCS is enforcing a support order, DCS may serve a notice of support debt, a notice of support debt and registration, a notice of support owed, or any other appropriate notice as provided in this chapter.

(2) If the support order sets the amount of the support obligation in a sum certain amount, DCS may serve a notice of support debt on the NCP as provided in RCW 74.20A.040 and WAC 388-14A-3304.

(3) If DCS is registering a support order or income-withholding order issued in another state, DCS may serve a notice of support debt and registration on the NCP, as provided in RCW 26.21A.500, RCW 26.21A.540 and WAC 388-14A-7100.

(4) Under RCW 26.23.110, DCS may serve a notice of support owed on an NCP or a custodial parent (CP), as appropriate, if the underlying support order:

(a) Does not state the monthly support obligation as a fixed dollar amount;

(b) Contains an escalation clause or adjustment provision for which additional information not contained in the support order is needed to determine the fixed dollar amount of the support debt or the fixed dollar amount of the current and future support obligation, or both;

(c) Provides that the NCP is responsible for a portion of nonmedical expenses incurred on behalf of the child, but does not reduce the amount owed to a fixed dollar amount; or

(d) Provides that either the NCP or the custodial parent (CP) must provide medical support as provided under either RCW 26.19.105 or 74.20A.300, but does not reduce the medical support obligation to a fixed dollar amount.

(5) As of the effective date of this section, DCS does not serve a notice of support owed under RCW 26.23.110 to determine the NCP's proportionate share of any nonmedical expenses other than daycare or child care expenses incurred on behalf of the child(ren) covered by the order.

(6) The fact that an NCP or CP's request that DCS act on his or her claim for unreimbursed nonmedical expenses is rejected by DCS does not mean that the NCP or CP cannot pursue reimbursement of those expenses by proceeding in court.

(a) If a CP obtains a judgment for unreimbursed non-medical expenses, DCS may enforce the judgment if the CP qualifies for services under WAC 388-14A-2000.

(b) If DCS served a notice of support owed to determine the NCP's proportionate share of nonmedical expenses at some time before the effective date of this section and either NCP or CP requests an annual review under RCW 26.23.110,

DCS may continue to provide annual reviews for the support order which was the subject of the prior notice of support owed.

(7) See WAC 388-14A-3310 for the general rules for a notice of support owed.

(a) WAC 388-14A-3311 describes the procedures for service of a notice of support owed to:

(i) Determine the fixed dollar amount of the support debt or the fixed dollar amount of the current and future support obligation;

(ii) Implement an escalation clause or adjustment provision;

(iii) Convert a support order set in foreign currency using the current rate of exchange to fix the amount of support in U.S. dollars; or

(iv) Determine as a sum certain the NCP's proportionate share of daycare or child care expenses paid by the NCP.

(b) WAC 388-14A-3312 describes the procedures for service of a notice of support owed to establish a parent's share of medical expenses and/or medical support owed for the child or children covered by a support order.

(8) WAC 388-14A-3307 discusses how DCS proceeds when DCS decides that a determination of controlling order under chapter 26.21A RCW is required. Under that section, DCS may serve a notice of support debt and registration as provided in WAC 388-14A-7100.

(9) WAC 388-14A-3315 provides that:

(a) When DCS serves a notice of support debt or a notice of support owed on the NCP, DCS notifies the CP and the payee under the order, if the CP is not the payee under the order; and

(b) When DCS serves a notice of support owed under WAC 388-14A-3312 on the CP, DCS notifies the NCP.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 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(~~?~~)² (1) The division of child support (DCS) may serve a notice of support owed under RCW 26.23.110 on ((a)) either the noncustodial parent (NCP) ((under RCW 26.23.110)) or the custodial parent (CP) whenever it is necessary to establish a fixed dollar amount ((~~of monthly support and accrued support debt~~;

(a) ~~If the support obligation under an order is not a fixed dollar amount; or~~

(b) ~~To implement an adjustment or escalation provision of a court order.~~

(2) ~~The notice of support owed may include day care costs and medical support if the court order provides for such costs. WAC 388-14A-3312 describes the use of a notice of support owed to collect unreimbursed medical expenses from either of the parties to a support order, no matter which one has custody of the child.~~

(3) ~~DCS serves a notice of support owed on an NCP like a summons in a civil action or by certified mail, return receipt requested.~~

(4) ~~Following service on the NCP, DCS mails a notice to payee under WAC 388-14A-3315.~~

(5) ~~In a notice of support owed, DCS includes the information required by RCW 26.23.110, and:~~

(a) ~~The factors stated in the order to calculate monthly support;~~

(b) ~~Any other information not contained in the order that was used to calculate monthly support and the support debt; and~~

(c) ~~Notice of the right to request an annual review of the order or a review on the date, if any, given in the order for an annual review.~~

(6) ~~The NCP must make all support payments after service of a notice of support owed to the Washington state support registry. DCS does not credit payments made to any other party after service of a notice of support owed except as provided in WAC 388-14A-3375.~~

(7) ~~A notice of support owed becomes final and subject to immediate income withholding and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW unless the NCP, within twenty days of service of the notice in Washington:~~

(a) ~~Contacts DCS, and signs an agreed settlement;~~

(i) ~~Files a request with DCS for a hearing under this section; or~~

(ii) ~~Obtains a stay from the superior court.~~

(b) ~~A notice of support owed served in another state becomes final according to WAC 388-14A-7200.~~

(8) ~~DCS may enforce at any time:~~

(a) ~~A fixed or minimum dollar amount for monthly support stated in the court order or by prior administrative order entered under this section;~~

(b) ~~Any part of a support debt that has been reduced to a fixed dollar amount by a court or administrative order; and~~

(c) ~~Any part of a support debt that neither party claims is incorrect.~~

(9) ~~For the rules on a hearing on a notice of support owed, see WAC 388-14A-3320.~~

(10) ~~A notice of support owed or a final administrative order issued under WAC 388-14A-3320 must inform the parties of the right to request an annual review of the order.~~

(11) ~~If an NCP or custodial parent (CP) requests a late hearing, the party must show good cause for filing the late hearing request if it is filed more than one year after service of the notice of support owed.~~

(12) ~~A notice of support owed fully and fairly informs the NCP of the rights and responsibilities in this section.~~

(13) ~~For the purposes of this section, WAC 388-14A-3312, 388-14A-3315 and 388-14A-3320, the term "payee" includes "physical custodian," "custodial parent," or "party seeking reimbursement.") owed under a child support order that was entered in Washington or by any other tribunal. This section provides general information regarding the notice of support owed.~~

(a) WAC 388-14A-3311 describes the procedures for service of a notice of support owed on the NCP to determine the fixed dollar amount of the support debt or the fixed dollar amount of the current and future support obligation, including the NCP's proportionate share of daycare or child care expenses incurred on behalf of the child(ren); and

(b) WAC 388-14A-3312 describes the procedures for service of a notice of support owed on either parent to establish that parent's share of medical expenses and/or medical support owed for the child or children covered by a support order.

(2) The notice of support owed contains an initial finding, showing DCS' calculation of the fixed dollar amount of:

(a) The current and future support obligation;

(b) Any support debt owed; or

(c) Both amounts.

(3) The notice of support owed facilitates enforcement of the underlying support order by implementing the terms of the order, but it cannot modify the terms of the order.

(4) The reasons that DCS may serve a notice of support owed include, but are not limited to:

(a) The support order sets a support obligation but does not state the monthly support obligation as a fixed dollar amount;

(b) DCS is implementing the adjustment or escalation provision of a court order;

(c) The support order provides that the NCP is responsible for paying for a portion of daycare or child care expenses incurred on behalf of the child(ren), but does not reduce the amount owed to a fixed dollar amount. DCS serves the notice of support owed to determine the NCP's proportionate share of those expenses; or

(d) The support order provides that either the NCP or the CP must provide medical support as required under either RCW 26.19.105 or 74.20A.300, but does not reduce the medical support obligation to a fixed dollar amount.

(5) Because of the different purposes for which DCS may serve a notice of support owed under RCW 26.23.110, DCS has developed two separate forms to use for the notice of support owed:

(a) The basic form used by DCS to establish a fixed dollar amount owed by an NCP under an existing child support order is called the notice of support owed.

(b) DCS developed a special form called the "notice of support owed - medical support" which is used only for the following purposes:

(i) To notify an obligated parent of the obligation to pay a portion of the premium for health insurance provided by the other parent or state of Washington;

(ii) To determine a fixed dollar amount for uninsured medical expenses incurred on behalf of the children and to demand payment of the obligated parent's proportionate share; or

(iii) When a support order requires the obligated parent to pay a specific percentage of uninsured medical expenses.

(6) For the purposes of this chapter, the term "notice of support owed" includes "notice of support owed" and "notice of support owed - medical support."

(7) DCS serves a notice of support owed on the NCP or the CP, as appropriate, like a summons in a civil action or by certified mail, return receipt requested.

(8) WAC 388-14A-3315 provides that, when DCS serves a notice of support owed on one party, DCS notifies the other party to the support order by sending a form called the notice to payee, and encloses a copy of the notice that was served.

(a) After service on the NCP, DCS mails a notice to payee to the CP and to the payee under the order, if the CP is not the payee under the order.

(b) After service on the CP, DCS mails a notice to payee to the NCP.

(9) In a notice of support owed, DCS includes:

(a) The information required by RCW 26.23.110;

(b) Any provision or factors contained in the underlying order regarding how to calculate the monthly support or the amounts claimed for medical support;

(c) Any other information not contained in the order that DCS used to calculate the amounts in the notice; and

(d) Notice of the right to request an annual review of the order or a review on the date given in the order for an annual review, if any. WAC 388-14A-3330 describes the procedures for the annual review of a notice of support owed.

(10) A notice of support owed fully and fairly informs the parties of the rights and responsibilities in this section.

(11) After service of a notice of support owed, the recipient of the notice (which could be either the CP or the NCP, as appropriate,) must make all support payments required by the notice to the Washington state support registry (WSSR). DCS does not credit payments made to any other party after service of a notice of support owed except as provided in WAC 388-14A-3375.

(12) The need to serve a notice of support owed does not require DCS to cease all enforcement actions on a case. At any time, DCS may enforce:

(a) A fixed or minimum dollar amount for monthly support stated in the court order or a prior administrative order entered under this section;

(b) Any part of a support debt that has been reduced to a fixed dollar amount by a court or administrative order; and

(c) Any part of a support debt that neither party claims is incorrect.

(13) A notice of support owed becomes final and subject to immediate income withholding and enforcement as provided in WAC 388-14A-3316.

(14) An objection or request for hearing on a notice of support owed may be timely or untimely:

(a) WAC 388-14A-3317 discusses what happens if a parent makes a timely request for hearing; and

(b) WAC 388-14A-3318 discusses what happens if a parent makes an untimely request for hearing.

(15) WAC 388-14A-3320 provides general information regarding an administrative hearing on a notice of support owed.

(16) WAC 388-14A-3330 provides information regarding the annual review of a notice of support owed.

(17) For the purposes of this section and WAC 388-14A-3311 through 388-14A-3330, the term "payee" includes "physical custodian," "custodial parent," or "party seeking reimbursement."

NEW SECTION

WAC 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? (1) The division of child support (DCS) serves a

notice of support owed under RCW 26.23.110, WAC 388-14A-3310 and this section on the noncustodial parent (NCP) to determine the fixed dollar amount of the support debt, the fixed dollar amount of the current and future support obligation, or both.

(2) DCS may serve a notice of support owed on the NCP to determine the fixed dollar amount of the current and future support obligation when a support order provides that the NCP's support obligation is:

(a) A certain percentage of the NCP's gross or net earnings;

(b) Set as a sum-certain amount, but the amount is to be paid other than monthly; or

(c) To be determined by some other formula or method requiring the use of information that is not contained in the order, including currency conversion when DCS is enforcing a support order which sets the support amount in a foreign currency.

(3) DCS may serve a notice of support owed on the NCP to determine the amount of the NCP's share of daycare or child care expenses for the children when the support order sets the NCP's obligation as a percentage or proportion of those expenses. A custodial parent (CP) seeking reimbursement for daycare or childcare expenses for the child(ren) must:

(a) Apply for full collection services at the time of the request, unless the CP already has an open full collection case with DCS;

(b) Have paid the daycare or child care expenses before seeking reimbursement through DCS;

(c) Provide proof of payment of those expenses;

(d) Complete the forms provided by DCS for the claim, or at a minimum present the required information and documentation in a format similar to that in the DCS forms; and

(e) Declare under penalty of perjury that he or she has asked the NCP to pay his or her share of the daycare or child care expenses or provide good cause for not asking the NCP for payment.

(4) DCS' denial of a request from either the CP or the NCP to serve a notice of support owed under this section does not affect either party's ability to bring an action in another tribunal to enforce a claim for the other party's proportionate share of expenses paid for the children. Either party may file an action in court to:

(a) Make a claim for reimbursement of daycare or child-care expenses;

(b) Make a claim for reimbursement of any other child rearing expenses; or

(c) See any other kind of relief against the other party.

(5) DCS may serve a notice of support owed under this section on the NCP to implement an escalation clause or adjustment provision for which additional information not contained in the support order is needed to determine the fixed dollar amount of the support debt or the fixed dollar amount of the current and future support obligation.

(6) Whenever DCS serves a notice of support owed on the NCP under subsections (2), (3) or (5) above, that notice may also include a determination of the fixed dollar amount of:

(a) Any support debt owing;

(b) Any amount paid by the NCP that exceeds his or her actual current and future support obligation; and

(c) Any amount paid by the NCP that exceeds his or her actual share of day care or child care expenses.

(7) If DCS is preparing a notice of support owed as part of an annual review, the notice may also include a determination of the fixed dollar amount of:

(a) Any support debt owed by the NCP; and

(b) Any amounts calculated under an order resulting from a previous notice of support owed that exceed the NCP's actual obligation after actual income or expenses are considered.

(8) If the notice of support owed contains a determination that the owed by the NCP under the previous notice of support owed (if any) is more than his or her actual current and future support obligation or his or her actual share of expenses, the notice addresses how the difference may be credited or repaid, in the absence of an agreement between the parties.

(a) Any overpayment may be applied as an offset to non-assistance child support arrears owed by the NCP on that case only.

(b) If there is no nonassistance debt owed on the case, the reimbursement must be in the form of a credit against the NCP's future child support obligation:

(i) Spread equally over a twelve-month period starting the month after the administrative order becomes final; or

(ii) In a case where the underlying order provides that the NCP's support obligation will end in less than twelve months, spread equally over the remaining life of the order.

(9) In a notice of support owed under this section, DCS includes:

(a) The information required by RCW 26.23.110 and WAC 388-14A-3110;

(b) A description of any provisions or factors contained in the underlying order regarding how to calculate the monthly support obligation or the amounts claimed for non-medical expenses; and

(c) Any other information not contained in the order that DCS used to calculate the amounts in the notice.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-3312. The division of child support serves a notice of support owed ((for unreimbursed medical expenses)) to establish a fixed dollar amount owed ((under a child support order)) by either parent for medical support. (1) ((The division of child support (DCS) may serve a notice of support owed for unreimbursed medical expenses under RCW 26.23.110 on either the noncustodial parent (NCP) or the custodial parent (CP) in order to collect the obligated parent's share of uninsured medical expenses owed to the party seeking reimbursement.

(2) Either the NCP or CP (if the CP is a party to the support order) may ask DCS to serve a notice of support owed for unreimbursed medical expenses on the other party to the support order, if that party is an obligated party under the support order.

(a) If the CP is not a party to the support order, DCS can not assist the CP in making a claim for unreimbursed medical expenses, but the CP may seek to recover such expenses by filing an action in court.

(b) DCS serves the notice if the party seeking reimbursement provides proof of payment of at least five hundred dollars in uninsured medical expenses.

(3) A notice of support owed for unreimbursed medical expenses:

(a) May be for a period of up to twenty-four consecutive months.

(b) May include only medical services provided after July 21, 2007.

(c) May not include months which were included in a prior notice of support owed for unreimbursed medical expenses or a prior judgment.

(d) Need not be for the twenty-four month period immediately following the period included in the prior notice of support owed for unreimbursed medical expenses.

(4) The party seeking reimbursement must ask DCS to serve a notice of support owed for unreimbursed medical expenses within two years of the expense being incurred.

(a) The fact that a claim for unreimbursed medical expenses is rejected by DCS does not mean that the parent cannot pursue reimbursement of those expenses by proceeding in court.

(b) If a parent obtains a judgment for unreimbursed medical expenses, DCS enforces the judgment.

(5) DCS does not serve a notice of support owed for unreimbursed medical expenses unless the party seeking reimbursement declares under penalty of perjury that he or she has asked the obligated party to pay his or her share of the medical expenses, or provides good cause for not asking the obligated party.

(a) If the medical expenses have been incurred within the last twelve months, this requirement is waived.

(b) If the obligated party denies having received notice that the other party was seeking reimbursement for medical expenses, the service of the notice of support owed for unreimbursed medical expenses constitutes the required notice.

(6) The NCP must apply for full child support enforcement services before the NCP may ask DCS to enforce the CP's medical support obligation.

(a) DCS opens a separate case to enforce a CP's medical support obligation.

(b) The case where DCS is enforcing the support order and collecting from the NCP is called the main case.

(c) The case where DCS is acting on NCP's request to enforce CP's medical support obligation is called the medical support case.

(7) DCS serves a notice of support owed on the obligated parent like a summons in a civil action or by certified mail, return receipt requested.

(8) Following service on the obligated parent, DCS mails a notice to the party seeking reimbursement under WAC 388-14A-3315.

(9) In a notice of support owed for unreimbursed medical expenses, DCS includes the information required by RCW 26.23.110, and:

(a) The factors stated in the order regarding medical support;

(b) A statement of uninsured medical expenses and a declaration by the parent seeking reimbursement; and

(c) Notice of the right to request an annual review of the order, as provided in WAC 388-14A-3318.

(10) A notice of support owed for unreimbursed medical expenses becomes final and subject to immediate income withholding and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW unless the obligated parent, within twenty days of service of the notice in Washington:

(a) Contacts DCS, and signs an agreed settlement;

(b) Files a request with DCS for a hearing under this section; or

(c) Obtains a stay from the superior court.

(11) A notice of support owed for unreimbursed medical expenses served in another state becomes final according to WAC 388-14A-7200.

(12) For the rules on a hearing on a notice of support owed for unreimbursed medical expenses, see WAC 388-14A-3320.

(13) A notice of support owed for unreimbursed medical expenses or a final administrative order issued under WAC 388-14A-3320 must inform the parties of the right to request an annual review of the order.

(14) Depending on the specific requirements of the child support order, and only if the case meets the criteria set out in WAC 388-14A-4111, the division of child support (DCS) may serve a notice of support owed under RCW 26.23.110, WAC 388-14A-3310 and this section:

(a) On either the noncustodial parent (NCP) or the custodial parent (CP), as appropriate, in order to:

(i) Establish as a sum certain and collect the obligated parent's proportionate share of uninsured medical expenses owed to the parent seeking reimbursement. This process is called reimbursement of uninsured medical expenses;

(ii) Establish as a sum certain and collect the obligated parent's monthly payment toward the premium currently being paid by the other parent for insurance coverage for the child; or

(iii) Establish and collect amounts owed under both subsections (a)(i) and (a)(ii) of this section.

(b) On the NCP in order to establish as a sum certain and collect the NCP's monthly payment toward the premium paid by the state for managed care coverage for the child, if the child receives state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment.

(2) Unless otherwise specified in the order, each parent's proportionate share of uninsured medical expenses and medical insurance premiums is the same as the proportionate share of income shown on the Washington state child support schedule worksheet that was completed as part of the support order.

(a) On occasion, a tribunal may specify that medical support obligations are to be shared between the parents at a different percentage than the one on the worksheet.

(b) DCS follows the terms of the underlying order when serving a notice of support owed under this section.

(3) WAC 388-14A-4111 and 388-14A-4112 set out some of the reasons why DCS may decline a party's request to enforce a medical support obligation.

(4) Only a CP who is both a parent and a party to the support order may ask DCS to serve a notice of support owed on the NCP under subsection (1)(a) of this section. If the CP is not both a parent and a party to the support order, DCS' denial of the request does not affect the CP's ability to bring an action in another tribunal to enforce the CP's claim against the NCP for medical support. The CP may file an action in court to:

(a) Make a claim for reimbursement of uninsured medical expenses;

(b) Make a claim for a monthly contribution toward any insurance coverage provided by the CP; or

(c) Seek both kinds of relief against the NCP.

(5) DCS may serve a notice of support owed on the NCP under subsection (1)(b) of this section without regard to the CP's status as a parent or party to the order, if the child receives state financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment.

(6) Either the NCP or the CP may ask DCS to serve a notice of support owed on the other party to the support order in order to establish the obligated parent's proportionate share of uninsured medical expenses as a sum certain amount if the support order establishes such an obligation. The parent seeking reimbursement for uninsured medical expenses must:

(a) Apply for full collection services at the time of the request, unless the parent already has an open full collection case with DCS;

(b) Have paid the uninsured medical expenses before seeking reimbursement through DCS;

(c) Provide proof of payment of at least five hundred dollars in uninsured medical expenses;

(d) Complete the forms provided by DCS for the claim, or at a minimum present the required information and documentation in a format similar to that in the DCS forms; and

(e) Declare under penalty of perjury that he or she has asked the obligated parent to pay his or her share of the uninsured medical expenses or provide good cause for not asking the obligated parent.

(i) If the uninsured medical expenses have been incurred within the last twelve months, this requirement is waived; and

(ii) If the obligated party denies having received notice that the other party was seeking reimbursement for uninsured medical expenses or support, the service of the notice of support owed constitutes the required notice.

(7) A party's request that DCS serve a notice of support owed to establish the other parent's obligation for medical support, including reimbursement for uninsured medical expenses:

(a) May be for a period of up to twenty-four consecutive months;

(b) May include only medical services provided after July 21, 2007;

(c) May not include months which were included in a prior notice of support owed for medical support or a prior judgment;

(d) Need not be for the twenty-four month period immediately following the period included in the prior notice of support owed for medical support;

(e) May include a claim for the obligated parent's proportionate share of any health insurance premiums paid by the requesting parent after July 21, 2007, but this type of claim is limited as provided in subsections (11) and (12) of this section; and

(f) May include a request that DCS establish a monthly payment toward the premium representing the obligated parent's proportionate share of the premium paid by the requesting parent only for premiums paid for health insurance coverage provided after September 30, 2009.

(8) The party seeking reimbursement must ask DCS to serve a notice of support owed for medical support within two years of the date that the uninsured medical expense or premium was incurred.

(a) The fact that a request that DCS serve a notice of support owed for medical support is denied, either in whole or in part, does not mean that the party cannot pursue reimbursement of those uninsured medical expenses by proceeding in court.

(b) If a party obtains a judgment for reimbursement of uninsured medical expenses or other type of medical support, DCS enforces the judgment.

(9) When either party asks DCS to serve a notice of support owed under this section to establish the other party's proportionate share of uninsured medical expenses as a sum certain amount and the medical expenses include premiums for health insurance for the child(ren) covered by the order, DCS reviews the order to determine whether it provides for a monthly payment toward the premium when the obligated parent does not have insurance available through his or her employer or union.

(a) If the order does not have such a requirement, DCS includes the health insurance premiums in the claim for reimbursement of uninsured medical expenses, but limits the obligated parent's obligation as provided in subsections (11) and (12) of this section.

(b) If the order does have such a requirement, DCS serves a notice of support owed which:

(i) Includes the health insurance premiums in the claim for reimbursement of uninsured medical expenses; and

(ii) If appropriate, includes the provisions necessary to establish a monthly contribution which represents the obligated parent's proportionate share of the premium paid by the other parent (not to exceed twenty-five percent of the obligated parent's basic support obligation), if the obligated parent is not already providing health insurance coverage for the child(ren).

(10) There are two circumstances under which DCS may serve a notice of support owed to establish the amount owed by an obligated parent as a monthly payment toward the premium paid for coverage by the other parent or the state. DCS may serve the notice of support owed when the support order:

(a) Specifically provides that the obligated parent's medical support obligation under RCW 26.09.105 (1)(c) is to pay

a monthly payment toward the premium instead of providing health insurance coverage, but does not set that obligation as a sum certain; or

(b) Provides that, if health insurance is not available through the obligated parent's employer or union at a cost not to exceed twenty-five percent of the obligated parent's basic support obligation, the obligated parent must pay a monthly payment toward the premium but does not set that obligation as a sum certain. In this situation, DCS serves the notice of support owed to establish a monthly payment toward the premium paid only if the obligated parent is not already providing coverage for the children.

(11) DCS may collect a maximum of twenty-five percent of the obligated parent's basic support obligation for medical premium costs claimed by the requesting party.

(12) DCS may not collect for medical premium costs claimed by the requesting party through either the monthly payment toward the premium or the reimbursement of uninsured medical expenses if the obligated parent is providing accessible health insurance coverage for the child.

(13) Once DCS serves a notice of support owed under this section that establishes a medical support obligation representing the obligated parent's proportionate share of the premium paid by the other parent, the obligated parent is not required to reimburse the other parent for any amounts of that proportionate share of the premium which are not paid because those amounts exceed twenty-five percent of the obligated parent's basic support obligation.

(a) That portion of the obligated parent's proportionate share of the premium for a month that is not included in the obligated parent's monthly payment toward the premium may not be recovered by a later claim for unreimbursed medical expenses; and

(b) The obligation to contribute a proportionate share of other uninsured medical expenses is not affected by the establishment of a medical support obligation for medical premiums paid by the requesting parent under this section.

(14) Once DCS serves a notice of support owed under this section that establishes a monthly payment toward the premium which represents the NCP's proportionate share of the premium paid by the state, the NCP is not required to reimburse the state for any amounts of that proportionate share of the premium which are not paid because those amounts exceed twenty-five percent of the NCP's basic support obligation.

(15) An NCP who wants DCS to enforce the CP's medical support obligation must first apply for full child support enforcement services.

(a) DCS enforces a CP's medical support obligation only as provided under WAC 388-14A-4112.

(b) If the parties already have an open full enforcement case with DCS, DCS opens up a new case which is called the medical support case, and the previously-existing case is called the main case.

(c) If the parties do not already have an open full enforcement case with DCS, DCS opens two cases:

(i) The case where DCS is acting on NCP's request to enforce CP's medical support obligation is called the medical support case; and

(ii) The case where DCS is enforcing the underlying support order and collecting from the NCP is called the main case.

(16) In a notice of support owed under this section, DCS includes the information required by RCW 26.23.110, and:

(a) The factors stated in the order regarding medical support;

(b) A statement of uninsured medical expenses and a declaration by the parent seeking reimbursement; and

(c) Any other information not contained in the order that DCS used to calculate the amounts in the notice.

(17) Whenever DCS serves a notice of support owed under this section, that notice may also include a determination of the fixed dollar amount of:

(a) Any medical support debt owed by the obligated parent;

(b) Any amounts owed by the obligated parent under a previous notice of support owed that exceed the obligated parent's actual monthly obligation to pay a proportionate share of the premium after actual expenses or updated proportionate shares owed are considered, but not to exceed twenty-five percent of the obligated parent's basic support obligation; and

(c) Any amounts owed by the obligated parent under a previous notice of support owed that are less than the obligated parent's actual monthly obligation to pay a proportionate share of the premium after actual expenses or updated proportionate shares owed are considered, but not to exceed twenty-five percent of the obligated parent's basic support obligation.

(18) If the notice of support owed contains a determination that the order resulting from a previous notice of support owed calculated a medical support obligation that differed from the obligated parent's actual obligation after actual expenses or updated proportionate shares owed are considered, the notice may address how any difference may be credited or repaid in the absence of any agreement between the parties.

(19) If the obligated parent is the NCP, any amounts ~~((owing determined by))~~ owed under a previous notice of support owed exceeding the actual obligation after actual expenses or updated proportionate shares owed are considered in the final administrative order are added to the NCP's support debt ~~((on the main case))~~.

~~((15))~~ (a) Amounts owed to the CP are added to the unassigned arrears on the case.

(b) Amounts owed to reimburse the state for medicaid or other state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment are added to the main case as permanently assigned arrears.

(20) If the obligated parent is the CP, any amounts ~~((owing determined by))~~ owed under a previous notice of support owed exceeding the actual obligation after actual expenses are considered in the final administrative order are paid in the following order:

(a) Any amount owed by the CP to the NCP is applied as an offset to any nonassistance child support arrears owed by the NCP on the main case only; or

(b) If there is no debt owed to the CP on the main case, payment of the amount owed by the CP is in the form of a credit against the NCP's future child support obligation:

(i) Spread equally over a twelve-month period starting the month after the administrative order becomes final (~~(, but not to exceed ten percent of the current support amount)~~); or

(ii) When the future support obligation will end under the terms of the order in less than twelve months, spread equally over the life of the order (~~(, but not to exceed ten percent of the current support amount)~~).

(c) If the amount owed by the CP exceeds the amount that can be paid off using the methods specified in subsections (a) and (b) of this section, DCS uses the medical support case to collect the remaining amounts owed using the remedies available to DCS for collecting child support debts.

~~((16) If either the obligated parent or the parent seeking reimbursement requests a late hearing, that party must show good cause for filing the late hearing request if it is filed more than one year after service of the notice of support owed for unreimbursed medical expenses.~~

~~(17) A notice of support owed for unreimbursed medical expenses fully and fairly informs the obligated parent of the rights and responsibilities in this section.~~

~~(18) A notice of support owed for unreimbursed medical expenses under this section is subject to annual review as provided in WAC 388-14A-3318.)~~

~~((19)) (21) If both the CP and the NCP request that DCS serve a notice of support owed ((for unreimbursed medical expenses)) under this section on the other party, those notices remain separate and may not be combined.~~

(a) The office of administrative hearings (OAH) may schedule consecutive hearings but may not combine the matters under the same docket number.

(b) The administrative law judge (ALJ) must issue two separate administrative orders, one for each obligated parent.

~~((20)) (22) DCS does not serve a second or subsequent notice of support owed ((for unreimbursed medical expenses)) under this section on an obligated parent until the party seeking reimbursement once again meets the conditions set forth in WAC ((388-14A-3318)) 388-14A-3330.~~

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-3315 When DCS serves a notice of support debt or a notice of support owed ((or notice of support owed for unreimbursed medical expenses)), we notify the other party to the child support order. (1) ~~((The division of child support (DCS) sends a notice to the payee under a Washington child support order or a foreign child support order when DCS receives proof of service on the noncustodial parent (NCP) of:~~

~~(a) A notice of support owed under WAC 388-14A-3310; or~~

~~(b) A notice of support owed for unreimbursed medical expenses under WAC 388-14A-3312; or~~

~~(c) A notice of support debt under WAC 388-14A-3304)) When the division of child support (DCS) needs to notify the parties that DCS is enforcing a previously-entered support order, DCS serves the appropriate notice under WAC~~

388-14A-3302. DCS may serve a notice of support owed on either the noncustodial parent (NCP) or the custodial parent (CP), as provided in WAC 388-14A-3310.

(2) After DCS serves a notice of support debt or a notice of support owed, DCS notifies the other party to the order by sending a form called the notice to payee, with a copy of the notice that was served, when DCS receives proof of service.

(3) DCS serves a notice of support debt or a notice of support owed on the NCP when DCS is enforcing an order that sets the NCP's support obligation. After service of the notice on the NCP:

(a) DCS sends the notice to payee to the CP, if the CP is the payee under the order; and

(b) DCS sends the notice to payee to the CP and to the payee under the order, if the CP is not also the payee under the order.

(4) DCS serves a notice of support owed on the CP when DCS is enforcing an order that sets the CP's medical support obligation. After service of the notice on the CP, DCS sends the notice to payee to the NCP.

(5) DCS sends the notice to payee by first class mail to the last known address ((of the payee)) DCS has on file, and encloses a copy of the notice that was served ((on the NCP)).

~~((3)) (a) In a notice to payee, DCS informs the payee of the right to file a request with DCS for a hearing on ((a)) the notice of support owed ((under WAC 388-14A-3310, a notice of support owed for unreimbursed medical expenses under WAC 388-14A-3312,)) or ((a)) the notice of support debt ((under WAC 388-14A-3304)) within twenty days of the date of a notice to payee that was mailed to a Washington address.~~

~~((4)) (b) If the notice to payee was mailed to an out-of-state address, the payee may request a hearing within sixty days of the date of the notice to payee.~~

~~((5)) (6) The effective date of a hearing request is the date DCS receives the request.~~

~~((6) When DCS serves a notice of support owed for unreimbursed medical expenses under WAC 388-14A-3312, DCS mails the notice to payee to the parent seeking reimbursement.)~~

NEW SECTION

WAC 388-14A-3316 When can a notice of support owed become a final order? (1) The division of child support (DCS) may serve a notice of support owed on either the noncustodial parent (NCP) or the custodial parent (CP), as described in WAC 388-14A-3310.

(2) The notice of support owed becomes a final administrative order subject to immediate income withholding and enforcement without further notice under chapters 26.18, 26.23, 74.20, and 74.20A RCW unless one of the parties, no matter which one was served with the notice, contacts DCS within the time limits provided in this section and:

(a) Objects to the notice;

(b) Requests a hearing;

(c) Negotiates and signs an agreed settlement as provided in WAC 388-14A-3600; or

(d) Obtains a stay from the superior court.

(3) DCS treats any objection to the notice of support owed as a request for hearing on the notice.

(4) If a timely objection is filed, DCS cannot enforce the contested amounts claimed in the notice of support owed until a final order as defined in this section is entered.

(a) WAC 388-14A-3317 discusses what happens if a party makes a timely objection or request for hearing on a notice of support owed.

(b) Even after a timely objection, DCS may still enforce those parts of the support obligation listed in WAC 388-14A-3310(10).

(5) To be timely, the party must object within the following time limits:

(a) Within twenty days of service, if the notice was served in Washington state.

(b) Within sixty days of service, if the notice was served outside of Washington state.

