

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 Enforce-

ment: 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

NEW SECTION

WAC 388-543-0500 DME and related supplies, prosthetics, orthotics, medical supplies and related services—

General. (1) The federal government considers durable medical equipment (DME) and related supplies, prosthetics, orthotics, and medical supplies as optional services under the medicaid program, except when prescribed as an integral part of an approved plan of treatment under the home health program or required under the early and periodic screening, diagnosis and treatment (EPSDT) program. The department may reduce or eliminate coverage for optional services, consistent with legislative appropriations.

(2) The department covers the DME and related supplies, prosthetics, orthotics, and related services including modifications, accessories, and repairs, and medical supplies listed in this chapter, according to department rules and subject to the limitations and requirements in this chapter.

(3) The department pays for DME and related supplies, prosthetics, orthotics, and related services including modifications, accessories, and repairs, and medical supplies when it is:

(a) Covered;

(b) Within the scope of the client's medical program (see WAC 388-501-0060 and WAC 388-501-0065);

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

(d) Prescribed by a physician, advanced registered nurse practitioner (ARNP), or physician assistant certified (PAC) within the scope of his or her licensure, except for dual eligible medicare/medicaid clients when medicare is the primary payer and the department is being billed for a co-pay and/or deductible only;

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

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

(g) Provided and used within accepted medical or physical medicine community standards of practice.

(4) The department requires prior authorization for covered DME and related supplies, prosthetics, orthotics, medical supplies, and related services when the clinical criteria set

forth in this chapter are not met, including the criteria associated with the expedited prior authorization process.

(a) The department evaluates requests requiring prior authorization on a case-by-case basis to determine medical necessity, according to the process found in WAC 388-501-0165.

(b) Refer to WAC 388-543-7000, 388-543-7001, and 388-543-7003 for specific details regarding authorization.

(5) The department bases its determination about which DME and related supplies, prosthetics, orthotics, medical supplies, and related services require prior authorization (PA) or expedited prior authorization (EPA) on utilization criteria (see WAC 388-543-7100 for PA and WAC 388-543-7300 for EPA). The department considers all of the following when establishing utilization criteria:

- (a) High cost;
- (b) The potential for utilization abuse;
- (c) A narrow therapeutic indication; and
- (d) Safety.

(6) The department evaluates a request for any DME item listed as noncovered in this chapter under the provisions of WAC 388-501-0160. When early and periodic screening, diagnosis and treatment (EPSDT) applies, the department evaluates a noncovered service, equipment, or supply according to the process in WAC 388-501-0165 to determine if it is medically necessary, safe, effective, and not experimental (see WAC 388-543-0100 for EPSDT rules).

(7) The department may terminate a provider's participation with the department according to WAC 388-502-0030 and 388-502-0040.

(8) The department evaluates a request for a service that is in a covered category, but has been determined to be experimental or investigational under the provisions of WAC 388-501-0165.

AMENDATORY SECTION (Amending WSR 02-16-054, filed 8/1/02, effective 9/1/02)

WAC 388-543-1000 (~~Definitions for durable medical equipment~~) **DME** and related supplies, prosthetics, and orthotics, medical supplies and related services—**Definitions.** The following definitions and abbreviations and those found in WAC 388-500-0005 apply to this chapter.

~~("Artificial limb" — See "prosthetic device."~~

~~"Augmentative communication device (ACD)" — See "speech-generating device (SGD)."~~

~~"Base year" means the year of the data source used in calculating prices.)~~

~~"By report (BR)" ((means a method of reimbursement for covered items, procedures, and services for which the department has no set maximum allowable fees)) 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.~~

~~"Date of delivery" ((means)) - The date the client actually took physical possession of an item or equipment.~~

"Digitized speech" (also referred to as devices with whole message speech output) - Words or phrases that have been recorded by an individual other than the speech-generating device (SGD) user for playback upon command of the SGD user.

"Disposable supplies" ((means)) - Supplies which may be used once, or more than once, but are time limited.

"Durable medical equipment (DME)" ((means)) - Equipment that:

- (1) Can withstand repeated use;
- (2) Is primarily and customarily used to serve a medical purpose;
- (3) Generally is not useful to a person in the absence of illness or injury; and
- (4) Is appropriate for use in the client's place of residence.

"EPSDT" - See WAC 388-500-0005.

"Expedited prior authorization (EPA)" ((means)) - ~~The process for obtaining authorization for selected~~ ((durable medical equipment, and related supplies, prosthetics, orthotics, medical supplies and related)) healthcare services((:)) in which providers use a set of numeric codes to indicate to ((MAA) the department which acceptable ((indications/conditions/MAA-defined)) indications, conditions, or department-defined criteria are applicable to a particular request for ((DME)) authorization. EPA is a form of prior authorization.

"Fee-for-service (FFS)" ((means)) - The general payment method ((MAA) the department uses to ((reimburse)) pay for covered medical services provided to clients, except those services covered under ((MAA's)) the department's pre-paid managed care programs.

~~(((Health care financing administration))~~ **Healthcare common procedure coding system (HCPCS)"** ((means)) - A coding system established by the Health Care Financing Administration (HCFA) to define services and procedures. HCFA is now known as the Centers for Medicare and Medicaid Services (CMS).

"Home" - For the purposes of this chapter, means location, other than hospital or skilled nursing facility where the client receives care.

"House wheelchair" ((means)) - A skilled nursing facility wheelchair that is included in the skilled nursing facility's per-patient-day rate under chapter 74.46 RCW.

"Limitation extension" ((means a process for requesting and approving covered services and reimbursement that exceeds a coverage limitation (quantity, frequency, or duration) set in WAC, billing instructions, or numbered memoranda. Limitation extensions require prior authorization)) - A client-specific authorization by the department for additional covered services beyond the set amount allowed under department rules. See WAC 388-501-0169.

~~(((Nonreusable supplies" are disposable supplies, which are used once and discarded.))~~

"Manual wheelchair" - See "wheelchair - manual."

"Medical supplies" ((means)) - Supplies that are:

- (1) Primarily and customarily used to service a medical purpose; and
- (2) Generally not useful to a person in the absence of illness or injury.

"Medically necessary" - See WAC 388-500-0005.

"National provider indicator (NPI)" - A federal system for uniquely identifying all providers of healthcare services, supplies, and equipment.

"Other durable medical equipment (other DME)" - All durable medical equipment, excluding wheelchairs and wheelchair-related items.

"Orthotic device" or "orthotic" ((means)) - A corrective or supportive device that:

- (1) Prevents or corrects physical deformity or malfunction; or
- (2) Supports a weak or deformed portion of the body.

"Personal or comfort item" ((means)) - An item or service which primarily serves the comfort or convenience of the client or caregiver.

~~("Personal computer (PC)" means any of a variety of electronic devices that are capable of accepting data and instructions, executing the instructions to process the data, and presenting the results. A PC has a central processing unit (CPU), internal and external memory storage, and various input/output devices such as a keyboard, display screen, and printer. A computer system consists of hardware (the physical components of the system) and software (the programs used by the computer to carry out its operations):)~~

"Power-drive wheelchair" - See "wheelchair - power."

"Pricing cluster" - A group of manufacturers' list prices for brands/models of DME, medical supplies and nondurable medical equipment that the department considers when calculating the reimbursement rate for a procedure code that does not have a fee established by medicare.

~~"Prior authorization" ((means process by which clients or providers must request and receive MAA approval for certain medical equipment and related supplies, prosthetics, orthotics, medical supplies and related services, based on medical necessity, before the services are provided to clients, as a precondition for provider reimbursement. Expedited prior authorization and limitation extension are types of prior authorization. Also see WAC 388-501-0165))~~ 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 device" or "prosthetic" ((means)) - A replacement, corrective, or supportive device 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:

- (1) Artificially replace a missing portion of the body;
 - (2) Prevent or correct physical deformity or malfunction;
- or
- (3) Support a weak or deformed portion of the body.

"Resource-based relative value scale (RBRVS)" ((means)) - A scale that measures the relative value of a medical service or intervention, based on the amount of physician resources involved.

"Reusable supplies" ((are)) - Supplies which are to be used more than once.

"Scooter" ((means)) - A federally-approved, motor-powered vehicle that:

- (1) Has a seat on a long platform;
- (2) Moves on either three or four wheels;
- (3) Is controlled by a steering handle; and
- (4) Can be independently driven by a client.

"Specialty bed" ((means)) - A pressure reducing support surface, such as foam, air, water, or gel mattress or overlay.

"Speech generating device (SGD)" ((means)) - An electronic device or system that compensates for the loss or impairment of a speech function due to a congenital condition, an acquired disability, or a progressive neurological disease. The term includes only that equipment used for the purpose of communication. Formerly known as "augmentative communication device (ACD)."

"Synthesized speech" - Is a technology that translates a user's input into device-generated speech using algorithms representing linguistic rules, unlike prerecorded messages of digitized speech. A SGD that has synthesized speech is not limited to prerecorded messages but rather can independently create messages as communication needs dictate.

"Three- or four-wheeled scooter" ((means)) - A three- or four-wheeled vehicle meeting the definition of scooter (see "scooter") and which has the following minimum features:

- (1) Rear drive;
- (2) A twenty-four volt system;
- (3) Electronic or dynamic braking;
- (4) A high to low speed setting; and
- (5) Tires designed for indoor/outdoor use.

"Trendelenburg position" ((means)) - A position in which the patient is lying on his or her back on a plane inclined thirty to forty degrees. This position makes the pelvis higher than the head, with the knees flexed and the legs and feet hanging down over the edge of the plane.

"Usual and customary charge" ((means)) - The amount the provider typically charges to fifty percent or more of his or her ~~((nonmedicaid clients, including clients with other third-party coverage))~~ patients who are not medical assistance clients.

~~("Warranty wheelchair" means a warranty))~~ **"Warranty-period"** - A guarantee or assurance, according to manufacturers' or provider's guidelines, of ~~((not less than one year))~~ set duration from the date of purchase.