(6) The effective date of an objection or hearing request is the date that DCS receives the objection or request for hearing.

(7) After a timely request for hearing, the final order is one of the following, whichever occurs latest:

(a) An agreed settlement or consent order under WAC 388-14A-3600; or

(b) A final order as defined in WAC 388-14A-6105 and further described in WAC 388-14A-6115.

(8) WAC 388-14A-3318 describes what happens when a party makes an untimely request for hearing on a notice of support owed.

(9) RCW 26.23.110 provides that if a party who receives a notice of support owed does not initiate an action in superior court and serve notice on DCS and on the other party to the support order within twenty days after service of the notice, that party is considered to have made an election of remedies. This means that the party (either the CP or the NCP) must exhaust the administrative remedies under chapter 26.23 RCW before bringing a court action to challenge the notice.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-3317 ((~~What is an annual review of a support order under RCW 26.23.110~~)) What happens if a party makes a timely request for hearing on a notice of support owed? (1) ((~~RCW 26.23.110 provides for an annual review of the support order which was previously the subject of a notice of support owed under that statute if the division of child support (DCS), the noncustodial parent (NCP), or the custodial parent (CP) requests a review.~~)

(a) ~~This type of annual review concerns the annual review that takes place after service of a notice of support owed under WAC 388-14A-3310.~~

(b) ~~For the definition of an annual review of a support order under RCW 26.23.110 that takes place after service of a notice of support owed for unreimbursed medical expenses under WAC 388-14A-3312, see WAC 388-14A-3318.~~

(2) ~~For purposes of chapter 388-14A WAC, an "annual review of a support order" is defined as:~~

(a) ~~The collection by DCS of necessary information from CP and NCP;~~

~~(b) The service of a notice of support owed under WAC 388-14A-3310; and~~

~~(c) The determination of arrears and current support amount with an effective date which is at least twelve months after the date the last notice of support owed, or the last administrative order or decision based on a notice of support owed, became a final administrative order.~~

~~(3) A notice of support owed may be prepared and served sooner than twelve months after the date the last notice of support owed, or the last administrative order or decision based on a notice of support owed, became a final administrative order, but the amounts determined under the notice of support owed may not be effective sooner than twelve months after that date.~~

~~(4) Either CP or NCP may request an annual review of the support order, even though the statute mentions only the NCP.~~

~~(5) DCS may request an annual review of the support order but has no duty to do so.~~

~~(6) For the purpose of this section, the terms "payee" and "CP" are interchangeable, and can mean either the payee under the order or the person with whom the child resides the majority of the time.~~

~~(7) The twelve month requirement for an annual review under this section runs separately from the twelve month requirement for an annual review under WAC 388-14A-3318)) A party who has been served with a notice of support owed may make a timely or untimely objection to the notice.~~

(a) A timely request for hearing on a notice of support owed is an objection made within the time limits of WAC 388-14A-3316.

(b) WAC 388-14A-3318 describes what happens when the party files an untimely objection.

(2) When the division of child support (DCS) serves a notice of support owed, DCS sends a notice to payee as provided in WAC 388-14A-3115. The party who receives the notice to payee has the right to object to the notice of support owed.

(3) If either party makes a timely request for hearing, DCS submits the hearing request to the office of administrative hearings (OAH) for scheduling.

(4) OAH sends a notice of hearing by first class mail to all parties at their addresses last known to DCS, notifying each party of the date, time and place of the hearing.

(5) DCS, the noncustodial parent (NCP) and the custodial parent (CP) are all parties to a hearing on a notice of support owed.

(6) A timely request for hearing stops the notice from becoming a final order, but DCS may still enforce those parts of the support obligation listed in WAC 388-14A-3310(10). In addition, any party may request that the administrative law judge (ALJ) enter a temporary support order under WAC 388-14A-3850.

(7) See WAC 388-14A-3320 for general information regarding a hearing on a notice of support owed.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-3318 (~~What is an annual review of a notice of support owed under WAC 388-14A-3312~~) **What happens if a party makes an untimely request for hearing on a notice of support owed?** (1) ((RCW 26.23.110 provides for an annual review of the support order which was previously the subject of a notice of support owed under that statute if the noneustodial parent (NCP) or the custodial parent (CP) requests a review.

(2) For purposes of chapter 388-14A WAC, the following rules apply to an "annual review of a support order" for a notice of support owed for unreimbursed medical expenses served under WAC 388-14A-3312:

(a) Either the CP or the NCP may be the party seeking reimbursement.

(b) The party seeking reimbursement must provide proof of payment of at least five hundred dollars in uninsured medical expenses for services provided in the last twenty-four months.

(c) At least twelve months must have passed since:

(i) The date the last notice of support owed for unreimbursed medical expenses on behalf of the party seeking reimbursement became a final order; or

(ii) The last administrative order or decision based on a notice of support owed for unreimbursed medical expenses on behalf of that party became a final administrative order.

(3) In the event that DCS has served both a notice of support owed under WAC 388-14A-3310 and a notice of support owed for unreimbursed medical expenses under WAC 388-14A-3312 on the same case, each type of notice of support owed has its own twelve-month cycle for annual review.

(4) For purposes of this section, the twelve-month cycle for annual review runs separately for the NCP and for the CP, depending on which one is the party seeking reimbursement)) A party who has been served with a notice of support owed may make a timely or untimely objection to the notice.

(a) WAC 388-14A-3117 describes what happens when the party files a timely objection.

(b) An objection which is not made within the time limits of WAC 388-14A-3116 is an untimely objection.

(2) The division of child support (DCS) continues to enforce the administrative order that resulted from the notice of support owed even if one of the parties files a late request for hearing.

(3) If DCS receives the late hearing request within one year of the date of service of the notice, the party requesting the hearing is not required to show good cause to have a hearing on the merits of the notice.

(4) If the party who has been served with a notice of support owed files an untimely request for hearing, he or she must show good cause for filing the late hearing request if the request is filed more than one year after service of the notice. See WAC 388-14A-3500 regarding good cause for filing a late request for hearing.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-3320 **What happens at a hearing on a notice of support owed?** (1) ((A hearing on a notice of support owed is only for interpreting the order for support and any modifying orders and not for changing or deferring the support provisions of the order.

(2) A hearing on a notice of support owed served under WAC 388-14A-3310 is only to determine:

(a) The amount of monthly support as a fixed dollar amount;

(b) Any accrued arrears through the date of hearing; and

(c) If a condition precedent in the order to begin or adjust the support obligation was met.

(3) A hearing on a notice of support owed for unreimbursed medical expenses served under WAC 388-14A-3312 is only to determine:

(a) Whether the parent on whom the notice was served is obligated under the support order to pay for uninsured medical expenses for the children covered by the order;

(b) The total amount of uninsured medical expenses paid by the party seeking reimbursement;

(c) The obligated parent's share of the uninsured medical expenses;

(d) The amount, if any, the obligated parent has already paid to the party seeking reimbursement; and

(e) The amount owed by the obligated parent to the party seeking reimbursement for unreimbursed medical expenses.

(4) If the administrative law judge (ALJ) determines that the uninsured medical expenses claimed by the parent seeking reimbursement do not amount to at least five hundred dollars, the ALJ:

(a) May not dismiss the notice on this basis;

(b) Must make the determination listed in subsection (3) above.

(5) The hearing is not for the purpose of setting a payment schedule on the support debt.

(6) Either the noneustodial parent (NCP) or payee may request a hearing on a notice of support owed served under WAC 388-14A-3310.

(7) Either the obligated parent or the party seeking reimbursement may request a hearing on a notice of support owed for unreimbursed medical expenses served under WAC 388-14A-3312.

(8)) This section provides general information regarding hearings on a notice of support owed.

(2) Either the noncustodial parent (NCP) or the custodial parent (CP) may request a hearing on a notice of support owed.

(3) The division of child support (DCS) serves two basic types of notice of support owed:

(a) The initial notice of support owed served to establish a sum certain amount for a support obligation under an existing order, as described in WAC 388-14A-3310; and

(b) A notice of support owed served as part of the annual review under RCW 26.23.110, as described in WAC 388-14A-3330.

(4) WAC 388-14A-3310(5) describes the two different forms created by DCS which are used for different types of notice of support owed:

(a) The specialized "notice of support owed - medical support" is used only for specific purposes related to the medical support obligations of either parent; and

(b) The notice of support owed is served on the NCP for all other purposes under RCW 26.23.110 and WAC 388-14A-3311.

(5) DCS and the parties may enter a consent order or agreed settlement instead of proceeding to hearing any time a parent has requested a hearing on a notice of support owed served by DCS. See WAC 388-14A-3600 for the rules regarding consent orders and agreed settlements.

(6) A hearing on a notice of support owed is only for:

(a) Interpreting the underlying order for support and any modifying orders;

(b) Determining whether a condition precedent set in the underlying order was met;

(c) Determining the amount of monthly support as a fixed dollar amount;

(d) Determining the difference between the obligation calculated in the order resulting from the previous notice of support owed and the actual amount owed for the period covered by the previous notice of support owed; and

(e) Determining the amount of accrued arrears or overpayment for daycare expenses or medical support through the last day of the month before the hearing, or of the month in which the hearing was held; this date is determined at the discretion of the administrative law judge (ALJ) if not agreed upon by the parties.

(7) A hearing on an initial notice of support owed is not for:

(a) Changing or deferring the support provisions of the underlying order; or

(b) Setting a payment schedule on any support amount or support debt that was not covered by the notice which is the subject of the hearing.

(8) A hearing on the annual review of a notice of support owed must comply with this section, but in addition must determine:

(a) Whether there is a difference between the obligation calculated in the order resulting from the previous notice of support owed and the actual obligation for that period after actual expenses or income are considered; and

(b) How that difference should be resolved.

(9) The party who requested the hearing has the burden of proving any defenses to liability that apply under WAC 388-14A-3370 or that the amounts stated in the notice of support owed are incorrect.

~~((9))~~ (10) The office of administrative hearings (OAH) sends a notice of hearing to DCS, the NCP ~~((to the division of child support (DCS);))~~ and ~~((to))~~ the ~~((custodial parent))~~ CP~~((s))~~. The NCP and the CP each may participate in the hearing as an independent party.

~~((10))~~ (11) If only one party appears ~~((and wishes to proceed with))~~ for the hearing, the ~~((administrative law judge (ALJ)))~~ ALJ may entertain requests for a continuance, and if there is no continuance granted, the ALJ holds a hearing and issues an order based on the evidence presented ~~((or continues the hearing))~~. ~~((See))~~ The provisions of WAC 388-14A-6110 and 388-14A-6115 ~~((to))~~ determine if the ALJ enters an initial order or a final order.

~~((11))~~ An order issued under this subsection includes an order of default against the nonappearing party and limits the appeal rights of the nonappearing party to the record made at the hearing.

~~((12))~~ (12) If neither the NCP nor the CP appears or wishes to proceed with the hearing, the ALJ issues an order of default against both parties.

~~((13))~~ (13) If either party requests a late hearing on a notice of support owed, that party must show good cause for filing the late hearing request, as provided in WAC 388-14A-3500.

~~((14))~~ (14) For purposes of this section, the terms "payee" and "CP" are used interchangeably and can mean either the CP, the payee under the order or both, except that a CP who is not also the payee under the support order may not ask DCS to serve a notice of support owed for unreimbursed medical expenses under WAC 388-14A-3312.

(15) This section, WAC 388-14A-3323, 388-14A-3324, 388-14A-3325 and 388-14A-6300 describe the duties of the ALJ in a hearing on a notice of support owed.

(16) Additional information regarding hearings on the notice of support owed can be found in the following sections:

(a) WAC 388-14A-3323 describes a hearing on a notice of support owed served under WAC 388-14A-3311; and

(b) WAC 388-14A-3324 describes a hearing on a notice of support owed served under WAC 388-14A-3312.

(17) WAC 388-14A-3330 describes the annual review of a notice of support owed.

NEW SECTION

WAC 388-14A-3323 What happens in a hearing on a notice of support owed served under WAC 388-14A-3311? (1) A hearing on a notice of support owed served under WAC 388-14A-3311 is subject to WAC 388-14A-3320 and this section.

(2) A hearing on a notice of support owed served under WAC 388-14A-3311 is only for the purpose of determining the amounts owed by the noncustodial parent (NCP) that are not stated as a fixed dollar amount in the underlying support order, either as part of the monthly support obligation or for nonmedical expenses of the children. See WAC 388-14A-3324 for the rules concerning a hearing on a notice of support owed for medical support.

(3) The administrative law judge (ALJ) must determine some or all of the following, depending on what was requested in the notice of support owed:

(a) The amount of monthly support as a fixed dollar amount;

(b) Any accrued arrears;

(c) Any difference between the NCP's obligation under a previous notice of support owed and his or her actual obligation after actual income or expenses are considered; and

(d) The amount of the NCP's share of nonmedical expenses for the children, including:

(i) The amount that the NCP must pay each month as his or her ongoing share of daycare and child care expenses for the children; and

(ii) Whether the custodial parent (CP) has provided sufficient proof of payment of daycare and child care expenses for the children; and

(iii) The amount of NCP's accrued debt for daycare and child care expenses.

(4) If the ALJ determines that the NCP's obligation under a previous notice of support owed is more than his or her actual obligation under the order after actual expenses or income are considered, the ALJ may not set a payment schedule on the support debt.

(5) If the ALJ determines that the NCP's obligation under a previous notice of support owed is less than his or her actual obligation under the order after actual expenses or income are considered, and the parties cannot agree on how the overpayment may be credited or repaid, the ALJ must enter an order providing that any difference may be:

(a) Applied as an offset to any nonassistance child support arrears owed by the NCP to the CP.

(b) In the form of a credit against the NCP's future child support obligation:

(i) Spread equally over a twelve-month period starting the month after the administrative order becomes final; or

(ii) When the future support obligation will end under the terms of the order in less than twelve months, spread equally over the life of the order.

(c) Paid in the form of a direct reimbursement by the CP to the NCP, but only with the consent of the CP, unless support has been assigned to the state.

NEW SECTION

WAC 388-14A-3324 What happens in a hearing on a notice of support owed served under WAC 388-14A-3312? (1) A hearing on a notice of support owed for medical support served under WAC 388-14A-3312 is subject to WAC 388-14A-3320 and this section. See WAC 388-14A-3323 for the rules concerning a hearing on a notice of support owed under WAC 388-14A-3311.

(2) A hearing on a notice of support owed served under WAC 388-14A-3312 is only for the purpose of determining:

(a) Issues regarding the reimbursement of uninsured medical expenses, such as:

(i) Whether the party on whom the notice was served is obligated under a support order to pay for uninsured medical expenses for the children covered by the order;

(ii) Whether the party seeking reimbursement has provided sufficient proof of payment for uninsured medical expenses for the children;

(iii) The total amount of uninsured medical expenses paid by the party seeking reimbursement;

(iv) The obligated parent's share of the uninsured medical expenses;

(v) The amount, if any, the obligated parent has already paid to the party seeking reimbursement;

(vi) Whether the obligated parent provided coverage during the time in question if reimbursement of medical premium costs is requested; and

(vii) The amount owed by the obligated parent to the party seeking reimbursement for unreimbursed medical expenses.

(b) Issues regarding a monthly payment toward the premium paid for coverage for the children, such as:

(i) Whether the support order requires the obligated parent to pay when the obligated parent does not provide coverage;

(ii) Whether the obligated parent is currently providing coverage, or did so during the time period in question;

(iii) The amount of the premium paid by the other parent or by the state to cover the child(ren);

(iv) The obligated parent's proportionate share of the premium;

(v) The amount, if any, the obligated parent has already contributed toward health insurance premiums paid by the other parent or the state for the time period in question; and

(vi) The monthly amount to be paid by the obligated parent as his or her proportionate share of the health insurance premium.

(3) If the administrative law judge (ALJ) determines that the uninsured medical expenses claimed by the party seeking reimbursement do not amount to at least five hundred dollars, the ALJ:

(a) May not dismiss the notice on this basis;

(b) Must make the determinations listed in subsection (2)(a) above.

(4) In an annual review hearing under WAC 388-14A-3330, the ALJ may not set a payment schedule on the support debt other than as provided in WAC 388-14A-3312 if the ALJ determines that the obligated parent has paid less than his or her actual obligation for medical support under the order after actual expenses or updated proportionate shares owed are considered.

(a) If the obligated parent is the noncustodial parent (NCP), any amounts owed are added to the NCP's support debt.

(i) Any amounts owed to the custodial parent (CP) are added to the nonassistance child support arrears owed by the NCP to the CP.

(ii) Any amounts owed to the state are added to the assigned child support arrears owed by the NCP.

(b) If the obligated parent is the CP, any amounts owed are paid as provided in WAC 388-14A-3312(17).

(5) If, in an annual review hearing under WAC 388-14A-3330, the ALJ determines that the NCP's obligation calculated in a previous notice of support owed is more than his or her actual obligation for medical support under the order after actual expenses or updated proportionate shares owed are considered, and the parties cannot agree on how the difference may be credited or repaid, the ALJ must enter an order providing that any difference may be:

(a) Applied as an offset to any nonassistance child support arrears owed by the NCP to the CP.

(b) In the form of a credit against the NCP's future child support obligation, if there is no nonassistance debt owed to the CP:

(i) Spread equally over a twelve-month period starting the month after the administrative order becomes final; or

(ii) When the future support obligation will end under the terms of the order in less than twelve months, spread equally over the life of the order.

(c) Paid in the form of a direct reimbursement by the CP to the NCP, but only with the consent of the CP.

(6) If the ALJ determines that the CP's obligation under a previous notice of support owed is more than his or her actual obligation for medical support under the order after actual expenses and updated proportionate share amounts are considered, and the parties cannot agree on how the difference may be credited or repaid, the ALJ must enter an order providing that any difference must be added to the nonassistance child support arrears owed by the NCP.

(7) The ALJ must determine either or both of the following, depending on what was requested in the notice of support owed:

(a) The amount owed by the obligated parent to the other for reimbursement of uninsured medical expenses; and

(b) The monthly amount to be paid by the obligated parent as his or her proportionate share of the health insurance premium paid by the other parent or the state.

NEW SECTION

WAC 388-14A-3330 What are the procedures for the annual review of a notice of support owed? (1) RCW 26.23.110 provides for an annual review of the support order which was previously the subject of a notice of support owed under that statute if the division of child support (DCS), the noncustodial parent (NCP), or the custodial parent (CP) requests a review.

(a) Either the CP or the NCP may request an annual review of the support order, even though RCW 26.23.110 mentions only the NCP.

(b) DCS may request an annual review of the support order but has no duty to do so.

(2) For purposes of chapter 388-14A WAC, an "annual review of a support order" is defined as:

(a) The collection by DCS of necessary information from CP and NCP;

(b) The service of a notice of support owed under WAC 388-14A-3310; and

(c) The determination of arrears and current support amount with an effective date which is at least twelve months after the date the last notice of support owed, or the last administrative order or decision based on a notice of support owed, became a final administrative order.

(3) A notice of support owed may be prepared and served sooner than twelve months after the date the last notice of support owed, or the last administrative order or decision based on a notice of support owed, became a final administrative order, but the amounts determined under the notice of support owed may not be effective sooner than twelve months after that date.

(4) For the purpose of this section, the terms "payee" and "CP" are interchangeable, and can mean either the payee under the order or the person with whom the child resides the majority of the time.

(5) For purposes of chapter 388-14A WAC, the following rules apply to an "annual review of a support order" for a notice of support owed served under WAC 388-14A-3312:

(a) Either the CP or the NCP may be the party seeking reimbursement, so long as the CP is both a party to the order

and a parent of the child(ren) for whom the expenses were incurred.

(b) The party seeking reimbursement must provide proof of payment of at least five hundred dollars in uninsured medical expenses for services provided in the last twenty-four months.

(c) At least twelve months must have passed since:

(i) The date the last notice of support owed for unreimbursed medical expenses on behalf of the party seeking reimbursement became a final order; or

(ii) The last administrative order or decision based on a notice of support owed for unreimbursed medical expenses on behalf of that party became a final administrative order.

(6) WAC 388-14A-3310(1) describes the different types of notice of support owed which are served by DCS. In the event that DCS has served more than one type of notice of support owed on the same case, each notice of support owed has its own twelve-month cycle for annual review.

(7) For purposes of this section, the twelve-month cycle for annual review runs separately for the NCP and for the CP, depending on which one is the party seeking reimbursement.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-3400 Are there limitations on how much of my income is available for child support? (1) ~~((There are))~~ The Washington State child support schedule (WSCSS) provides two ((kinds of)) limitations based on ((your)) income ((when we set your child support obligation:)), the forty-five percent limitation and the self-support reserve. The division of child support (DCS) applies those limitations when we calculate your child support obligation. These limitations do not apply to child support arrears, or to the enforcement of your child support obligation.

(a) ~~((The monthly))~~ Your basic child support ((amount)) obligation for all of your biological or legal children cannot exceed forty-five percent of your monthly net income, unless there are special circumstances as provided in chapter 26.19 RCW((; and)).

(i) RCW 26.19.065 provides that all of the children are entitled to a "pro rata" share of the income:

(ii) When the forty-five percent limitation applies, DCS calculates your support obligation in a way that gives each child an equal share of the income:

(iii) Either party may argue to the administrative law judge (ALJ) that "pro rata" does not mean the same as "equal," and may propose a different method of calculation or a different amount for the support obligation for the children in the case.

(b) The monthly basic child support ((amount)) obligation cannot reduce your net monthly income below ((the one person need standard (WAC 388-478-0015))) the self-support reserve of one hundred twenty-five percent of the federal poverty guideline, unless there are special circumstances as provided in chapter 26.19 RCW.

(2) See WAC 388-14A-3405 for information on how to find information about, and how to calculate the self-support reserve.

(3) See WAC 388-14A-3405 for information on how DCS calculates and applies the self-support reserve.

(4) No matter what your monthly child support obligation may be, RCW 26.23.060 and 74.20A.090 limit(s) the amount that can be withheld from your wages for child support to fifty percent of your ((net monthly)) disposable earnings.

NEW SECTION

WAC 388-14A-3410 What amount does DCS use for the self-support reserve? (1) When the division of child support (DCS) calculates and applies the self-support reserve, DCS:

(a) Uses the amount shown for a one-person family in the federal poverty guideline for the current year; and

(b) Multiplies that amount by one hundred twenty-five percent.

(2) The self-support reserve does not vary depending on whether or not the parent is responsible for shelter costs.

(3) An administrative law judge (ALJ) must calculate and apply the self-support reserve using the one-person family amount.

(4) The provisions of the Washington Administrative Code (WAC) are not binding on the superior courts or tribal courts. Those tribunals may use different methods for calculating and applying the self-support reserve.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

WAC 388-14A-4100 How does the division of child support enforce my obligation to provide health insurance for my children? (1) If a child support order requires ~~((the noncustodial parent (NCP)))~~ a parent to provide health insurance for the children, the division of child support (DCS) attempts to enforce that requirement according to the terms of the order. ~~((The following subsections describe the different types of premium limitations that could apply to a support order))~~

(2) A parent required to provide medical support or health insurance coverage for a child is called the obligated parent, and can be either the custodial parent (CP) or the non-custodial parent (NCP).

~~((2))~~ (3) WAC 388-14A-4111 and 388-14A-4112 describe when DCS may accept or decline a request to enforce a medical support obligation.

(4) When DCS is enforcing a support order which contains a specific dollar limit for the cost of health insurance premiums or provides for coverage which is available at no cost to the ((NCP)) obligated parent, DCS does not require the ((NCP)) obligated parent to provide health insurance if coverage is not available within the limitations of the order.

~~((3))~~ (5) When DCS is enforcing a support order entered in Washington on or after October 1, 2009, providing that either or both parents must provide coverage and/or a proportionate share of uninsured medical expenses as part of the medical support obligation under RCW 26.09.105, the rules in this subsection apply unless the support order specifies differently:

(a) The obligated parent must provide health insurance for the dependent child(ren) covered by the order if coverage is:

(i) Available or becomes available through accessible private insurance which is not provided through the obligated parent's employer or union; or

(ii) Available or becomes available through the obligated parent's employment or union at a cost that is not more than twenty-five percent of the obligated parent's basic support obligation.

(b) If the obligated parent does not provide proof of coverage or if coverage is not available, DCS may serve a notice of support owed under WAC 388-14A-3312 to determine the monthly amount that the obligated parent must pay as his or her proportionate share of any premium paid by the other parent or by the state on behalf of the child(ren).

(6) When DCS is enforcing a support order entered ((or after)) in Washington between May 13, 1989 and September 30, 2009, unless the support order specifies differently, the ((NCP)) obligated parent must provide health insurance for dependent children if coverage is:

(a) Available or becomes available through the ((NCP's)) obligated parent's employment or union; and

(b) Available at a cost of not greater than twenty-five percent of the ((NCP's)) obligated parent's basic support obligation.

~~((4))~~ (7) When DCS is enforcing a Washington support order entered prior to May 13, 1989, unless the support order specifies differently, the ((NCP)) obligated parent must provide health insurance for the dependent ((children)) child(ren) if coverage is available or becomes available through the ((NCP's)) obligated parent's employment or union:

(a) For a maximum of twenty-five dollars per month, if the order specifies that the ((NCP)) obligated parent must provide coverage only if it is available at a reasonable cost; or

(b) For any premium amount whatsoever, if the order does not specify reasonable cost.

~~((5))~~ (8) DCS serves a notice of intent to enforce a health insurance obligation if the support order:

(a) Requires the ((NCP)) obligated parent either to provide health insurance coverage or prove that coverage is not available; and

(b) Does not inform the ((NCP)) obligated parent that failure to provide health insurance or prove it is not available may result in enforcement of the order without notice to the ((NCP)) obligated parent.

~~((6))~~ (9) DCS serves the notice of intent to enforce a health insurance obligation on the ((NCP)) obligated parent by certified mail, return receipt requested, or by personal service.

~~((7))~~ (10) The notice advises the ((NCP)) obligated parent that ((the NCP)) he or she must submit proof of coverage, proof that coverage is not available, or proof that the ((NCP)) obligated parent has applied for coverage, within twenty days of the date of service of the notice.

~~((8))~~ (11) The notice advises the ((NCP)) obligated parent that, if health insurance is not yet available, the ((NCP)) obligated parent must immediately notify DCS if health

insurance coverage becomes available through the ((NCP's)) obligated parent's employer or union.

((9)) (12) When DCS enforces an ((NCP's)) obligated parent's health insurance obligation, such enforcement may include asking the employer and the plan administrator to enroll the ((NCP)) obligated parent in a health insurance plan available through the employer.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-4110 If my support order requires me to provide ((health insurance)) medical support for my children, what do I have to do? (1) Once a support order is entered requiring ((health insurance)) medical support, the obligated parent must take the following actions within twenty days:

- (a) Provide health insurance coverage; and
- (b) Provide proof of coverage to the other parent and to the division of child support (DCS), such as:
 - (i) The name of the insurer providing the health insurance coverage;
 - (ii) The names of the beneficiaries covered;
 - (iii) The policy number;
 - (iv) That coverage is current; and
 - (v) The name and address of the obligated parent's employer.
- (2) If private, union or employer-provided health insurance coverage that is accessible to the children named in the order is available, the obligated parent must:
 - (a) Provide for coverage for the children without waiting for an open enrollment period, as provided under RCW 48.01.235 (4)(a); and
 - (b) Submit proof of coverage as outlined in subsection (1)(b) above.
- (3) If health insurance is not immediately available to the obligated parent, as soon as health insurance becomes available, the obligated parent must:
 - (a) Provide for coverage for the children named in the order; and
 - (b) Submit proof of coverage as outlined in subsection (1)(b) above.
- (4) Medical assistance provided by the department under chapter 74.09 RCW does not substitute for health insurance.
- (5) DCS may serve a notice of support owed for medical support under WAC 388-14A-3312 to establish either or both of the following:
 - (a) Either parent's share of uninsured medical expenses owed to the other parent; or
 - (b) Either parent's monthly payment toward the premium paid for coverage by the other parent or the state, if:
 - (i) Health insurance coverage is not available through the parent's employer or union or is not otherwise provided; and
 - (ii) The support order provides for the payment of a monthly payment toward the premium when the obligated parent does not provide coverage.
- (6) See WAC 388-14A-4165 for a description of what happens when the combined total of a noncustodial parent's current support obligation, arrears payment and health insur-

ance premiums to be withheld by the employer exceeds the fifty per cent limitation for withholding.

(7) Both parents must notify DCS any time there is a change to the health insurance coverage for the children named in the order.

(8) WAC 388-14A-4111 and 388-14A-4112 describe when DCS may accept or decline a request to enforce a medical support obligation.

NEW SECTION

WAC 388-14A-4111 When may DCS decline a request to enforce a medical support obligation? The division of child support (DCS) may decline to enforce a medical support obligation using the remedies available under RCW 26.09.105, 26.18.170 and 26.23.110 if one or more of the following apply:

- (1) The medical support obligation is imposed by a child support order that was not entered in a court or administrative forum of the state of Washington;
- (2) The department of social and health services is not paying public assistance or providing foster care services;
- (3) The party requesting enforcement of the medical support obligation does not have an open IV-D case with DCS for the child;
- (4) The party requesting enforcement of the medical support obligation is not a parent of the child for whom the medical support obligation was established;
- (5) The party is requesting reimbursement of the obligated parent's proportionate share of medical premium costs, and the obligated parent is providing accessible health insurance coverage for the child;
- (6) The party requesting enforcement of the medical support obligation is not a former recipient of public assistance as described in WAC 388-14A-2000 (2)(d);
- (7) DCS has not received a request for services from a child support agency in another state or a child support agency of an Indian tribe or foreign country;
- (8) The party requesting enforcement of the medical support obligation has not applied for full support enforcement services;
- (9) The party requesting enforcement of the medical support obligation does not qualify as a party who can receive child support enforcement services from DCS under WAC 388-14A-2000;
- (10) The case does not meet the requirements for provision of support enforcement services from DCS under WAC 388-14A-2010;
- (11) DCS denies the application under WAC 388-14A-2020;
- (12) The party requesting enforcement of the medical support obligation does not provide proof of payment, any required forms, and/or the declaration under penalty of perjury required under WAC 388-14A-3312;
- (13) The case meets one or more of the reasons set out in WAC 388-14A-4112(2) that DCS does not enforce a custodial parent's obligation to provide medical support.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-4112 When does the division of child support enforce a custodial parent's obligation to provide ~~((health insurance coverage))~~ medical support? (1) A non-custodial parent (NCP) may file an application for full child support enforcement services and specifically request that the division of child support (DCS) enforce the ~~((health insurance))~~ medical support obligation of the custodial parent (CP). WAC 388-14A-4111 describes when DCS may accept or decline a request to enforce a medical support obligation.

(2) DCS does not enforce the CP's medical support obligation unless the NCP files an application for nonassistance support enforcement services under WAC 388-14A-2000 (2)(c). The NCP must specify whether he or she is requesting that DCS enforce the CP's obligation to provide:

(a) The CP's proportionate share of uninsured medical expenses;

(b) Health insurance coverage (including the possibility of a monthly payment toward the premium paid by the NCP for coverage of the children when appropriate); or

(c) Both.

(3) A medical support obligation includes providing health insurance coverage or contributing a monthly payment toward the premium paid for coverage when appropriate, and paying a proportionate share of any uninsured medical expenses for the children.

(a) DCS may enforce the CP's obligation to pay a proportionate share of any uninsured medical expenses for the children under WAC 388-14A-3312.

(b) DCS may decide whether it is appropriate to enforce the CP's obligation to provide health insurance coverage or contribute a monthly payment toward the premium paid for coverage under subsection (4) of this section.

(4) DCS does not enforce a custodial parent's obligation to provide health insurance coverage or pay a monthly payment toward the premium paid for coverage when:

(a) The support order does not include a medical support obligation which includes providing health insurance ~~((obligation))~~ or paying monthly payment toward the premium paid for coverage for the CP.

(b) The NCP is already providing health insurance coverage for the children covered by the order.

(c) The amount that the CP would have to pay for the premium for health insurance exceeds the NCP's monthly support obligation for the children.

(d) The children are covered by health insurance provided by someone else.

(e) The children are receiving medicaid.

(f) The children are receiving TANF.

(g) The CP does not reside in Washington state.

(h) The CP is a tribal member living on or near the reservation.

(i) The CP is receiving child support enforcement services through a tribal IV-D program.

~~((3))~~ (5) DCS does not enforce a CP's obligation to pay a proportionate share of medical expenses incurred by an NCP when:

(a) The support order does not include an obligation for the CP to pay a proportionate share of uninsured medical expenses; or

(b) The NCP is already providing health insurance coverage for the children covered by the order.

(6) If none of the conditions under subsection ~~((2))~~ (4) exist, DCS may enforce the CP's obligation to provide health insurance coverage when the CP has health insurance available at a reasonable cost through the CP's employer or union.

~~((4))~~ (7) A "reasonable cost" for health insurance coverage is defined as twenty-five percent of the basic support obligation for the children covered by the order, unless the support order provides a different limitation.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-4115 Can my support order reduce my support obligation if I pay for health insurance? (1) Some support orders reduce the noncustodial parent's ~~((support obligation))~~ transfer payment based on health insurance premiums paid by the noncustodial parent (NCP).

(2) An NCP is entitled to the reduction for premiums paid only if(=

~~((a))~~ the NCP submits proof of the cost of coverage ~~((as provided in WAC 388-14A-4110 (1)(b); and~~

~~((b) NCP actually pays the required premium))~~ which is actually being provided at the time the support order is entered, so that the amounts can be included in the worksheet calculation.

(3) ~~((If the NCP fails to submit proof or pay the premium, the division of child support (DCS) collects the NCP's adjusted basic support obligation without a reduction for health insurance premium payments))~~ If health insurance coverage terminates or if the amount of the premium changes, this does not mean that the transfer payment is automatically increased or decreased. However, such a change may constitute the basis for a petition to modify the support order.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-4120 DCS uses the National Medical Support Notice to enforce an obligation to provide health insurance coverage. (1) The division of child support (DCS) uses a notice of enrollment called the National Medical Support Notice (NMSN) to enforce an obligated parent's obligation to provide health insurance coverage under chapter 26.18 RCW.