"Wheelchair - manual" ((means)) - A federally-approved, nonmotorized wheelchair that is capable of being independently propelled and fits one of the following categories:

- (1) Standard:
 - (a) Usually is not capable of being modified;
 - (b) Accommodates a person weighing up to two hundred fifty pounds; and
 - (c) Has a warranty period of at least one year.
- (2) Lightweight:
 - (a) Composed of lightweight materials;
 - (b) Capable of being modified;
 - (c) Accommodates a person weighing up to two hundred fifty pounds; and

- (d) Usually has a warranty period of at least three years.
 - (3) High-strength lightweight:
 - (a) Is usually made of a composite material;
 - (b) Is capable of being modified;
 - (c) Accommodates a person weighing up to two hundred fifty pounds;
 - (d) Has an extended warranty period of over three years; and
 - (e) Accommodates the very active person.
 - (4) Hemi:
 - (a) Has a seat-to-floor height lower than eighteen inches to enable an adult to propel the wheelchair with one or both feet; and
 - (b) Is identified by its manufacturer as "Hemi" type with specific model numbers that include the "Hemi" description.
 - (5) Pediatric: Has a narrower seat and shorter depth more suited to pediatric patients, usually adaptable to modifications for a growing child.
 - (6) Recliner: Has an adjustable, reclining back to facilitate weight shifts and provide support to the upper body and head.
 - (7) Tilt-in-space: Has a positioning system, which allows both the seat and back to tilt to a specified angle to reduce shear or allow for unassisted pressure releases.
 - (8) Heavy duty:
 - (a) Specifically manufactured to support a person weighing up to three hundred pounds; or
 - (b) Accommodating a seat width of up to twenty-two inches wide (not to be confused with custom manufactured wheelchairs).
 - (9) Rigid: Is of ultra-lightweight material with a rigid (nonfolding) frame.
 - (10) Custom heavy duty:
 - (a) Specifically manufactured to support a person weighing over three hundred pounds; or
 - (b) Accommodates a seat width of over twenty-two inches wide (not to be confused with custom manufactured wheelchairs).
 - (11) Custom manufactured specially built:
 - (a) Ordered for a specific client from custom measurements; and
 - (b) Is assembled primarily at the manufacturer's factory.
- "Wheelchair - power"** ((means)) - A federally-approved, motorized wheelchair that can be independently driven by a client and fits one of the following categories:
- (1) Custom power adaptable to:
 - (a) Alternative driving controls; and
 - (b) Power recline and tilt-in-space systems.
 - (2) Noncustom power: Does not need special positioning or controls and has a standard frame.
 - (3) Pediatric: Has a narrower seat and shorter depth that is more suited to pediatric patients. Pediatric wheelchairs are usually adaptable to modifications for a growing child.

AMENDATORY SECTION (Amending WSR 07-17-062, filed 8/13/07, effective 9/13/07)

WAC 388-543-1100 ((Scope of coverage and coverage limitations for)) DME and related supplies, prosthetics, orthotics, medical supplies and related services—Cli-

ent eligibility. ((The federal government deems **durable medical equipment (DME)** and related supplies, **prosthetics, orthotics, and medical supplies** as optional services under the **medicaid** program, except when prescribed as an integral part of an approved plan of treatment under the home health program or required under the early and periodic screening, diagnosis and treatment (**EPSDT**) program. The **department** may reduce or eliminate coverage for optional services, consistent with legislative appropriations.

(1) The department covers DME and related supplies, prosthetics, orthotics, medical supplies, related services, repairs and labor charges when they are:

(a) Within the scope of an eligible client's medical care program (see WAC 388-501-0060 and 388-501-0065);

(b) Within accepted medical or physical medicine community standards of practice;

(c) Prior authorized as described in WAC 388-543-1600, 388-543-1800, and 388-543-1900;

(d) Prescribed by a physician, advanced registered nurse practitioner (ARNP), or physician assistant certified (PAC). Except for dual eligible medicare/medicaid clients when medicare is the primary payer and the department is being billed for co-pay and/or deductible only:

(i) The prescriber must use DSHS 13-794 (Health and Recovery Services (HRSA) Prescription Form) to write the prescription. The form is available for download at <http://www1.dshs.wa.gov/msa/forms/eforms.html>; and;

(ii) The prescription (DSHS 13-794) must:

(A) Be signed and dated by the prescriber;

(B) Be no older than one year from the date the prescriber signs the prescription; and

(C) State the specific item or service requested, diagnosis, estimated length of need (weeks, months, or years), and quantity;

(e) Billed to the department as the payor of last resort only. The department does not pay first and then collect from medicare and;

(f) **Medically necessary** as defined in WAC 388-500-0005. The provider or client must submit sufficient objective evidence to establish medical necessity. Information used to establish medical necessity includes, but is not limited to, the following:

(i) A physiological description of the client's disease, injury, impairment, or other ailment, and any changes in the client's condition written by the prescribing physician, ARNP, PAC, licensed prosthetist and/or orthotist, physical therapist, occupational therapist, or speech therapist; and/or

(ii) Video and/or photograph(s) of the client demonstrating the impairments as well as client's ability to use the requested equipment, when applicable.

(2) The department evaluates a request for any equipment or device listed as nonecovered in WAC 388-543-1300 under the provisions of WAC 388-501-0160.

(3) The department evaluates a request for a service that is in a covered category, but has been determined to be experimental or investigational under WAC 388-531-0550, under the provisions of WAC 388-501-0165.

(4) The department evaluates requests for covered services in this chapter that are subject to limitations or other restrictions and approves such services beyond those limita-

tions or restrictions under the provisions of WAC 388-501-0165 and 388-501-0169.

(5) The department does not reimburse for DME and related supplies, prosthetics, orthotics, medical supplies, related services, and related repairs and labor charges under ~~fee-for-service (FFS)~~ when the client is any of the following:

- (a) An inpatient hospital client;
- (b) Eligible for both ~~medicare~~ and medicaid, and is staying in a ~~nursing facility~~ in lieu of hospitalization;
- (c) Terminally ill and receiving hospice care; or
- (d) Enrolled in a risk-based managed care plan that includes coverage for such items and/or services.

(6) ~~The department covers medical equipment and related supplies, prosthetics, orthotics, medical supplies and related services, repairs, and labor charges listed in the department's published issuances, including Washington Administrative Code (WAC), billing instructions, and numbered memoranda.~~

(7) An interested party may request the department to include new equipment/supplies in the billing instructions by sending a written request plus all of the following:

- (a) Manufacturer's literature;
- (b) Manufacturer's pricing;
- (c) Clinical research/case studies (including FDA approval, if required); and
- (d) Any additional information the requester feels is important.

(8) The department bases the decision to purchase or rent DME for a client, or to pay for repairs to client-owned equipment on medical necessity.

(9) The department covers replacement batteries for purchased medically necessary DME equipment covered within this chapter.

(10) The department covers the following categories of medical equipment and supplies only when they are medically necessary, prescribed by a physician, ARNP, or PAC, are within the scope of his or her practice as defined by state law, and are subject to the provisions of this chapter and related WACs:

- (a) Equipment and supplies prescribed in accordance with an approved plan of treatment under the home health program;
- (b) Wheelchairs and other DME;
- (c) Prosthetic/orthotic devices;
- (d) Surgical/ostomy appliances and urological supplies;
- (e) Bandages, dressings, and tapes;
- (f) Equipment and supplies for the management of diabetes; and

(g) ~~Other medical equipment and supplies listed in department published issuances.~~

(11) The department evaluates a ~~BR~~ item, procedure, or service for its medical appropriateness and reimbursement value on a case-by-case basis.

(12) For a client in a ~~nursing facility~~, the department covers only the following when medically necessary. All other DME and supplies identified in the department's billing instructions are the responsibility of the nursing facility, in accordance with chapters 388-96 and 388-97 WAC. See also WAC 388-543-2900 (3) and (4).

- (a) The department covers:

(i) The purchase and repair of a speech generating device (SGD) and one of the following:

(A) A powered or manual wheelchair for the exclusive full-time use of a permanently disabled nursing facility resident when the wheelchair is not included in the nursing facility's per diem rate; or

(B) A specialty bed or the rental of a specialty bed outside of the skilled nursing facility per diem when:

- (I) The specialty bed is intended to help the client heal; and
- (II) The client's nutrition and laboratory values are within normal limits.

(b) A heavy duty bariatric bed is not considered a specialty bed.

(13) Vendors must provide instructions for use of equipment; therefore, instructional materials such as pamphlets and video tapes are not covered.

(14) Bilirubin lights are limited to rentals, for at-home newborns with jaundice)) (1) Durable medical equipment (DME) and related services, prosthetics and orthotics, medical supplies and related services are available to clients who are eligible for services under one of the following medical assistance programs:

(a) Categorically needy (CN);

(b) Children's healthcare as described in WAC 388-505-0210;

(c) Medically needy (MN);

(d) Disability lifeline (formerly GA U/ADATSA) (within Washington state or designated border cities); or

(e) Alien emergency medical (AEM) as described in WAC 388-438-0110, when the medical services are necessary to treat a qualifying emergency medical condition.

(2) Clients who are eligible for services under medicaid and medicaid (medically needy program-qualified medicaid beneficiaries) are eligible for DME and related services, prosthetics and orthotics, medical supplies and related services.

(3) Clients who are enrolled in a department contracted managed care organization (MCO) must arrange for DME and related services, prosthetics and orthotics, medical supplies and related services directly through his or her department-contracted MCO. The department does not pay for medical equipment and/or services provided to a client who is enrolled in a department-contracted MCO, but chose not to use one of the MCO's participating providers.

(4) For clients who reside in a skilled nursing facility, see WAC 388-543-5700.

AMENDATORY SECTION (Amending WSR 07-17-062, filed 8/13/07, effective 9/13/07)

WAC 388-543-2000 ((~~Wheelchairs~~)) **DME and related supplies, prosthetics, orthotics, medical supplies and related services—Eligible providers and provider requirements.** (1) The department ((bases its decisions regarding requests for wheelchairs on medical necessity and on a case-by-case basis.