(2) DCS sends the NMSN to the obligated parent's employer in one of the following ways:

(a) In the same manner as a summons in a civil action,

(b) By certified mail, return receipt requested,

(c) By regular mail, or

(d) By electronic means as provided in WAC 388-14A-4040 (1)(d).

(3) DCS sends the NMSN without notice to the obligated parent, who could be either the noncustodial parent (NCP) or the custodial parent (CP) when:

(a) A court or administrative order requires the obligated parent to provide insurance coverage for a dependent child;

(b) The obligated parent fails to provide health insurance (either by not covering the child or by letting the coverage lapse) or fails to provide proof of coverage;

(c) The requirements of RCW 26.23.050 are met; and

(d) DCS has reason to believe that coverage is available through the obligated parent's employer or union.

(4) If sending the NMSN does not result in coverage for the child, DCS may seek to enforce the obligated parent's medical support obligation by other means, as provided in RCW 26.18.170 and WAC 388-14A-4100.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

WAC 388-14A-4165 What happens when a noncustodial parent does not earn enough to pay child support plus the health insurance premium? (1) Under RCW 26.23.060(3), a payroll deduction may not exceed fifty percent of the noncustodial parent's disposable earnings in each pay period.

(2) When the division of child support (DCS) enforces a child support obligation through an income withholding action and also enforces a health insurance obligation, the noncustodial parent's employer often must withhold amounts for:

- (a) Current child support;
- (b) Child support arrears; and
- (c) Health insurance premiums.

(3) When the employer or plan administrator must enroll the noncustodial parent (NCP) in a health insurance plan in order to enroll the children (see WAC 388-14A-4140), the premium amount for the NCP's coverage is included in the amounts to withhold under subsection (2) above. If the NCP is already enrolled in a plan, the premium amount for the NCP's coverage is not included the amounts to withhold under that subsection.

(4) If the combined amounts for current support, support arrears and health insurance premiums are more than fifty percent of the noncustodial parent's disposable earnings, the employer must notify DCS immediately.

(5) In certain circumstances, DCS may adjust the amount to be withheld for support arrears so that the total amount withheld does not exceed fifty percent of the noncustodial parent's disposable earnings.

(6) If the noncustodial parent's current support obligation plus health insurance premiums exceeds fifty percent of the noncustodial parent's disposable earnings, DCS:

(a) Enforces the child support obligation through income withholding; but

(b) Is not able to enforce the noncustodial parent's health insurance obligation at that time.

(7) In the situation described in subsection (6), DCS may establish a monthly payment toward the premium, as described in WAC 388-14A-3312, even if the combined amount for the current support obligation and the monthly payment toward the premium exceeds fifty percent of the NCP's disposable earnings.

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 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-4175 ~~((Is an employer)) Who is required to notify the division of child support when insurance coverage for the children ends?~~ (1) Once the division of child support (DCS) has notified an employer that a parent is obligated by a support order to provide health insurance coverage for the children named in the order, the National Medical Support Notice (NMSN) or other notice of enrollment remains in effect as specified in WAC 388-14A-4170.

(2) If coverage for the children is terminated, the employer must notify DCS within thirty days of the date coverage ends.

(3) A parent who is required by a child support order to provide health insurance coverage for his or her children must notify DCS and the other parent within thirty days of the date coverage for the children ends. This requirement applies whether the obligated parent is the custodial parent or the noncustodial parent.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-4180 When must the division of child support communicate with the DSHS ~~((health and recovery services))~~ **medicaid purchasing administration?** (1) The division of child support (DCS) must inform the DSHS ~~((health and recovery services))~~ **medicaid purchasing** administration ~~((HRSA))~~ **(MPA)** of the existence of a new or modified court or administrative order for child support when the order includes a requirement for medical support. ~~((HRSA))~~ **MPA** is the part of DSHS which provides services for the state of Washington under Title XIX of the federal Social Security Act.

(2) DCS must provide ~~((HRSA))~~ **MPA** with the following information:

(a) Title IV-A case number, Title IV-E foster care case number, medicaid number or the individual's Social Security number;

(b) Name of the obligated parent;

(c) Social Security number of the obligated parent;

(d) Name and Social Security number of the child(ren) named in the order;

(e) Home address of the obligated parent;

(f) Name and address of the obligated parent's employer;

(g) Information regarding the obligated parent's health insurance policy; and

(h) Whether the child(ren) named in the order are covered by the policy.

(3) DCS must periodically communicate with ~~((HRSA))~~ **MPA** to determine if there have been any lapses (stops and starts) in the obligated parent's health insurance coverage for medicaid applicants.

(4) Before DCS may serve a notice of support owed under WAC 388-14A-3312 (1)(b) to establish an obligated

parent's monthly payment toward the premium paid by the state for coverage. MPA must provide information regarding the premium paid for each child covered by the notice.

(a) DCS distributes to MPA any collections based on the obligation established under WAC 388-14A-3312 (1)(b) when the child receives state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment.

(b) Such collections are retained by the department to reimburse the state, subject to the limitations in WAC 388-14A-2035(4).

NEW SECTION

WAC 388-14A-4800 When does a child support order contain an undifferentiated amount of child support? (1) RCW 26.23.050 (5)(d) provides that every child support order must state the monthly child support obligation as a sum certain amount, but does not require that the support obligation be stated in a "per month per child" amount when more than one child is covered by the order.

(2) A support order which provides a monthly amount of child support for two or more children, but does not provide a specific support obligation for each child, may be a differentiated support order or an undifferentiated support order.

(a) To determine whether a support order is differentiated or undifferentiated, the division of child support (DCS) reviews the information contained in the support order, and, if necessary to interpret the intent of the order, may consider the worksheets associated with the order.

(b) When the order may justifiably be divided into per child amounts for each child, the division of child support (DCS) calls it a "differentiated support order."

(c) When the order does not contain enough information in either the order or the worksheets to justify dividing the monthly amount into per child amounts for each child, DCS calls it an "undifferentiated support order."

(d) The support amounts set by these orders are called either "differentiated support amounts" or "undifferentiated support amounts," respectively.

(3) When DCS is calculating a support obligation for more than one child in an administrative support obligation notice, DCS may set the monthly support obligation as an undifferentiated amount for the reasons listed in WAC 388-14A-3200(4).

(4) When DCS is enforcing a support order, WAC 388-14A-4810 through 388-14A-4830 address how DCS:

(a) Determines whether a support order which does not state a per month per child amount may justifiably be divided into a per child amount for each child covered by the support order; and

(b) Deals with a support order which does not contain enough information in either the order or the worksheets associated with the order to justify dividing the monthly amount into "per child" amounts for each child covered by the support order.

NEW SECTION

WAC 388-14A-4810 How does DCS determine if a support order contains a differentiated or undifferentiated amount of support?

(1) When a child support order does not contain a per month per child amount, the division of child support (DCS) reviews the support order and other documents filed with the order in order to determine the amount of support due for each child. "Other documents" may include but are not limited to:

(a) The child support schedule worksheets which RCW 26.19.035(4) requires to be attached to or filed with the support order;

(b) Any residential schedule or parenting plan filed in the case where the support order was entered;

(c) Any findings of fact and conclusions of law filed in the case where the support order was entered; or

(d) Any other documents signed or approved by the tribunal which entered the child support order.

(2) Unless the worksheets provide for credits or deviations after the basic child support obligation is determined, DCS may consider the support amounts to be differentiated and determine a per-child amount to be paid by the noncustodial parent (NCP) if:

(a) The order or documents filed with the order reflect a per-child calculation and indicate the court intended to enter a per-child order; and

(b) The NCP's proportional share of all the per-child amounts equals the whole transfer payment amount.

(3) If DCS can determine a per-child amount of support, DCS determines the NCP's differentiated transfer payment by applying the NCP's proportional share of income (line six on the worksheet) to the basic support obligation for each child (line five on the worksheet). **Example.** Assume the support order states that NCP's transfer payment for three children is four hundred twenty dollars, but the order does not provide per-child support amounts. However, line six of the worksheet shows that the NCP's proportional share of income is .6 or sixty percent, and line five shows a basic support obligation of three hundred dollars for child number one, two hundred dollars for child number two and two hundred dollars for child number three. DCS can determine the NCP's support obligation to be one hundred eighty dollars (.6 x three hundred dollars) for child number one, and one hundred twenty dollars (.6 x two hundred dollars) each for child number two and child number three.

(4) When the NCP's support obligation for one or more, but not all, of the children covered by an undifferentiated support order is terminated for any reason, DCS determines whether the amount to be enforced for NCP's monthly support obligation under the order should change:

(a) If DCS is able to determine a per-month amount for each child, DCS may reduce the amount of the NCP's monthly obligation to be enforced by the per-month amount for each child who is no longer covered by the order.

(b) If DCS is unable to determine a per-month amount for each child, DCS continues to enforce the undifferentiated amount of support until there is no longer any child covered by the support order.

NEW SECTION

WAC 388-14A-4820 What can I do if I don't agree with DCS' decision on whether my support order con-

tains a differentiated or undifferentiated amount of support? (1) If the noncustodial parent (NCP) or custodial parent (CP) claim that the NCP's support obligation for one or more, but not all, of the children covered by an undifferentiated support order is terminated for any reason, either party may ask the division of child support (DCS) to determine whether to adjust the amount enforced as the NCP's monthly support obligation.

(2) DCS reviews the order as provided in WAC 388-14A-4810 and then advises the parties of its decision.

(3) If a CP disagrees with DCS' decision, the CP may request a hearing on a distribution and disbursement statement, as provided in WAC 388-14A-5100.

(4) If either the NCP or the CP disagrees with DCS' interpretation of the order, the aggrieved party may request a conference board under WAC 388-14A-6400.

(5) Either the NCP or the CP may proceed in superior court to seek:

- (a) An order clarifying the NCP's monthly support obligation;
- (b) An order modifying the support order; or
- (c) Any other appropriate relief.

NEW SECTION

WAC 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? (1) If two or more children covered by the same child support order change residences so that more than one custodial parent (CP) is eligible to receive child support paid by the noncustodial parent (NCP):

(a) As long as the NCP's support obligation for all of the children has not been terminated, the NCP continues to owe the total amount of child support stated in the support order;

(b) The division of child support (DCS) allocates the NCP's support obligation between the various cases based on which children reside with each CP.

(c) DCS distributes support collections among the cases as provided in WAC 388-14A-5001 through 388-14A-5050.

(2) To allocate the child support amounts between cases, DCS determines whether the support order states a per-child amount for each child covered by the order. If the support order contains an undifferentiated amount of support, DCS reviews the order under WAC 388-14A-4810.

(3) If DCS determines a per-child amount for each child, DCS allocates the per-child amounts to the appropriate cases.

(4) If DCS is unable to determine a per-child amount for each child because the order is undifferentiated, DCS divides the NCP's total monthly support obligation by the number of children and allocates each child's fractional share of the total support obligation to that child's case.

(a) DCS divides the undifferentiated support amount for administrative efficiency, and so that support can be disbursed to each CP.

(b) The fact that DCS allocates fractional shares between cases does not convert the undifferentiated order into a differentiated order.

(5) If the NCP disagrees with DCS' decision, the NCP may request a conference board under WAC 388-14A-6400.

(6) If a CP disagrees with DCS' decision, the CP may request a hearing on a distribution and disbursement statement, as provided in WAC 388-14A-5100.

(7) Either the NCP or one or more CPs may proceed in superior court to seek:

- (a) An order clarifying the NCP's monthly support obligation;
- (b) An order modifying the support order; or
- (c) Any other appropriate relief.

AMENDATORY SECTION (Amending WSR 01-24-078, filed 12/3/01, effective 1/3/02)

WAC 388-14A-5007 If the paying parent has more than one case, can DCS apply support money to only one specific case? (1) The division of child support (DCS) applies amounts to a support debt owed for one family or household and distributes the amounts accordingly, rather than make a proportionate distribution between support debts (~~owned~~) owed to different families, when:

- (a) Proportionate distribution is administratively inefficient; or
- (b) The collection resulted from the sale or disposition of a specific piece of property against which a court awarded the custodial parent (CP) a judgment lien for child support; or
- (c) The collection is the result of a contempt order which provides that DCS must distribute the amounts to a particular case.

(2) If the collection is the result of an automated enforcement of interstate (AEI) transaction under RCW 74.20A.188, DCS applies the payment as provided in WAC 388-14A-5006, even if the requesting state wants the payment applied to a specific case.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-6300 Duty of the administrative law judge in a hearing to determine the amount of a support obligation. (1) A support order entered under this chapter must conform to the requirements set forth in RCW 26.09.105 (~~and~~), 26.18.170, and (~~the~~) RCW 26.23.050 (~~and~~ ~~(5)~~). The administrative law judge (ALJ) must comply with the DSHS rules on child support and include a Washington state child support schedule worksheet when entering a support order.

(2) In hearings held under this chapter to contest a notice and finding of financial responsibility or a notice and finding of parental responsibility or other notice or petition, the ALJ must determine:

- (a) The noncustodial parent's obligation to provide support under RCW 74.20A.057;
- (b) The names and dates of birth of the children covered by the support order;
- (c) The net monthly income of the noncustodial parent (NCP) and any custodial parent (CP);
- (d) The NCP's share of the basic support obligation and any adjustments to that share, according to his or her circumstances;
- (e) Each party's proportionate share of costs such as health care, day care and special child rearing expenses;

(f) If requested by a party, the NCP's proportionate share of ~~((any))~~ costs such as health care, day care and special child-rearing expenses in a sum certain amount per month;

~~((f))~~ (g) A statement that either or both parents are obligated to provide medical support under RCW 26.09.105 and 26.18.170, as provided in subsection (3) of this section, including but not limited to ~~((the following:~~

~~(i) A requirement that either or both parents are obligated to provide health insurance coverage for the child covered by the support order if coverage that can be extended to cover the child is or becomes available through the parent's employment or union;~~

~~((ii))~~ notice that if proof of health insurance coverage or proof that the coverage is unavailable is not provided to DCS within twenty days, DCS may seek direct enforcement through the obligated parent's employer or union without further notice to the parent ~~((; and~~

~~((iii) The reasons for not ordering health insurance coverage if the order fails to require such coverage;~~

~~(g) A provision which determines the mother and the father's proportionate share of uninsured medical expenses));~~

(h) The NCP's accrued debt and order payments toward the debt in a monthly amount to be determined by the division of child support (DCS);

(i) The NCP's current and future monthly support obligation as a per month per child amount ~~((and order payments in that amount)), if appropriate under WAC 388-14A-3200(4) and 388-14A-4800; and~~

(j) The NCP's total current and future support obligation as a sum certain and order payments in that amount.

(3) In determining the medical support obligation of the parents, the ALJ must:

(a) Require both parents to provide medical support for the children covered by the order. Medical support includes both:

(i) The obligation to provide health insurance coverage for the children or to make a monthly contribution toward the premium paid for coverage by the other parent or the state when coverage is not available; and

(ii) The obligation to pay his or her proportionate share of uninsured medical expenses.

(b) Determine whether one (but not both) of the parents should be excused from the obligation to provide coverage or contribute to a premium.

(i) The ALJ must state the reasons for excusing a parent from the coverage obligation.

(ii) The ALJ may not excuse that parent from the obligation to contribute his or her proportionate share of uninsured medical expenses.

(4) Having made the determinations required in subsection (2) above, the ALJ must order the NCP to make payments to the Washington state support registry (WSSR).

~~((4))~~ (5) The ALJ must allow DCS to orally amend the notice at the hearing to conform to the evidence. The ALJ may grant a continuance, when necessary, to allow the NCP or the CP additional time to present rebutting evidence or argument as to the amendment.

~~((5))~~ (6) The ALJ may not require DCS to produce or obtain information, documents, or witnesses to assist the NCP or CP in proof of defenses to liability. However, this

rule does not apply to relevant, nonconfidential information or documents that DCS has in its possession.

~~((6))~~ (7) In a hearing held on a notice of support owed served on the NCP under WAC 388-14A-3310 or 388-14A-3311, the ALJ must comply with WAC 388-14A-3323 and 388-14A-3325 to determine, depending on what was requested in the notice:

(a) Whether a condition precedent in the order to begin or adjust the support obligation was met;

(b) The amount of monthly support as a fixed dollar amount;

(c) Any accrued arrears;

(d) Any difference between the amount calculated in the order resulting a previous notice of support owed and the actual amount of the NCP's obligation for the period covered by the order; and

(e) The amount of the NCP's share of daycare or child care expenses for the children, including:

(i) The amount that the NCP must pay each month as his or her ongoing share of daycare or child care expenses for the children; and

(ii) The amount of NCP's accrued debt for daycare or child care expenses.

(8) In a hearing held on a notice of support owed served on either the NCP or the CP issued under WAC 388-14A-3312, the ALJ must determine either or both of the following, depending on what was requested in the notice:

(a) The amount owed by the obligated parent to the other for unreimbursed medical expenses;

(b) The monthly amount to be paid by the obligated parent as his or her proportionate share of the health insurance premium paid by the other parent or the state.

~~((a))~~ (9) Except as provided in WAC 388-14A-3324, the ALJ does not specify how the amounts owed by the obligated parent should be paid.

~~((b))~~ (10) In the event that DCS has served a notice of support owed under WAC 388-14A-3312 on both the NCP and the CP, the ALJ must issue a separate administrative order for each notice issued, and may not set off the debts against each other.

AMENDATORY SECTION (Amending WSR 06-16-073, filed 7/28/06, effective 8/28/06)

WAC 388-14A-8130 How does DCS complete the WSCSS worksheets when setting a joint child support obligation ~~((when the parents of))~~ for a child in foster care ~~((are married and residing together))~~? (1) When the division of child support (DCS) is ~~((setting))~~ preparing an administrative support notice to establish a joint support obligation for ~~((married))~~ the parents ~~((who reside together))~~ of a child in foster care, DCS follows the steps set out in this section for completing the worksheets under the Washington state child support schedule (WSCSS).

(2) DCS establishes a joint support obligation when the parents reside together and are either married or in a registered domestic partnership.

(3) DCS calculates each parent's income under the rules set out in WAC 388-14A-3205, and then calculates the income of the marital or domestic partnership community by

combining both parents' income in ~~((the "Father"))~~ one column of the worksheet and does not put any income or other information in the ~~(("Mother"))~~ other column.

~~((3))~~ (4) DCS calculates the joint support obligation using the limitations contained in RCW 26.19.065:

(a) The joint child support obligation may not exceed forty-five percent of the net income of the ~~((marital))~~ community except for good cause.

(b) ~~((Even with the need standard))~~ DCS follows WAC 388-14A-3410 when calculating and applying the self-support reserve limitation.

(c) Even though there are two parents involved, and despite the application of any limitations, ~~((there is a))~~ the presumptive minimum obligation of ~~((twenty-five))~~ fifty dollars per month per child applies when DCS sets a joint child support obligation.

~~((e))~~ (d) DCS or the administrative law judge (ALJ) may find reasons for deviation and must support those reasons with appropriate findings of fact in the support order.

~~((4))~~ (5) As described in subsection (2) of this section, the support obligation in the ~~(("Father"))~~ column of the WSCSS worksheet which contains information regarding both parents is the joint support obligation of the parents. ~~((The support obligation in the "Mother" column of the WSCSS worksheet is irrelevant for purposes of this particular support calculation.))~~

~~((5))~~ (6) DCS determines the joint support obligation of the parents without regard to the cost of foster care placement, as provided in WAC 388-14A-8105.

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, 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.

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 [45504], 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.

March 18, 2011

Katherine I. Vasquez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-11-047, filed 5/15/08, effective 6/15/08)

WAC 388-500-0005 Medical definitions. ((Unless defined in this chapter or in other chapters of the *Washington Administrative Code*, use definitions found in the *Webster's New World Dictionary*. This section contains definitions of words and phrases the department uses in rules for medical programs. Definitions of words used for both medical and financial programs are defined under WAC 388-22-030.

"Assignment of rights" means the client gives the state the right to payment and support for medical care from a third party.

"Base period" means the time period used in the limited casualty program which corresponds with the months considered for eligibility.

"Beneficiary" means an eligible person who receives:

*A federal cash Title XVI benefit; and/or

*State supplement under Title XVI; or

*Benefits under Title XVIII of the Social Security Act.

"Benefit period" means the time period used in determining whether medicare can pay for covered Part A services. A benefit period begins the first day a beneficiary is furnished inpatient hospital or extended care services by a qualified provider. The benefit period ends when the beneficiary has not been an inpatient of a hospital or other facility primarily providing skilled nursing or rehabilitation services for sixty consecutive days. There is no limit to the number of benefit periods a beneficiary may receive. Benefit period also means a "spell of illness" for medicare payments.

"Cabulance" means a vehicle for hire designed and used to transport a physically restricted person.

"Carrier" means:

*An organization contracting with the federal government to process claims under Part B of medicare; or

*A health insurance plan contracting with the department.

"Categorical assistance unit (CAU)" means one or more family members whose eligibility for medical care is determined separately or together based on categorical relatedness.

"Categorically needy" means the status of a person who is eligible for medical care under Title XIX of the Social Security Act. See WAC 388-503-0310, chapter 388-517 WAC and WAC 388-523-2305.

"Children's health program" means a state-funded medical program for children under age eighteen:

*Whose family income does not exceed one hundred percent of the federal poverty level; and

*Who are not otherwise eligible under Title XIX of the Social Security Act.

"Coinsurance medicare" means the portion of reimbursable hospital and medical expenses, after subtraction of any deductible, which medicare does not pay. Under Part A, coinsurance is a per day dollar amount. Under Part B, coinsurance is twenty percent of reasonable charges.

"Community services office (CSO)" means an office of the department which administers social and health services at the community level.

"Couple" means, for the purposes of an SSI-related client, an SSI-related client living with a person of the opposite

sex and both presenting themselves to the community as husband and wife. The department shall consider the income and resources of such couple as if the couple were married except when determining institutional eligibility.

"Deductible medicare" means an initial specified amount that is the responsibility of the client.

"Part A of medicare inpatient hospital deductible" means an initial amount of the medical care cost in each benefit period which medicare does not pay.

"Part B of medicare physician deductible" means an initial amount of medicare Part B-covered expenses in each calendar year which medicare does not pay.

"Delayed certification" means department approval of a person's eligibility for medicaid made after the established application processing time limits.

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

"Early and periodic screening, diagnosis and treatment (EPSDT)" also known as the "healthy kids" program; means a program providing early and periodic screening, diagnosis and treatment to persons under twenty-one years of age who are eligible for medicaid or the children's health program.

"Electronic fund transfers (EFT)" means automatic bank deposits to a client's or provider's account.

"Emergency medical condition" means the sudden onset of a medical condition (including labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

*Placing the patient's health in serious jeopardy;

*Serious impairment to bodily functions; or

*Serious dysfunction of any bodily organ or part.

"Emergency medical expense requirement" means a specified amount of expenses for ambulance, emergency room or hospital services, including physician services in a hospital, incurred for an emergency medical condition that a client must incur prior to certification for the medically indigent program.

"Essential spouse" see **"spouse."**

"Extended care patient" means a recently hospitalized medicare patient needing relatively short-term skilled nursing and rehabilitative care in a skilled nursing facility.

"Garnishment" means withholding an amount from earned or unearned income to satisfy a debt or legal obligation.

"Grandfathered client" means:

*A noninstitutionalized person who meets all current requirements for medicaid eligibility except the criteria for blindness or disability; and

*Was eligible for medicaid in December 1973 as blind or disabled whether or not the person was receiving cash assistance in December 1973; and

*Continues to meet the criteria for blindness or disability and other conditions of eligibility used under the medicaid plan in December 1973; and

*An institutionalized person who was eligible for medicaid in December 1973 or any part of that month, as an inpatient of a medical institution or resident of an intermediate

care facility that was participating in the medicaid program and for each consecutive month after December 1973 who:

*Continues to meet the requirements for medicaid eligibility that were in effect under the state's plan in December 1973 for institutionalized persons; and

*Remains institutionalized.

"Health maintenance organization (HMO)" means an entity licensed by the office of the insurance commissioner to provide comprehensive medical services directly to an eligible-enrolled client in exchange for a premium paid by the department on a prepaid capitation risk basis.

"Healthy kids," see **"EPSDT."**

"Home health agency" means an agency or organization certified under medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence.

"Hospital" means an institution licensed as a hospital by the department of health.

"Income for an SSI-related client," means the receipt by an individual of any property or service which the client can apply either directly, by sale, or conversion to meet the client's basic needs for food, clothing, and shelter.

***"Earned income"** means gross wages for services rendered and/or net earnings from self-employment.

***"Unearned income"** means all other income.

"Institution" means an establishment which furnishes food, shelter, medically related services, and medical care to four or more persons unrelated to the proprietor. This includes medical facilities, nursing facilities, and institutions for the mentally retarded.

***"Institution public"** means an institution, including a correctional institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.

***"Institution for mental diseases"** means an institution primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases including medical attention, nursing care, and related services.

***"Institution for the mentally retarded or a person with related conditions"** means an institution that:

*Is primarily for the diagnosis, treatment or rehabilitation of the mentally retarded or a person with related conditions; and

*Provides, in a protected residential setting, on-going care, twenty-four hour supervision, evaluation, and planning to help each person function at the greatest ability.

***"Institution for tuberculosis"** means an institution for the diagnosis, treatment, and care of a person with tuberculosis.

***"Medical institution"** means an institution:

*Organized to provide medical care, including nursing and convalescent care;

*With the necessary professional personnel, equipment and facilities to manage the health needs of the patient on a continuing basis in accordance with acceptable standards;

*Authorized under state law to provide medical care; and

*Staffed by professional personnel. Services include adequate physician and nursing care.

"Intermediary" means an organization having an agreement with the federal government to process medicare claims under Part A.

"Legal dependent" means a person for whom another person is required by law to provide support.

"Limited casualty program (LCP)" means a medical care program for medically needy, as defined under WAC 388-503-0320 and for medically indigent, as defined under WAC 388-503-0370.

"Medicaid" means the federal aid Title XIX program under which medical care is provided to persons eligible for:

*Categorically needy program as defined in WAC 388-503-0310; or

*Medically needy program as defined in WAC 388-503-0320.

"Medical assistance." See **"medicaid."**

"Medical assistance administration (MAA)" means the unit within the department of social and health services authorized to administer the Title XIX medicaid and the state-funded medical care programs.

"Medical assistance unit (MAU)" means one or more family members whose eligibility for medical care is determined separately or together based on financial responsibility.

"Medical care services" means the limited scope of care financed by state funds and provided to general assistance (GAU) and ADATSA clients.

"Medical consultant" means a physician employed by the department.

"Medical facility" see **"Institution."**

"Medically indigent (MI)" means a state-funded medical program for a person who has an emergency medical condition requiring hospital-based services.

"Medically necessary" is a term for describing requested service which is reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent worsening of conditions in the client that endanger life, or cause suffering or pain, or result in an illness or infirmity, or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction. There is no other equally effective, more conservative or substantially less costly course of treatment available or suitable for the client requesting the service. For the purpose of this section, "course of treatment" may include mere observation or, where appropriate, no treatment at all.

"Medically needy (MN)" is the status of a person who is eligible for a federally matched medical program under Title XIX of the Social Security Act, who, but for income above the categorically needy level, would be eligible as categorically needy. Effective January 1, 1996, an AFDC-related adult is not eligible for MN.

"Medicare" means the federal government health insurance program for certain aged or disabled clients under Titles II and XVIII of the Social Security Act. Medicare has two parts:

***"Part A"** covers the medicare inpatient hospital, post-hospital skilled nursing facility care, home health services, and hospice care.

***"Part B"** is the supplementary medical insurance benefit (SMIB) covering the medicare doctor's services, outpatient hospital care, outpatient physical therapy and speech

pathology services, home health care, and other health services and supplies not covered under Part A of medicare.

"Medicare assignment" means the method by which the provider receives payment for services under Part B of medicare.

"Month of application" means the calendar month a person files the application for medical care. When the application is for the medically needy program, at the person's request and if the application is filed in the last ten days of that month, the month of application may be the following month.

"Nursing facility" means any institution or facility the department [of health] licenses as a nursing facility, or a nursing facility unit of a licensed hospital, that the:

*Department certifies; and

*Facility and the department agree the facility may provide skilled nursing facility care.

"Outpatient" means a nonhospitalized patient receiving care in a hospital outpatient or hospital emergency department, or away from a hospital such as in a physician's office, the patient's own home, or a nursing facility.

"Patient transportation" means client transportation to and from covered medical services under the federal medicare and state medical care programs.

"Physician" means a doctor of medicine, osteopathy, or podiatry who is legally authorized to perform the functions of the profession by the state in which the services are performed.

"Professional activity study (PAS)" means a compilation of inpatient hospital data, conducted by the commission of professional and hospital activities, to determine the average length of hospital stay for patients.

"Professional review organization for Washington (PRO-W)" means the state level organization responsible for determining whether health care activities:

*Are medically necessary;

*Meet professionally acceptable standards of health care; and

*Are appropriately provided in an outpatient or institutional setting for beneficiaries of medicare and clients of medicaid and maternal and child health.

"Prosthetic devices" means replacement, corrective, or supportive devices prescribed by a physician or other licensed practitioner of the healing arts within the scope of his or her practice as defined by state law to:

*Artificially replace a missing portion of the body;

*Prevent or correct physical deformity or malfunction;

or

*Support a weak or deformed portion of the body.

"Provider" or **"provider of service"** means an institution, agency, or person:

*Who has a signed agreement with the department to furnish medical care, goods, and/or services to clients; and

*Is eligible to receive payment from the department.

"Resources for an SSI related client," means cash or other liquid assets or any real or personal property that an individual or spouse, if any, owns and could convert to cash to be used for support or maintenance.

*If an individual can reduce a liquid asset to cash, it is a resource.

*If an individual cannot reduce an asset to cash, it is not considered an available resource.

*Liquid means properties that are in cash or are financial instruments which are convertible to cash such as, but not limited to, cash, savings, checking accounts, stocks, mutual fund shares, mortgage, or a promissory note.

*Nonliquid means all other property both real and personal evaluated at the price the item can reasonably be expected to sell for on the open market.

"Retroactive period" means the three calendar months before the month of application.

"Spell of illness" see **"benefit period."**

"Spendedown" means the process by which a person uses incurred medical expenses to offset income and/or resources to meet the financial standards established by the department.

"Spouse" means:

***"Community spouse"** means a person living in the community and married to an institutionalized person or to a person receiving services from a home and community-based waiver program as described under chapter 388-515 WAC.

***"Eligible spouse"** means an aged, blind or disabled husband or wife of an SSI-eligible person, with whom such a person lives.

***"Essential spouse"** means, a husband or wife whose needs were taken into account in determining old age assistance (OAA), aid to the blind (AB), or disability assistance (DA) client for December 1973, who continues to live in the home and to be the spouse of such client.

***"Ineligible spouse"** means the husband or wife of an SSI-eligible person, who lives with the SSI-eligible person and who has not applied or is not eligible to receive SSI.

***"Institutionalized spouse"** means a married person in an institution or receiving services from a home or community-based waiver program.

***"Nonapplying spouse"** means an SSI-eligible person's husband or wife, who has not applied for assistance.

"SSI-related" means an aged, blind or disabled person not receiving an SSI cash grant.

"Supplemental security income (SSI) program, Title XVI" means the federal grant program for aged, blind, and disabled established by section 301 of the Social Security amendments of 1972, and subsequent amendments, and administered by the Social Security Administration (SSA).

"Supplementary payment (SSP)" means the state money payment to persons receiving benefits under Title XVI, or who would, but for the person's income, be eligible for such benefits, as assistance based on need in supplementation of SSI benefits. This payment includes:

***"Mandatory state supplement"** means the state money payment to a person who, for December 1973, was a client receiving cash assistance under the department's former programs of old age assistance, aid to the blind and disability assistance; and

***"Optional state supplement"** means the elective state money payment to a person eligible for SSI benefits or who, except for the level of the person's income, would be eligible for SSI benefits.

"Third party" means any entity that is or may be liable to pay all or part of the medical cost of care of a medical program client.

"Title XIX" is the portion of the federal Social Security Act that authorizes grants to states for medical assistance programs. Title XIX is also called medicaid.

"Transfer" means any act or omission to act when title to or any interest in property is assigned, set over, or otherwise vested or allowed to vest in another person; including delivery of personal property, bills of sale, deeds, mortgages, pledges, or any other instrument conveying or relinquishing an interest in property. Transfer of title to a resourcee occurs by:

*An intentional act or transfer; or

*Failure to act to preserve title to the resourcee.

"Value fair market for an SSI-related person" means the current value of a resourcee at the price for which the resourcee can reasonably be expected to sell on the open market.

"Value of compensation received" means, for SSI-related medical eligibility, the gross amount paid or agreed to be paid by the purchaser of a resourcee.

"Value uncompensated" means, for SSI-related medical eligibility, the fair market value of a resourcee, minus the amount of compensation received in exchange for the resourcee)) Chapter 388-500 WAC contains definitions of words and phrases used in rules for medical assistance programs. When a term is not defined in this chapter, other department WAC, or state or federal law, the medical definitions found in the Taber's Cyclopedic Medical Dictionary will apply. For general terms not defined in this chapter, other department WAC, or state or federal law, the definitions in Webster's New World Dictionary apply. If a definition in this chapter conflicts with a definition in another chapter of Title 388 WAC, the definition in the specific WAC prevails.

NEW SECTION

WAC 388-500-0010 Medical assistance definition - A. "Allowable costs" are the documented costs as reported after any cost adjustment, cost disallowances, reclassifications, or reclassifications to nonallowable costs which are necessary, ordinary and related to the outpatient care of medical care clients are not expressly declared nonallowable by applicable statutes or regulations. Costs are ordinary if they are of the nature and magnitude which prudent and cost-conscious management would pay.

"Ancillary services" means additional services ordered by the provider to support the core treatment provided to the patient. These services may include, but are not limited to, laboratory services, radiology services, drugs, physical therapy, occupational therapy, and speech therapy.

"Apple health for kids" is the umbrella term for health-care coverage for certain groups of children that is funded by the state and federal governments under Title XIX medicaid programs or Title XXI Children's Health Insurance Program, or solely through state funds (including the program formerly known as the children's health program). Funding for any given child depends on the program for which the child is

determined to be eligible. Children who may be eligible for medical assistance but who are not included under the apple health for kids umbrella are described in WAC 388-505-0210.

"Authorization" means the department's determination that criteria are met, as one of the preconditions to the department's decision to provide payment for a specific service or device. (See also "expedited prior authorization" and "prior authorization.")

NEW SECTION

WAC 388-500-0015 Medical assistance definitions - B. "Benefit Package" means the set of healthcare service categories included in a client's eligibility program. See the table in WAC 388-501-0060.

"Benefit period" means the time period used in determining whether medicare can pay for covered Part A services. A benefit period begins the first day a beneficiary is furnished inpatient hospital or extended care services by a qualified provider. The benefit period ends when the beneficiary has not been an inpatient of a hospital or other facility primarily providing skilled nursing or rehabilitation services for sixty consecutive days. There is no limit to the number of benefit periods a beneficiary may receive. Benefit period also means a "spell of illness" for medicare payments.

"Blind" is a category of medical program eligibility that requires a central visual acuity of 20/200 or less in the better eye with the use of a correcting lens, or a field of vision limitation so the widest diameter of the visual field subtends an angle no greater than twenty degrees from central.

"By report (BR)" means a method of payment in which the department determines the amount it will pay for a service when the rate for that service is not included in the department's published fee schedules. The provider must submit a "report" which describes the nature, extent, time, effort and/or equipment necessary to deliver the service.

NEW SECTION

WAC 388-500-0020 Medical assistance definitions - C. "Carrier" means an organization that contracts with the federal government to process claims under medicare Part B.

"Categorically needy (CN) or categorically needy program (CNP)" is the state and federally-funded health-care program established under Title XIX of the Social Security Act for persons within medicaid-eligible categories, whose income and/or resources are at or below set standards.

"Categorically needy (CN) scope of care" is the range of healthcare services included within the scope of service categories described in WAC 388-501-0060 available to individuals eligible to receive benefits under a CN program. Some state-funded healthcare programs provide CN scope of care.

"Centers for Medicare and Medicaid Services (CMS)" means the agency within the federal department of health and human services (DHHS) with oversight responsibility for the medicare and medicaid programs.

"Children's health program or children's healthcare programs" See "Apple health for kids."

"Community spouse" See "spouse."

"Couple" See "spouse."

"Covered service" is a healthcare service within a "service category," as described in WAC 388-501-0060, included in the medical assistance program's benefit package.

NEW SECTION

WAC 388-500-0025 Medical assistance definitions - D. "Delayed certification" means department approval of a person's eligibility for medical assistance made after the established application processing time limits.

"Dental consultant" means a dentist employed or contracted by the department.

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

"Disabled" means unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that:

- (1) Can be expected to result in death;
- (2) Has lasted or can be expected to last for a continuous period of not less than twelve months; or
- (3) In the case of a child age seventeen or younger, means any physical or mental impairment of comparable severity.

Decisions on SSI-related disability are subject to the authority of federal statutes and rules codified at 42 USC Sec 1382c and 20 CFR, parts 404 and 416, as amended, and controlling federal court decisions, which define the old-age, survivors, and disability insurance (OASDI) and SSI disability standard and determination process. See WAC 388-500-0015 for definition of "blind."

"Domestic partner" means an adult who meets the requirements for a valid state registered domestic partnership as established by RCW 26.60.030 and who has been issued a certificate of state registered domestic partnership from the Washington Secretary of State.

"Dual eligible client" means a client who has been found eligible as a categorically needy (CN) or medically needy (MN) medicaid client and is also a medicare beneficiary. This does not include a client who is only eligible for a medicare savings program as described in chapter 388-517 WAC.

NEW SECTION

WAC 388-500-0030 Medical assistance definitions - E. "Early and periodic screening, diagnosis and treatment (EPSDT)" is a comprehensive child health program that entitles infants, children, and youth to preventive care and treatment services. EPSDT is available to persons twenty years of age and younger who are eligible for any department healthcare program. Access and services for EPSDT are governed by federal rules at 42 CFR, Part 441, Subpart B. See also chapter 388-534 WAC.

"Emergency medical condition" means the sudden onset of a medical condition (including labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

- (1) Placing the patient's health in serious jeopardy;
- (2) Serious impairment to bodily functions; or

(3) Serious dysfunction of any bodily organ or part.

"Evidenced-based medicine (EBM)" means the application of a set of principles and a method for the review of well-designed studies and objective clinical data to determine the level of evidence that proves to the greatest extent possible, that a healthcare service is safe, effective, and beneficial when making population-based coverage policies (see WAC 388-501-0055), or individual medical necessity decisions (see WAC 388-501-0165).

"Exception to rule" See WAC 388-501-0160.

"Expedited prior authorization (EPA)" means the process for obtaining authorization for selected healthcare services in which providers use a set of numeric codes to indicate to the department which acceptable indications, conditions, or department-defined criteria are applicable to a particular request for authorization. EPA is a form of "prior authorization."

"Extended care services" means a recently hospitalized medicare patient needing relatively short-term skilled nursing and rehabilitative care in a skilled nursing facility.

NEW SECTION

WAC 388-500-0035 Medical assistance definitions - F. "Fee-for-service (FSS)" - The general payment method the department uses to pay for covered medical services provided to clients, except those services covered under the department's prepaid managed care programs.

"Fiscal intermediary" means an organization having an agreement with the federal government to process medicare claims under Part A.

NEW SECTION

WAC 388-500-0040 Medical assistance definitions - G. "Grandfathered client" means a noninstitutionalized person who meets all current requirements for medicaid eligibility except the criteria for blindness or disability; and:

(1) Was eligible for medicaid in December 1973 as blind or disabled whether or not the person was receiving cash assistance in December 1973;

(2) Continues to meet the criteria for blindness or disability and other conditions of eligibility used under the medicaid plan in December 1973; or

(3) Was an institutionalized person who:

(a) Was eligible for medicaid in December 1973, or any part of that month, as an inpatient of a medical institution or a resident of a facility that is known as an intermediate care facility that was participating in the medicaid program and for each consecutive month after December 1973; and

(b) Continues to meet the requirements for medicaid eligibility that were in effect under the state's plan in December 1973 for institutionalized persons and remains institutionalized.

NEW SECTION

WAC 388-500-0045 Medical assistance definitions - H. "Healthcare professional" means a provider of healthcare services licensed or certified by the state in which they practice.

"Health maintenance organization (HMO)" means an entity licensed by the office of the insurance commissioner to provide comprehensive medical services directly to an eligible enrolled client in exchange for a premium paid by the department on a prepaid capitation risk basis.

"Home health agency" means an agency or organization certified under medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence.

"Hospital" means an entity that is licensed as an acute care hospital in accordance with applicable state laws and rules, or the applicable state laws and rules of the state in which the entity is located when the entity is out-of-state, and is certified under Title XVIII of the federal Social Security Act. The term "hospital" includes a medicare or state-certified distinct rehabilitation unit or a psychiatric hospital.

NEW SECTION

WAC 388-500-0050 Medical assistance definitions - I. "Ineligible spouse" See "spouse."

"Institution" means an entity that furnishes (in single or multiple facilities) food, shelter, and some treatment or services to four or more persons unrelated to the proprietor. Eligibility for medical assistance program may vary depending upon the type of institution in which an individual resides. For the purposes of medical assistance programs, "institution" includes all of the following:

(1) **"Institution for mental diseases (IMD)"** — a hospital, nursing facility, or other institution of more than sixteen beds that is primarily engaged in providing diagnosis, treatment or care of persons with mental diseases, including medical attention, nursing care and related services. An IMD may include inpatient chemical dependency facilities of more than sixteen beds which provide residential treatment for alcohol and substance abuse.

(2) **"Intermediate care facility for the mentally retarded (ICF/MR)"** — an institution or distinct part of an institution that is:

(a) Defined in 42 CFR 440.150;

(b) Certified to provide ICF/MR services under 42 CFR 483, Subpart I; and

(c) Primarily for the diagnosis, treatment, or rehabilitation for persons with mental retardation or a related condition (see WAC 388-823-0700 for information about what qualifies as a "related condition").

(3) **"Medical institution"** — an entity that is organized to provide medical care, including nursing and convalescent care. The terms "medical facility" and "medical institution" are sometimes used interchangeably throughout title 388 WAC.

(a) To meet the definition of medical institution, the entity must:

(i) Be licensed as a medical institution under state law;

(ii) Provide medical care, with the necessary professional personnel, equipment, and facilities to manage the health needs of the patient on a continuing basis in accordance with acceptable standards; and

(iii) Include adequate physician and nursing care.

(b) Medical institutions include all of the following:

(i) "Hospice care center" — an entity licensed by the department of health (DOH) to provide hospice services. Hospice care centers must be medicare-certified, and approved by the department to be considered a medical institution.

(ii) "Hospital" — defined in WAC 388-500-0045.

(iii) "Nursing facility (NF)" — an entity certified to provide skilled nursing care and long term care services to medicaid recipients under Section 1919(a) of the Social Security Act. Nursing facilities that may become certified include nursing homes licensed under chapter 18.51 RCW, and nursing facility units within hospitals licensed by the department of health (DOH) under chapter 70.41 RCW. This includes the nursing facility section of a state veteran's facility.

(iv) "Psychiatric hospital" — an institution, or a psychiatric unit located in a hospital, licensed as a hospital in accordance with applicable Washington state laws and rules, that is primarily engaged to provide psychiatric services for the diagnosis and treatment of mentally ill persons under the supervision of a physician.

(v) "Psychiatric residential treatment facility (PRTF)" — a nonhospital residential treatment center licensed by department of health, and certified by the department to provide psychiatric inpatient services to medicaid-eligible individuals twenty-one years of age and younger. A PRTF must be accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or any other accrediting organization with comparable standards recognized by Washington state. A PRTF must meet the requirements in 42 CFR 483, Subpart G, regarding the use of restraint and seclusion.

(vi) "Residential habilitation center (RHC)" — a residence operated by the state under chapter 71A.20 RCW that serves individuals who have exceptional care and treatment needs due to their developmental disabilities by providing residential care designed to develop individual capacities to their optimum. RHCs provide residential care and may be certified to provide ICF/MR services and/or nursing facility services.

(c) Medical institutions do not include entities licensed by the department as adult family homes (AFHs) and boarding homes. AFHs and boarding homes include assisted living facilities, adult residential centers, enhanced adult residential centers, and developmental disability group homes.

(4) **"Public institution"** means an entity that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.

(a) Public institutions include all of the following:

(i) Correctional facility — an entity such as a state penitentiary or county jail, (includes placement in a work release program or outside of the institution, including home detention).

(ii) Eastern and Western State mental hospitals. (Medicaid coverage for these institutions is limited to individuals age twenty-one and younger, and individuals age sixty-five and older.)

(iii) Certain facilities administered by Washington state's department of veteran's affairs (see (b) of this subsection for facilities that are not considered public institutions).

(b) Public institutions do not include intermediate care facilities, entities that meet the definition of medical institution (such as Harborview Medical Center and University of Washington Medical Center), or facilities in Retsil, Orting, and Spokane that are administered by the department of veteran's affairs and licensed as nursing facilities.

"Institution for mental diseases (IMD)" See "institution."

"Institutionalized spouse" See "spouse."

"Intermediate care facility for the mentally retarded (ICF/MR)" See "institution."

NEW SECTION

WAC 388-500-0065 Medical assistance definitions -

L. "Limitation extension" See WAC 388-501-0169.

"Limited casualty program (LCP)" means the medically needy (MN) program.

NEW SECTION

WAC 388-500-0070 Medical assistance definitions -

M. "Medicaid" is the federal aid Title XIX program of the Social Security Act under which medical care is provided to eligible persons.

"Medical assistance" for the purposes of chapters 388-500 through 388-561 WAC, means the various healthcare programs administered by the department that provide federally-funded and/or state-funded healthcare benefits to eligible clients.

"Medical assistance administration (MAA)" is the former organization within the department of social and health services authorized to administer the federally-funded and/or state-funded healthcare programs that are now administered by the medicaid purchasing administration (MPA), formerly the health and recovery services administration (HRSA).

"Medical care services (MCS)" means the limited scope of care financed by state funds and provided to disability and alcohol and drug addiction services clients.

"Medical consultant" means a physician employed or contracted by the department.

"Medical facility" means a medical institution or a medical clinic. A medical clinic does not meet the criteria to be considered a medical institution (see "medical institution").

"Medical institution" See "institution."

"Medically necessary" is a term for describing requested service which is reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent worsening of conditions in the client that endanger life, or cause suffering or pain, or result in an illness or infirmity, or threaten to cause or aggravate a handicap, or cause physical deformity or mal-function. There is no other equally effective, more conservative or substantially less costly course of treatment available or suitable for the client requesting the service. For the purposes of this section, "course of treatment" may include mere observation or, where appropriate, no medical treatment at all.

"Medically needy (MN) or medically needy program (MNP)" is the state and federally-funded healthcare program

available to specific groups of persons who would be eligible as categorically needy (CN), except their monthly income is above the CN standard. Some long-term care clients with income and/or resources above the CN standard may also qualify for MN.

"Medicare" is the federal government health insurance program for certain aged or disabled persons under Titles II and XVIII of the Social Security Act. Medicare has four parts:

(1) **"Part A"** - covers medicare inpatient hospital services, post-hospital skilled nursing facility care, home health services, and hospice care.

(2) **"Part B"** - the supplementary medical insurance benefit (SMIB) that covers medicare doctors' services, outpatient hospital care, outpatient physical therapy and speech pathology services, home health care, and other health services and supplies not covered under Part A of medicare.

(3) **"Part C"** - covers medicare benefits for clients enrolled in a medicare advantage plan.

(4) **"Part D"** - the medicare prescription drug insurance benefit.

"Medicare assignment" means the process by which a provider agrees to provide services to a medicare beneficiary and accept medicare's payment for the services.

"Medicare cost-sharing" means out-of-pocket medical expenses related to services provided by medicare. For medical assistance clients who are enrolled in medicare, cost-sharing may include Part A and Part B premiums, co-insurance, deductibles, and co-payments for medicare services. See chapter 388-517 WAC for more information.

NEW SECTION

WAC 388-500-0075 Medical assistance definitions -

N. "National correct coding initiative (NCCI)" is a national standard for the accurate and consistent description of medical goods and services using procedural codes. The standard is based on coding conventions defined in the American Medical Association's Current Procedural Terminology (CPT®) manual, current standards of medical and surgical coding practice, input from specialty societies, and analysis of current coding practices. The centers for medicare and medicaid services (CMS) maintain NCCI policy. Information can be found at: <http://www.cms.hhs.gov/NationalCorrectCodInitEd/>.

"National provider indicator (NPI)" is a federal system for uniquely identifying all providers of healthcare services, supplies, and equipment.

"NCCI edit" is a software step used to determine if a claim is billing for a service that is not in accordance with federal and state statutes, federal and state regulations, department fee schedules, billing instructions, and other publications. The department has the final decision whether the NCCI edits allow automated payment for services that were not billed in accordance with governing law, NCCI standards or department policy.

"Nonapplying spouse" See "spouse."

"Noncovered service(s)" means a specific healthcare service(s) or item(s) the department has determined it will not cover or pay for any client under any medical assistance pro-

gram. Noncovered services are identified in WAC 388-501-0070 and in specific healthcare program rules.

"Nursing facility" See "institution."

NEW SECTION

WAC 388-500-0080 Medical assistance definitions - O. "Outpatient" means a patient receiving care in a hospital outpatient setting or a hospital emergency department, or away from a hospital such as in a physician's office or clinic, the patient's own home, or a nursing facility.

"Overhead costs" means those costs that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Overhead costs that are allocated must be clearly distinguished from other functions and identified as a benefit to a direct service.

NEW SECTION

WAC 388-500-0085 Medical assistance definitions - P. "Patient transportation" means client transportation to and/or from covered healthcare services under federal and state healthcare programs.

"Physician" means a doctor of medicine, osteopathy, or podiatry who is legally authorized to perform the functions of the profession by the state in which the services are performed.

"Prior authorization" is the requirement that a provider must request, on behalf of a client and when required by rule, the department's approval to render a healthcare service or write a prescription in advance of the client receiving the healthcare service or prescribed drug, device, or drug-related supply. The department's approval is based on medical necessity. Receipt of prior authorization does not guarantee payment. Expedited prior authorization and limitation extension are types of prior authorization.

"Prosthetic devices" means replacement, corrective, or supportive devices prescribed by a physician or other licensed practitioner of the healing arts within the scope of his or her practice as defined by state law to:

- Artificially replace a missing portion of the body;
- Prevent or correct physical deformity or malfunction;

or

- Support a weak or deformed portion of the body.

"Provider" means an institution, agency, or person that is licensed, certified, accredited, or registered according to Washington state laws and rules, and:

(1) Has signed a core provider agreement or signed a contract with the department, and is authorized to provide healthcare, goods, and/or services to medical assistance clients; or

(2) Has authorization from a managed care organization (MCO) that contracts with the department to provide healthcare, goods, and/or services to eligible medical assistance clients enrolled in the MCO plan.

"Public institution" See "institution."

NEW SECTION

WAC 388-500-0095 Medical assistance definitions - R. "Regional support network (RSN)" means a single or

multiple-county authority or other entity operating as a pre-paid health plan through which the department contracts for the delivery of community outpatient and inpatient mental health services system in a defined geographic area.

"Retroactive period" means approval of medical coverage for any or all of the retroactive period. A client may be eligible only in the retroactive period or may have both current eligibility and a separate retroactive period of eligibility approved.

NEW SECTION

WAC 388-500-0100 Medical assistance definitions - S. "Scope of healthcare service categories" are the groupings of healthcare services listed in the table in WAC 388-501-0060 that are available under each medical assistance program's benefits package.

"Spendedown" is a term used in the medically needy (MN) program and means the process by which a person uses incurred medical expenses to offset income and/or resources to meet the financial standards established by the department. See WAC 388-519-0110.

"Spouse" means, for the purposes of medicaid, a person who is a husband or wife legally married to a person of the opposite sex. Washington state recognizes other states' determinations of legal and common-law marriages between two persons of the opposite gender.

(1) "Community spouse" means a person who:

(a) Does not reside in a medical institution; and

(b) Is legally married to a client who resides in a medical institution or receives services from a home and community-based waiver program. A person is considered married if not divorced, even when physically or legally separated from his or her spouse.

(2) "Eligible spouse" means an aged, blind or disabled husband or wife of an SSI-eligible person, who lives with the SSI-eligible person, and is also eligible for SSI.

(3) "Essential spouse" means a husband or wife whose needs were taken into account in determining old age assistance (OAA), aid to the blind (AB), or disability assistance (DA) for a client in December 1973, who continues to live in the home and remains married to the client.

(4) "Ineligible spouse" means the husband or wife of an SSI-eligible person, who lives with the SSI-eligible person, and who has not applied or is not eligible to receive SSI.

(5) "Institutionalized spouse" means a legally married person who has attained institutional status as described in chapter 388-513 WAC, and receives services in a medical institution or from a home or community-based waiver program described in chapter 388-515 WAC. A person is considered married if not divorced, even when physically or legally separated from his or her spouse.

(6) "Nonapplying spouse" means an SSI-related person's husband or wife, who has not applied for medical assistance.

"SSI-related" means an aged, blind or disabled person not receiving an SSI cash grant.

"Supplemental security income (SSI) program (Title XVI)" is the federal grant program for aged, blind, and disabled persons, established by section 301 of the Social Secu-

rity amendments of 1972, and subsequent amendments, and administered by the Social Security Administration (SSA).

"Supplementary payment (SSP)" means the state money payment to a person receiving benefits under Title XVI, or who would, but for the person's income, be eligible for such benefits, as assistance based on need in supplementation of SSI benefits. This payment includes:

- **"Mandatory state supplement"** - the state money payment to a person who, for December 1973, was a client receiving cash assistance under the department's former programs of old age assistance, aid to the blind and disability assistance; and

- **"Optional state supplement"** - the elective state money payment to a person eligible for SSI benefits or who, except for the level of the person's income, would be eligible for SSI benefits.

NEW SECTION

WAC 388-500-0105 Medical assistance definitions - T. "Third party" means an entity other than the department that is or may be liable to pay all or part of the cost of healthcare for a medical assistance client.

"Third party liability (TPL)" means the legal responsibility of an identified third party or parties to pay all or part of the cost of healthcare for a medical assistance client. A medical assistance client's obligation to help establish TPL is described in WAC 388-505-0540.

"Title XIX" is the portion of the federal Social Security Act, 42 USC 1396, that authorizes funding to states for medical assistance programs. Title XIX is also called medicaid.

"Title XXI" is the portion of the federal Social Security Act, 42 USC 1397 et seq, that authorizes funding to states for the children's health insurance program. Title XXI is also called CHIP.

"Transfer of assets" means changing ownership or title of an asset such as income, real property, or personal property by one of the following:

- (1) An intentional act that changes ownership or title; or
- (2) A failure to act that results in a change of ownership or title.

NEW SECTION

WAC 388-500-0110 Medical assistance definitions - U. "Urgent care" means an unplanned appointment for a covered medical service with verification from an attending physician or facility that the client must be seen that day or the following day.

"Usual and customary charge" means the amount a provider typically charges to fifty percent or more of patients who are not medical assistance clients.

WSR 11-08-009
PROPOSED RULES
DEPARTMENT OF
EARLY LEARNING

[Filed March 29, 2011, 1:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-15-116.

Title of Rule and Other Identifying Information: Chapter 170-290 WAC, Working connections and seasonal child care programs, revising sections related to the seasonal child care (SCC) subsidy program in Parts I and III of this chapter.

Hearing Location(s): On Thursday, May 12, 2011, at 6:00 p.m. to 8:30 p.m., at Northwest Educational Services District 189, Admiralty Room, 1601 R Avenue, Anacortes, WA 98221; and on Saturday, May 14, 2011, at 11:00 a.m. to 2:00 p.m., at Yakima Valley Community College, Deccio Instructional Center, Parker Room, South 16th Avenue and Nob Hill Boulevard (the Deccio Center and parking are along South 12th Avenue), Yakima, Washington 98902.

Anyone may join these hearings anytime during the posted hours to offer input or to hear what others are saying about the proposed rules. Spanish interpreters will be provided.

The deadline for giving written input on the proposed rules is midnight on Sunday, May 15, 2011. See the *"submit written comments to"* section of this notice on how to give written input on this proposal.

Everyone who comments on the proposed rules either in writing or at a public hearing will receive the department's combined written response, called a *concise explanatory statement* (CES). This CES will also be posted on the department of early learning (DEL) web site at <http://www.del.wa.gov/laws/development/Default.aspx> when the final rules are posted. Request a copy of the CES by e-mailing Rules@del.wa.gov, or by writing to the DEL Rules Coordinator, P.O. Box 40972, Olympia, WA 98504-0972 (persons requesting by e-mail will receive an electronic copy of the CES).

DEL encourages the public to use of the department's Facebook and Blog pages on the internet to post input about DEL programs and initiatives. However, for a written comment to be considered part of the official record for this proposal, and for the sender to receive the CES, the comment must be received at the on-line, e-mail, fax or postal mail locations as described in this notice under *"submit written comments to,"* or at one of the public hearings noted above.

Date of Intended Adoption: After May 15, 2011.

Submit Written Comments to: DEL Rules Coordinator, P.O. Box 40972, Olympia, WA 98504-0972, DEL on-line comment web site <https://apps.del.wa.gov/PolicyProposalComment/Detail.aspx>, e-mail Rules@del.wa.gov, or fax (360) 725-4939, by 11:59 p.m., May 15, 2011.

Assistance for Persons with Disabilities: Contact the DEL rules coordinator by 5:00 p.m., on May 6, 2011, at (360) 725-4397, (360) 725-4672 or at Rules@del.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DEL is revising rules in chapter 170-290 WAC regarding implementation of the SCC subsidy program. One section of Part I is amended,

and all sections of Part III of this chapter are revised. The proposed rules:

1. Would allow DEL to limit consumer entry into SCC if needed to keep the program within available funds;
2. Note that responsibility for processing family applications for SCC and determining family eligibility for SCC subsidy benefits is shifted to the department of social and health services (DSHS); and
3. Where appropriate, align SCC eligibility standards, eligibility determination, and appeal rights with those for the working connections child care (WCCC) subsidy program.

The SCC program helps families working in seasonal agriculture harvesting and processing jobs pay for child care. Families in SCC must meet income limit requirements, and must pay for part of their child care each month (copayment). The proposed changes are expected to reduce costs of administering the SCC program by approximately \$1 million per year.

Reasons Supporting Proposal: The proposed rules are part of DEL's efforts to reduce spending as directed by the Governor's Executive Order 10-04.

Under this directive, DEL and other state agencies have implemented across-the-board spending cuts of nearly 6.3 percent in the state fiscal year (SFY) ending June 30, 2011, from levels appropriated in the 2010-2011 supplemental operating budget bill, ESSB 6444 (chapter 37, Laws of 2010 1st sp. sess.).

DEL submitted proposed across-the-board cuts to the governor to meet the 6.3 percent budget reduction target, including changing implementation of the SCC program from contracted agencies to DSHS. (Find proposed across-the-board spending reduction proposals from all state agencies at <http://www.ofm.wa.gov/reductions/default.asp>).

SFY 2011 funding for SCC has been exhausted. Since January 1, 2011, DEL stopped taking new applications for SCC subsidy benefits, and ended the contracts with community agencies. The department plans to restart the program in July 2011 with SFY 2012 funding and with SCC application processing, eligibility determinations and payments administered by DSHS. DSHS already provides the same services for the WCCC subsidy program.

The following table describes key changes in the SCC rules in chapter 170-290 WAC:

	Under the current SCC rules (previously implemented by contracted agencies)	Under the proposed rules (to be implemented by DSHS)
Where does a family apply for SCC?	Families applied at local community agencies around the state contracted by DEL.	Families would apply for SCC to DSHS. <i>(See proposed WAC 170-290-0002.)</i>

	Under the current SCC rules (previously implemented by contracted agencies)	Under the proposed rules (to be implemented by DSHS)
In what areas of Washington state are the SCC subsidies available?	This is not clear in the current SCC rules.	To receive SCC, a family must live in Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Okanogan, Skagit, Walla Walla, Whatcom or Yakima county, and meet other SCC eligibility requirements. <i>(See proposed WAC 170-290-3520 (1)(b).)</i>
When does the legal status of the child receiving SCC program benefits need to be verified?	SCC contractors were not required to verify a child's citizenship or immigration status under current SCC WAC 170-290-3540.	If the child's parent or parents are undocumented immigrants, DSHS would need to verify the citizenship or immigration status only of the child or children needing subsidized child care. The current WCCC WAC 170-290-0015 (1)(e) would apply.
Can a family receive SCC if they live in Washington but work in Oregon or Idaho?	Yes under the current rules, if the work site is within forty miles of Washington state.	No. Under the proposed rules, the family must work in seasonal agriculture in Washington state and live in one of the counties listed in proposed WAC 170-290-3520. <i>(See proposed WAC 170-290-3555(1).)</i>

	Under the current SCC rules (previously implemented by contracted agencies)	Under the proposed rules (to be implemented by DSHS)
After submitting a SCC application, how long does a family have to turn in information to complete the application?	The family generally had fourteen days from the application date to turn in all application information.	The family would have up to thirty days to turn in all application information, consistent with WCCC. <i>(See proposed WAC 170-290-3665 (1)(a).)</i>
If a family is denied SCC services, how do they find out if they may be eligible for WCCC subsidies?	Contractors did not determine if the family is eligible for other subsidy programs. The family would need to apply for WCCC subsidies on their own.	DSHS would automatically determine if the family is eligible for WCCC subsidies if the family is denied SCC benefits. <i>(See proposed WAC 170-290-3690(3).)</i>
What types of income are "excluded" when determining a family's SCC eligibility?	The following types of income are currently "excluded" (not counted) under the SCC program: <ul style="list-style-type: none"> • Savings accounts. • Money from sale of real or personal property. • Tax refunds. • One-time insurance settlement payments. • Earned income credits. • Capital gains. • Basic Food program benefits. • Income earned by children. • Government economic stimulus payments. 	The following types of income will be <u>added</u> to the list of "excluded" income sources and will not be counted, consistent with WCCC: <ul style="list-style-type: none"> • Income listed in DSHS WAC 388-450-0035 (educational benefits), 388-450-0040 (Native American benefits), and 388-450-0055 (needs-based assistance). • DSHS diversion cash assistance. • Insurance, property loss awards and other cash awards.

	Under the current SCC rules (previously implemented by contracted agencies)	Under the proposed rules (to be implemented by DSHS)
		<ul style="list-style-type: none"> • Adoption and foster care support payments. <i>(See proposed WAC 170-290-3630.)</i>
Which child care providers can a parent use when they receive SCC subsidies?	A family receiving SCC may use for child care: <ul style="list-style-type: none"> • A DEL-licensed or certified child care provider, or • A DEL-contracted seasonal day camp. 	A family receiving SCC may place their child only with a DEL-licensed or certified child care provider. <i>(See proposed WAC 170-290-3750.)</i> <i>(Note: No children would lose child care because of this rule change. There are no DEL-contracted seasonal day camps in areas where the state currently pays for SCC.)</i>

Providing for possible limited entry into SCC, amended WAC 170-290-3501.

DEL anticipates that annual funding allocated for SCC may not be sufficient to provide child care subsidy benefits to all families applying for SCC, or that funds may be exhausted prior to end of the fiscal year. Amended WAC 170-290-3501 would permit DEL and DSHS to take one or more of the following steps to regulate SCC program expenditures if needed:

- Limiting or closing enrollment;
- Establishing priority lists for new enrollees, subject to state and federal law; or
- Creating a waiting list.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070, chapter 43.215 RCW.

Statute Being Implemented: Chapter 43.215 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Under section 501, chapter 265, Laws of 2006 (uncodified), DEL and DSHS jointly operate the WCCC pro-

gram. DEL is responsible for WCCC policy-making and adopting rules for the program. DSHS staff accept WCCC applications, determine family eligibility, and process payments to child care providers who care for children who receive WCCC subsidized care. Under the proposed rules, DSHS would provide the same functions for the SCC program.

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Mark Rosen/Andy Fernando, DEL, Lacey, Washington, (360) 725-4397; Implementation: DSHS field offices and call centers, statewide; and Enforcement: DSHS field offices, statewide.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Preparation of a small business economic impact statement is not required. The proposed rules do not impose new requirements on affected businesses. The rules eliminate one category of child care provider, DEL-contracted seasonal day camps, from the types of providers eligible to care for children receiving SCC subsidies. However, no DEL-contracted seasonal day camps are caring for SCC-subsidized children now, and there were no DEL contracts with seasonal day camps in the counties served by SCC when the SCC program was suspended in January 2010. No children in care will be displaced by removing DEL-contracted seasonal day camps from the list of eligible SCC providers.

Contracts with local community agencies to implement the SCC program were ended in late 2010 and early 2011 under the terms of their individual contracts. The contracts established the roles and responsibilities of the SCC contractors, the current rules only describe those contractual roles and responsibilities. The proposed rules remove references to SCC contractors and their roles and responsibilities, and do not impose any requirement on the contractors.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not listed among the state agencies required to comply with RCW 34.05.328.

March 29, 2011
Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0002 Scope of agency responsibilities.

(1) The responsibilities of the department of early learning (DEL) include, but are not limited to:

(a) Determining child care subsidy policy for the WCCC and SCC programs, including determining thresholds for eligibility and copayment amounts and establishing rights and responsibilities. DEL is also designated as the lead agency for child care and development funds (CCDF) and oversees expenditure of CCDF funds; and

(b) ~~((Contracting with community organizations to meet with families to see if they are eligible for the SCC program. SCC contractors are located in several communities across the state, and must follow the rules that DEL has established for the SCC program; and~~

~~(e)))~~ Serving as the designated representative for the state to implement the collective bargaining agreement under RCW 41.56.028 for in-home/relative providers as defined in WAC 170-290-0003(7), and for all licensed family child care providers.

(2) The responsibilities of the department of social and health services (DSHS) include, but are not limited to, service delivery for the ~~((working connections child care~~ ~~(e)))~~ WCCC ~~(e))~~ and SCC programs, including determining who is eligible for WCCC and SCC benefits, authorizing payments for these programs, and managing payments made to providers that receive WCCC and SCC subsidies.

(3) This allocation between DEL and DSHS is pursuant to section 501(2), chapter 265, Laws of 2006 (2SHB 2964), in which the legislature transferred all of the powers, duties, and functions relating to the WCCC program from DSHS to DEL, except for eligibility staffing and eligibility payment functions, which remain in DSHS.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0003 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) **"Collective bargaining agreement"** or **"CBA"** means the most recent agreement that has been negotiated and entered into between the exclusive bargaining representative for all licensed and license-exempt family child care providers as defined in chapter 41.56 RCW.

(2) **"Consumer"** or **"eligible consumer"** means the person applying for or receiving:

(a) WCCC benefits as described in part II of this chapter; or

(b) SCC benefits as described in part III of this chapter.

(3) **"Copayment"** means the amount of money the consumer is responsible to pay the child care provider toward the cost of child care each month.

(4) **"DEL"** means the department of early learning.

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

(6) **"Days"** means calendar days unless otherwise specified.

(7) **"In-home/relative provider,"** referred to in the collective bargaining agreement as **"license-exempt provider,"** means those providers who meet the requirements in WAC 170-290-0130 through 170-290-0167.