(2) The following apply when the department determines that a wheelchair is medically necessary for six months or less:

(a) If the client lives at home, the department rents a wheelchair for the client; or

(b) If the client lives in a nursing facility, the nursing facility must provide a ~~house wheelchair~~ as part of the per diem rate paid by the aging and disability services administration (ADSA).

(3) ~~The department considers rental or purchase of a manual wheelchair for a home client who is nonambulatory or has limited mobility and requires a wheelchair to participate in normal daily activities. The department determines the type of manual wheelchair based on the following:~~

(a) A standard wheelchair if the client's medical condition requires the client to have a wheelchair to participate in normal daily activities;

(b) A standard lightweight wheelchair if the client's medical condition is such that the client:

(i) Cannot self-propel a standard weight wheelchair; or

(ii) Requires custom modifications that cannot be provided on a standard weight wheelchair.

(c) A high-strength lightweight wheelchair for a client:

(i) Whose medical condition is such that the client cannot self-propel a lightweight or standard weight wheelchair; or

(ii) Requires custom modifications that cannot be provided on a standard weight or lightweight wheelchair.

(d) A heavy-duty wheelchair for a client who requires a specifically manufactured wheelchair designed to:

(i) Support a person weighing up to three hundred pounds; or

(ii) Accommodate a seat width up to twenty-two inches wide (not to be confused with custom heavy-duty wheelchairs).

(e) A custom heavy-duty wheelchair for a client who requires a specifically manufactured wheelchair designed to:

(i) Support a person weighing over three hundred pounds; or

(ii) Accommodate a seat width over twenty-two inches wide.

(f) A rigid wheelchair for a client:

(i) With a medical condition that involves severe upper extremity weakness;

(ii) Who has a high level of activity; and

(iii) Who is unable to self-propel any of the above categories of wheelchair.

(g) A custom-manufactured wheelchair for a client with a medical condition requiring wheelchair customization that cannot be obtained on any of the above categories of wheelchairs.

(4) The department considers a ~~power-drive wheelchair~~ when the client's medical needs cannot be met by a less costly means of mobility. The prescribing physician must certify that the client can safely and effectively operate a power-drive wheelchair and that the client meets all of the following conditions:

(a) The client's medical condition negates his or her ability to self-propel any of the wheelchairs listed in the manual wheelchair category; and

(b) A power-drive wheelchair will provide the client the only means of independent mobility; or

(c) A power-drive wheelchair will enable a child to achieve age-appropriate independence and developmental milestones.

(d) All other circumstances will be considered based on medical necessity and on a case-by-case basis.

(e) The following additional information is required for a three- or four-wheeled power-drive scooter/cart:

(i) The prescribing physician certifies that the client's condition is stable; and

(ii) The client is unlikely to require a standard power-drive wheelchair within the next two years.

(5) The department considers the power-drive wheelchair to be the client's primary chair when the client has both a power-drive wheelchair and a manual wheelchair.

(6) In order to consider purchasing a wheelchair, the department requires the provider to submit the following information from the prescribing physician, physical therapist, or occupational therapist:

(a) Specific medical justification for the make and model of wheelchair requested;

(b) Define the degree and extent of the client's impairment (such as stage of decubitus, severity of spasticity or flaccidity, degree of kyphosis or scoliosis); and

(c) Documented outcomes of less expensive alternatives (aids to mobility) that have been tried by the client.

(7) In addition to the basic wheelchair, the department may consider wheelchair accessories or modifications that are specifically identified by the manufacturer as separate line-item charges. The provider must submit specific medical justification for each line item, with the modification request.

(8) The department considers wheelchair modifications to a medically necessary wheelchair when the provider submits all of the following with the modification request:

(a) The make, model, and serial number of the wheelchair to be modified;

(b) The modification requested; and

(c) Specific information regarding the client's medical condition that necessitates the modification.

(9) The department may consider wheelchair repairs to a medically necessary wheelchair; the provider must submit to the department the make, model, and serial number of the wheelchair for which the repairs are requested.

(10) The department may cover two wheelchairs, a manual wheelchair and a power-drive wheelchair, for a noninstitutionalized client in certain situations. One of the following must apply:

(a) The architecture of the client's home is completely unsuitable for a power-drive wheelchair, such as narrow hallways, narrow doorways, steps at the entryway, and insufficient turning radii;

(b) The architecture of the client's home bathroom is such that power-drive wheelchair access is not possible, and the client needs a manual wheelchair to safely and successfully complete bathroom activities and maintain personal cleanliness;

(c) The client has a power-drive wheelchair, but also requires a manual wheelchair because the power-drive wheelchair cannot be transported to meet the client's community, workplace, or educational activities; the manual wheelchair would allow the caregiver to transport the client in a

standard automobile or van. In these cases, the department requires the client's situation to meet the following conditions:

(i) ~~The client's activities that require the second wheelchair must be located farther than one-fourth of a mile from the client's home; and~~

(ii) ~~Cabulance, public buses, or personal transit are neither available, practical, nor possible for financial or other reasons.~~

(iii) ~~All other circumstances will be considered on a case-by-case basis, based on medical necessity))~~ pays qualified providers for durable medical equipment (DME) and related supplies, prosthetics, orthotics, medical supplies, repairs, and related services on a fee-for-service basis as follows:

(a) DME providers for DME and related repair services;

(b) Medical equipment dealers, pharmacies, and home health agencies under their national provider indicator (NPI) for medical supplies;

(c) Prosthetics and orthotics providers who are licensed by the Washington state department of health in prosthetics and orthotics. Medical equipment dealers and pharmacies that do not require licensure to provide selected prosthetics and orthotics may be paid for those selected prosthetics and orthotics only;

(d) Physicians who provide medical equipment and supplies in the office. The department may pay separately for medical supplies, subject to the provisions in the department's resource-based relative value scale fee schedule; and

(e) Out-of-state orthotics and prosthetics providers who meet their state regulations.

(2) Providers and suppliers of durable medical equipment (DME) and related supplies, prosthetics, orthotics, medical supplies and related items must:

(a) Meet the general provider requirements in chapter 388-502 WAC;

(b) Have the proper business license and be certified, licensed and/or bonded if required, to perform the services billed to the department;

(c) Have a valid prescription;

(i) To be valid, a prescription must:

(A) Be written on the department's Prescription Form (DSHS 13-794). The department's electronic forms are available online at: <http://www.dshs.wa.gov/msa/forms/eforms.html>;

(B) Be written by a physician, advanced registered nurse practitioner (ARNP), or physician's assistant certified (PAC);

(C) Be written, signed (including the prescriber's credentials), and dated by the prescriber on the same day and before delivery of the supply, equipment, or device. Prescriptions must not be back-dated;

(D) Be no older than one year from the date the prescriber signs the prescription; and

(E) State the specific item or service requested, diagnosis, estimated length of need (weeks, months, or years), and quantity.

(ii) For dual eligible medicare/medicaid clients when medicare is the primary payer and the department is being billed for the co-pay and/or deductible only, subsection (2)(a) of this section does not apply.

(d) Provide instructions for use of equipment;

(e) Furnish only new equipment to clients that includes full manufacturer and dealer warranties. See WAC 388-543-2250(3);

(f) Furnish documentation of proof of delivery, upon department request (see WAC 388-543-2200); and

(g) Bill the department using only the allowed procedure codes listed in published DME and related supplies, prosthetics and orthotics, medical supplies and related items billing instructions.

AMENDATORY SECTION (Amending WSR 03-19-083, filed 9/12/03, effective 10/13/03)

WAC 388-543-2100 ((Wheelchairs—Reimbursement methodology)) DME and related supplies, prosthetics, orthotics, medical supplies and related services—Requests to include new equipment/supplies/technology.

(1) ((MAA reimburses a DME provider for purchased wheelchairs for a home or nursing facility client based on the specific brand and model of wheelchair dispensed. MAA decides which brands and/or models of wheelchairs are eligible for reimbursement based on all of the following:

(a) The client's medical needs;

(b) Product quality;

(c) Cost; and

(d) Available alternatives.

(2) For wheelchair rentals and wheelchair accessories (e.g., cushions and backs), MAA uses either:

(a) The medicare fees that are current on April 1 of each year; or

(b) MAA's maximum allowable reimbursement is based on a percentage of the manufacturer's list price in effect on January 31 of the **base year**, or the invoice for the specific item. MAA uses the following percentages:

(i) For basic standard wheelchairs, sixty-five percent;

(ii) For add-on accessories and parts, eighty-four percent;

(iii) For upcharge modifications and cushions, eighty percent;

(iv) For all other manual wheelchairs, eighty percent; and

(v) For all other power-drive wheelchairs, eighty-five percent.

(3) MAA determines rental reimbursement for categories of manual and power-driven wheelchairs based on average market rental rates or medicare rates.

(4) MAA evaluates and updates the wheelchair fee schedule once per year.

(5) MAA implements wheelchair rate changes on April 1 of the base year, and the rates are effective until the next rate change)) An interested party may request the department to include new equipment/supplies in the department's durable medical equipment (DME) and related supplies, prosthetics, orthotics, medical supplies and related services billing instructions.

(2) The request should include credible evidence, including but not limited to:

(a) Manufacturer's literature;

(b) Manufacturer's pricing;

(c) Clinical research/case studies (included FDA approval, if required);

(d) Proof of certification from the centers for medicare and medicaid services (CMS), if applicable; and

(e) Any additional information the requester feels would aid the department in its determination

(3) Requests should be sent to the DME Program Management Unit, PO Box 45505, Olympia WA 98504-5506.

AMENDATORY SECTION (Amending WSR 02-16-054, filed 8/1/02, effective 9/1/02)

WAC 388-543-2200 ((~~Speech generating devices (SGD)~~) DME and related supplies, prosthetics, orthotics, medical supplies and related services—Proof of delivery.

(1) ((MAA considers all requests for speech generating devices (SGDs) on a case-by-case basis. The SGD requested must be for a severe expressive speech impairment, and the medical condition must warrant the use of a device to replace verbal communication (e.g., to communicate medical information):

(2) In order for MAA to cover an SGD, the SGD must be a speech device intended for use by the individual who has a severe expressive speech impairment, and have one of the following characteristics. For the purposes of this section, MAA uses the medicare definitions for "digitized speech" and "synthesized speech" that were in effect as of April 1, 2002. The SGD must have:

(a) Digitized speech output, using pre-recorded messages;

(b) Synthesized speech output requiring message formation by spelling and access by physical contact with the device; or

(c) Synthesized speech output, permitting multiple methods of message formulation and multiple methods of device access:

(3) MAA requires a provider to submit a prior authorization request for SGDs. The request must be in writing and contain all of the following information:

(a) A detailed description of the client's therapeutic history, including, at a minimum:

(i) The medical diagnosis;

(ii) A physiological description of the underlying disorder;

(iii) A description of the functional limitations; and

(iv) The prognosis for improvement or degeneration.

(b) A written assessment by a licensed speech language pathologist (SLP) that includes all of the following:

(i) If the client has a physical disability, condition, or impairment that requires equipment, such as a wheelchair, or a device to be specially adapted to accommodate an SGD, an assessment by the prescribing physician, licensed occupational therapist or physical therapist;

(ii) Documented evaluations and/or trials of each SGD that the client has tried. This includes less costly types/models, and the effectiveness of each device in promoting the client's ability to communicate with health care providers, caregivers, and others;

(iii) The current communication impairment, including the type, severity, language skills, cognitive ability, and anticipated course of the impairment;

(iv) An assessment of whether the client's daily communication needs could be met using other natural modes of communication;

(v) A description of the functional communication goals expected to be achieved, and treatment options;

(vi) Documentation that the client's speaking needs cannot be met using natural communication methods; and

(vii) Documentation that other forms of treatment have been ruled out.

(e) The provider has shown or has demonstrated all of the following:

(i) The client has reliable and consistent motor response, which can be used to communicate with the help of an SGD;

(ii) The client has demonstrated the cognitive and physical abilities to utilize the equipment effectively and independently to communicate; and

(iii) The client's treatment plan includes a training schedule for the selected device.

(d) A prescription for the SGD from the client's treating physician.

(4) MAA may require trial-use rental. All rental costs for the trial use will be applied to the purchase price.

(5) MAA covers SGDs only once every two years for a client who meets the criteria in subsection (3) of this section. MAA does not approve a new or updated component, modification, or replacement model for a client whose SGD can be repaired or modified. MAA may make exceptions to the criteria in this subsection based strictly on a finding of unforeseeable and significant changes to the client's medical condition. The prescribing physician is responsible for justifying why the changes in the client's medical condition were unforeseeable.

(6) Clients who are eligible for both medicare and medicaid must apply first to medicare for an SGD. If medicare denies the request and the client requests an SGD from MAA, MAA evaluates the request based on medical necessity and the requirements in this section. The request for an SGD must meet the authorization requirements in this section)) When a provider delivers an item directly to the client or the client's authorized representative, the provider must furnish the proof of delivery when the department requests that information. All of the following apply:

(a) The department requires a delivery slip as proof of delivery, and it must:

(i) Be signed and dated by the client or the client's authorized representative (the date of signature must be the date the item was received by the client);

(ii) Include the client's name and a detailed description of the item(s) delivered, including the quantity and brand name; and

(iii) For durable medical equipment (DME) that may require future repairs, include the serial number.

(b) When the provider or supplier submits a claim for payment to the department, the date of service on the claim must be one of the following:

(i) For a one-time delivery, the date the item was received by the client or the client's authorized representative; or

(ii) For nondurable medical supplies for which the department has established a monthly maximum, on or after the date the item was received by the client or the client's authorized representative.

(2) When a provider uses a delivery/shipping service to deliver items which are not fitted to the client, the provider must furnish proof of delivery that the client received the equipment and/or supply, when the department requests that information.

(a) If the provider uses a delivery/shipping service, the tracking slip is the proof of delivery. The tracking slip must include:

(i) The client's name or a reference to the client's package(s);

(ii) The delivery service package identification number; and

(iii) The delivery address.

(b) If the provider/supplier does the delivering, the delivery slip is the proof of delivery. The delivery slip must include:

(i) The client's name;

(ii) The shipping service package identification number;

(iii) The quantity, detailed description(s), and brand name(s) of the items being shipped; and

(iv) For DME that may require future repairs, the serial number.

(c) When billing the department:

(i) Use the shipping date as the date of service on the claim if the provider uses a delivery/shipping service; or

(ii) Use the actual date of delivery as the date of service on the claim if the provider/supplier does the delivery.

(3) A provider must not use a delivery/shipping service to deliver items which must be fitted to the client.

(4) Providers must obtain prior authorization when required before delivering the item to the client. The item must be delivered to the client before the provider bills the department.

(5) The department does not pay for DME and related supplies, prosthetics and orthotics, medical supplies and related items furnished to the department's clients when:

(a) The medical professional who provides medical justification to the department for the item provided to the client is an employee of, has a contract with, or has any financial relationship with the provider of the item; or

(b) The medical professional who performs a client evaluation is an employee of, has a contract with, or has any financial relationship with a provider of DME and related supplies, prosthetics and orthotics, medical supplies, and related items.

NEW SECTION

WAC 388-543-2250 DME and related supplies, prosthetics, orthotics, medical supplies and related services—Rental or purchase. (1) The department bases its decision to rent or purchase durable medical equipment (DME) on the length of time the client needs the equipment.

(2) A provider must not bill the department for the rental or purchase of equipment supplied to the provider at no cost by suppliers/manufacturers.

(3) The department purchases new DME equipment only.

(a) A new DME item that is placed with a client initially as a rental item is considered a new item by the department at the time of purchase.

(b) A used DME item that is placed with a client initially as a rental item must be replaced by the supplier with a new item prior to purchase by the department.

(4) The department requires a dispensing provider to ensure the DME rented to a client is:

(a) In good working order; and

(b) Comparable to equipment the provider rents to individuals with similar medical equipment needs who are either private pay or who have other third-party coverage.

(5) The department's minimum rental period for covered DME is one day.

(6) The department authorizes rental equipment for a specific period of time. The provider must request authorization from the department for any extension of the rental period.

(7) The department's reimbursement amount for rented DME includes all of the following:

(a) Delivery to the client;

(b) Fitting, set-up, and adjustments;

(c) Maintenance, repair and/or replacement of the equipment; and

(d) Return pickup by the provider.

(8) The department considers rented equipment to be purchased after twelve months' rental unless the equipment is restricted as rental only.

(9) DME and related supplies, prosthetics, and orthotics purchased by the department for a client are the client's property.

(10) The department rents, but does not purchase, certain DME for clients. This includes, but is not limited to, the following:

(a) Bilirubin lights for newborns at home with jaundice; and

(b) Electric hospital-grade breast pumps.

(11) The department stops paying for any rented equipment effective the date of a client's death. The department prorates monthly rentals as appropriate.

(12) For a client who is eligible for both Medicare and Medicaid, the department pays only the client's coinsurance and deductibles. The department discontinues paying client's coinsurance and deductibles for rental equipment when either of the following applies:

(a) The reimbursement amount reaches Medicare's reimbursement cap for the equipment; or

(b) Medicare considers the equipment purchased.

(13) The department does not obtain or pay for insurance coverage against liability, loss and/or damage to rental equipment that a provider supplies to a client.

AMENDATORY SECTION (Amending WSR 01-01-078, filed 12/13/00, effective 1/13/01)

WAC 388-543-3000 (~~DME and supplies provided in physician's office~~) Covered—Hospital beds, mattresses, and related equipment. ((MAA does not pay a DME provider for medical supplies used in conjunction with a physician office visit. MAA pays the office physician for these supplies, as stated in the RBRVS, when it is appropriate)) (1) Hospital beds.

(a) The department covers, with prior authorization, one hospital bed in a ten-year period, per client, with the following limitations:

(i) A manual hospital bed as the primary option when the client has full-time caregivers; or

(ii) A semi-electric hospital bed only when:

(A) The client's medical need requires the client to be positioned in a way that is not possible in a regular bed and the position cannot be attained through less costly alternatives (e.g., the use of bedside rails, a trapeze, pillows, bolsters, rolled up towels or blankets);

(B) The client's medical condition requires immediate position changes;

(C) The client is able to operate the controls independently; and

(D) The client needs to be in the Trendelenburg position.

(b) The department bases the decision to rent or purchase a manual or semi-electric hospital bed on the length of time the client needs the bed.

(c) Rental - The department pays up to eleven months continuous rental of a hospital bed in a twelve-month period as follows:

(i) A manual hospital bed with mattress, with or without bed rails. The client must meet all of the following clinical criteria:

(A) Has a length of need/life expectancy that is twelve months or less;

(B) Has a medical condition that requires positioning of the body that cannot be accomplished in a standard bed (reason must be documented in the client's file);

(C) Has tried pillows, bolsters, and/or rolled up blankets/towels in client's own bed, and determined to not be effective in meeting the client's positioning needs (nature of ineffectiveness must be documented in the client's file);

(D) Has a medical condition that necessitates upper body positioning at no less than a thirty-degree angle the majority of time the client is in the bed;

(E) Does not have full-time caregivers; and

(F) Does not also have a rental wheelchair.

(ii) A semi-electric hospital bed with mattress, with or without bed rails. The client must meet all of the following clinical criteria:

(A) Has a length of need/life expectancy that is twelve months or less;

(B) Has tried pillows, bolsters, and/or rolled up blankets/towels in own bed, and determined ineffective in meeting positioning needs (nature of ineffectiveness must be documented in the client's file);

(C) Has a chronic or terminal condition such as chronic obstructive pulmonary disease (COPD), congestive heart failure (CHF), lung cancer or cancer that has metastasized to

the lungs, or other pulmonary conditions that cause the need for immediate upper body elevation;

(D) Must be able to independently and safely operate the bed controls; and

(E) Does not have a rental wheelchair.