(8) **"In loco parentis"** means the adult caring for an eligible child in the absence of the biological, adoptive, or step-parents, and who is not a relative, court-ordered guardian, or custodian.

(9) **"SCC"** means the seasonal child care program, which is a child care subsidy program described in part III of this chapter that assists eligible families who are seasonally employed in agriculturally related work to pay for licensed or certified child care.

(10) **"WCCC"** means the working connections child care program, which is a child care subsidy program described in part II of this chapter that assists eligible families in obtaining child care subsidies for approvable activities that

enable them to work, attend training, or enroll in educational programs.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3501 Program funding~~((—Waiting lists)).~~ The seasonal child care (SCC) program is subject to available funds ~~((and creates waiting lists when budget limits occur)).~~ As used in this chapter, "subject to available funds" includes one or more of the following:

- (1) Limiting or closing enrollment;
- (2) Establishing a priority list for new enrollees subject to applicable state and federal law; or
- (3) Creating and maintaining a waiting list.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3510 SCC definitions. The following definitions apply only to part III of this chapter relating to seasonal child care (SCC):

~~((1))~~ "Application interview date" means the first date a consumer, as defined in WAC 170-290-0003, meets with the SCC contractor to see if the consumer is eligible for subsidy benefits.

~~((2))~~ "Child care plan" means ~~((a state form))~~ an enhanced award letter filled out by ~~((the SCC contractor))~~ DSHS that ~~((tells))~~ states for the consumer and provider:

- (a) When benefits start and end;
- (b) The amount of the copayment; ~~((and))~~
- (c) The approved hours of care; and
- (d) Each consumer's eligibility for SCC program subsidies.

~~((3))~~ "SCC contractor" means the agency that DEL has contracted with to meet with families to see if they are eligible for the seasonal child care program. SCC contractors are located in several communities across the state. SCC contractors are responsible to follow the SCC rules that DEL has established.

~~((4))~~ (2) "Eligibility" means that a consumer has met all of the requirements of part III of this chapter to receive SCC program subsidies.

(3) "Seasonally available labor" or "seasonally available agricultural related work" means ~~((labor))~~ work that is available only in a specific season during part of the calendar year. The ~~((labor))~~ work is directly related to the cultivation, production, harvesting or processing of fruit trees or crops.

~~((5))~~ "Waiting list" means a list of families who are currently working and waiting for seasonal child care subsidies when funding is not available to meet the requests from all eligible families. (4) "Waiting list" means a list of families who are currently working and waiting for seasonal child care subsidies when funding is not available to meet the requests from all eligible families.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3520 Eligible consumers. (1) In SCC, an eligible consumer:

(a) Is not currently receiving temporary aid for needy families (TANF)~~((:));~~

(b) Lives in ~~((the state of))~~ one of the following Washington~~((:))~~ state counties: Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Okanogan, Skagit, Walla Walla, Whatcom, or Yakima;

(c) Has parental control of one or more children~~((:));~~ and

(d) Is the child's:

- ~~((a))~~ (i) Parent, either biological or adopted;
- ~~((b))~~ (ii) Stepparent;
- ~~((c))~~ (iii) Legal guardian as verified by a legal or court document;
- ~~((d))~~ (iv) Adult sibling or step-sibling;
- ~~((e))~~ (v) Aunt;
- ~~((f))~~ (vi) Uncle;
- ~~((g))~~ (vii) Niece or nephew;
- ~~((h))~~ (viii) Grandparent; or
- ~~((i))~~ (ix) Any of the above relatives in ~~((e), (f), or (h))~~ (v), (vi), or (viii) of this subsection, with the prefix "great," such as great-aunt.

(2) Consumers may be eligible for SCC ~~((benefits))~~ program subsidies if they:

- (a) Meet eligibility requirements in this chapter;
- (b) Participate in an approved activity under WAC 170-290-3555; and

(c) Have countable income at or below ~~((two hundred percent of the federal poverty guidelines (FPG)))~~ the maximum eligibility limit described in WAC ~~((170-290-3640))~~ 170-290-0005 (2)(d) and (3).

(3) Consumers are not eligible for SCC ~~((benefits))~~ program subsidies if they:

- (a) Have a copayment, under WAC 170-290-0075, that is higher than the maximum monthly state child care rate for all of the consumer's children in care;
- (b) Were employed with one employer more than eleven months in the previous twelve months for a single-parent household;
- (c) Are receiving TANF benefits; or
- (d) Are the only parent in the household and will be away from the home for more than thirty days in a row.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3530 Verifying consumers' information. (1) A consumer must provide information to ~~((the SCC contractor))~~ DSHS to determine eligibility when:

- (a) The consumer initially applies for benefits;
 - (b) The consumer reapplies for benefits; or
 - (c) A change of circumstances occurs.
- (2) ~~((The SCC contractor))~~ A consumer's eligibility may change if:

(a) DSHS finds out that the consumer's circumstances may have changed; or

(b) The information DSHS has is inconsistent, conflicting, or outdated.

(3) DSHS may accept any verification that the consumer can easily obtain when it reasonably supports the consumer's statement of his or her circumstances. The verification that the consumer gives to ~~((the SCC contractor))~~ DSHS must:

(a) Clearly relate to information ~~((the SCC contractor))~~ DSHS is requesting;

(b) Be from a reliable source; and

(c) Be accurate, complete, current and consistent.

~~((3))~~ ~~The SCC contractor~~) (4) DSHS will accept a variety of forms of verification to show the consumer is eligible. ~~((For example, any of the following documents are accepted to show the child is in the home: School records, immunization records or birth certificates, or other type of documents))~~ If DSHS requires verification from a consumer that costs money, DSHS must pay for the consumer's reasonable costs.

~~((4))~~ (5) If the verification that a consumer ~~((gives to the SCC contractor))~~ provides to DSHS is inconsistent, conflicting, or outdated ~~((or confusing, the SCC contractor))~~, DSHS may:

(a) Ask ~~((a))~~ the consumer to provide ~~((the SCC contractor))~~ DSHS with more ~~((information or documentation))~~ verification or provide a collateral contact (a "collateral contact" is a statement from someone outside of the consumer's residence that knows the consumer's situation); or

(b) ~~((Ask for))~~ Send an investigator from the DSHS division of fraud investigations (DFI) to make an unannounced visit to the consumer's home to verify the consumer's circumstances. See WAC 170-290-0025(9).

~~((5))~~ (6) If a consumer does not provide ~~((the SCC contractor with))~~ all of the verification ~~((that the SCC contractor has))~~ requested, ~~((the SCC contractor))~~ DSHS will determine if ~~((the))~~ a consumer is eligible based on the information already available to ~~((the SCC contractor))~~ DSHS.

(7) DSHS staff verify if the consumer received TANF income during the previous twelve months.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3540 Eligibility—Family size. ~~((DEL))~~ DSHS determines a consumer's family size as ~~((follows:))~~ provided in WAC 170-290-0015.

((1)) If a consumer's family includes:	Then DEL counts the following individuals as part of the family for SCC program eligibility:
(a) A single parent, including a minor parent, living independently or residing in her/his parent's home with her/his children.	The consumer and the consumer's children.
(b) Unmarried parents living together who have at least one mutual child.	Both parents and all their children living in the household.
(e) Unmarried parents living together with no mutual children.	Each parent and their own children, as separate families.
(d) Married parents living together.	Both parents and all their children living in the household.

(e) A legal guardian verified by a legal or court document; adult sibling or step-sibling; nephew or niece; aunt; uncle; grandparent; or great-aunt, great-uncle, or great-grandparent.	Only the children and their income.
(f) A parent who is voluntarily out of the household for reasons other than employment, such as visiting a family member.	The consumer, the absent parent and the children.
(g) A parent who is out of the household because of employer requirements, such as working in a different community, and is expected to return to the household.	The consumer, the absent parent, and the children. Subsection (1)(b) and (d) of this section apply.
(h) An incarcerated parent.	The incarcerated person is not part of the household count in determining income and eligibility. DEL counts all remaining household members. All other family rules in this section apply.
(2) If the consumer's household includes:	Then in addition, DEL counts the sibling as part of the family for SCC program eligibility as follows:
(a) Eighteen year old siblings of the children who require care and are enrolled in secondary education or general equivalency diploma (GED) program.	The eighteen year olds (unless they are a parent themselves), until they turn nineteen or complete high school/GED, whichever comes first. All other family rules in this section apply.
(b) Siblings of the children requiring care who are up to twenty-one years old who are participating in a program through the school district's special education department under RCW 28A.155.020.	The person participating in the approved program through RCW 28A.155.020 up to twenty-one years of age (unless they are a parent themselves). All other family rules in this section apply.)

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3550 Eligibility—Special circumstances. (1) A consumer may be eligible for the SCC program when he or she:

(a) Has children living with them in Washington state who are:

(i) Younger than age thirteen; or
 (ii) Thirteen to nineteen years old and under court supervision; or

(iii) Less than nineteen years old and have a verified special need according to WAC 170-290-0220; and

(b) Is a parent in a two-parent family (~~(in which)~~) and both parents currently work in seasonally available agricultural related work.

(2) If both parents are not currently employed in seasonally agricultural related work, the consumer may be eligible for SCC only when the other parent is "unable" to provide care for the children because of physical or mental restrictions. If a consumer claims one parent is unable to care for the children, the consumer must provide written documentation from a licensed medical or mental health professional that states the:

(a) Reason the parent is unable to care for the children; and

(b) Expected duration and severity of the condition that keeps the parent from caring for the children.

(3) (~~For the previous twelve months before applying for SCC benefits,~~) Fifty percent or more of the family's earned income must have come from seasonally available agricultural related work, during the twelve months prior to the SCC application for benefits.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3555 Eligibility—Approved activities.

(1) A consumer may be eligible for SCC (~~(benefits)~~) program subsidies for up to sixteen hours per day for the time he or she is involved in seasonally available agricultural related work in(~~=~~

~~(a) Washington state; or~~

~~(b) A bordering state within forty miles of))~~ Washington state.

(2) When the consumer is part of a two-parent family, both parents must be employed as described in subsection (1) of this section;

(3) (~~The SCC contractor~~) DSHS may authorize care for:

(a) Travel time only between the child care location and the employment location (~~(only)~~);

(b) Job search, of no more than five days per month, if the consumer's seasonally available agricultural related work ends and he or she is still eligible and continues to need child care; or

(c) Sleep time, up to eight hours per day when needed, if the consumer works nights and sleeps days.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3560 Consumers' rights. When a consumer applies for or receives SCC (~~(benefits)~~) program subsidies, he or she has the right to:

(1) Be free from discrimination in accordance with all applicable federal and state nondiscrimination laws, regulations and policies;

(2) Have the consumer's application accepted and acted upon within thirty days;

(3) Be informed, in writing, of the consumer's legal rights and responsibilities related to the SCC (~~(benefits)~~) subsidy program;

(4) Have the consumer's information shared with other agencies only when required by federal or state regulations;

(5) Be allowed to choose a licensed or certified child care provider as long as the provider meets requirements in WAC 170-290-3750;

(6) Receive a written notice at least ten days before changes are made to lower or stop benefits except as stated in WAC 170-290-3730;

(7) Ask for an administrative hearing if the consumer does not agree with a decision per WAC 170-290-3860;

(8) Ask to speak to (~~(the SCC contractor's)~~) a supervisor or administrator at DSHS to review a decision or action affecting the consumer's benefits without affecting the consumer's right to an administrative hearing;

(9) Have interpreter or translator services provided by (~~(the SCC contractor)~~) DSHS within a reasonable amount of time and at no cost to the consumer;

(10) Refuse to speak to a fraud early detection (FRED) investigator from the (~~(department of social and health services)~~) DSHS division of fraud investigations (DFI) when they ask to come into your home. This request will not affect eligibility for SCC program subsidies. If the consumer refuses to cooperate with the investigator at a later date, it could affect his or her (~~(benefits)~~) SCC program subsidies;

(11) Access his or her child at all times while the child is in child care;

(12) Terminate child care without cause and without notice to the provider. Notice must be given to (~~(the SCC contractor)~~) DSHS within five days of termination; and

(13) Not be charged by the consumer's licensed or certified provider, or be made to pay, for:

(a) The difference between (~~(their)~~) the child care provider's private rate and the state maximum child care subsidy rate, when their private rate for child care or the registration fee is higher;

(b) Any day when the consumer's child is absent;

(c) Vacation days when the provider chooses to close;

(d) A higher amount than the state allows for field trips;

(e) A preschool tuition fee in addition to regular child care services; or

(f) Child care services after the final day of care, when the provider chooses to stop caring for the consumer's children.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3565 Consumers' responsibilities.

When a consumer applies for or receives SCC (~~(benefits)~~) program subsidies, he or she must:

(1) Give (~~(the SCC contractor)~~) DSHS correct and current information so that (~~(the SCC contractor)~~) DSHS can determine the consumer's eligibility and authorize child care payments correctly;

(2) Choose a licensed or certified child care provider who meets requirements of WAC 170-292-3750;

(3) Leave the consumer's children with his or her provider while the consumer is in SCC approved activities. If the consumer is not in an approved activity and wants to use the provider, he or she must pay the provider if the provider wants payment;

(4) Pay for additional child care that exceeds the authorization based on the same fees that are charged to other families;

(5) Pay, or make arrangements for someone to pay, the consumer's SCC copayment directly to the child care provider;

(6) Pay the provider the same late fees that are charged to other families, if the consumer pays a copayment late or picks up the child late;

(7) Sign his or her children in and out of child care as provided in WAC 170-295-7030, 170-296-0520, or 170-151-460, as applicable, for that type of provider; and

(8) Provide the information requested by the ~~((SCC contractor or the department of social and health services))~~ DSHS fraud early detection (FRED) investigator. If the consumer refuses to provide the information requested within fourteen days, it could affect his or her ~~((benefits))~~ SCC program subsidies. If ~~((the SCC contractor))~~ DSHS determines ~~((that))~~ a consumer is not cooperating by supplying the requested information, the consumer will not be eligible for SCC ~~((benefits))~~ program subsidies. The consumer may become eligible again when he or she meets SCC program requirements in part III of this chapter.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3570 Notification of changes. When a consumer applies for or receives SCC ~~((benefits))~~ program subsidies, he or she must:

(1) Notify ~~((the SCC contractor))~~ DSHS, within five days, of any change in providers;

(2) Notify his or her provider within ten days when ~~((the SCC contractor))~~ DSHS changes his or her child care authorization;

(3) Notify ~~((the SCC contractor))~~ DSHS within ten days of any change in the consumer's:

(a) Number of child care hours needed (more or less hours);

(b) ~~((Child becoming eligible))~~ Child's eligibility for migrant Head Start or another child care program;

(c) Household income, including any new receipt of a TANF grant or child support increases or decreases;

(d) Household size such as any family member moving in or out of his or her home;

(e) Employment hours such as starting, stopping or changing employers;

(f) Home address and telephone number; or

(g) Child support payments made by the consumer.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3580 Failure to report changes. (1) If a consumer fails to report any changes as required in WAC 170-290-3570 within the stated time frames, ~~((DEL))~~ DSHS may establish an overpayment to the consumer per WAC 170-290-3850 or the consumer may have to pay additional costs, such as a higher copayment.

(2) The consumer may receive an overpayment for what the provider is allowed to bill to include billing for absent days (see publication *Child Care Subsidies, A Booklet for Licensed and Certified Child Care Providers*, DEL 22-877, revised ~~((2009))~~ 2010).

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3590 ~~((SCC contractor's))~~ DSHS's responsibilities to consumers. ~~((SCC contractors are community agencies that contract with DEL to perform SCC program authorizations. The SCC contractors and their))~~ DSHS staff must:

(1) Treat consumers in accordance with all applicable federal and state nondiscrimination laws, regulations and policies;

(2) ~~((Authorize SCC program subsidies for a consumer's children based on eligibility criteria established by DEL, as defined in this chapter;~~

~~((3)))~~ (3) Ask if a consumer has received, or is currently receiving, child care services from another subsidy program; ~~((and if he or she has received a copy of his or her termination letter from that program;~~

~~((4) Ask if a consumer has applied, and been denied, for working connections child care (WCCC); and if he or she has, verify his or her denial from that program;~~

~~((5)))~~ (3) Complete ~~((intake documents in a consumer's presence,))~~ applications for SCC program subsidies based on information ~~((he or she))~~ the consumer provides, and determine a consumer's eligibility within thirty days from the date the consumer applied;

~~((6)))~~ (4) Accept a variety of forms of verification and may not specify the type of documentation required;

~~((7)))~~ (5) Authorize payments only to a licensed or certified child care provider ~~((of a consumer's choice))~~ the consumer chooses who meets the requirements in WAC 170-290-3750;

~~((8)))~~ (6) Authorize payments only when no adult in a consumer's family (under WAC 170-290-3540) is able or available to care for the consumer's children as defined in WAC 170-290-3550;

~~((9)))~~ (7) Give a consumer a SCC program approved child care plan in order to enroll his or her children in licensed or certified child care;

~~((10)))~~ (8) Inform a consumer of:

(a) The consumer's copayment amount as determined in WAC 170-290-3620 and defined in WAC 170-290-0075;

(b) The consumer's rights and responsibilities under the SCC program when he or she applies or reapplies;

(c) The types of child care providers the SCC program will pay;

(d) The community resources that can help the consumer select child care when needed;

(e) Other options for child care subsidies, if the consumer does not qualify for SCC program subsidies; and

(f) The consumer's rights to an administrative hearing (~~(under the SCC program)~~);

~~((14))~~ (9) Provide prompt child care authorizations to a consumer's child care provider;

~~((12))~~ (10) Respond to a consumer within ten days if the consumer reports a change of circumstance that affects the consumer's:

(a) SCC eligibility;

(b) Copayment; or

(c) Providers; and

~~((13))~~ (11) Provide an interpreter or translator service at no cost to the consumer to explain information related to the SCC program.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3610 Countable income. (~~(DEL)~~) DSHS counts income as money a consumer earns or receives from:

(1) Wages and commissions earned from employment;
 (2) Unemployment compensation;
 (3) A TANF or other welfare grant;
 (4) Child support payments received;
 (5) Supplemental Security Income (SSI);
 (6) Other Social Security payments, such as Social Security Administration (SSA) and Social Security disability insurance (SSDI);

(7) Refugee assistance payments;

(8) Payments from the Veterans' Administration;

(9) Pensions or retirement income;

(10) Payments from labor and industries (L&I), or disability payments;

(11) (~~Inheritance~~;

~~(12) Reportable gambling winnings; and~~

~~(13)) Lump sums as money a consumer receives from a one-time payment such as back child support, an inheritance, or gambling winnings;~~

(12) Other types of income not listed in WAC 170-290-3630; and

(13) Gross wages from employment or self-employment income. "Employment" or "work" has the same meaning as defined in WAC 170-290-0040(2). "Self-employment income" means a consumer's gross income from self-employment minus allowable business expenses in WAC 388-450-0085.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3620 Calculation of income. (1) For the SCC program, (~~(DEL)~~) DSHS uses a consumer's average countable income when determining his or her income eligibility and copayment. (~~(DEL determines)~~) A consumer's average monthly income is determined by totaling all income earned and received in the past twelve months, as listed in WAC 170-290-3610, and dividing by twelve. The last month

of income that is counted is the month before the consumer applies for SCC.

(2) If a consumer receives a lump sum payment (such as money from back child support payment) in the month of application or during his or her SCC eligibility:

(a) DSHS divides the lump sum payment by twelve to come up with a monthly amount;

(b) DSHS adds the monthly amount to the month it was received and each subsequent month of the twelve month review period; and

(c) The consumer must meet income guidelines for SCC after the lump sum payment is added to remain eligible for SCC.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3630 Excluded income and deductions. (1) The SCC program does not count the following income types when determining a consumer's income eligibility and copayment:

(a) Income types as defined in WAC 388-450-0035, 388-450-0040, and 388-450-0055;

(b) Savings accounts;

~~((b))~~ (c) Money received from sale of real property, such as a house, or personal property, such as a car;

~~((e))~~ (d) Reimbursements, such as tax refunds;

~~((d))~~ (e) Earned income credits;

~~((e) One-time insurance settlement payments;))~~

(f) Diversion cash assistance;

(g) Compensatory awards, such as an insurance settlement or court-ordered payment for personal injury, damage, or loss of property;

(h) Capital gains;

~~((g))~~ (i) Basic Food program;

~~((h))~~ (j) Income earned by children as described in WAC 170-290-3540;

~~((i))~~ (k) Benefits received by children of Vietnam War veterans who are diagnosed with any form or manifestation of spina bifida except spina bifida occulta;

(l) Adoption support assistance and foster care payments; and

~~((j))~~ (m) Government economic stimulus payments.

(2) SCC deducts the amount a consumer pays for child support from his or her countable income when figuring his or her eligibility and copayment for the SCC.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3640 Determining income eligibility and copayment. (1) For the SCC program, (~~(DEL)~~) DSHS determines a consumer's family's income eligibility and copayment by:

(a) The consumer's family size as defined under WAC 170-290-3540;

(b) The consumer's average monthly income as calculated under WAC 170-290-3620;

(c) The consumer's family's average monthly income as compared to the federal poverty guidelines (FPG); and

(d) The consumer's family's average monthly income as compared to the copayment chart defined in WAC 170-290-0075.

(2) If a consumer's family's income is above ~~((two hundred percent of the FPG as defined in WAC 170-290-0075))~~ the maximum eligibility limit as provided in WAC 170-290-0005 (2)(d) and (3), his or her family is not eligible for the SCC program.

(3) ~~((SCC does not prorate the copayment when a consumer uses care for part of a month.~~

(4)) The FPG is updated every year on April 1. The SCC eligibility level is updated at the same time every year to remain current with the FPG.

~~((5))~~ (4) SCC shall assign a copayment amount based on the family's countable income. The copayment amount will be on the consumer's child care plan. The consumer pays the copayment directly to the provider.

(5) SCC does not prorate the copayment when a consumer uses care for part of a month.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3650 Change in copayment. (1) A consumer's SCC program copayment could change when:

- (a) DEL makes a mass change in subsidy benefits due to a change in law or program funding;
- (b) The consumer's family size increases;
- (c) ~~((The SCC contractor))~~ DSHS makes an error in the consumer's copayment computation;
- (d) The consumer did not report all income, activity and household information at the time of eligibility determination or application/reapplication; or
- (e) The consumer is approved for a new eligibility period.

(2) If a consumer's copayment changes during his or her eligibility period, the change is effective:

- (a) On the first day of the month following the change, when:
 - (i) The report is made to ~~((the SCC contractor))~~ DSHS or the information is learned by ~~((the contractor))~~ DSHS within ten or more days after the change as provided in WAC 170-290-3570;
 - (ii) The consumer receives ten days written notice; and
 - (iii) The copayment is increasing; or
- (b) On the first day of the month that the change occurred when:
 - (i) The report is made to ~~((the SCC contractor))~~ DSHS or the information is learned by ~~((the contractor))~~ DSHS within ten days or less after the change as provided in WAC 170-290-3570; and
 - (ii) The copayment is decreasing.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3660 Eligibility period. ~~((The SCC contractor may approve a consumer for a period up to six months. The first month of eligibility is the same month that child care begins.))~~ (1) A consumer who meets all of the

requirements of part III of this chapter is eligible for SCC subsidies for six months.

(2) A consumer's eligibility may be for less than six months if requested by the consumer.

(3) A consumer's eligibility may end ~~((before his or her end date))~~ sooner than six months if:

(a) The consumer no longer wishes to participate in SCC; or

(b) DSHS terminates the consumer's eligibility as stated in WAC 170-290-3855.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3665 When SCC ~~((benefits))~~ program subsidies start. ~~((The consumer's child care plan will tell the consumer when the benefits start and end.))~~

(1) ~~((The SCC contractor))~~ DSHS authorizes ~~((child care))~~ SCC program subsidies ~~((when))~~ to begin on the date the consumer applies for SCC and the following requirements are met:

(a) The consumer turns in all of his or her eligibility paperwork ~~((to the SCC contractor))~~ and provider information to DSHS within thirty calendar days of his or her application date;

(b) The ~~((SCC contractor determines that the))~~ consumer is determined eligible for the program; and

(c) The consumer starts his or her children in care with an approved child care provider.

(2) ~~((After the SCC contractor decides that a consumer is eligible, the date the subsidy begins depends upon when the consumer applied and when the consumer turned in all of the paperwork needed as follows:~~

If at the time of application the consumer:	And the consumer turns all paperwork in:	Then the child-care benefits begin:
(a) Has not begun work yet;	Within 14 days of the job starting;	The first day of the job.
(b) Has not begun work yet;	15-29 days after the job starts;	The day after the paperwork is turned in.
(c) Has not begun work yet;	30 days after the job starts;	The application is denied and the consumer must reapply.
(d) Is working;	Within 14 days of the application interview date;	The day the consumer either calls or comes into the SCC contractor's office to apply for SCC benefits.
(e) Is working;	15-29 days after the application interview date;	The day after the paperwork is turned in.

If at the time of application the consumer:	And the consumer turns all paper-work in:	Then the child-care benefits begin:
(f) Is working;	30 days after the application interview date;	The application is denied and the consumer must reapply.)

The consumer's application date is whichever is earlier:

(a) The date the consumer's application is entered into DSHS's automated system; or

(b) The date the consumer's application is date stamped as received.

(3) If a consumer fails to turn in all information within thirty calendar days from his or her application date, the consumer must restart the application process. The consumer's begin date for benefits is described in subsection (2) of this section.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3690 Denial of benefits—Date of re-determining eligibility. (1) ~~((The SCC contractor))~~ DSHS sends a consumer a denial letter when the consumer has applied for child care and the consumer:

(a) Is not eligible due to the consumer's:

- (i) Family composition;
- (ii) Income; or
- (iii) Activity; or

(b) Did not provide information required to determine the consumer's eligibility according to WAC 170-290-3530.

(2) If a consumer turns in information or otherwise meets eligibility requirements after the denial letter is sent, the consumer's benefits begin according to WAC 170-290-3665.

(3) WCCC eligibility will be determined when a consumer is denied for SCC program subsidies.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3720 Notice of payment changes. ~~((The SCC contractor))~~ DSHS provides SCC consumers with at least ten days written notice of changes to payments related to the suspension, reduction, or termination of benefits, in child care arrangements, except as noted in WAC 170-290-3730.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3730 When notice of payment changes is not required. ~~((The SCC contractor))~~ DSHS does not give a consumer notice if the consumer:

- (1) Tells ~~((the SCC contractor))~~ DSHS that he or she no longer wants SCC;
- (2) Has moved and his or her whereabouts are unknown to ~~((the SCC contractor))~~ DSHS;
- (3) Is receiving duplicate child care benefits;

(4) Has a current ~~((eligibility period))~~ authorization that is scheduled to end;

(5) Has a new eligibility period that results in a change in child care benefits; or

(6) Is receiving child care at a location that does not meet requirements under WAC 170-290-3750.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3750 Eligible child care providers. To receive payment under the SCC program, a consumer's child care provider must be:

(1) Currently licensed as required by chapter 43.215 RCW and chapters 170-295, 170-296, or 170-151 WAC;

(2) Meeting their state's licensing regulations, for providers who care for children in states bordering Washington. The SCC program pays the lesser of the following to qualified child care facilities in bordering states:

- (a) The provider's private pay rate for that child; or
- (b) The state maximum child care subsidy rate for the DSHS region where the child resides; or

(3) Exempt from licensing but certified by DEL, such as:

- (a) Tribal child care facilities that meet the requirements of tribal law;
- (b) Child care facilities on a military installation; and
- (c) Child care facilities operated on public school property by a school district(;

~~(4) Seasonal day camps that have a contract with DEL to provide subsidized child care)).~~

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3760 SCC subsidy rates—Effective date. ~~((DEL))~~ State child care subsidy rates in this part are effective as of the date stated in WAC 170-290-0180.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3770 Authorized SCC payments. The SCC program may authorize payments to licensed~~((/))~~ or certified child care providers for:

(1) Basic child care either full day or half day, at rates listed in the chart in WAC 170-290-0200 and 170-290-0205~~((, including on Saturdays and Sundays))~~:

(a) A full day of child care when care is needed for five to ten hours per day;

(b) A half day of child care when care is needed for less than five hours per day;

(2) A registration fee, according to WAC 170-290-0245;

(3) Subsidy rates for five-year old children according to WAC 170-290-0185;

(4) The field trip fees in WAC 170-290-0247;

(5) The nonstandard hours bonus in WAC 170-290-0249; and

(6) Special needs care when the child has a documented special need and a documented need for a higher level of care, according to WAC 170-290-0220, 170-290-0225, and 170-290-0230.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3790 When additional SCC subsidy payments are authorized. ~~((The SCC contractor))~~ DSHS may authorize additional child care when:

- (1) Needed to accommodate a family's work schedule;
- (2) Employer verification of work schedule is presented;

and

(3) More than ten hours of care is ~~((provided))~~ needed per day for the consumer to participate in an approved activity (up to a maximum of sixteen hours a day) and the provider's policy is to charge all families for these extra hours.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3830 Redetermination of SCC ~~((benefits))~~ program subsidies. (1) At least every six months, ~~((the SCC contractor))~~ DSHS reviews a consumer's information to determine if he or she ~~((may keep receiving subsidies. A consumer may receive subsidy benefits for less than six months when:~~

~~((a) The consumer's employer says that the consumer might be working less than six months; or~~

~~((b) The consumer's child or children may not be eligible for the next six months because of their age))~~ is still eligible for SCC program subsidies.

(2) ~~((The SCC contractor))~~ DSHS will:

(a) Review the consumer's updated information to include the last six months of earned and unearned income and add it to the most current six months of the previous income information; and

(b) Redetermine the consumer's eligibility.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3840 New eligibility period. (1) If a consumer wants to receive ~~((child care benefits))~~ SCC program subsidies for another eligibility period, he or she must reapply for SCC benefits before the end of the current eligibility period listed on the child care plan. To determine if a consumer is eligible, the consumer calls ~~((or comes into the SCC contractor's office))~~ DSHS on or before the end date of the consumer's current SCC eligibility period to request ~~((an application interview date))~~ SCC program subsidies.

(2) A consumer may be eligible for SCC ~~((benefits))~~ program subsidies for a new eligibility period with no break in ~~((child care))~~ SCC program subsidies if:

(a) The consumer calls ~~((or comes into the SCC contractor's office))~~ DSHS on or before the end date of the consumer's current SCC eligibility period to request ~~((an application interview date))~~ SCC program subsidies;

(b) The consumer's provider is eligible for payment under WAC 170-290-3750; and

(c) The consumer meets all SCC eligibility requirements.

(3) If ~~((the SCC contractor))~~ DSHS determines that a consumer is eligible for SCC ~~((benefits))~~ program subsidies based on his or her application information, ~~((the SCC con-~~

~~tractor))~~ DSHS notifies the consumer of the new eligibility period and copayment.

(4) If a consumer fails to ~~((call or come into a SCC contractor's office))~~ contact DSHS on or before the end date of the consumer's current SCC eligibility period to request ~~((an application interview date))~~ SCC program subsidies, he or she must reapply according to WAC 170-290-3665.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3850 Payment discrepancies generally. ~~((DEL))~~ Child care subsidy payment discrepancies are described in WAC 170-290-0266 through 170-290-0275, with the exception of underpayments requested by licensed child care centers, which will only be considered for twelve months after the date of services.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3855 Termination of and redetermination eligibility for ~~((benefits))~~ SCC program subsidies. (1) A consumer's continued eligibility for SCC program subsidies stops when:

(a) The consumer's monthly copayment is equal to or higher than the state maximum monthly child care rate for all of the consumer's children in care; or

(b) The consumer:

(i) Is not participating in an approved activity as defined in WAC 170-290-3555;

(ii) Does not meet other SCC eligibility requirements related to family size, income and approved activities;

(iii) Does not pay the copayment fees to the consumer's child care provider or does not make mutually acceptable arrangements with the consumer's child care provider for ~~((their))~~ payment; or

(iv) Refuses to cooperate with investigations conducted by quality assurance staff or the division of fraud investigations.

(2) A consumer might be eligible for SCC program subsidies again when:

(a) The consumer meets all SCC program eligibility requirements;

(b) The consumer ~~((paid))~~ pays back copayment fees or made mutually acceptable payment arrangements with his or her child care provider; or

(c) The consumer cooperated with the quality assurance review process or with the DSHS division of fraud investigations.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3860 Right to request an administrative hearing. ~~((+))~~ SCC consumers ~~((;))~~ and licensed or certified child care providers ~~((, and DEL contracted seasonal day camps))~~ must follow ~~((chapter 170-03))~~ WAC 170-290-0280 to request a hearing.

~~((2) SCC consumers have a right to request a hearing on any action affecting SCC benefits except for mass changes resulting from a change in policy or law.~~

~~(3) Under this part, licensed or certified child care providers, or DEL contracted seasonal day camps have a right to request a hearing only for SCC overpayments.~~

~~(4) An SCC consumer, licensed or certified child care provider, or DEL contracted seasonal day camp must make a request for a hearing as required by WAC 170-03-0050 and 170-03-0060.~~

~~(a) An SCC consumer must request a hearing within ninety days of the date a decision is received.~~

~~(b) A licensed or certified child care provider or DEL contracted seasonal day camp must request a hearing within twenty-eight days of the date a decision is received.)~~

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3865 Receipt of SCC ((benefits)) program subsidies pending the outcome of an administrative hearing. ~~((1))~~ A consumer may receive SCC ((benefits)) program subsidies while waiting for the outcome of a hearing ~~(, if he or she is currently authorized for the SCC program and:~~

~~(a) The consumer requests a hearing:~~

~~(i) On or before the effective date of an action; or~~

~~(ii) No more than ten days after the consumer receives a notice of adverse action ("adverse action" for the purposes of this section means an action to reduce or terminate the consumer's SCC subsidies); or~~

~~(b) The consumer requests payments for child care payable to an eligible provider according to WAC 170-290-3750.~~

~~(2) If a consumer loses a hearing, any SCC program benefit that a consumer uses between the date of the adverse action and the date of the hearing decision (final order) is an overpayment to the consumer)) as provided in WAC 170-290-0285.~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 170-290-3670 Preauthorization for the SCC program.