(d) Purchase - The department pays, with prior authorization, for the initial purchase of a semi-electric hospital bed with mattress, with or without bed rails, when the following criteria are met:

(i) The client:

(A) Has a length of need/life expectancy that is twelve months or more;

(B) Has tried positioning devices such as pillows, bolsters, foam wedges, and/or rolled up blankets/towels in own bed, and been determined ineffective in meeting positioning needs (nature of ineffectiveness must be documented in the client's file);

(C) Must be able to independently and safely operate the bed controls; and

(D) Is diagnosed:

(I) With quadriplegia;

(II) With tetraplegia;

(III) With duchenne muscular dystrophy;

(IV) With amyotrophic lateral sclerosis (ALS), often referred to as "Lou Gehrig's Disease";

(V) As ventilator-dependent; or

(VI) With chronic obstructive pulmonary disease (COPD) or congestive heart failure (CHF) with aspiration risk or shortness of breath that causes the need for an immediate change of more than thirty degrees.

(ii) Requests for prior authorization must be submitted in writing to the department and be accompanied by:

(A) A completed General Information for Authorization form (DSHS 13-835) and Hospital Bed Evaluation form (DSHS 13-747). The department's electronic forms are available online (see WAC 388-543-7000 Authorization);

(B) Documentation of the client's life expectancy, in months and/or years, the client's diagnosis, the client's date of delivery and serial number of the hospital bed; and

(C) Be accompanied by written documentation, from the client or caregiver, indicating the client has not been previously provided a hospital bed, purchase or rental.

(2) Mattresses and related equipment - The department pays, with prior authorization, for the following:

(a) Pressure pad, alternating with pump -one in a five-year period;

(b) Dry pressure mattress - one in a five-year period;

(c) Gel or gel-like pressure pad for mattress - one in a five-year period;

(d) Gel pressure mattress - one in a five-year period;

(e) Water pressure pad for mattress - one in a five-year period;

(f) Dry pressure pad for mattress - one in a five-year period;

(g) Mattress, inner spring - one in a five-year period; and

(h) Mattress, foam rubber - one in a five-year period.

NEW SECTION

WAC 388-543-3100 Covered—Patient lifts/traction, equipment/fracture, and frames/transfer boards. The department covers the purchase of the following with the stated limitations, without prior authorization:

- (1) Patient lift, hydraulic, with seat or sling - one per client in a five-year period.
- (2) Traction equipment - one per client in a five-year period.
- (3) Trapeze bars - one per client in a five-year period. The department requires prior authorization for rental.
- (4) Fracture frames - one per client in a five-year period. The department requires prior authorization for rental.
- (5) Transfer board or devices - one per client in a five-year period.

NEW SECTION

WAC 388-543-3200 Covered—Positioning devices. The department covers, without prior authorization, positioning devices with the following limitations:

- (1) Positioning system/supine board (small or large), including padding, straps adjustable armrests, footboard, and support blocks - one per client in a five-year period.
- (2) Prone stander (infant, child, youth, or adult size) -one per client is a five-year period. The prone stander must be prescribed by a physician and the client must not be residing in a skilled nursing facility.
- (3) Adjustable standing frame (for child/adult who is thirty to sixty-eight inches tall), including two padded back support blocks, a chest strap, a pelvic strap, a pair of knee blocks, an abductor, and a pair of foot blocks - one per client in a five-year period.
- (4) Positioning car seats - one per client, eight years of age and older or four feet nine inches or taller, in a five-year period.

NEW SECTION

WAC 388-543-3300 Covered—Osteogenesis electrical stimulator (bone growth stimulator). (1) The department covers, with prior authorization, noninvasive osteogenesis electrical stimulators, limited to one per client, in a five-year period.

- (2) The department pays for the purchase of non-spinal bone growth stimulators, only when:
 - (a) The stimulators have pulsed electromagnetic field (PEMF) simulation; and
 - (b) The client meets one or more of the following clinical criteria:
 - (i) Has a nonunion of a long bone fracture (which includes clavicle, humerus, phalanx, radius, ulna, femur, tibia, fibula, metacarpal and metatarsal) after three months have elapsed since the date of injury without healing; or
 - (ii) Has a failed fusion of a joint other than in the spine where a minimum of nine months has elapsed since the last surgery.
- (3) The department pays for the purchase of spinal bone growth stimulators, when:

(a) Prescribed by a neurologist, an orthopedic surgeon, or a neurosurgeon and;

(b) The client meets one or more of the following clinical criteria:

- (i) Has a failed spinal fusion where a minimum of nine months have elapsed since the last surgery; or
- (ii) Is post-op from a multilevel spinal fusion surgery; or
- (iii) Is post-op from spinal fusion surgery where there is a history of a previously failed spinal fusion.

NEW SECTION

WAC 388-543-3400 Covered—Communication devices/speech generating devices (SGD). (1) The department covers:

- (a) One artificial larynx, any type, without prior authorization, per client in a five-year period; and
 - (b) One speech generating device (SGD), with prior authorization, per client every two years.
- (2) The department pays only for those approved speech generating devices (SGDs) that have:
- (a) Digitized speech output, using pre-recorded messages;
 - (b) Synthesized speech output requiring message formation by spelling and access by physical contact with the device; or
 - (c) Synthesized speech output, permitting multiple methods of message formulation and multiple methods of device access.
- (3) The department requires prior authorization for SGDs and reviews requests on a case-by-case basis. Requests to the department for prior authorization must meet all of the following:
- (a) The client must have a severe expressive speech impairment and the client's medical condition warrants the use of a device to replace verbal communication (e.g., to communicate medical information); and
 - (b) The request must be in writing and be accompanied by:
 - (i) A completed General Information for Authorization form (DSHS 13-835). The department's electronic forms are available online (see WAC 388-543-7000 Authorization); and
 - (ii) A completed Speech Language Pathologist (SLP) Evaluation for Speech Generating Devices form (DSHS 15-310). The department requires, at a minimum, the following information:
 - (A) A detailed description of the client's therapeutic history;
 - (B) A written assessment by a licensed speech language pathologist (SLP); and
 - (C) Documentation of all of the following:
 - (I) The client has reliable and consistent motor response, which can be used to communicate with the help of an SGD;
 - (II) The client has demonstrated the cognitive and physical abilities to utilize the equipment effectively and independently to communicate; and
 - (III) The client's treatment plan includes a training schedule for the selected device.

(iii) A copy of the prescription for the SGD from the client's treating physician written on a department Prescription form (DSHS 13-794) (see WAC 388-543-2000(2)).

(4) The department may require trial-use rental of a SGD. The department applies the rental costs for the trial-use to the purchase price.

(5) The department pays for the repair or modification of an SGD when all of the following are met:

(a) All warranties are expired;

(b) The cost of the repair or modification is less than fifty percent of the cost of a new SGD and the provider has supporting documentation; and

(c) The repair has a warranty for a minimum of ninety days.

(6) The department does not pay for devices requested for the purpose of education.

(7) The department pays for replacement batteries for a SGD in accordance with WAC 388-543-5500(3). The department does not pay for back-up batteries for a SGD.

(8) Clients who are eligible for both medicare and medicaid must apply first to medicare for an SGD. If medicare denies the request and the client requests an SGD from the department, the department evaluates the request according to the rules of this section.

NEW SECTION

WAC 388-543-3500 Covered—Ambulatory aids (canes, crutches, walkers, related supplies). (1) The department covers the purchase of the following ambulatory aids with stated limitations, without prior authorization:

(a) Canes - one per client in a five-year period.

(b) Crutches - one per client in a five-year period.

(c) Walkers - one per client in a five-year period.

(2) The department pays for replacement underarm pads for crutches and replacement handgrips and tips for canes, crutches, and walkers. Prior authorization is not required.

NEW SECTION

WAC 388-543-4000 Covered—Wheelchairs—General. (1) The department covers, with prior authorization, manual and power-drive wheelchairs for clients who reside at home. For clients who reside in a skilled nursing facility, see WAC 388-543-5700.

(2) For manual or power-drive wheelchairs for clients who reside at home, requests for prior authorization must include all of the following completed forms:

(a) General Information for Authorization form (DSHS 13-835). The department's electronic forms are available online (see WAC 388-543-7000 Authorization);

(b) A Prescription form (DSHS 13-794); and

(c) Medical Necessity for Wheelchair Purchase (for home clients only) form (DSHS 13-727) from the client's physician or therapist. The date on this form (DSHS 13-727) must not be prior to the date on the Prescription form (DSHS-13-794).

(3) The department does not pay for manual or power-drive wheelchairs that have been delivered to a client without prior authorization from the department.

(4) When the department determines that a wheelchair is medically necessary, according to the process found in WAC 388-501-0165, for six months or less, the department rents a wheelchair for clients who live at home. For clients who reside in a skilled nursing facility, see WAC 388-543-5700.

NEW SECTION

WAC 388-543-4100 Covered—Wheelchairs—Manual. The department covers the rental or purchase of a manual wheelchair for a home client who is nonambulatory or has limited mobility and requires a wheelchair to participate in normal daily activities. For clients who reside in a skilled nursing facility, see WAC 388-543-5700.

(1) The department determines the type of manual wheelchair for a home client as follows:

(a) A standard wheelchair if the client's medical condition requires the client to have a wheelchair to participate in normal daily activities;

(b) A standard lightweight wheelchair if the client's medical condition is such that the client:

(i) Cannot self-propel a standard weight wheelchair; or

(ii) Requires custom modifications that cannot be provided on a standard weight wheelchair.

(c) A high-strength lightweight wheelchair for a client:

(i) Whose medical condition is such that the client cannot self-propel a lightweight or standard weight wheelchair; or

(ii) Requires custom modifications that cannot be provided on a standard weight or lightweight wheelchair.

(d) A heavy duty wheelchair for a client who requires a specifically manufactured wheelchair designed to:

(i) Support a person weighing three hundred pounds or over; or

(ii) Accommodate a seat width up to twenty-two inches wide (not to be confused with custom heavy duty wheelchairs).

(e) A custom heavy duty wheelchair for a client who requires a specifically manufactured wheelchair designed to:

(i) Support a person weighing three hundred pounds or over; or

(ii) Accommodate a seat width over twenty-two inches wide.

(f) A rigid wheelchair for a client:

(i) With a medical condition that involves severe upper extremity weakness;

(ii) Who has a high level of activity; and

(iii) Who is unable to self-propel any of the above categories of wheelchair.

(g) A custom manufactured wheelchair for a client with a medical condition requiring wheelchair customization that cannot be obtained on any of the categories of wheelchairs listed in this section.

(h) Pediatric wheelchairs/positioning strollers having a narrower seat and shorter depths more suited to pediatric patients, usually adaptable to modifications for a growing child.

(2) The department pays for both a manual wheelchair and a power-drive wheelchair only for noninstitutionalized

clients in limited circumstances. See WAC 388-543-4200 (5).

NEW SECTION

WAC 388-543-4200 Covered—Wheelchairs—Power-drive. (1) The department covers power-drive wheelchairs when the prescribing physician certifies that the following clinical criteria are met:

(a) The client can independently and safely operate a power-drive wheelchair;

(b) The client's medical condition negates his or her ability to self-propel any of the wheelchairs listed in the manual wheelchair category; and

(c) A power-drive wheelchair will:

(i) Provide the client the only means of independent mobility; or

(ii) Enable a child to achieve age-appropriate independence and developmental milestones.

(2) The following additional information is required for a three or four-wheeled power-drive scooter/power-operated vehicle (POV):

(a) The prescribing physician certifies that the client's condition is stable; and

(b) The client is unlikely to require a standard power-drive wheelchair within the next two years.

(3) When the department approves a power-drive wheelchair for a client who already has a manual wheelchair, the power-drive wheelchair becomes the client's primary chair, unless the client meets the criteria in subsection (5) of this section.

(4) The department pays to maintain only the client's primary wheelchair, unless the conditions of subsection (6) of this section apply.

(5) The department pays for one manual wheelchair and one power-drive wheelchair for noninstitutionalized clients only when one of the following circumstances applies:

(a) The architecture of the client's home is completely unsuitable for a power-drive wheelchair, such as narrow hallways, narrow doorways, steps at the entryway, and insufficient turning radius;

(b) The architecture of the client's home bathroom is such that power-drive wheelchair access is not possible, and the client needs a manual wheelchair to safely and successfully complete bathroom activities and maintain personal cleanliness; or

(c) The client has a power-drive wheelchair, but also requires a manual wheelchair because the power-drive wheelchair cannot be transported to meet the client's community, workplace, or educational activities. In this case, the manual wheelchair would allow the caregiver to transport the client in a standard automobile or van. The department requires the client's situation to meet the following conditions:

(i) The client's activities that require the second wheelchair must be located farther than one-fourth of a mile from the client's home; and

(ii) Cabulance, public buses, or personal transit are not available, practical, or possible for financial or other reasons.

(6) When the department approves both a manual wheelchair and a power-drive wheelchair for a noninstitutionalized client who meets one of the circumstances in subsection (5) of this section, the department pays to maintain both wheelchairs.

NEW SECTION

WAC 388-543-4300 Covered—Wheelchairs—Modifications, accessories, and repairs. (1) The department covers, with prior authorization, wheelchair accessories and modifications that are specifically identified by the manufacturer as separate line item charges. To receive payment, providers must submit the following to the department:

(a) A completed General Information for Authorization form (DSHS 13-835). The department's electronic forms are available online (see WAC 388-543-7000 Authorization);

(b) A completed Prescription form (DSHS 13-794);

(c) A completed Medical Necessity for Wheelchair Purchase (for home clients only) form (DSHS 13-727). The date on this form (DSHS 13-727) must not be dated prior to the date on the Prescription form (DSHS-13-794);

(d) The make, model, and serial number of the wheelchair to be modified;

(e) The modification requested; and

(f) Any specific information regarding the client's medical condition that necessitates the modification.

(2) The department pays for transit option restraints only when used for client-owned vehicles.

(3) The department covers, with prior authorization, wheelchair repairs. To receive payment, providers must submit the following to the department:

(a) General Information for Authorization form (DSHS 13-835). The department's electronic forms are available online (see WAC 388-543-7000);

(b) A completed Medical Necessity for Wheelchair Purchase form (for home clients only) (DSHS 13-727);

(c) The make, model, and serial number of the wheelchair to be repaired; and

(d) The repair requested.

(4) Prior authorization is required for the repair and modification of client-owned equipment.

NEW SECTION

WAC 388-543-5000 Covered—Prosthetics/orthotics. (1) The department covers, without prior authorization, the following prosthetics and orthotics, with stated limitations:

(a) Thoracic-hip-knee-ankle orthosis (THKAO) standing frame - one every five years.

(b) Preparatory, above knee "PTB" type socket, non-alignable system, pylon, no cover, SACH foot plaster socket, molded to model - one per lifetime, per limb.

(c) Preparatory, below knee "PTB" type socket, non-alignable system, pylon, no cover, SACH foot thermoplastic or equal, direct formed - one per lifetime, per limb.

(d) Socket replacement, below the knee, molded to patient model - one per twelve-month period.

(e) Socket replacement, above the knee/knee disarticulation, including attachment plate, molded to patient model - one per twelve-month period.

(f) All other prosthetics and orthotics are limited to one per twelve-month period per limb.

(2) The department pays only licensed prosthetic and orthotic providers to supply prosthetics and orthotics. This requirement does not apply to the following:

(a) Selected prosthetics and orthotics that do not require specialized skills to provide; and

(b) Out-of-state providers, who must meet the licensure requirements of that state.

(3) The department pays only for prosthetics or orthotics that are listed as such by the centers for medicare and medic-aid services (CMS), formerly known as HCFA, that meet the definition of prosthetic and orthotic as defined in WAC 388-543-1000 and are prescribed per WAC 388-543-1100 and WAC 388-543-1200.

(4) The department pays for repair or modification of a client's current prosthesis. To receive payment, all of the following must be met:

(a) All warranties are expired;

(b) The cost of the repair or modification is less than fifty percent of the cost of a new prosthesis and the provider has supporting documentation; and

(c) The repair is warranted for a minimum of ninety days.

(5) The department requires the client to take responsibility for routine maintenance of a prosthetic or orthotic. If the client does not have the physical or mental ability to perform the task, the department requires the client's caregiver to be responsible. The department requires prior authorization for extensive maintenance to a prosthetic or orthotic.

(6) For prosthetics dispensed for purely cosmetic reasons, see WAC 388-543-3800 Noncovered-DME.

NEW SECTION

WAC 388-543-5500 Covered—Medical supplies and related services. The department covers, without prior authorization, the following medical supplies and related services:

(1) Antiseptics and germicides:

(a) Alcohol (isopropyl) or peroxide (hydrogen) - one pint per month;

(b) Alcohol wipes (box of two hundred) - one box per month;

(c) Betadine or pHisoHex solution - one pint per month;

(d) Betadine or iodine swabs/wipes (box of one hundred) - one box per month;

(2) Bandages, dressings, and tapes;

(3) Batteries - replacement batteries:

(a) The department pays for the purchase of replacement batteries for wheelchairs.

(b) The department does not pay for wheelchair replacement batteries that are used for speech generating devices (SGDs) or ventilators. See WAC 388-543-3400 for speech generating devices and chapter 388-548 WAC for ventilators.

(4) Blood monitoring/testing supplies:

(a) Replacement battery of any type, used with a client-owned, medically necessary home or specialized blood glucose monitor - one in a three-month period;

(b) Spring-powered device for lancet - one in a six-month period;

(c) Diabetic test strips as follows:

(i) For clients, twenty years of age and younger, as follows:

(A) Insulin dependent, three hundred test strips and three hundred lancets per client, per month.

(B) For noninsulin dependent, one hundred test strips and one hundred lancets per client, per month.

(ii) For clients, twenty-one years of age and older:

(A) Insulin dependent, one hundred test strips and one hundred lancets per client, per month.

(B) For noninsulin dependent, one hundred test strips and one hundred lancets per client, every three months.

(iii) For pregnant women with gestational diabetes, the department pays for the quantity necessary to support testing as directed by the client's physician, up to sixty days postpartum.

(d) See WAC 388-543-5500(13) for blood glucose monitors.

(5) Braces, belts, and supportive devices:

(a) Knee brace (neoprene, nylon, elastic, or with a hinged bar) - two per twelve-month period;

(b) Ankle, elbow, or wrist brace - two per twelve-month period;

(c) Lumbosacral brace, rib belt, or hernia belt - one per twelve-month period;

(d) Cervical head harness/halter, cervical pillow, pelvic belt/harness/boot, or extremity belt/harness - one per twelve-month period.

(6) Decubitus care products:

(a) Cushion (gel, sacroiliac, or accuback) and cushion cover (any size) - one per twelve-month period;

(b) Synthetic or lamb's wool sheepskin pad - one per twelve-month period;

(c) Heel or elbow protectors - four per twelve-month period.

(7) Ostomy supplies:

(a) Adhesive for ostomy or catheter: Cement; powder; liquid (e.g., spray or brush); or paste (any composition, e.g., silicone or latex) - four total ounces per month.

(b) Adhesive or nonadhesive disc or foam pad for ostomy pouches - ten per month.

(c) Adhesive remover or solvent - three ounces per month.

(d) Adhesive remover wipes, fifty per box - one box per month.

(e) Closed pouch, with or without attached barrier, with a one- or two-piece flange, or for use on a faceplate - sixty per month.

(f) Closed ostomy pouch with attached standard wear barrier, with built-in one-piece convexity - ten per month.