WAC 170-290-3820 Review of eligibility and copayment information.

WSR 11-08-017
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
[Filed March 30, 2011, 2:15 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 220-22-020 Coast, Willapa Bay, Grays Harbor salmon management and catch reporting areas, 220-36-023 Salmon—Grays Harbor fall fishery, 220-40-027 Salmon—Willapa Bay fall fishery, and 232-28-620 Coastal salmon—Saltwater seasons and daily limits.

Hearing Location(s): Natural Resources Building, Room 175, 1111 Washington Street S.E., Olympia, WA 98504, on Tuesday, May 10, 2011, at 1:00 - 2:00 p.m.

Date of Intended Adoption: On or after Tuesday, May 10, 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 Monday, May 2, 2011.

Assistance for Persons with Disabilities: Contact Susan Galloway by May 2, 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 Willapa Bay and Grays Harbor 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 Willapa Bay and Grays Harbor.

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: Barbara McClellan, 1111 Washington Street, Olympia, (360) 249-1213; 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, Record-keeping, and Other Compliance Requirements of the Proposed Rule: These rules incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable salmon while protecting species of fish listed as endangered. The rules include legal gear requirements, area restrictions, and open periods for commercial salmon fisheries occurring in Willapa Bay and Grays Harbor.

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 that are closed in Grays Harbor and Willapa Bay to commercial harvest methods, and legal gear requirements.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: No costs of compliance are anticipated. Harvest methods, open areas, and open dates in these rules are similar to those in previous years.

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.

There are no anticipated costs of compliance.

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 mailer 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 each year, and which allows constituents to supply input on the rules contained in this filing.

8. A List of Industries That Will Be Required to Comply with the Rule: All licensed fishers using legal commercial gear types seeking to harvest salmon in the all-citizen commercial salmon fisheries occurring in Grays Harbor and Willapa Bay.

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.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not affect hydraulics.

March 30, 2011 [2011]

Lori Preuss
Rules Coordinator

AMENDATORY SECTION (Amending Order 90-05, filed 1/19/90, effective 2/19/90)

WAC 220-22-020 Coast, Willapa Harbor, Grays Harbor Salmon Management and Catch Reporting Areas. (1) **Area 1** shall include those waters of District 1 and the Oregon coast westerly of a line projected from the inshore end of the north Columbia River jetty in the state of Washington to the knuckle of the south Columbia River jetty in the state of Oregon, northerly of a line projected true west from Tillamook Head in Oregon and southerly of a line projected true west from Leadbetter Point in Washington.

(2) **Area 2** shall include those waters of District 1 northerly of a line projected true west from Leadbetter Point and southerly of a line projected true west from the Queets River mouth.

(3) **Area 2A** shall include those waters of Grays Harbor and the Chehalis River estuary upstream from the Union

Pacific Railroad Bridge at Aberdeen to a line projected from the Lakeside Industries asphalt plant tower at a right angle to the thread of the stream to the opposite shore.

(4) **Area 2B** shall include those waters of Grays Harbor lying easterly of a straight line projected from the Point Chehalis light, located 123 feet above mean high water at Westport, through the Coast Guard look out tower to the shore near Point Brown, southerly of a line projected from a fishing boundary marker at Ocean Shores Marina, to a fishing boundary marker on Sand Island and thence to the tripod station at Brackenridge Bluff, westerly of a line projected from the tripod station at Brackenridge Bluff southward and extending through channel marker 8 in the south channel at the mouth of Johns River to the mainland, and northerly of the Bay City Bridge.

(5) **Area 2C** shall include those waters of Grays Harbor northerly of a line projected from a fishing boundary marker at Ocean Shores Marina to a fishing boundary marker on Sand Island to the tripod station at Brackenridge Bluff and westerly of a line starting at a monument located at the point of Holman Bluff near the mouth of Grass Creek and projected to a monument set on Point New, exclusive of those waters within 1/4 mile of a monument set on the beach near the mouth of Chenois Creek and those waters northerly of a line starting at a monument located near the beach in front of the Giles Hogan residence located west of the mouth of the Humptulips River, thence projected in a southeasterly direction to a monument set on the most southerly tip of the grass spit at the mouth of the Humptulips River, thence projected in an easterly direction to a point on Chenois Bluff at 47° 0' 32" N latitude, 124° 1' W longitude.

(6) **Area 2D** shall include those waters of Grays Harbor and the Chehalis River estuary easterly of a line projected from the tripod station at Brackenridge Bluff southward and through channel marker 8 at the mouth of Johns River in the south channel to the mainland and westerly of the Union Pacific Railroad Bridge in Aberdeen and westerly (downstream) of the Highway 105 Bridge on Johns River.

(7) **Area 2G** shall include those waters of Willapa Harbor northerly of a line projected from Needle Point approximately 305° true to the Island Sands light approximately 2 miles south of Riddle Spit light No. 10 and thence true west to the North Beach Peninsula, (~~westerly of a line projected from Needle Point northerly to day beacon No. 14 and thence to Ramsey Point~~) northwesterly of a line projected from Needle Point, northeasterly to Lynn Point and thence approximately 60° true to landfall at 46° 31' 18.6342" N latitude, - 123° 53' 45.438" W longitude, outside and westerly of a line projected from Stony Point to the Bay Center Channel light (F1 4 seconds, 16 feet) to the northern tip of Goose Point, downstream and westerly of a line projected 235 degrees true from the north shore of the Willapa River through Willapa River light number 33 to the south shore, outside and southerly of a line commencing at a boundary marker on the west shore of the North River projected 82 degrees true through channel marker No. 16 to a boundary marker on the east shore, outside and southerly of a line projected from the Cedar River's meander corner between Section 31, Township 15N, and Section 6, Township 14N, Range 10W, W.M., to the meander corner between Sections 36, Township 15N, and

Section 1, Township 14N, Range 11W, W.M., and inside and easterly of a straight line projected from the Cape Shoalwater light through buoy 8A, located between buoy 8 and buoy 10, approximately 1,500 yards from Cape Shoalwater light on a line 171° true, to Leadbetter Point.

(8) **Area 2H** shall include those waters of Willapa Harbor and the Willapa River estuary easterly of Area 2G and downstream from a line projected true north from the Standard Oil dock in South Bend to the opposite shore of the Willapa River.

(9) **Area 2J** shall include those waters of Willapa Harbor lying southerly and westerly of a line projected from Diamond Point to the Island Sands light, approximately 2 miles south of Riddle Spit light No. 10, and thence due west to the North Beach Peninsula, and northerly of a line projected true east-west through marker 20 between Long Island and the North Beach Peninsula.

(10) **Area 2K** shall include those waters of Willapa Harbor easterly of a line projected from the northern tip of Goose Point to the Bay Center Channel light (F1 4 seconds, 16 feet) to Stony Point and westerly of the Palix River Highway 101 Bridge.

(11) **Area 2M** shall include those waters of Willapa Harbor lying southerly and easterly of a line projected from Needle Point approximately 285° true to the Island Sands light, approximately 2 miles south of Riddle Spit light No. 10, and south to Diamond Point, downstream and westerly of the Highway 101 Bridge over the Naselle River, and northerly and easterly of a line from Stanley Point to Paradise Point.

(12) **Area 3** shall include those waters of District 1 northerly of a line projected true west from the Queets River mouth and southerly of a line projected true west from Cape Alava.

(13) **Area 4** shall include those waters of District 1 northerly of a line projected true west from Cape Alava, westerly of lines projected from the northern tip of Portage Head to the southern tip of Waatch Point and from the Tatoosh Island light to Bonilla Point and southerly of a line projected true west from the intersection of the Bonilla-Tatoosh line with the U.S.-Canada International Boundary Line.

(14) **Area 4A** shall include those waters easterly and inside of a line projected from the northern tip of Portage Head to the southern tip of Waatch Point, outside and westerly of the mouth of any river or stream flowing to the sea.

AMENDATORY SECTION (Amending Order 09-108, filed 5/27/10, effective 6/27/10)

WAC 220-36-023 Salmon—Grays Harbor fall fishery. From August 16 through December 31 of each year, it is unlawful to fish for salmon in Grays Harbor for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

Fishing periods:

(1) Gill net gear may be used to fish for salmon and white sturgeon only according to the chart below. All nonlegal sturgeon, all steelhead, and all other species including Chinook, coho, chum and white sturgeon must be handled

with care to minimize injury and must be released immediately to the river/bay:

Time:	Areas:
6:00 p.m. August ((31)) <u>30</u> through 6:00 p.m. ((September 1, 2010)) <u>August 31, 2011</u> ;	Area 2C
6:00 p.m. September ((2)) <u>1</u> through 6:00 a.m. September ((4)) <u>3</u> , ((2010)) <u>2011</u> ;	
6:00 p.m. September ((6)) <u>5</u> through 6:00 a.m. September ((8)) <u>7</u> , ((2010)) <u>2011</u> ;	
6:00 p.m. September ((9)) <u>8</u> through 6:00 p.m. September ((11)) <u>10</u> , ((2010)) <u>2011</u> ;	
6:00 p.m. September ((22)) <u>21</u> through 6:00 p.m. September ((23)) <u>22</u> , ((2010)) <u>2011</u> ;	
AND	
6:00 p.m. September ((27)) <u>26</u> through 6:00 p.m. September ((28)) <u>27</u> , ((2010)) <u>2011</u> ;	
7:00 a.m. October ((8)) <u>7</u> through 7:00 p.m. October ((8)) <u>7</u> , ((2010)) <u>2011</u> ;	
AND	
7:30 a.m. October ((14)) <u>13</u> through 7:30 p.m. October ((14)) <u>13</u> , ((2010)) <u>2011</u> .	

That portion of **Area 2A** upstream from the Highway 101 Bridge at Aberdeen, to a line projected from the Lakeside Industries asphalt plant tower at a right angle to the thread of the stream to the opposite shore.

That portion of **Area 2D** lying easterly of a north-south line from the confluence of the Hoquiam and Chehalis rivers to Renney Island, then easterly to Range Marker G, then to the eastern boundary of Area 2D at the Highway 101 Bridge.

Gear

(2) Gill net gear restrictions: All areas:

(a) Drift gill net gear only. It is unlawful to use set net gear. It is permissible to have on board a commercial vessel more than one net, provided the nets are of a mesh size legal for the fishery, and the length of any one net does not exceed one thousand five hundred feet in length.

Nets with a mesh size different from that being actively fished must be properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches or greater.

It is unlawful to use a gill net to fish for salmon if the lead line weighs more than two pounds per fathom of net as measured on the cork line, provided that it is lawful to have a gill net with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or in transiting through Grays Harbor.

(b) In Area 2C, mesh size must not exceed nine-inch maximum mesh.

In Areas 2A and 2D, mesh size must not exceed six-inch maximum mesh. Nets may be no more than fifty-five meshes

deep. Nets must hang straight from top to bottom. Strings may only be used to secure breakaway panels.

(c) Entire nets must be single mesh size. Only one net may be fished at a time; other nets must be properly stored.

(d) Soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the gill net web is deployed into the water until the gill net web is fully retrieved from the water.

(e) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing Areas 2A, 2D, and 2C. Each box must be operating during any time the net is being retrieved or picked. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box: The inside length measurement must be at or within 39-1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river/bay water into each chamber.

(f) All wild (unmarked) coho, nonlegal sturgeon, (~~chum~~) and all steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay or to an operating recovery box when fishing in Area 2C.

All wild (unmarked) Chinook, nonlegal sturgeon, (~~chum~~) and all steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay or to an operating recovery box when fishing Areas 2A and 2D.

(g) Any fish that is bleeding or lethargic must be placed in the recovery box prior to being released to the river/bay.

(h) All fish placed in recovery boxes must be released to the river/bay prior to landing or docking.

Other

(3) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(12), reports must be made by 10:00 a.m. the day following landing.

(4) Fishers must take department observers if requested by department staff when participating in these openings. Pursuant to WAC 220-69-240, fishers also must provide notice of intent to participate by contacting Quick Reporting by phone, fax or e-mail. Notice of intent must be given prior to 12:00 p.m. on August ~~((20))~~ 19, ~~((2010))~~ 2011, for the openings in Area 2C and prior to 12:00 p.m. ~~((October 1,~~

~~2010))~~ September 30, 2011, for the openings in Area 2A and 2D.

(5) NOAA Fisheries has listed the southern population of green sturgeon as threatened under the Endangered Species Act, effective July 6, 2006. Most of the green sturgeon taken in Washington fisheries are from the Columbia River stock, which is part of the southern population. Therefore, the retention of green sturgeon is prohibited to protect this federally listed stock.

AMENDATORY SECTION (Amending Order 09-108, filed 5/27/10, effective 6/27/10)

WAC 220-40-027 Salmon—Willapa Bay fall fishery.

From August 16 through December 31 of each year, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

Fishing periods:

(1) Gill net gear may be used to fish for salmon and white sturgeon only as shown below. All nonlegal sturgeon, all steelhead, and all other species including Chinook, coho, chum and white sturgeon, must be handled with care to minimize injury to the fish and must be released immediately to the river/bay:

Time:

6:00 p.m. August ~~((+5))~~ 14 through 6:00 p.m. August ~~((+6))~~ 15, ~~((2010))~~ 2011.

Area:

Areas 2G east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, except:

Closed Waters Area (Net Free Zone): That portion of SMCRA 2G lying within the following boundary lines, Western Boundary: Those waters east of a line drawn from the most waterward exposed end of the jetty at Toke Point (46°42.446'N, 123°57.973'W) to Willapa Marker 2 (46°41.529'N, 123°57.973'W) then 180 degrees true to Goose Point (46°38.184'N, 123°57.584'W). Eastern boundary that includes those waters west of a North-South line through Marker 29.

Time:

Area:

Time:

Area:

6:00 p.m. September ((22)) 21 through 6:00 p.m. September ((23)) 22, ((2010)) 2011;

AND

6:00 p.m. September ((27)) 26 through 6:00 p.m. September ((28)) 27, ((2010)) 2011.

6:00 p.m. September ((12)) 11 through 5:59 p.m. September ((15)) 14, ((2010)) 2011.

Area 2H west of Willapa Channel Marker 40, **Area 2J** north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2), and **Area 2M**.

Area 2K

Areas 2G east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, except:

Closed Waters Area (Net Free Zone): That portion of the SMCRA 2G lying within the following boundary lines, Western Boundary: Those waters east of a line drawn from the most waterward exposed end of the jetty at Toke Point (46°42.446'N, 123°57.973'W) to Willapa Marker 2 (46°41.529'N, 123°57.973'W) then 180 degrees true to Goose Point (46°38.184'N, 123°57.584'W). Eastern boundary that includes those waters west of a North-South line (180 degrees true) through Range Marker "B" (46°42.564'N, 123°51.3'W) between Channel Markers 26 and 28.

Area 2H west of Willapa Channel Marker 40, **Area 2J** north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2), and **Area 2M**.

6:00 p.m. September ((15)) 14 through 6:00 p.m. September ((22)) 21, ((2010)) 2011.

6:01 p.m. September ((22)) 21 through 6:00 p.m. September ((30)) 29, ((2010)) 2011.

6:00 p.m. ((October 1, 2010)) September 30, through 6:00 p.m. October ((2)) 1, ((2010)) 2011.

12:00 p.m. November ((6)) 5 through 12:00 p.m. November 30, ((2010)) 2011.

Areas 2G east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, **Area 2H** west of Willapa Channel Marker 40, **Area 2J** north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2), and **Area 2M**.

Areas 2G east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, **Area 2H**, **Area 2J** north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2), and **Area 2M**.

Areas 2G east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, **Area 2H**, **Area 2J** north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2), and **Area 2M**.

Areas 2G, 2H, 2J, and 2M.

(2) The Tokeland Boat basin is closed to commercial fishing during the openings in Salmon Management and Catch Reporting Area (SMCRA) 2G, described in this section. The Tokeland Boat basin is that portion of SMCRA 2G bounded on the south by the shoreline of the boat basin, on the west by the seawall, and on the north and east by a line from the Tokeland Channel Marker "3" (flashing green, 4-seconds), to Tokeland Channel Marker "4," to the tip of the seawall.

Gear:

(3) Gill net gear restrictions - All areas:

(a) Drift gill net gear only. It is unlawful to use set net gear. It is permissible to have on board a commercial vessel more than one net, provided the nets are of a mesh size that is

legal for the fishery, and the length of any one net does not exceed one thousand five hundred feet in length.

Nets with a mesh size different from that being actively fished must be properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches or greater.

It is unlawful to use a gill net to fish for salmon if the lead line weighs more than two pounds per fathom of net as measured on the cork line, provided that it is lawful to have a gill net with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or in transiting through Willapa Bay.

(b) From August 16 through August 31, ~~((2010))~~ 2011: Mesh size must not exceed six-inch minimum mesh to nine-inch maximum mesh.

(c) From September 1 through 6:00 p.m. September 22, ~~((2010))~~ 2011: Mesh size must not exceed six-inch maximum mesh.

(d) From 6:01 p.m. September 22 through October 15, ~~((2010))~~ 2011: Mesh size must not exceed six and one-half inch maximum mesh.

(e) From November ~~((6))~~ 5 through November 30, ~~((2010))~~ 2011: Mesh size must not exceed nine-inch minimum mesh.

(f) Only one net may be fished at a time; other nets must be properly stored.

(g) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing in Willapa Bay Areas 2G, 2H, 2J, 2K, and 2M. Each box must be operating during any time the net is being retrieved or picked. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box: The inside length measurement must be at or within 39-1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river/bay water into each chamber.

(h) Soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the gill net web is deployed into the water until the gill net web is fully retrieved from the water.

(i) From August 16 through September 30, ~~((2010))~~ 2011, all wild (unmarked) coho, wild (unmarked) Chinook, nonlegal sturgeon and all steelhead must be handled with care to minimize injury to the fish and must be released

immediately to the river/bay or to an operating recovery box when fishing in Willapa Bay Areas 2G, 2H, 2J, 2K, and 2M.

From October 1 through October 15, ~~((2010))~~ 2011, all wild (unmarked) coho, nonlegal sturgeon, and all steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay or to an operating recovery box when fishing in Willapa Bay Areas 2G, 2H, 2J, 2K, and 2M.

(j) Any fish that is bleeding or lethargic must be placed in the recovery box prior to being released to the river/bay.

(k) All fish placed in recovery boxes must be released to the river/bay prior to landing or docking.

Other:

(4) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(12), reports must be made by 10:00 a.m. the day following landing.

(5) NOAA Fisheries has listed the southern population of green sturgeon as threatened under the Endangered Species Act, effective July 6, 2006. Most of the green sturgeon taken in Washington fisheries are from the Columbia River stock, which is part of the southern population. Therefore, the retention of green sturgeon is prohibited; to protect this federally listed stock.

(6) It is unlawful to fish for salmon with gill net gear in Areas 2G, 2H, 2J, 2K, and 2M unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department-issued certification card.

AMENDATORY SECTION (Amending Order 09-108, filed 5/27/10, effective 6/27/10)

WAC 232-28-620 Coastal salmon—Saltwater seasons and daily limits. It is unlawful to take, fish for, or possess salmon taken by angling for personal use except from the following coastal areas, during the following seasons, in the quantities and the sizes provided for in WAC 220-56-180, and for the species designated in this section. An area is open when a daily limit is provided:

(1) **Catch Record Card Area 1:**

(a) May 1 through June 11 - Closed.

(b) June 12 through June 30 - Daily limit of 2 salmon. Release coho and wild Chinook.

(c) July 1 through September 30 - Daily limit of 2 salmon, of which not more than one may be a Chinook salmon. Release wild coho.

(d) October 1 through April 30 - Closed.

(e) Closed in the Columbia River Mouth Control Zone 1 during all open periods. See WAC 220-56-195.

(2) **Catch Record Card Area 2:**

(a) May 1 through June 11 - Closed.

(b) June 12 through June 30 - Daily limit of 2 salmon. Release coho and wild Chinook.

(c) July 4 through September 19 - Open Sundays through Thursdays only. Daily limit 2 salmon, of which not more than one may be a Chinook salmon. Release wild coho.

(d) September 20 through April 30 - Closed.

(e) Closed to salmon fishing August 1 through September 19 in the Grays Harbor Control Zone described in WAC 220-56-195(11).

(3) Willapa Bay (Catch Record Card Area 2-1):

(a) May 1 through July 3 - Closed.

(b) July 4 through July 31 - Open concurrent with Area 2 when Area 2 is open for salmon angling. Area 2 rules apply.

(c) August 1 through January 31 - Daily limit of six salmon, not more than three of which may be adult salmon. Release chum(, ~~wild coho~~) and wild Chinook.

(d) February 1 through April 30 - Closed.

(4) Grays Harbor (Catch Record Card Area 2-2 east of the Buoy 13 line):

(a) May 1 through September 15 - Closed.

(b) September 16 through November 30 - Daily limit of 2 salmon. Release (~~chum and~~) Chinook.

(c) December 1 through April 30 - Closed.

(d) Notwithstanding the provisions of this subsection, Westport Boat Basin and Ocean Shores Boat Basin: Open only August 16 through January 31 - Daily limit of six salmon, not more than four of which may be adult salmon.

(5) Grays Harbor (Catch Record Card Area 2-2 west of the Buoy 13 line) - Closed.

(6) Catch Record Card Area 3:

(a) May 1 through June 11 - Closed.

(b) June 12 through June 30 - Daily limit of 2 salmon. Release coho and wild Chinook.

(c) July 1 through September 19 - Open Tuesdays through Saturdays only. Daily limit of 2 salmon, of which not more than one may be a Chinook salmon. Release wild coho.

(d) September 20 through April 30 - Closed.

(e) Notwithstanding the provisions of this subsection, waters north of 47°50'00"N latitude and south of 48°00'00"N latitude also open September 26 through October 11 - Daily limit two salmon, of which not more than one may be a Chinook salmon. Release wild coho.

(7) Catch Record Card Area 4:

(a) May 1 through June 11 - Closed.

(b) June 12 through June 30 - Daily limit of 2 salmon. Release coho and wild Chinook. Waters east of a true north-south line through Sail Rock closed.

(c) July 1 through September 19 - Open Tuesdays through Saturdays only. Daily limit of 2 salmon, of which not more than one may be a Chinook salmon. Release wild coho salmon. Waters east of a true north-south line through Sail Rock closed July 1 through July 31. Release Chinook salmon caught east of the Bonilla-Tatoosh line beginning August 1. Release chum salmon beginning August 1.

(d) September 20 through April 30 - Closed.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 246-08-400 Allowable fees for searching and duplicating medical records.

Hearing Location(s): Department of Health, 310 Israel Road S.E., Room 152, Tumwater, WA 98501, on May 10, 2011, at 8:00 a.m.

Date of Intended Adoption: May 11, 2011.

Submit Written Comments to: Sherry Thomas, Department of Health, P.O. Box 47850, Olympia, WA 98504-7850, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4626, by May 10, 2011.

Assistance for Persons with Disabilities: Contact Sherry Thomas by May 3, 2011, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose is to adjust the maximum fees medical providers are allowed to charge for searching and duplicating medical records. The adjustment is required to occur every two years, according to the change in the consumer price index (CPI) for the Seattle-Tacoma metropolitan statistical area. The fees will increase to allow for inflation.

Reasons Supporting Proposal: The proposed rule sets reasonable fees providers are allowed to charge for cost recovery. This adjustment is required by law to occur every two years. The CPI for the Seattle-Tacoma area changed from 222.5880 in December 2008 to 226.862 in December 2010, which is a 1.9 percent increase.

Statutory Authority for Adoption: RCW 70.02.010(15) and 43.70.040.

Statute Being Implemented: RCW 70.02.010(15).

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 and Implementation: Sherry Thomas, 310 Israel Road, Tumwater, WA, (360) 246-4612.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(3) [(4)(e)], a small business economic impact statement is not required for a proposed rule where the content of the rule is explicitly and specifically dictated by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(v) exempts rules the content of which is explicitly and specifically dictated by statute.

March 31, 2011
Mary C. Selecky
Secretary

WSR 11-08-025
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed March 31, 2011, 3:48 p.m.]

Original Notice.

AMENDATORY SECTION (Amending WSR 09-13-102, filed 6/17/09, effective 7/1/09)

WAC 246-08-400 How much can a medical provider charge for searching and duplicating medical records? RCW 70.02.010(15) allows medical providers to charge fees

for searching and duplicating medical records. The fees a provider may charge cannot exceed the fees listed below:

(1) Copying charge per page:

(a) No more than one dollar and (~~two~~) four cents per page for the first thirty pages;

(b) No more than (~~seventy-eight~~) seventy-nine cents per page for all other pages.

(2) Additional charges:

(a) The provider can charge a twenty-three dollar clerical fee for searching and handling records;

(b) If the provider personally edits confidential information from the record, as required by statute, the provider can charge the usual fee for a basic office visit.

(3) This section is effective July 1, (~~2009~~) 2011, through June 30, (~~2011~~) 2013.

(4) HIPAA covered entities: See HIPAA regulation Section 164.524 (c)(4) to determine applicability of this rule.

WSR 11-08-031

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF FISH AND WILDLIFE

[Filed April 1, 2011, 11:49 a.m.]

The Washington department of fish and wildlife is withdrawing WAC 232-28-620 from WSR 11-08-017 filed on March 30, 2011.

Lori Preuss
Rules Coordinator

WSR 11-08-032

PROPOSED RULES DEPARTMENT OF FISH AND WILDLIFE

[Filed April 1, 2011, 11:54 a.m.]

Supplemental Notice to WSR 11-08-017.

Preproposal statement of inquiry was filed as WSR 11-03-058 on January 14, 2011.

Title of Rule and Other Identifying Information: WAC 220-22-020 Coast, Willapa Bay, Grays Harbor salmon management and catch reporting areas, 220-36-023 Salmon—Grays Harbor fall fishery, and 220-40-027 Salmon—Willapa Bay fall fishery.

Hearing Location(s): Region 6 Fish and Wildlife Office, Conference Room, 48 Devonshire Road, Montesano, WA 98563, on Tuesday, May 10, 2011, at 1:00 p.m. - 2:00 p.m.

Date of Intended Adoption: On or after Tuesday, May 10, 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 May 2, 2011.

Assistance for Persons with Disabilities: Contact Susan Galloway by Monday, May 2, 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: The CR-102 for this project, filed as WSR 11-08-017 on March 30, 2011, erroneously included WAC 232-28-620. That WAC has been eliminated in this supplemental notice of proposed rule making, and the department will file a withdrawal notice to have it removed from WSR 11-08-017. This supplemental notice also changes the location of the public hearing on May 10, 2011, from Olympia to Montesano.

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 Willapa Bay and Grays Harbor 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 Willapa Bay and Grays Harbor.

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: Barbara McClellan, 1111 Washington Street, Olympia, (360) 249-1213; 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, Record-keeping, and Other Compliance Requirements of the Proposed Rule:

These rules incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable salmon while protecting species of fish listed as endangered. The rules include legal gear requirements, area restrictions, and open periods for commercial salmon fisheries occurring in Willapa Bay and Grays Harbor.

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 that are closed in Grays Harbor and Willapa Bay to commercial harvest methods, and legal gear requirements.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: No costs of compliance are anticipated. Harvest methods, open areas, and open dates in these rules are similar to those in previous years.

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.

There are no anticipated costs of compliance.

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 mailer 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 each year, and which allows constituents to supply input on the rules contained in this filing.

8. A List of Industries That Will Be Required to Comply with the Rule: All licensed fishers using legal commercial gear types seeking to harvest salmon in the all-citizen commercial salmon fisheries occurring in Grays Harbor and Willapa Bay.

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.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not affect hydraulics.

April 1, 2011

Lori Preuss
Rules Coordinator

AMENDATORY SECTION (Amending Order 90-05, filed 1/19/90, effective 2/19/90)

WAC 220-22-020 Coast, Willapa Harbor, Grays Harbor Salmon Management and Catch Reporting Areas.

(1) **Area 1** shall include those waters of District 1 and the Oregon coast westerly of a line projected from the inshore end of the north Columbia River jetty in the state of Washington to the knuckle of the south Columbia River jetty in the state of Oregon, northerly of a line projected true west from Tillamook Head in Oregon and southerly of a line projected true west from Leadbetter Point in Washington.

(2) **Area 2** shall include those waters of District 1 northerly of a line projected true west from Leadbetter Point and southerly of a line projected true west from the Queets River mouth.

(3) **Area 2A** shall include those waters of Grays Harbor and the Chehalis River estuary upstream from the Union Pacific Railroad Bridge at Aberdeen to a line projected from the Lakeside Industries asphalt plant tower at a right angle to the thread of the stream to the opposite shore.

(4) **Area 2B** shall include those waters of Grays Harbor lying easterly of a straight line projected from the Point Chehalis light, located 123 feet above mean high water at Westport, through the Coast Guard look out tower to the shore near Point Brown, southerly of a line projected from a fishing boundary marker at Ocean Shores Marina, to a fishing boundary marker on Sand Island and thence to the tripod station at Brackenridge Bluff, westerly of a line projected from

the tripod station at Brackenridge Bluff southward and extending through channel marker 8 in the south channel at the mouth of Johns River to the mainland, and northerly of the Bay City Bridge.

(5) **Area 2C** shall include those waters of Grays Harbor northerly of a line projected from a fishing boundary marker at Ocean Shores Marina to a fishing boundary marker on Sand Island to the tripod station at Brackenridge Bluff and westerly of a line starting at a monument located at the point of Holman Bluff near the mouth of Grass Creek and projected to a monument set on Point New, exclusive of those waters within 1/4 mile of a monument set on the beach near the mouth of Chenois Creek and those waters northerly of a line starting at a monument located near the beach in front of the Giles Hogan residence located west of the mouth of the Humptulips River, thence projected in a southeasterly direction to a monument set on the most southerly tip of the grass spit at the mouth of the Humptulips River, thence projected in an easterly direction to a point on Chenois Bluff at 47° 0' 32" N latitude, 124° 1' W longitude.

(6) **Area 2D** shall include those waters of Grays Harbor and the Chehalis River estuary easterly of a line projected from the tripod station at Brackenridge Bluff southward and through channel marker 8 at the mouth of Johns River in the south channel to the mainland and westerly of the Union Pacific Railroad Bridge in Aberdeen and westerly (downstream) of the Highway 105 Bridge on Johns River.

(7) **Area 2G** shall include those waters of Willapa Harbor northerly of a line projected from Needle Point approximately 305° true to the Island Sands light approximately 2 miles south of Riddle Spit light No. 10 and thence true west to the North Beach Peninsula, (~~westerly of a line projected from Needle Point northerly to day beacon No. 14 and thence to Ramsey Point~~) northwesterly of a line projected from Needle Point, northeasterly to Lynn Point and thence approximately 60° true to landfall at 46° 31' 18.6342" N latitude, - 123° 53' 45.438" W longitude, outside and westerly of a line projected from Stony Point to the Bay Center Channel light (F1 4 seconds, 16 feet) to the northern tip of Goose Point, downstream and westerly of a line projected 235 degrees true from the north shore of the Willapa River through Willapa River light number 33 to the south shore, outside and southerly of a line commencing at a boundary marker on the west shore of the North River projected 82 degrees true through channel marker No. 16 to a boundary marker on the east shore, outside and southerly of a line projected from the Cedar River's meander corner between Section 31, Township 15N, and Section 6, Township 14N, Range 10W, W.M., to the meander corner between Sections 36, Township 15N, and Section 1, Township 14N, Range 11W, W.M., and inside and easterly of a straight line projected from the Cape Shoalwater light through buoy 8A, located between buoy 8 and buoy 10, approximately 1,500 yards from Cape Shoalwater light on a line 171° true, to Leadbetter Point.

(8) **Area 2H** shall include those waters of Willapa Harbor and the Willapa River estuary easterly of Area 2G and downstream from a line projected true north from the Standard Oil dock in South Bend to the opposite shore of the Willapa River.

(9) **Area 2J** shall include those waters of Willapa Harbor lying southerly and westerly of a line projected from Diamond Point to the Island Sands light, approximately 2 miles south of Riddle Spit light No. 10, and thence due west to the North Beach Peninsula, and northerly of a line projected true east-west through marker 20 between Long Island and the North Beach Peninsula.

(10) **Area 2K** shall include those waters of Willapa Harbor easterly of a line projected from the northern tip of Goose Point to the Bay Center Channel light (F1 4 seconds, 16 feet) to Stony Point and westerly of the Palix River Highway 101 Bridge.

(11) **Area 2M** shall include those waters of Willapa Harbor lying southerly and easterly of a line projected from Needle Point approximately 285° true to the Island Sands light, approximately 2 miles south of Riddle Spit light No. 10, and south to Diamond Point, downstream and westerly of the Highway 101 Bridge over the Naselle River, and northerly and easterly of a line from Stanley Point to Paradise Point.

(12) **Area 3** shall include those waters of District 1 northerly of a line projected true west from the Queets River mouth and southerly of a line projected true west from Cape Alava.

(13) **Area 4** shall include those waters of District 1 northerly of a line projected true west from Cape Alava, westerly of lines projected from the northern tip of Portage Head to the southern tip of Waatch Point and from the Tatoosh Island light to Bonilla Point and southerly of a line projected true west from the intersection of the Bonilla-Tatoosh line with the U.S.-Canada International Boundary Line.

(14) **Area 4A** shall include those waters easterly and inside of a line projected from the northern tip of Portage Head to the southern tip of Waatch Point, outside and westerly of the mouth of any river or stream flowing to the sea.