(g) Continent plug for continent stoma - thirty per month.

(h) Continent device for continent stoma - one per month.

(i) Drainable ostomy pouch, with or without attached barrier, or with one- or two-piece flange - twenty per month.

(j) Drainable ostomy pouch with attached standard or extended wear barrier, with or without built-in one-piece convexity - twenty per month.

(k) Drainable ostomy pouch for use on a plastic or rubber faceplate (only one type of faceplate allowed) - ten per month.

(l) Drainable urinary pouch for use on a plastic, heavy plastic, or rubber faceplate (only one type of faceplate allowed) - ten per month.

(m) Irrigation bag - two every six months.

(n) Irrigation cone and catheter, including brush - two every six months.

(o) Irrigation supply, sleeve - one per month.

(p) Ostomy belt (adjustable) for appliance - two every six months.

(q) Ostomy convex insert - ten per month.

(r) Ostomy ring - ten per month.

(s) Stoma cap - thirty per month.

(t) Ostomy faceplate - ten per month. The department does not pay for either of the following when billed in combination with an ostomy faceplate:

(i) Drainable pouches with plastic face plate attached; or

(ii) Drainable pouches with rubber face plate.

(8) Syringes and needles;

(9) Urological supplies - diapers and related supplies:

(a) The standards and specifications in this subsection apply to all disposable incontinent products (e.g., briefs, diapers, pull-up pants, underpads for beds, liners, shields, guards, pads, and undergarments). See subsections (b), (c), (d), and (e) of this section for additional standards for specific products. All of the following apply to all disposable incontinent products:

(i) All materials used in the construction of the product must be safe for the client's skin and harmless if ingested;

(ii) Adhesives and glues used in the construction of the product must not be water-soluble and must form continuous seals at the edges of the absorbent core to minimize leakage;

(iii) The padding must provide uniform protection;

(iv) The product must be hypoallergenic;

(v) The product must meet the flammability requirements of both federal law and industry standards; and

(vi) All products are covered for client personal use only.

(b) In addition to the standards in subsection (a) of this section, diapers must meet all the following specifications. They must:

(i) Be hourglass shaped with formed leg contours;

(ii) Have an absorbent filler core that is at least one-half inch from the elastic leg gathers;

(iii) Have leg gathers that consist of at least three strands of elasticized materials;

(iv) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling materials;

(v) Have a back sheet that is moisture impervious and is at least 1.00 mm thick, designed to protect clothing and linens;

(vi) Have a top sheet that resists moisture returning to the skin;

(vii) Have an inner lining that is made of soft, absorbent material; and

(viii) Have either a continuous waistband, or side panels with a tear-away feature, or refastenable tapes, as follows:

(A) For child diapers, at least two tapes, one on each side.

(B) The tape adhesive must release from the back sheet without tearing it, and permit a minimum of three fastening/unfastening cycles.

(c) In addition to the standards in subsection (a) of this section, pull-up pants and briefs must meet the following specifications. They must:

(i) Be made like regular underwear with an elastic waist or have at least four tapes, two on each side or two large tapes, one on each side;

(ii) Have an absorbent core filler that is at least one-half inch from the elastic leg gathers;

(iii) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling;

(iv) Have leg gathers that consist of at least three strands of elasticized materials;

(v) Have a back sheet that is moisture impervious, is at least 1.00 mm thick, and is designed to protect clothing and linens;

(vi) Have an inner lining made of soft, absorbent material; and

(vii) Have a top sheet that resists moisture returning to the skin.

(d) In addition to the standards in subsection (a) of this section, underpads are covered only for incontinent purposes in a client's bed and must meet the following specifications:

(i) Have an absorbent layer that is at least one and one-half inches from the edge of the underpad;

(ii) Be manufactured with a waterproof backing material;

(iii) Be able to withstand temperatures not to exceed one hundred-forty degrees Fahrenheit;

(iv) Have a covering or facing sheet that is made of non-woven, porous materials that have a high degree of permeability, allowing fluids to pass through and into the absorbent filler. The patient contact surface must be soft and durable;

(v) Have filler material that is highly absorbent. It must be heavy weight fluff filler or the equivalent; and

(vi) Have four-ply, nonwoven facing, sealed on all four sides.

(e) In addition to the standards in subsection (a) of this section, liners, shields, guards, pads, and undergarments are covered for incontinence only and must meet the following specifications:

(i) Have channels to direct fluid throughout the absorbent area, and leg gathers to assist in controlling leakage, and/or be contoured to permit a more comfortable fit;

(ii) Have a waterproof backing designed to protect clothing and linens;

(iii) Have an inner liner that resists moisture returning to the skin;

(iv) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling materials;

(v) Have pressure-sensitive tapes on the reverse side to fasten to underwear; and

(vi) For undergarments only, be contoured for good fit, have at least three elastic leg gathers, and may be belted or unbelted.

(f) The department pays for urological products when they are used alone. The following are examples of products which the department does not pay for when used in combination with each other:

- (i) Disposable diapers;
- (ii) Disposable pull-up pants and briefs;
- (iii) Disposable liners, shields, guards, pads, and undergarments;
- (iv) Rented reusable diapers (e.g., from a diaper service); and
- (v) Rented reusable briefs (e.g., from a diaper service), or pull-up pants.

(g) The department approves a client's use of a combination of products only when the client uses different products for daytime and nighttime use. Example: pull-up pants for daytime use and disposable diapers for nighttime use. The total quantity of all products in this section used in combination cannot exceed the monthly limitation for the product with the highest limit.

(h) Purchased disposable diapers (any size) are limited to two hundred per month for clients three years of age and older.

- (i) Reusable cloth diapers (any size) are limited to:
 - (i) Purchased - thirty-six per year; and
 - (ii) Rented - two hundred per month.
- (j) Disposable briefs and pull-up pants (any size) are limited to:
 - (i) Two hundred per month for a client age three to eighteen years of age; and
 - (ii) One hundred fifty per month for a client nineteen years of age and older.
- (k) Reusable briefs, washable protective underwear, or pull-up pants (any size) are limited to:
 - (i) Purchased - four per year.
 - (ii) Rented - one hundred fifty per month.
- (l) Disposable pant liners, shields, guards, pads, and undergarments are limited to two hundred per month.

(m) Underpads for beds are limited to:

- (i) Disposable (any size) - one hundred eighty per month.
- (ii) Purchased, reusable (large) - forty-two per year.
- (iii) Rented, reusable (large) - ninety per month.

(10) Urological supplies - urinary retention:

(a) Bedside drainage bag, day or night, with or without anti-reflux device, with or without tube - two per month. The department does not pay for these when billed in combination with any of the following:

- (i) With extension drainage tubing for use with urinary leg bag or urostomy pouch (any type, any length), with connector/adaptor; and/or
- (ii) With an insertion tray with drainage bag, and with or without catheter.

(b) Bedside drainage bottle, with or without tubing - two per six month period.

(c) Extension drainage tubing (any type, any length), with connector/adaptor, for use with urinary leg bag or urostomy pouch. The department does not pay for these when

billed in combination with a vinyl urinary leg bag, with or without tube.

(d) External urethral clamp or compression device (not be used for catheter clamp) - two per twelve-month period.

(e) Indwelling catheters (any type) - three per month.

(f) Insertion trays:

(i) Without drainage bag and catheter - one hundred and twenty per month. The department does not pay for these when billed in combination with other insertion trays that include drainage bag, catheters, and/or individual lubricant packets.

(ii) With indwelling catheters - three per month. The department does not pay for these when billed in combination with other insertion trays without drainage bag and/or indwelling catheter, individual indwelling catheters, and/or individual lubricant packets.

(g) Intermittent urinary catheter - one hundred twenty per month. The department does not pay for these when billed in combination with an insertion tray with or without drainage bag and catheter; or other individual intermittent urinary catheters.

(h) Irrigation syringe (bulb or piston). The department does not pay for these when billed in combination with irrigation tray or tubing.

(i) Irrigation tray with syringe (bulb or piston) - thirty per month. The department does not pay for these when billed in combination with irrigation syringe (bulb or piston), or irrigation tubing set.

(j) Irrigation tubing set - thirty per month. The department does not pay for these when billed in combination with an irrigation tray or irrigation syringe (bulb or piston).

(k) Leg straps (latex foam and fabric), replacement only.

(l) Male external catheter, specialty type, or with adhesive coating or adhesive strip - sixty per month.

(m) Urinary suspensory with leg bag, with or without tube - two per month. The department does not pay for these when billed in combination with a latex urinary leg bag, urinary suspensory without leg bag, extension drainage tubing, or a leg strap.

(n) Urinary suspensory without leg bag, with or without tube - two per month.

(o) Urinary leg bag, vinyl, with or without tube - two per month. The department does not pay for these when billed in combination with drainage bag and without catheter.

(p) Urinary leg bag, latex - one per month. The department does not pay for these when billed in combination with or without catheter.

(11) Miscellaneous supplies:

(a) Bilirubin light therapy supplies when provided with a bilirubin light which the department prior authorized - five days supply.

(b) Continuous passive motion (CPM) softgoods kit - one, with rental of CPM machine.

(c) Eye patch with elastic, tied band, or adhesive, to be attached to an eyeglass lens - one box of twenty.

(d) Eye patch (adhesive wound cover) - one box of twenty.

(e) Nontoxic gel (e.g., LiceOff TM) for use with lice combs - one bottle per twelve-month period.

(f) Nonsterile gloves - two hundred, per client, per month.

(i) For clients residing in an assisted living facility, the department pays, with prior authorization, for additional nonsterile gloves up to the quantity necessary as directed by the client's physician, not to exceed a total of four hundred per client, per month.

(ii) Prior authorization requests must include a completed:

(A) General Information for Authorization form (DSHS 13-835). The department's electronic forms are available online (see WAC 388-543-7000 Authorization); and

(B) Limitation Extension Request Incontinent Supplies and Gloves form (DSHS 13-870).