AMENDATORY SECTION (Amending Order 09-108, filed 5/27/10, effective 6/27/10)

WAC 220-36-023 Salmon—Grays Harbor fall fishery. From August 16 through December 31 of each year, it is unlawful to fish for salmon in Grays Harbor for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

Fishing periods:

(1) Gill net gear may be used to fish for salmon and white sturgeon only according to the chart below. All nonlegal sturgeon, all steelhead, and all other species including Chinook, coho, chum and white sturgeon must be handled with care to minimize injury and must be released immediately to the river/bay:

Time:	Areas:
6:00 p.m. August ((34)) <u>30</u> through 6:00 p.m. ((September 1, 2010)) <u>August 31, 2011</u> ;	Area 2C
6:00 p.m. September ((2)) <u>1</u> through 6:00 a.m. September ((4)) <u>3</u> , ((2010)) <u>2011</u> ;	

Time:	Areas:
6:00 p.m. September ((6)) <u>5</u> through 6:00 a.m. September ((8)) <u>7</u> , ((2010)) <u>2011</u> ;	
6:00 p.m. September ((9)) <u>8</u> through 6:00 p.m. September ((11)) <u>10</u> , ((2010)) <u>2011</u> ;	
6:00 p.m. September ((22)) <u>21</u> through 6:00 p.m. September ((23)) <u>22</u> , ((2010)) <u>2011</u> ;	
AND	
6:00 p.m. September ((27)) <u>26</u> through 6:00 p.m. September ((28)) <u>27</u> , ((2010)) <u>2011</u> ;	
7:00 a.m. October ((8)) <u>7</u> through 7:00 p.m. October ((8)) <u>7</u> , ((2010)) <u>2011</u> ;	That portion of Area 2A upstream from the Highway 101 Bridge at Aberdeen, to a line projected from the Lakeside Industries asphalt plant tower at a right angle to the thread of the stream to the opposite shore.
AND	
7:30 a.m. October ((14)) <u>13</u> through 7:30 p.m. October ((14)) <u>13</u> , ((2010)) <u>2011</u> .	That portion of Area 2D lying easterly of a north-south line from the confluence of the Hoquiam and Chehalis rivers to Renney Island, then easterly to Range Marker G, then to the eastern boundary of Area 2D at the Highway 101 Bridge.

Gear

(2) Gill net gear restrictions: All areas:

(a) Drift gill net gear only. It is unlawful to use set net gear. It is permissible to have on board a commercial vessel more than one net, provided the nets are of a mesh size legal for the fishery, and the length of any one net does not exceed one thousand five hundred feet in length.

Nets with a mesh size different from that being actively fished must be properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches or greater.

It is unlawful to use a gill net to fish for salmon if the lead line weighs more than two pounds per fathom of net as measured on the cork line, provided that it is lawful to have a gill net with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or in transiting through Grays Harbor.

(b) In Area 2C, mesh size must not exceed nine-inch maximum mesh.

In Areas 2A and 2D, mesh size must not exceed six-inch maximum mesh. Nets may be no more than fifty-five meshes deep. Nets must hang straight from top to bottom. Strings may only be used to secure breakaway panels.

(c) Entire nets must be single mesh size. Only one net may be fished at a time; other nets must be properly stored.

(d) Soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the gill net web is deployed into the water until the gill net web is fully retrieved from the water.

(e) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing Areas 2A, 2D, and 2C. Each box must be operating during any time the net is being retrieved or picked. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box: The inside length measurement must be at or within 39-1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river/bay water into each chamber.

(f) All wild (unmarked) coho, nonlegal sturgeon, (~~chum~~) and all steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay or to an operating recovery box when fishing in Area 2C.

All wild (unmarked) Chinook, nonlegal sturgeon, (~~chum~~) and all steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay or to an operating recovery box when fishing Areas 2A and 2D.

(g) Any fish that is bleeding or lethargic must be placed in the recovery box prior to being released to the river/bay.

(h) All fish placed in recovery boxes must be released to the river/bay prior to landing or docking.

Other

(3) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(12), reports must be made by 10:00 a.m. the day following landing.

(4) Fishers must take department observers if requested by department staff when participating in these openings. Pursuant to WAC 220-69-240, fishers also must provide notice of intent to participate by contacting Quick Reporting by phone, fax or e-mail. Notice of intent must be given prior to 12:00 p.m. on August (~~(20)~~) 19, (~~(2010)~~) 2011, for the openings in Area 2C and prior to 12:00 p.m. (~~October 1, 2010~~) September 30, 2011, for the openings in Area 2A and 2D.

(5) NOAA Fisheries has listed the southern population of green sturgeon as threatened under the Endangered Species Act, effective July 6, 2006. Most of the green sturgeon taken in Washington fisheries are from the Columbia River stock, which is part of the southern population. Therefore, the retention of green sturgeon is prohibited to protect this federally listed stock.

AMENDATORY SECTION (Amending Order 09-108, filed 5/27/10, effective 6/27/10)

WAC 220-40-027 Salmon—Willapa Bay fall fishery. From August 16 through December 31 of each year, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

Fishing periods:

(1) Gill net gear may be used to fish for salmon and white sturgeon only as shown below. All nonlegal sturgeon, all steelhead, and all other species including Chinook, coho, chum and white sturgeon, must be handled with care to minimize injury to the fish and must be released immediately to the river/bay:

Time:

6:00 p.m. August (~~(15)~~) 14
through 6:00 p.m. August
(~~(16)~~) 15, (~~(2010)~~) 2011.

Area:

Areas 2G east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, except:

Closed Waters Area (Net Free Zone): That portion of SMCRA 2G lying within the following boundary lines, Western Boundary: Those waters east of a line drawn from the most waterward exposed end of the jetty at Toke Point (46°42.446'N, 123°57.973'W) to Willapa Marker 2 (46°41.529'N, 123°57.973'W) then 180 degrees true to Goose Point (46°38.184'N, 123°57.584'W). Eastern boundary that includes those waters west of a North-South line through Marker 29.

Area 2H west of Willapa Channel Marker 40, **Area 2J** north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2), and **Area 2M**.

6:00 p.m. September (~~(22)~~) 21
through 6:00 p.m. Sep-
tember (~~(23)~~) 22, (~~(2010)~~) 2011;

AND

<p>Time: 6:00 p.m. September ((27)) <u>26</u> through 6:00 p.m. September ((28)) <u>27</u>, ((2010)) <u>2011</u>.</p> <p>6:00 p.m. September ((12)) <u>11</u> through 5:59 p.m. September ((15)) <u>14</u>, ((2010)) <u>2011</u>.</p>	<p>Area: Areas 2G east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, except:</p> <p>Closed Waters Area (Net Free Zone): That portion of the SMCRA 2G lying within the following boundary lines, Western Boundary: Those waters east of a line drawn from the most waterward exposed end of the jetty at Toke Point (46°42.446'N, 123°57.973'W) to Willapa Marker 2 (46°41.529'N, 123°57.973'W) then 180 degrees true to Goose Point (46°38.184'N, 123°57.584'W). Eastern boundary that includes those waters west of a North-South line (180 degrees true) through Range Marker "B" (46°42.564'N, 123°51.3'W) between Channel Markers 26 and 28. Area 2H west of Willapa Channel Marker 40, Area 2J north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2), and Area 2M.</p> <p>Areas 2G east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, Area 2H west of Willapa Channel Marker 40, Area 2J north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2), and Area 2M.</p>	<p>Time: 6:01 p.m. September ((22)) <u>21</u> through 6:00 p.m. September ((30)) <u>29</u>, ((2010)) <u>2011</u>.</p> <p>6:00 p.m. ((October 1-2010)) <u>September 30</u>, through 6:00 p.m. October ((2)) <u>1</u>, ((2010)) <u>2011</u>.</p> <p>12:00 p.m. November ((6)) <u>5</u> through 12:00 p.m. November 30, ((2010)) <u>2011</u>.</p> <p>(2) The Tokeland Boat basin is closed to commercial fishing during the openings in Salmon Management and Catch Reporting Area (SMCRA) 2G, described in this section. The Tokeland Boat basin is that portion of SMCRA 2G bounded on the south by the shoreline of the boat basin, on the west by the seawall, and on the north and east by a line from the Tokeland Channel Marker "3" (flashing green, 4-seconds), to Tokeland Channel Marker "4," to the tip of the seawall.</p> <p>Gear:</p> <p>(3) Gill net gear restrictions - All areas:</p> <p>(a) Drift gill net gear only. It is unlawful to use set net gear. It is permissible to have on board a commercial vessel more than one net, provided the nets are of a mesh size that is legal for the fishery, and the length of any one net does not exceed one thousand five hundred feet in length.</p> <p>Nets with a mesh size different from that being actively fished must be properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches or greater.</p> <p>It is unlawful to use a gill net to fish for salmon if the lead line weighs more than two pounds per fathom of net as measured on the cork line, provided that it is lawful to have a gill net with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or in transiting through Willapa Bay.</p>	<p>Area: Areas 2G east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, Area 2H, Area 2J north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2), and Area 2M.</p> <p>Areas 2G east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, Area 2H, Area 2J north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2), and Area 2M.</p> <p>Areas 2G, 2H, 2J, and 2M.</p>
<p>6:00 p.m. September ((15)) <u>14</u> through 6:00 p.m. September ((22)) <u>21</u>, ((2010)) <u>2011</u>.</p>	<p>Area: Areas 2G east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, Area 2H west of Willapa Channel Marker 40, Area 2J north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2), and Area 2M.</p>	<p>6:00 p.m. September ((27)) <u>26</u> through 6:00 p.m. September ((28)) <u>27</u>, ((2010)) <u>2011</u>.</p> <p>6:00 p.m. September ((30)) <u>29</u>, ((2010)) <u>2011</u>.</p> <p>12:00 p.m. November ((6)) <u>5</u> through 12:00 p.m. November 30, ((2010)) <u>2011</u>.</p> <p>(2) The Tokeland Boat basin is closed to commercial fishing during the openings in Salmon Management and Catch Reporting Area (SMCRA) 2G, described in this section. The Tokeland Boat basin is that portion of SMCRA 2G bounded on the south by the shoreline of the boat basin, on the west by the seawall, and on the north and east by a line from the Tokeland Channel Marker "3" (flashing green, 4-seconds), to Tokeland Channel Marker "4," to the tip of the seawall.</p> <p>Gear:</p> <p>(3) Gill net gear restrictions - All areas:</p> <p>(a) Drift gill net gear only. It is unlawful to use set net gear. It is permissible to have on board a commercial vessel more than one net, provided the nets are of a mesh size that is legal for the fishery, and the length of any one net does not exceed one thousand five hundred feet in length.</p> <p>Nets with a mesh size different from that being actively fished must be properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches or greater.</p> <p>It is unlawful to use a gill net to fish for salmon if the lead line weighs more than two pounds per fathom of net as measured on the cork line, provided that it is lawful to have a gill net with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or in transiting through Willapa Bay.</p>	<p>Area: Areas 2G east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, Area 2H, Area 2J north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2), and Area 2M.</p> <p>Areas 2G east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, Area 2H, Area 2J north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2), and Area 2M.</p> <p>Areas 2G, 2H, 2J, and 2M.</p>

(b) From August 16 through August 31, (~~(2010)~~) 2011: Mesh size must not exceed six-inch minimum mesh to nine-inch maximum mesh.

(c) From September 1 through 6:00 p.m. September 22, (~~(2010)~~) 2011: Mesh size must not exceed six-inch maximum mesh.

(d) From 6:01 p.m. September 22 through October 15, (~~(2010)~~) 2011: Mesh size must not exceed six and one-half inch maximum mesh.

(e) From November (~~(6)~~) 5 through November 30, (~~(2010)~~) 2011: Mesh size must not exceed nine-inch minimum mesh.

(f) Only one net may be fished at a time; other nets must be properly stored.

(g) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing in Willapa Bay Areas 2G, 2H, 2J, 2K, and 2M. Each box must be operating during any time the net is being retrieved or picked. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box: The inside length measurement must be at or within 39-1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river/bay water into each chamber.

(h) Soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the gill net web is deployed into the water until the gill net web is fully retrieved from the water.

(i) From August 16 through September 30, (~~(2010)~~) 2011, all wild (unmarked) coho, wild (unmarked) Chinook, nonlegal sturgeon and all steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay or to an operating recovery box when fishing in Willapa Bay Areas 2G, 2H, 2J, 2K, and 2M.

From October 1 through October 15, (~~(2010)~~) 2011, all wild (unmarked) coho, nonlegal sturgeon, and all steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay or to an operating recovery box when fishing in Willapa Bay Areas 2G, 2H, 2J, 2K, and 2M.

(j) Any fish that is bleeding or lethargic must be placed in the recovery box prior to being released to the river/bay.

(k) All fish placed in recovery boxes must be released to the river/bay prior to landing or docking.

Other:

(4) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(12), reports must be made by 10:00 a.m. the day following landing.

(5) NOAA Fisheries has listed the southern population of green sturgeon as threatened under the Endangered Species Act, effective July 6, 2006. Most of the green sturgeon taken in Washington fisheries are from the Columbia River stock, which is part of the southern population. Therefore, the retention of green sturgeon is prohibited; to protect this federally listed stock.

(6) It is unlawful to fish for salmon with gill net gear in Areas 2G, 2H, 2J, 2K, and 2M unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department-issued certification card.

WSR 11-08-043
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed April 5, 2011, 8:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-05-072.

Title of Rule and Other Identifying Information: Amending WAC 296-17-31021 Units of exposure, 296-17-895 Industrial insurance accident fund base rates and medical aid base rates by class of industry, 296-17A-6707 Classification 6707 (Athletic teams - contact sports), 296-17A-6809 Classification 6809 (Athletic teams - noncontact sports), and 296-17A-7102 Classification 7102 (Football teams - NFL).

Hearing Location(s): Tumwater L&I Building, 7273 Linderson Way S.W., Tumwater, WA 98501, on May 10, 2011, at 1:00 p.m.

Date of Intended Adoption: May 31, 2011.

Submit Written Comments to: Les Hargrave, P.O. Box 44140, Olympia, WA 98501, e-mail HALE235@lni.wa.gov, fax (360) 902-4988, by 5 p.m. on May 10, 2011.

Assistance for Persons with Disabilities: Contact office of information and assistance by May 5, 2011, TTY (360) 902-5797.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: A review of reporting practices by employers in the sports industry showed that hours for coaches account for too much of the premium compared to players. In addition, we found that most teams assume hours by game and practices and that this is not always consistent between teams. This rule making will amend our regulations to better accommodate current industry practices and ensure more uniformity in reporting. Premium costs will be better distributed among coaches' and players' hours.

Reasons Supporting Proposal: In response to an industry inquiry, we have reviewed our rates and reporting requirements and decided that there is a better way to assess and collect premiums in this industry.

Statutory Authority for Adoption: RCW 51.04.020 and 51.16.035.

Statute Being Implemented: RCW 51.16.035.

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: Richard Bredeson, Tumwater, Washington, (360) 902-4985; Implementation: Les Hargrave, Tumwater, Washington, (360) 902-4298; and Enforcement: Beth A. Dupre, Tumwater, Washington, (360) 902-4209.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency is exempt from conducting a small business economic impact statement since the proposed rules set or adjust fees or rates to legislative standards described in RCW 34.05.310 (4)(f) and do not change current coverage options for employers and workers.

A cost-benefit analysis is not required under RCW 34.05.328. Since the proposed rules do not change any existing coverage options for employers or workers and adjust fees pursuant to legislative standards, they are exempted by RCW 34.05.328 (5)(b)(vi) from the requirement for a cost-benefit analysis.

April 5, 2011

Judy Schurke

Director

AMENDATORY SECTION (Amending WSR 07-24-045, filed 12/1/07, effective 1/1/08)

WAC 296-17-31021 Units of exposure. (1) What is a "unit of exposure?"

A unit of exposure is the measure which is used to help determine the premium you will pay. For most businesses the unit of exposure is the *hours* worked by their employees. Because not all employees are compensated based on the hours they work, we have developed reporting alternatives to make reporting to us easier. Those alternatives are outlined in subsection (2) of this section. In other cases, the department *may* authorize some other method in assuming workers hours for premium calculation purposes.

(2) What are the alternatives to actual hours worked?

The exceptions are:

- **Apartment house managers, caretakers, domestic, home care or similar employees:** To determine the number of hours you need to report to us, divide an employee's total compensation, including housing and utility allowances, by the average hourly wage for the classification. The total number of work hours to be reported for each employee is not to exceed 520 hours per quarter. You will need to call us at (360) 902-4817 to obtain average hourly wage information.
- **Commission employees - outside (such as, but not limited to, real estate and insurance sales):** You must select one of the following methods to report your commission employees - outside:
- Actual hours worked; or

- Assumed hours of eight hours per day for part-time employees or one hundred-sixty hours per month for full-time employees.
All outside commission employees of an employer must be reported by the same method. You cannot report some outside commission employees based on the actual hours they work and others using the eight hours per day for part-time employees or one hundred-sixty hours per month for full-time employees method.
- **Drywall - stocking, installation, scrapping, taping, and texturing:** Premiums are based on material installed/finished rather than the hours it took to install/finish the drywall.
- **Horse racing - excluding jockeys:** Employers in the horse racing industry pay premiums based on a type of license their employees hold rather than the hours the employees work. Premiums are collected by the Washington horse racing commission at the time of licensing.
- **Jockeys:** Report ten hours for each race/mount or for any day in which duties are reported.
- **Pilots and flight crew members:** Pilots and flight crew members having flight duties during a work shift including preflight time shall have premium calculated by utilizing daily readings logged per federal requirements of the aircraft tachometer time: Provided, That if the total tachometer time for any day includes a fraction of an hour, the reportable time will be increased to the next full hour: Provided further, That pilots and flight crew members who assume nonflying duties during a work shift will have premium calculated in accordance with the appropriate rules and classifications applicable to nonflight duties.
- **Professional and semiprofessional athletic teams; players, coaches, managers, and officials:** Report eight hours for each worker every game or practice day.
- **Race car drivers:** Report ten hours for each race/heat.
- **Salaried employees:** You must select one of the following methods to report your salaried employees:
 - Actual hours worked; or
 - Assumed hours of one hundred-sixty hours per month.

All salaried employees of an employer must be reported by the same method. You cannot report some salaried employees based on the actual hours they work and others using the one hundred sixty hours per month method. Provided further, as in the case of contract personnel employed by schools and/or school districts, the school or school district shall report actual hours worked for each employee, one hundred sixty hours per month for each employee, or the department *may* authorize some other method in assuming workers hours for premium calculation purposes.

(3) Can I use assumed work hours for piece workers?

No, if you employ piece workers you must report the actual hours these individuals work for you unless another unit of exposure is required.

Example: If you have employees engaged in drywall work you would report and pay premiums on the basis of the square footage of the material they installed not the hours they worked.

AMENDATORY SECTION (Amending WSR 11-04-069, filed 1/28/11, effective 2/28/11)

WAC 296-17-895 Industrial insurance accident fund base rates and medical aid base rates by class of industry. Industrial insurance accident fund and medical aid fund base rates by class of industry shall be as set forth below.

Base Rates Effective
January 1, 2011

Class	Base Rates Effective January 1, 2011		Class	Base Rates Effective January 1, 2011	
	Accident Fund	Medical Aid Fund		Accident Fund	Medical Aid Fund
0101	1.9913	0.7878	0604	1.4682	0.8126
0103	2.5351	1.1235	0606	0.7735	0.4001
0104	1.3529	0.5826	0607	0.8759	0.4264
0105	1.8059	0.8927	0608	0.4980	0.2435
0107	1.9321	0.6800	0701	3.4669	0.7652
0108	1.3529	0.5826	0803	0.6659	0.3675
0112	0.9852	0.4337	0901	2.1988	0.7991
0201	4.4299	1.1360	1002	1.4477	0.6931
0202	4.9314	1.8028	1003	1.1163	0.5836
0210	1.7341	0.6051	1004	0.8347	0.3468
0212	2.0374	0.7248	1005	13.1041	4.8573
0214	2.2476	0.7960	1007	0.5492	0.2097
0217	1.5258	0.6260	1101	1.0534	0.5356
0219	1.8060	0.7492	1102	2.2602	0.8662
0301	0.9229	0.5091	1103	1.8269	0.8111
0302	3.3552	1.0702	1104	0.7945	0.4966
0303	2.7012	0.8922	1105	1.2720	0.5289
0306	1.5059	0.5633	1106	0.4243	0.3002
0307	1.3203	0.5543	1108	0.8776	0.4661
0308	0.6746	0.4431	1109	2.0698	1.0129
0403	2.5384	1.1181	1301	0.8501	0.3735
0502	2.0327	0.7345	1303	0.2959	0.1575
0504	2.2999	1.1556	1304	0.0414	0.0214
0507	4.2765	2.0017	1305	0.6984	0.3746
0508	3.1091	0.9358	1401	0.6005	0.3679
0509	2.9627	1.0077	1404	1.1704	0.6736
0510	2.5862	1.1644	1405	0.9214	0.5132
0511	2.3325	0.9043	1407	0.6510	0.4292
0512	2.3533	0.9083	1501	0.8992	0.4120
0513	1.1211	0.4589	1507	0.8529	0.4210
0514	2.7704	1.1316	1701	1.2719	0.5943
0516	2.3543	0.9553	1702	3.2097	0.9132
0517	3.1373	1.3718	1703	1.6080	0.3934
0518	2.1988	0.7991	1704	1.2719	0.5943
0519	2.7689	1.1423	1801	0.6892	0.3369
0521	0.8247	0.3570	1802	1.1057	0.5906
0601	0.9101	0.3730	2002	1.0874	0.6184
0602	1.1677	0.4150	2004	1.1303	0.6476
0603	1.6954	0.5583	2007	0.7360	0.4253
			2008	0.4834	0.2730
			2009	0.5040	0.3296
			2101	0.9474	0.5639
			2102	0.7349	0.4602
			2104	0.3455	0.3159

Base Rates Effective January 1, 2011			Base Rates Effective January 1, 2011		
Class	Accident Fund	Medical Aid Fund	Class	Accident Fund	Medical Aid Fund
2105	0.7380	0.4406	3603	0.6227	0.3812
2106	0.6018	0.3700	3604	1.0074	0.7053
2201	0.3165	0.1895	3605	0.7706	0.3759
2202	1.0588	0.5617	3701	0.3828	0.2103
2203	0.6146	0.4012	3702	0.5979	0.3340
2204	0.3165	0.1895	3708	0.8247	0.4088
2401	0.7634	0.3258	3802	0.2690	0.1670
2903	0.8534	0.5232	3808	0.6450	0.2869
2904	0.9650	0.5256	3901	0.2027	0.1609
2905	0.8463	0.5305	3902	0.5794	0.3970
2906	0.4727	0.2897	3903	1.3755	0.9846
2907	0.7022	0.4117	3905	0.1781	0.1443
2908	1.5599	0.7707	3906	0.6036	0.3939
2909	0.5186	0.3257	3909	0.3757	0.2539
3101	1.0666	0.5099	4002	1.9297	0.7811
3102	0.3828	0.2103	4101	0.4850	0.2625
3103	0.7510	0.3911	4103	0.6908	0.4482
3104	0.9005	0.4504	4107	0.2216	0.1219
3105	1.0063	0.5977	4108	0.2486	0.1483
3303	0.6155	0.3500	4109	0.2790	0.1610
3304	0.6206	0.4369	4201	1.1368	0.4010
3309	0.5616	0.2883	4301	0.8042	0.5812
3402	0.7696	0.4041	4302	0.9412	0.5135
3403	0.2959	0.1562	4304	1.1506	0.7729
3404	0.6782	0.3839	4305	1.8475	0.7679
3405	0.3876	0.2454	4401	0.5530	0.3660
3406	0.3000	0.2015	4402	1.1376	0.6595
3407	1.2442	0.5406	4404	0.7257	0.4496
3408	0.2879	0.1640	4501	0.2356	0.1804
3409	0.2046	0.1350	4502	0.0530	0.0342
3410	0.3235	0.2241	4504	0.1489	0.1163
3411	0.7420	0.3484	4601	1.0725	0.5809
3412	0.9478	0.3729	4802	0.4396	0.2937
3414	0.8479	0.4229	4803	0.3251	0.2871
3415	1.2348	0.6070	4804	0.6254	0.4329
3501	1.4885	0.7634	4805	0.3669	0.2637
3503	0.3506	0.2955	4806	0.0782	0.0538
3506	1.3806	0.5172	4808	0.6377	0.4155
3509	0.4988	0.3438	4809	0.4028	0.3064
3510	0.4737	0.2871	4810	0.1652	0.1335
3511	0.8914	0.4757	4811	0.3806	0.3139
3512	0.4860	0.3371	4812	0.5049	0.3338
3513	0.6427	0.4365	4813	0.2013	0.1534
3602	0.1701	0.0990	4900	0.2935	0.1084

Base Rates Effective January 1, 2011			Base Rates Effective January 1, 2011		
Class	Accident Fund	Medical Aid Fund	Class	Accident Fund	Medical Aid Fund
4901	0.0977	0.0462	6201	0.4482	0.2248
4902	0.1667	0.0879	6202	0.8486	0.5149
4903	0.2185	0.1273	6203	0.1190	0.1134
4904	0.0347	0.0233	6204	0.1573	0.1105
4905	0.4368	0.3645	6205	0.3494	0.2169
4906	0.1301	0.0736	6206	0.3156	0.1986
4907	0.0711	0.0481	6207	1.3533	1.1700
4908	0.1046	0.1027	6208	0.2892	0.2404
4909	0.0484	0.0588	6209	0.4011	0.2843
4910	0.6414	0.3677	6301	0.2110	0.0781
4911	0.0833	0.0468	6303	0.1055	0.0576
5001	12.2018	4.3539	6304	0.4359	0.3565
5002	0.8691	0.4365	6305	0.1360	0.0995
5003	3.5793	1.1976	6306	0.4104	0.2294
5004	1.1143	0.6147	6308	0.0923	0.0568
5005	1.0563	0.4251	6309	0.2755	0.1803
5006	2.3288	0.8032	6402	0.3511	0.2432
5101	1.3201	0.6259	6403	0.2139	0.1705
5103	0.9733	0.6476	6404	0.3375	0.2372
5106	0.9733	0.6476	6405	0.7690	0.3874
5108	1.1126	0.7164	6406	0.1560	0.1197
5109	0.8092	0.3732	6407	0.3642	0.2415
5201	0.5756	0.2947	6408	0.6186	0.3278
5204	1.3306	0.6267	6409	1.0728	0.4862
5206	0.5788	0.2774	6410	0.4050	0.2482
5207	0.1868	0.1474	6501	0.2056	0.1309
5208	1.0667	0.6243	6502	0.0430	0.0264
5209	0.9967	0.5315	6503	0.1168	0.0499
5300	0.1750	0.0907	6504	0.4511	0.3708
5301	0.0500	0.0293	6505	0.1253	0.1286
5302	0.0232	0.0126	6506	0.1400	0.0983
5305	0.0721	0.0506	6509	0.4618	0.3430
5306	0.0682	0.0486	6510	0.6914	0.2977
5307	0.9034	0.4130	6511	0.4964	0.3297
5308	0.1178	0.0890	6512	0.2199	0.1241
6103	0.0970	0.0832	6601	0.2611	0.1658
6104	0.4796	0.3179	6602	0.6892	0.4561
6105	0.5779	0.2782	6603	0.4616	0.2673
6107	0.1881	0.1615	6604	0.1046	0.0723
6108	0.6024	0.4205	6605	0.4466	0.3399
6109	0.1541	0.0818	6607	0.2209	0.1396
6110	0.8319	0.4926	6608	0.9037	0.2611
6120	0.4159	0.2155	6620	4.8059	2.1491
6121	0.5077	0.2620	6704	0.1886	0.1176

Base Rates Effective January 1, 2011		
Class	Accident Fund	Medical Aid Fund
6705	0.9772	0.8269
6706	0.3719	0.2689
6707	(5.3057) <u>1.4087</u>	(4.5925) <u>1.2193</u>
6708	9.0627	9.6007
6709	0.3327	0.2475
6801	1.0011	0.4451
6802	0.8080	0.4691
6803	1.4912	0.4620
6804	0.4633	0.2922
6809	(6.1440) <u>1.6312</u>	(4.6455) <u>1.2334</u>
6901	0.0000	0.0556
6902	1.5697	0.5264
6903	11.1708	4.2851
6904	0.7841	0.3207
6905	0.5840	0.3035
6906	0.0000	0.3035
6907	1.7689	1.0013
6908	0.6193	0.3398
6909	0.1527	0.1049
7100	0.0430	0.0267
7101	0.0328	0.0187
7102	(3.9953) <u>1.2485</u>	(4.7758) <u>1.4924</u>
7103	0.9515	0.4477
7104	0.0413	0.0280
7105	0.0388	0.0257
7106	0.2962	0.2115
7107	0.2785	0.2329
7108	0.2421	0.1895
7109	0.1856	0.1356
7110	0.4979	0.2199
7111	0.6881	0.2689
7112	0.8836	0.5824
7113	0.4934	0.3486
7114	0.6384	0.5343
7115	0.6760	0.4897
7116	0.8163	0.4955
7117	1.9260	1.1988
7118	1.8834	1.2199
7119	1.8968	1.0593
7120	8.4798	4.6818
7121	7.9178	4.3832
7122	0.6200	0.4649

Base Rates Effective January 1, 2011		
Class	Accident Fund	Medical Aid Fund
7200	2.0381	0.8820
7201	2.3671	0.9828
7202	0.0466	0.0204
7203	0.1338	0.1458
7204	0.0000	0.0000
7205	0.0000	0.0000
7301	0.5904	0.3625
7302	1.2378	0.7953
7307	0.5858	0.3912
7308	0.5195	0.4157
7309	0.3086	0.2521
7400	2.3671	0.9828

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6707 Classification 6707.

6707-00 Football teams, N.O.C.

Contact sports, N.O.C.

Applies to players, coaches, referees, and managers employed by a professional football team that is *not a member of the National Football League (NFL)* and professional wrestlers, roller derbies, and professional martial arts competitors and their managers, coaches and referees.

Employers must report eight assumed hours for each of their workers covered under this classification every day the team has a game or practice.

This classification excludes employees engaged in caring for the team and equipment, the care and operation of the playing field/stadium and care of the facility in which the team organization is housed who are to be reported separately in classification 6706, and officials of community or school amateur sporting events are to be reported separately in classification 6103.

Special note: Teams that are members of the NFL, including players, coaches, referees, and managers, are to be reported separately in classification 7102.

6707-01 Hockey teams

Applies to players, coaches, referees, and managers employed by a professional hockey team.

Employers must report eight assumed hours for each of their workers covered under this classification every day the team has a game or practice.

This classification excludes employees engaged in caring for the team and equipment, the care and operation of the arena/stadium, and care of the facility in which the team organization is housed who are to be reported separately in classification 6706 and officials of community or school amateur sporting events are to be reported separately in classification 6103.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6809 Classification 6809.

6809-00 Baseball teams - professional

Applies to players, umpires, coaches, and managers employed by a professional baseball team.

Employers must report eight assumed hours for each of their workers covered under this classification every day the team has a game or practice.

This classification excludes employees engaged in caring for the team and equipment, the care and operation of the playing field/stadium, and care of the facility in which the team organization is housed who are to be reported separately in classification 6706 and officials of community or school amateur sporting events who are to be reported separately in classification 6103.

6809-01 Basketball teams - professional

Applies to players, coaches, managers, and referees employed by a professional basketball team.

Employers must report eight assumed hours for each of their workers covered under this classification every day the team has a game or practice.

This classification excludes employees engaged in caring for the team and equipment, the care and operation of the arena/stadium, and care of the facility in which the team organization is housed who are to be reported separately in classification 6706 and officials of community or school amateur sporting events who are to be reported separately in classification 6103.

**6809-02 Soccer teams - professional
Noncontact sports, N.O.C.**

Applies to players, coaches, managers, and referees employed by a professional soccer team or noncontact sports teams that are not covered by another classification (N.O.C.).

Employers must report eight assumed hours for each of their workers covered under this classification every day the team has a game or practice.

This classification excludes employees engaged in caring for the team and equipment, the care and operation of the playing fields/stadium, and care of the facility in which the team organization is housed who are to be reported separately in classification 6706 and officials of community or school amateur sporting events who are to be reported separately in classification 6103.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-7102 Classification 7102.

7102-00 Football teams - NFL

Applies to players, referees, coaches and managers employed by a professional football team that is a member of the *National Football League (NFL)*.

Employers must report eight assumed hours for each of their workers covered under this classification every day the team has a game or practice.

This classification excludes employees engaged in caring for the team and equipment, the care and operation of the

playing field/stadium, and care of the facility in which the team organization is housed who are to be reported separately in classification 6706; officials of community or school amateur sporting events who are to be reported separately in classification 6103; and professional football teams that are not members of the NFL which are to be reported separately in classification 6707.

WSR 11-08-046

**WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF LICENSING**

(By the Code Reviser's Office)

[Filed April 5, 2011, 8:49 a.m.]

WAC 308-408-010, proposed by the department of licensing in WSR 10-19-058 appearing in issue 10-19 of the State Register, which was distributed on October 6, 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 11-08-047

**WITHDRAWAL OF PROPOSED RULES
GAMBLING COMMISSION**

(By the Code Reviser's Office)

[Filed April 5, 2011, 8:51 a.m.]

WAC 230-13-135, proposed by the gambling commission in WSR 10-19-106 appearing in issue 10-19 of the State Register, which was distributed on October 6, 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 11-08-049

**WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF LICENSING**

(By the Code Reviser's Office)

[Filed April 5, 2011, 8:54 a.m.]

WAC 308-408A-110, proposed by the department of licensing in WSR 10-19-120 appearing in issue 10-19 of the State Register, which was distributed on October 6, 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 11-08-051**WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF LICENSING**

(By the Code Reviser's Office)

[Filed April 5, 2011, 8:55 a.m.]

WAC 308-408-010, proposed by the department of licensing in WSR 10-19-146 appearing in issue 10-19 of the State Register, which was distributed on October 6, 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 11-08-064**PROPOSED RULES
DEPARTMENT OF HEALTH**

[Filed April 6, 2011, 9:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-13-175.

Title of Rule and Other Identifying Information: Chapter 246-803 WAC, creating a new chapter for East Asian medicine practitioner, which will also include acupuncture, and repealing chapter 246-802 WAC the existing chapter for acupuncture.

Hearing Location(s): Department of Health, 310 Israel Road S.E., Point Plaza East, Room 153, Tumwater, WA 98501, on May 17, 2011, at 9:00 a.m.

Date of Intended Adoption: May 17, 2011.

Submit Written Comments to: Vicki Brown, Program Manager, P.O. Box 47852, Olympia, WA 98504-7852, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by May 17, 2011.

Assistance for Persons with Disabilities: Contact Vicki Brown by May 10, 2011, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SSB 6280 (chapter 286, Laws of 2010) amended chapter 18.06 RCW to replace "acupuncture" with "East Asian medicine." It also clarified the scope of practice and made other conforming changes. Rule making is necessary to align the current rules with the new legislation. The existing acupuncture rules, chapter 246-802 WAC, will be repealed, and both existing and new standards will be in chapter 246-803 WAC, East Asian medicine practitioner. The proposed rules also establish training, exam and patient waiver requirements and clarify the inactive license option.

Reasons Supporting Proposal: Chapter 18.06 RCW establishes the requirements to practice as an East Asian medicine practitioner (EAMP). The legislative intent of chapter 18.06 RCW is to recognize that acupuncturists engage in a system of medicine to maintain and promote wellness and to prevent, diagnose, and treat disease drawing upon the experience, learning, and traditions originating in East Asia, that include more than acupuncture. The state's

existing professional designation of acupuncturists needs to be changed so that the rule is consistent with the statute.

Statutory Authority for Adoption: Chapter 18.06 RCW, SSB 6280 (chapter 286, Laws of 2010).

Statute Being Implemented: Chapter 18.06 RCW, SSB 6280 (chapter 286, 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, Implementation and Enforcement: Vicki Brown, Program Manager, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4865.

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 Vicki Brown, Health Professions/Facilities, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4865, fax (360) 236-2901, e-mail vicki.brown@doh.wa.gov.

April 5, 2011

Mary C. Selecky

Secretary

Chapter 246-803 WAC**EAST ASIAN MEDICINE PRACTITIONER****EAST ASIAN MEDICINE PRACTITIONERS**NEW SECTION

WAC 246-803-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

- (1) Accredited school, college or program is:
 - (a) Accredited or has candidacy status as a United States postsecondary school, college or program; or
 - (b) Accredited by or has candidacy status with the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM).
- (2) "Approved school" is a school, college or program approved by the secretary of the department of health that meets the requirements of WAC 246-803-500.
- (3) "Credit" means ten classroom contact hours on the quarter system or fifteen classroom contact hours on the semester or trimester system.
- (4) "Department" means the department of health.
- (5) "East Asian medicine apprenticeship" is training in East Asian medicine administered by an apprenticeship trainer that satisfies the educational requirements set out in WAC 246-803-210, 246-803-220, and 246-803-230. An apprenticeship is of limited duration and ends at the time the parties to the apprenticeship agreement have completed their obligations.
- (6) "East Asian medicine practitioner" is a person licensed under chapter 18.06 RCW.

(7) "East Asian medicine program" is training in East Asian medicine offered by an academic institution that satisfies the education requirements set out in WAC 246-803-210, 246-803-220, and 246-803-230 and also offers training in other areas of study. A program is an established area of study offered on a continuing basis. An East Asian medicine program may be referred to as a program in acupuncture, acupuncture and Oriental medicine, or Oriental medicine.

(8) "East Asian medicine school" is an accredited academic institution which has the sole purpose of offering training in East Asian medicine that satisfies the education requirements set out in WAC 246-803-210, 246-803-220, and 246-803-230.

(9) "East Asian medicine tutorial instruction" is training in East Asian medicine which is offered by an academic institution or qualified instructor on the basis of a tutorial agreement between the school or instructor and the student and satisfies the education requirements set out in WAC 246-803-210, 246-803-220, and 246-803-230. A tutorial is of limited duration and ends at the time the parties to the tutorial agreement have performed their obligations under the agreement.

(10) "Primary health care provider" is an individual licensed under:

- (a) Chapter 18.36A RCW, Naturopathy;
- (b) Chapter 18.57 RCW, Osteopathy—Osteopathic medicine and surgery;
- (c) Chapter 18.57A RCW, Osteopathic physicians' assistants;
- (d) Chapter 18.71 RCW, Physicians;
- (e) Chapter 18.71A RCW, Physician assistants; or
- (f) RCW 18.79.050, "Advanced registered nursing practice" defined—Exceptions.

NEW SECTION

WAC 246-803-020 Advertising. (1) A person licensed under this chapter may use the title East Asian medicine practitioner (EAMP) or licensed acupuncturist (L.Ac.) in all forms of advertising, professional literature and billing.

(2) An East Asian medicine practitioner may not use the title "doctor," "Dr.," or "Ph.D." on any advertising or other printed material unless the nature of the degree is clearly stated.

(3) An East Asian medicine practitioner may not represent that he or she holds a degree from an East Asian medicine school other than that degree which appears on his or her application for licensure.

(4) An East Asian medicine practitioner shall not engage in false, deceptive, or misleading advertising including, but not limited to, the following:

- (a) Advertising that misrepresents the potential of East Asian medicine or acupuncture; and
- (b) Advertising of any service, technique, or procedure that is outside the scope of practice for an East Asian medicine practitioner.

NEW SECTION

WAC 246-803-030 East Asian medicine. East Asian medicine is a health care service using East Asian medicine diagnosis and treatment to promote health and treat organic

or functional disorders. East Asian medicine includes the following:

- (1) Acupuncture. Acupuncture includes the use of acupuncture needles or lancets to directly or indirectly stimulate acupuncture points and meridians;
- (2) Use of electrical, mechanical, or magnetic devices to stimulate acupuncture points and meridians;
- (3) Moxibustion;
- (4) Acupressure;
- (5) Cupping;
- (6) Dermal friction technique;
- (7) Infrared;
- (8) Sonopuncture;
- (9) Laserpuncture;
- (10) Point injection therapy (aquapuncture);
- (11) Dietary advice and health education based on East Asian medical theory, including the recommendation and sale of herbs, vitamins, minerals, and dietary and nutritional supplements.

Health education. Health education is educational information directed to the patient that attempts to improve, maintain, promote and safeguard the health care of the patient. Health education consists of educating the patient on how the mind, body and spirit connect in context of imbalances, emotional patterns and tendencies as defined by and treated in East Asian medicine. Health education does not include mental health counseling;

(12) Breathing, relaxation, and East Asian exercise techniques;

(13) Qi gong;

(14) East Asian massage. East Asian massage means manual techniques having originated in East Asia involving the manipulation of the soft tissues of the body for therapeutic purposes.

(a) East Asian massage consists of:

- (i) Applying fixed or movable pressure;
- (ii) Passive, resistive, and assisted stretching of fascial and connective tissue;
- (iii) Holding or causing movement of the body; or
- (iv) Tapping, compressions or friction.

(b) East Asian massage may be performed with the use of tools common to the practice and aids of superficial heat, cold, water, lubricants, salts, minerals, liniments, poultices, and herbs.

(c) East Asian massage does not include attempts to adjust or manipulate any articulations of the body or spine or mobilization of these articulations by the use of a thrusting force, nor does it include genital mobilization;

(15) Tui na. Tui na is a method of East Asian bodywork, characterized by the kneading, pressing, rolling, shaking, and stretching of the body and does not include spinal manipulation; and

(16) Superficial heat and cold therapies.

LICENSURE—APPLICATION AND ELIGIBILITY REQUIREMENTS

NEW SECTION

WAC 246-803-100 Application requirements for applicants from approved schools, colleges or programs.

An applicant for an East Asian medicine practitioner license who has graduated from an approved school, college or program must submit to the department:

- (1) A completed application.
- (2) The application fee required under WAC 246-803-990.
- (3) Verification of academic or educational study and clinical training at a school, college or program approved by the secretary. The school, college or program verification must include one of the following:
 - (a) Original copy of school transcript evidencing completion of a program in East Asian medicine that includes the required basic sciences sent directly from the school, college or program; or
 - (b) If the school no longer exists, a copy of the transcript and a sworn affidavit stating the school no longer exists.
- (4) Verification of clinical training as required in WAC 246-803-230.
- (5) Verification of successful completion of the examinations as required in WAC 246-803-240.
- (6) Verification of all East Asian medicine practitioner or health care licenses held, submitted directly from the licensing agency. The certification shall include the license number, issue date, expiration date and whether the East Asian medicine practitioner has been the subject of final or pending disciplinary action.
- (7) Verification of completion of seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.
- (8) Verification of current cardio-pulmonary resuscitation (CPR) certification. The training in CPR shall consist of a minimum of one quarter credit or equivalent. Red Cross certification or documentation of equivalent training may be substituted for the one quarter credit.
- (9) An attestation stating that the applicant will submit a plan for consultation, emergency transfer and referral prior to practicing.
- (10) Any additional documents requested by the secretary.

NEW SECTION

WAC 246-803-110 Application requirements for applicants from accredited schools, colleges or programs.

An applicant for an East Asian medicine practitioner license who has graduated from an accredited school, college or program must submit to the department:

- (1) A completed application.
- (2) The application fee required under WAC 246-803-990.
- (3) Verification of academic or educational study and clinical training at a school, college or program accredited by the Accreditation Commission for Acupuncture and Oriental

Medicine (ACAOM). The school, college or program verification must include one of the following:

- (a) Original copy of school transcript evidencing completion of a program in East Asian medicine that includes the required basic sciences sent directly from the school, college or program. If all of the required basic sciences were not included as a part of the curriculum, then the applicant must also provide official transcripts where the basic sciences were obtained; or
- (b) A notarized affidavit or statement signed by an officer of the school, college or program certifying the applicant's satisfactory completion of the training and designating the subjects and hours; or
- (c) If the school no longer exists, a copy of the transcript and a sworn affidavit stating the school no longer exists.
- (4) Verification of clinical training as required in WAC 246-803-230.
- (5) Verification of successful completion of the examinations as required in WAC 246-803-240.
- (6) Verification of all East Asian medicine practitioner or health care licenses held, submitted directly from the licensing agency. The certification shall include the license number, issue date, expiration date and whether the East Asian medicine practitioner has been the subject of final or pending disciplinary action.
- (7) Verification of completion of seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.
- (8) Verification of current cardio-pulmonary resuscitation (CPR) certification. The training in CPR shall consist of a minimum of one quarter credit or equivalent. Red Cross certification or documentation of equivalent training may be substituted for the one quarter credit.
- (9) An attestation stating that the applicant will submit a plan for consultation, emergency transfer and referral prior to practicing.
- (10) Any additional documents requested by the secretary.

NEW SECTION

WAC 246-803-120 Application requirements for applicants from approved apprenticeships or tutorials.

Prior to applying for an East Asian medicine practitioner license, an applicant must have on file an approved application for apprenticeship or tutorial. The application must meet the requirements set out in WAC 246-803-510. An applicant for an East Asian medicine practitioner license who has completed an apprenticeship or tutorial program approved by the secretary must submit to the department:

- (1) A completed application.
- (2) The application fee required under WAC 246-803-990.
- (3) Verification of academic or educational study and clinical training at an approved apprenticeship or tutorial. Verification must include a notarized affidavit or statement signed by the apprenticeship trainer certifying the applicant's satisfactory completion of the training and designating the subjects and hours.
- (4) Verification of clinical training as required in WAC 246-803-230.

(5) Verification of successful completion of the examinations as required in WAC 246-803-240.

(6) Verification of all East Asian medicine practitioner or health care licenses held, submitted directly from the licensing agency. The certification shall include the license number, issue date, expiration date and whether the East Asian medicine practitioner has been the subject of final or pending disciplinary action.

(7) Verification of completion of seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

(8) Verification of current cardio-pulmonary resuscitation (CPR) certification. The training in CPR shall consist of a minimum of one quarter credit or equivalent. Red Cross certification or documentation of equivalent training may be substituted for the one quarter credit.

(9) An attestation stating that the applicant will submit a plan for consultation, emergency transfer and referral prior to practicing.

(10) Any additional documents requested by the secretary.

NEW SECTION

WAC 246-803-130 Application requirements for applicants from foreign schools. (1) An applicant for an East Asian medicine practitioner license who has graduated from a foreign East Asian medicine practitioner program not accredited or approved by the secretary must:

(a) Have at least a bachelor's or master's degree in East Asian medicine or acupuncture from an institution of higher learning which is approved by the foreign country's ministry of education/health, or other governmental entity;

(b) Have graduated from a program of East Asian medicine or acupuncture education with requirements substantially equal to those required of graduates of secretary-approved programs; and

(c) Demonstrate fluency in reading, speaking, and understanding the English language by taking the examinations required in WAC 246-803-240 (2)(a) through (c) in English or by passage of the test of English as a foreign language in WAC 246-803-240(3).

(2) An applicant for an East Asian medicine practitioner license must submit to the department:

(a) A completed application.

(b) The application fee required under WAC 246-803-990.

(c) Original copy of school transcripts from the East Asian medicine or acupuncture program showing degree and degree date.

(d) A credentialing evaluation report from the American Association of Collegiate Registrars and Admissions Officers (AACRAO). The report must be sent directly from the AACRAO to the department. Submit transcripts, fees, and other documentation to a credentialing service approved by the department and request the evaluation report be sent directly to the department. The department recognizes the AACRAO for credential evaluations.

(e) Verification of clinical training as required in WAC 246-803-230.

(f) Verification of successful completion of the examinations as required in WAC 246-803-240.

(g) Verification of all East Asian medicine practitioner or health care licenses held, submitted directly from the licensing agency. The certification shall include the license number, issue date, expiration date and whether the East Asian medicine practitioner has been the subject of final or pending disciplinary action.

(h) Verification of completion of seven clock hours of AIDS education as required in chapter 246-812 WAC, Part 8.

(i) Verification of current cardiopulmonary resuscitation (CPR) certification. The training in CPR shall consist of a minimum of one quarter credit or equivalent. Red Cross certification or documentation of equivalent training may be substituted for the one quarter credit.

(j) An attestation stating that the applicant will submit a plan for consultation, emergency transfer and referral prior to practicing.

(k) Any additional documents requested by the secretary.

EDUCATION, TRAINING AND EXAMINATION— REQUIREMENTS

NEW SECTION

WAC 246-803-200 Training for East Asian medicine practitioners. To become an East Asian medicine practitioner, an applicant must have training in:

(1) Basic sciences as described in WAC 246-803-210;

(2) East Asian medicine sciences as described in WAC 246-803-220; and

(3) Clinical training as described in WAC 246-803-230.

NEW SECTION

WAC 246-803-210 Basic sciences. To become an East Asian medicine practitioner, an applicant must have training in basic sciences that must consist of a minimum of forty-five quarter credits or thirty semester or trimester credits. These credits shall consist of the following:

(1) Anatomy;

(2) Physiology;

(3) Microbiology;

(4) Biochemistry;

(5) Pathology;

(6) Survey of western clinical sciences; and

(7) Hygiene.

NEW SECTION

WAC 246-803-220 East Asian medicine sciences. To become an East Asian medicine practitioner, an applicant must have training in East Asian medicine sciences consisting of a minimum of seventy-five quarter credits or fifty semester or trimester credits. These credits must include the following subjects of acupuncture/East Asian medicine:

(1) Fundamental principles;

(2) Diagnosis;

(3) Pathology;

(4) Therapeutics;

(5) Meridians/vessels and points; and

- (6) Techniques, including electro-acupuncture.

NEW SECTION

WAC 246-803-230 Clinical training. To become an East Asian medicine practitioner, an applicant must complete a minimum of five hundred hours of supervised clinical training including no more than one hundred hours of observation which includes case presentation and discussion. At least four hundred hours must be patient treatment.

(1) Qualified instructors must observe and provide guidance to the student as appropriate. Instructors must be qualified to provide instruction in their areas of specialization in East Asian medicine as demonstrated by possession of the following:

(a) Broad and comprehensive training in East Asian medicine; and

(b) Two years of relevant current work experience or teaching experience in East Asian medicine.

(2) Qualified instructors must be available within the clinical facility to provide consultation and assistance to the student for patient treatments. Prior to initiation of each treatment, instructors must have knowledge of and approve the diagnosis and treatment plan.

(3) "Patient treatment" includes:

(a) Conducting a patient intake interview concerning the patient's past and present medical history;

(b) Performing East Asian medicine examination and diagnosis;

(c) Discussion between the instructor and the student concerning the proposed diagnosis and treatment plan;

(d) Applying East Asian medicine treatment principles and techniques; and

(e) Charting of patient conditions, evaluative discussions and findings, and concluding remarks.

NEW SECTION

WAC 246-803-240 Examinations. (1) The examinations administered by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) are the official examinations for licensure as an East Asian medicine practitioner.

(2) An applicant for licensure as an East Asian medicine practitioner must pass the following examinations:

(a) Foundations of Oriental medicine examination;

(b) Acupuncture with point location examination;

(c) Biomedicine examination; and

(d) Council of Colleges of Acupuncture and Oriental Medicine (CCAOM) clean needle technique course.

(3) If the applicant takes the examinations listed in subsection (2) of this section in a language other than English, they must also take and pass the test of English as a foreign language (TOEFL) internet-based (IBT) examination. This is done by obtaining scores on the TOEFL IBT of at least:

(a) 24 on the writing section;

(b) 26 on the speaking section;

(c) 21 on the reading section; and

(d) 18 on the listening comprehension section.

NEW SECTION

WAC 246-803-250 Documents in foreign language.

All documents submitted to the department in a foreign language must be accompanied by an accurate translation in English. Each translated document must bear the affidavit of the translator certifying that the translator is competent in both the language of the document and the English language and that the translation is a true and complete translation of the foreign language original. Translation of any document relative to a person's application is at the expense of the applicant.

PRACTICE STANDARDS

NEW SECTION

WAC 246-803-300 Patient notification of qualifications and scope of practice. East Asian medicine practitioners in the state of Washington must provide to each patient prior to or at the time of the initial patient visit the qualifications and scope of practice form. The form must include:

(1) The East Asian medicine practitioner's education. The degree obtained or if the education was by apprenticeship, the dates and locations of the didactic and clinical training.

(2) License information, including state license number and date of licensure.

(3) A statement that the practice of East Asian medicine in the state of Washington includes the following:

(a) Acupuncture, including the use of acupuncture needles or lancets to directly and indirectly stimulate acupuncture points and meridians;

(b) Use of electrical, mechanical, or magnetic devices to stimulate acupuncture points and meridians;

(c) Moxibustion;

(d) Acupressure;

(e) Cupping;

(f) Dermal friction technique;

(g) Infrared;

(h) Sonopuncture;

(i) Laserpuncture;

(j) Point injection therapy (aquapuncture);

(k) Dietary advice and health education based on East Asian medical theory, including the recommendation and sale of herbs, vitamins, minerals, and dietary and nutritional supplements;

(l) Breathing, relaxation, and East Asian exercise techniques;

(m) Qi gong;

(n) East Asian massage and Tui na (which is a method of East Asian bodywork); and

(o) Superficial heat and cold therapies.

(4) A statement that side effects of the treatments listed above may include, but are not limited to, the following:

(a) Pain following treatment;

(b) Minor bruising;

(c) Infection;

(d) Needle sickness; and

(e) Broken needle.

(5) A statement that patients must inform the East Asian medicine practitioner if they have a severe bleeding disorder or pacemaker prior to any treatment.

NEW SECTION

WAC 246-803-310 Referral to primary health care provider. (1) When an East Asian medicine practitioner sees a patient with a potentially serious disorder, the East Asian medicine practitioner shall immediately request a consultation or written diagnosis from a primary health care provider.

(2) Potentially serious disorders include, but are not limited to:

- (a) Cardiac conditions including uncontrolled hypertension;
- (b) Acute abdominal symptoms;
- (c) Acute undiagnosed neurological changes;
- (d) Unexplained weight loss or gain in excess of fifteen percent body weight within a three-month period;
- (e) Suspected fracture or dislocation;
- (f) Suspected systemic infection;
- (g) Any serious undiagnosed hemorrhagic disorder; and
- (h) Acute respiratory distress without previous history or diagnosis.

(3) In the event a patient with a potentially serious disorder refuses to authorize such consultation or provide a recent diagnosis from a primary health care provider, East Asian medical treatments, including acupuncture may only continue after the patient signs a written waiver acknowledging the risks associated with the failure to pursue treatment from a primary health care provider.

(4) The written waiver must include:

(a) A statement acknowledging that failure by the patient to pursue treatment from a primary health care provider may involve risks that such a condition can worsen without further warning and even become life threatening;

(b) An explanation of an East Asian medicine practitioner's scope of practice, to include the services and techniques East Asian medicine practitioners are authorized to provide; and

(c) A statement that the services and techniques that an East Asian medicine practitioner is authorized to provide will not resolve the patient's underlying potentially serious disorder.

NEW SECTION

WAC 246-803-330 Plan for consultation, emergency transfer and referral. Every licensed East Asian medicine practitioner shall develop a written plan for consultation, emergency transfer, and referral. The written consultation plan must be submitted to the department after initial licensure but prior to treating any patients, and annually with the license renewal fee. The written plan for consultation, emergency transfer and referral must include:

(1) The name, license number and telephone numbers of two consulting primary health care providers.

(2) A statement attesting that in an emergency, the East Asian medicine practitioner will:

(a) Initiate the emergency medical system (EMS) by dialing 911;

(b) Request an ambulance; and

(c) Provide patient support until emergency response arrives.

(3) Confirmation from the primary health care providers listed as to their agreement to consult with and accept referred patients from the applicant.

NEW SECTION

WAC 246-803-340 Mandatory reporting. All individuals credentialed under this chapter must comply with the mandatory reporting rules in chapter 246-16 WAC.

LICENSE STATUS

NEW SECTION

WAC 246-803-400 Inactive status. (1) An East Asian medicine practitioner may obtain an inactive license by meeting the requirements of WAC 246-12-090.

(2) An inactive license must be renewed every year on the East Asian medicine practitioner's birthday according to WAC 246-12-100 and 246-803-990.

(3) If a license is inactive for three years or less, to return to active status an East Asian medicine practitioner must meet the requirements of WAC 246-12-110 and 246-803-990.

(4) If a license is inactive for more than three years and the East Asian medicine practitioner has been actively practicing in another state of the United States or its major territories, to return to active status the East Asian medicine practitioner must:

(a) Provide certification of an active East Asian medicine practitioner license, submitted directly from another licensing entity. The certification shall include the license number, issue date, expiration date and whether the East Asian medicine practitioner has been the subject of final or pending disciplinary action;

(b) Provide verification of current active practice in another state of the United States or its major territories for the last three years; and

(c) Meet the requirements of WAC 246-12-110 and 246-803-990.

(5) If a license is inactive for more than three years, and the East Asian medicine practitioner has not been actively practicing in another state of the United States or its major territories, to return to active status the East Asian medicine practitioner must provide:

(a) A written request to change licensure status;

(b) The applicable fees according to WAC 246-803-990;

(c) Proof of successful completion of the examinations as required in WAC 246-803-240 (2)(a), (b), and (c) within the past year;

(d) Written certification of all East Asian medicine practitioner or health care licenses held, submitted directly from the licensing agency. The certification shall include the license number, issue date, expiration date and whether the East Asian medicine practitioner has been the subject of final or pending disciplinary action; and

(e) Proof of AIDS education according to WAC 246-803-100, 246-803-110 or 246-803-120.

EAST ASIAN MEDICINE PROGRAM APPROVALNEW SECTION

WAC 246-803-500 Application for approval of a nonaccredited school, college or program. (1) Clinical and didactic training of a school, college or program may be approved separately.

(2) The department may consider for approval didactic training which meet the requirements outlined in WAC 246-803-210 and 246-803-220. Clinical training must meet the requirements outlined in WAC 246-803-230.

(3) Application for approval of a school, college or program is made by the authorized representative of the school, college or program.

(4) The authorized representative may request approval of the school, college or program as of the date of the application or retroactively to a specified date.

(5) The application for approval of a school, college or program shall include documentation required by the department pertaining to:

- (a) Educational administration;
- (b) Qualifications of instructors;
- (c) Didactic and/or clinical facilities; and
- (d) Content of offered training.

(6) An application fee as required under WAC 246-803-990 must accompany the completed application.

(7) The department will evaluate the application and, if necessary, conduct a site inspection of the school, college or program prior to approval by the department.

(8) After completing the evaluation of the application, the department may grant or deny approval, or grant approval conditioned upon appropriate modification to the application.

(9) If the department denies an application or grants conditional approval, the authorized representative of the applicant school, college or program may request a review within ninety days of the department's adverse action. After ninety days the contesting party may only obtain review by submitting a new application.

(10) The authorized representative shall notify the department of significant changes with respect to educational administration, instructor qualifications, facilities, or content of training.

(11) The department may inspect an approved school, college or program at reasonable intervals for compliance. Approval may be withdrawn if the department finds failure to comply with the requirements of law, administrative rules, or representations in the application.

(12) The authorized representative must immediately correct deficiencies which resulted in withdrawal of the department's approval.

NEW SECTION

WAC 246-803-510 Application for approval of alternative training. (1) Clinical and didactic training of any apprenticeship or tutorial instruction may be approved separately.

(2) The department may consider for approval didactic training which meets the requirements outlined in WAC 246-

803-210 and 246-803-220. Clinical training must meet the requirements of WAC 246-803-230.

(3) Application for approval of an apprenticeship or tutorial instruction is made by the apprenticeship or tutorial trainer.

(4) A request for approval of the apprenticeship or tutorial instruction may be as of the date of the application or retroactively to a specified date.

(5) The apprenticeship or tutorial instructor must be licensed as an East Asian medicine practitioner in the state of Washington and have no less than seven out of the last ten years of experience in full-time practice as an East Asian medicine practitioner.

(6) The application for approval of an apprenticeship or tutorial instruction must include documentation required by the department pertaining to:

- (a) Educational administration;
- (b) Qualifications of the apprenticeship or tutorial trainer;
- (c) Didactic and/or clinical facilities; and
- (d) Content of offered training.

(7) An application fee as required under WAC 246-803-990 must accompany the completed application.

(8) The department will evaluate the application and, if necessary, conduct a site inspection of the apprenticeship or tutorial instruction prior to approval by the department.

(9) After completing the evaluation of the application, the department may grant or deny approval, or grant approval conditioned upon appropriate modification to the application.

(10) If the department denies an application or grants conditional approval, the apprenticeship or tutorial trainer may request a review within ninety days of the department's adverse action. After ninety days the contesting party may only obtain review by submitting a new application.

(11) The apprenticeship or tutorial trainer shall notify the department of significant changes with respect to educational administration, trainer qualifications, facilities, or content of training.

(12) The department may inspect an approved apprenticeship or tutorial instruction at reasonable intervals for compliance. Approval may be withdrawn if the department finds failure to comply with the requirements of law, administrative rules, or representations in the application.

(13) The apprenticeship or tutorial trainer must immediately correct deficiencies which resulted in withdrawal of the department's approval.

(14) An apprenticeship or tutorial is of limited duration and ends at the time the parties to the agreement have completed their obligations.

FEESNEW SECTION

WAC 246-803-990 East Asian medicine practitioner fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee	WAC 246-802-230	State and federal agencies.
License application	\$100.00	WAC 246-802-240	Cooperation with investigation.
License renewal	196.00	WAC 246-802-250	AIDS prevention and information education requirements.
Inactive license renewal	50.00	WAC 246-802-990	East Asian medicine practitioner fees and renewal cycle.
Late renewal penalty	105.00		
Expired license reissuance	50.00		
Expired inactive license reissuance	50.00		
Duplicate license	15.00		
Certification of license	25.00		
East Asian medicine training program application	500.00		
UW library access fee	9.00		

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-802-010	Definitions.
WAC 246-802-025	Inactive status.
WAC 246-802-030	Approval of school, program, apprenticeship or tutorial instruction.
WAC 246-802-040	Western sciences.
WAC 246-802-050	Acupuncture sciences.
WAC 246-802-060	Clinical training.
WAC 246-802-070	Documents in foreign language.
WAC 246-802-080	Sufficiency of documents.
WAC 246-802-090	Examinations.
WAC 246-802-100	Consultation plan.
WAC 246-802-110	Referral to other health care practitioners.
WAC 246-802-120	Patient informed consent.
WAC 246-802-130	Application exhibits required.
WAC 246-802-140	Advertising.
WAC 246-802-160	General provisions.
WAC 246-802-170	Mandatory reporting.
WAC 246-802-180	Health care institutions.
WAC 246-802-190	Acupuncture associations or societies.
WAC 246-802-200	Health care service contractors and disability insurance carriers.
WAC 246-802-210	Professional liability carriers.
WAC 246-802-220	Courts.

WSR 11-08-070
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Medicaid Purchasing Administration)
 [Filed April 6, 2011, 10:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-12-043.

Title of Rule and Other Identifying Information: Chapter 388-543 WAC, Durable medical equipment and related supplies, prosthetics, orthotics, medical supplies and related services.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on June 7, 2011, at 10:00 a.m.

Date of Intended Adoption: Not sooner than June 8, 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 June 7, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by May 10, 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 proposed amendments to chapter 388-543 WAC, Durable medical equipment and related supplies, prosthetics, orthotics, medical supplies and related services are necessary in order to reorganize the order of the rules to easier use, to eliminate duplicate information, to propose clearer titles, offer a more logical flow, remove old acronyms, cross references, definitions, update coverage policy, update documentation requirements, update client eligibility, clarify proof of delivery requirements, update reimbursement methodology, clarify rental verses purchase, clarify a valid prescription, update authorization requirements, and clarified limits.

Reasons Supporting Proposal: As sections were added to the chapter over the years, the size of the chapter expanded to mammoth proportions. It became clear that it was time for

a major overhaul to update the chapter and to reorganize the order of the sections to match other medical assistance rule chapters recently filed.

Statutory Authority for Adoption: RCW 74.08.090, 74.04.050.

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: Erin Mayo, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1729.

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 Erin Mayo, P.O. Box 45506, Olympia, WA 98504-5506, fax (360) 586-9727, e-mail Erin.Mayo@dshs.wa.gov.

March 31, 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 11-10 issue of the Register.

WSR 11-08-072
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed April 6, 2011, 10:22 a.m.]

Original Notice.

Expedited rule making—Proposed notice was filed as WSR 11-03-078.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-400-0025 Who is eligible for disability lifeline benefits?

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

Date of Intended Adoption: Not earlier 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, 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.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to add pregnancy to the existing eligibility criteria for the disability lifeline (DL) program in WAC 388-400-0025.

Reasons Supporting Proposal: These changes are necessary to comply with RCW 74.04.005 which requires the department to provide DL benefits to eligible pregnant women who are not eligible for federal assistance programs.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapters 74.08A and 74.12 RCW.

Statute Being Implemented: RCW 74.04.005.

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: Shane Riddle, P.O. Box 45470, Olympia, WA 98504-5470, (360) 725-4352.

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

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."

April 1, 2011

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-16-096, filed 7/30/10, effective 9/1/10)

WAC 388-400-0025 Who is eligible for disability lifeline benefits? (1) Effective March 29, 2010, the "general assistance" program was replaced by "disability lifeline." Any reference in Washington Administrative Code (WAC) to general assistance also applies to disability lifeline.

(2) You are eligible for disability lifeline (DL) benefits if you:

(a) Are pregnant as verified by a medical statement or incapacitated as required under WAC 388-448-0001 through 388-448-0120;

(b) Are at least eighteen years old or, if under eighteen, a member of a married couple;

(c) Are in financial need according to DL income and resource rules in chapters 388-450, 388-470 and 388-488 WAC. We determine who is in your assistance unit according to WAC 388-408-0010;

(d) Meet the disability lifeline citizenship/alien status requirements under WAC 388-424-0015(2);

(e) Provide a Social Security number as required under WAC 388-476-0005;

(f) Reside in the state of Washington as required under WAC 388-468-0005;

(g) Undergo referrals for assessment, treatment, or to other agencies as provided under WAC 388-448-0130 through 388-448-0150;

(h) Sign an interim assistance reimbursement authorization to agree to repay the monetary value of general assistance or disability lifeline benefits subsequently duplicated by Supplemental Security Income benefits as described under WAC 388-448-0200, 388-448-0210 and 388-474-0020;

(i) Report changes of circumstances as required under WAC 388-418-0005; and

(j) Complete a mid-certification review and provide proof of any changes as required under WAC 388-418-0011.

(3) You aren't eligible for disability lifeline benefits if you:

(a) Have received general assistance or disability lifeline benefits for more than the maximum number of months as defined in WAC 388-448-0250.

(b) Are eligible for temporary assistance for needy families (TANF) benefits.

(c) Are eligible for state family assistance (SFA) benefits.

(d) Refuse or fail to meet a TANF or SFA eligibility rule.

(e) Refuse or fail to participate in drug or alcohol treatment as required in WAC 388-448-0220.

(f) Are eligible for Supplemental Security Income (SSI) benefits.

(g) Are an ineligible spouse of an SSI recipient.

(h) Failed to follow a Social Security Administration (SSA) program rule or application requirement and SSA denied or terminated your benefits.

(4) If you reside in a public institution and meet all other requirements, your eligibility for DL depends on the type of institution. A "public institution" is an institution that is supported by public funds, and a governmental unit either is responsible for it or exercises administrative control over it.

(a) You may be eligible for disability lifeline if you are:

(i) A patient in a public medical institution; or

(ii) A patient in a public mental institution and:

(A) Sixty-five years of age or older; or

(B) Twenty years of age or younger.

(b) You aren't eligible for DL when you are in the custody of or confined in a public institution such as a state penitentiary or county jail including placement:

(i) In a work release program; or

(ii) Outside of the institution including home detention.