(g) Sterile gloves - thirty pair, per client, per month.

(12) Miscellaneous DME:

(a) Bilirubin light or light pad - five days rental per twelve-month period for at-home newborns with jaundice.

(b) Blood glucose monitor (specialized or home) - one in a three-year period. See WAC 388-543-5500(4) for blood monitoring/testing supplies. The department does not pay for continuous glucose monitoring systems including related equipment and supplies.

(c) Continuous passive motion (CPM) machine - up to ten days rental and requires prior authorization.

(d) Lightweight protective helmet/soft shell (including adjustable chin/mouth strap) - two per twelve-month period.

(e) Lightweight ventilated hard-shell helmet (including unbreakable face bar, woven chin strap with adjustable buckle and snap fastener, and one set of cushion pads for adjusting fit to head circumference) - two per twelve-month period.

(f) Pneumatic compressor - one in a five-year period.

(g) Positioning car seat - one in a five-year period.

NEW SECTION

WAC 388-543-5700 Covered—DME and related supplies for clients in skilled nursing facilities. (1) The department's skilled nursing facility per diem rate, established in chapter 74.46 RCW, chapter 388-96 WAC, and chapter 388-97 WAC, includes any reusable and disposable medical supplies that may be required for a skilled nursing facility client, unless otherwise specified within this section.

(2) The department pays for the following covered DME and related supplies outside of the skilled nursing facility per diem rate, subject to the limitations in this section:

(a) Manual or power-drive wheelchairs;

(b) Speech generating devices (SGD); and

(c) Specialty beds.

(3) The department pays for one manual or one power-drive wheelchair for clients who reside in a skilled nursing facility, with prior authorization, according to the requirements in WAC 388-543-4100, 388-543-4200, and 388-543-4300. Requests for prior authorization must:

(a) Be for the exclusive full-time use of a skilled nursing facility resident;

(b) Not be included in the skilled nursing facility's per diem rate;

(c) Include a completed General Information for Authorization form (DSHS 13-835);

(d) Include a copy of the telephone order, signed by the physician, for the wheelchair assessment;

(e) Include a completed Medical Necessity for Wheelchair Purchase for Nursing Facility Clients form (DSHS 13-729).

(4) The department pays for wheelchair accessories and modifications that are specifically identified by the manufacturer as separate line item charges, with prior authorization. To receive payment, providers must submit the following to the department:

(a) A completed Prescription form (DSHS 13-794);

(b) A completed Medical Necessity for Wheelchair Purchase for Nursing Facility Clients form (DSHS 13-729). The date on this form (DSHS 13-727) must not be prior to the date on the Prescription form (DSHS-13-794). The department's electronic forms are available online (see WAC 388-543-7000 Authorization);

(c) The make, model, and serial number of the wheelchair to be modified;

(d) The modification requested; and

(e) Specific information regarding the client's medical condition that necessitates modification.

(5) The department pays for wheelchair repairs, with prior authorization. To receive payment, providers must submit the following to the department:

(a) A completed Medical Necessity for Wheelchair Purchase for Nursing Facility Clients form (DSHS 13-729). The department's electronic forms are available online (see WAC 388-543-7000 Authorization);

(b) The make, model, and serial number of the wheelchair to be repaired; and

(c) The repair requested.

(6) Prior authorization is required for the repair and modification of client-owned equipment.

(7) The skilled nursing facility must provide a house wheelchair as part of the per diem rate, when the client resides in a skilled nursing facility.

(8) When the client is eligible for both medicare and medicaid and is residing in a skilled nursing facility in lieu of hospitalization, the department does not reimburse for DME and related supplies, prosthetics, orthotics, medical supplies, related services, and related repairs and labor charges under fee-for-service (FFS).

(9) The department pays for the purchase and repair of a speech generating device (SGD), with prior authorization. The department pays for replacement batteries for SGDs in accordance with WAC 388-543-5500(3).

(10) The department pays for the purchase or rental of a specialty bed (a heavy duty bariatric bed is not a specialty bed), with prior authorization, when:

(a) The specialty bed is intended to help the client heal; and

(b) The client's nutrition and laboratory values are within normal limits.

(11) The department considers decubitus care products to be included in the skilled nursing facility per diem rate and does not reimburse for these separately.

(12) See WAC 388-543-9200 for reimbursement for wheelchairs.

(13) The department pays for the following medical supplies for a client in a skilled nursing facility outside the skilled nursing facility per diem rate:

(a) Medical supplies or services that replace all or parts of the function of a permanently impaired or malfunctioning internal body organ. This includes, but is not limited to the following:

(i) Colostomy and other ostomy bags and necessary supplies (see WAC 388-97-1060(3)); and

(ii) Urinary retention catheters, tubes, and bags, excluding irrigation supplies.

(b) Supplies for intermittent catheterization programs, for the following purposes:

(i) Long term treatment of atonic bladder with a large capacity; and

(ii) Short term management for temporary bladder atony.

(c) Surgical dressings required as a result of a surgical procedure, for up to six weeks post-surgery.

NEW SECTION

WAC 388-543-6000 DME and related supplies, medical supplies and related services—Noncovered. The department pays for DME and related supplies, medical supplies and related services only when listed as covered in this chapter. The department evaluates a request for any durable medical equipment (DME) and related supplies, prosthetics, orthotics, and medical supplies listed as noncovered in this chapter under the provisions of WAC 388-501-0160. In addition to the noncovered services found in WAC 388-501-0070, the department does not cover:

(1) A client's utility bills, even if the operation or maintenance of medical equipment purchased or rented by the department for the client contributes to an increased utility bill;

(2) Instructional materials such as pamphlets and video tapes;

(3) Hairpieces or wigs;

(4) Material or services covered under manufacturers' warranties;

(5) Shoe lifts less than one inch, arch supports for flat feet, and nonorthopedic shoes;

(6) Supplies and equipment used during a physician office visit, such as tongue depressors and surgical gloves;

(7) Prosthetic devices dispensed for cosmetic reasons;

(8) Home improvements and structural modifications, including but not limited to the following:

(a) Automatic door openers for the house or garage;

(b) Electrical rewiring for any reason;

(c) Elevator systems and elevators;

(d) Installation of, or customization of existing, bathtubs or shower stalls;

(e) Lifts or ramps for the home;

(f) Overhead ceiling track lifts;

(g) Saunas;

(h) Security systems, burglar alarms, call buttons, lights, light dimmers, motion detectors, and similar devices;

(i) Swimming pools; and

(j) Whirlpool systems, such as jacuzzis, hot tubs, or spas.

(9) Nonmedical equipment, supplies, and related services, including but not limited to, the following:

(a) Back-packs, pouches, bags, baskets, or other carrying containers;

(b) Bedboards/conversion kits, and blanket lifters (e.g., for feet);

(c) Car seats for children seven years of age and younger or less than four feet nine inches tall, except for prior authorized positioning car seats under WAC 388-543-3200;

(d) Cleaning brushes and supplies, except for ostomy-related cleaners/supplies;

(e) Diathermy machines used to produce heat by high frequency current, ultrasonic waves, or microwave radiation;

(f) Electronic communication equipment, installation services, or service rates, including but not limited to, the following:

(i) Devices intended for amplifying voices (e.g., microphones);

(ii) Interactive communications computer programs used between patients and healthcare providers (e.g., hospitals, physicians), for self care home monitoring, or emergency response systems and services;

(iii) Two-way radios;

(iv) Rental of related equipment or services; and

(v) Devices requested for the purpose of education.

(g) Environmental control devices, such as air conditioners, air cleaners/purifiers, dehumidifiers, portable room heaters or fans (including ceiling fans), heating or cooling pads, and light boxes;

(h) Ergonomic equipment;

(i) Durable medical equipment that is used in a clinical setting;

(j) Exercise classes or equipment such as exercise mats, exercise balls, bicycles, tricycles, stair steppers, weights, or trampolines;

(k) Generators;

(l) Computer software other than speech generating software, printers, and computer accessories (such as anti-glare shields, backup memory cards);

(m) Computer utility bills, telephone bills, internet service bills, or technical support for computers or electronic notebooks;

(n) Any communication device that is useful to someone without severe speech impairment (including but not limited to cellular telephone and associated hardware, walkie-talkie, two-way radio, pager, or electronic notebook);

(o) Racing strollers/wheelchairs and purely recreational equipment;

(p) Room fresheners/deodorizers;

(q) Bidet or hygiene systems, "sharps" containers, paraffin bath units, and shampoo rings;

(r) Timers or electronic devices to turn things on or off, which are not an integral part of the equipment;

(s) Vacuum cleaners, carpet cleaners/deodorizers, and/or pesticides/insecticides; or

(t) Wheeled reclining chairs, lounge and/or lift chairs (including but not limited to geri-chair, posture guard, or lazy boy).

(10) Blood pressure monitoring:

- (a) Sphygmomanometer/blood pressure apparatus with cuff and stethoscope;
- (b) Blood pressure cuff only; and
- (c) Automatic blood pressure monitor.
- (11) Transcutaneous electrical nerve stimulation (TENS) devices and supplies, including battery chargers;
- (12) Functional electrical stimulation (FES) bike;
- (13) Wearable defibrillators;
- (14) Disinfectant spray;
- (15) Periwash;
- (16) Bathroom equipment used inside or outside of the physical space of a bathroom:
 - (a) Bath stools;
 - (b) Bathtub wall rail (grab bars);
 - (c) Bed pans;
 - (d) Bedside commode chair;
 - (e) Control unit for electronic bowel irrigation/evacuation system;
 - (f) Disposable pack for use with electronic bowel system;
 - (g) Potty chairs;
 - (h) Raised toilet seat;
 - (i) Safety equipment (including but not limited to belt, harness or vest);
 - (j) Shower chairs;
 - (k) Shower/commode chairs;
 - (l) Sitz type bath or equipment;
 - (m) Standard and heavy duty bath chairs;
 - (n) Toilet rail;
 - (o) Transfer bench for tub or toilet;
 - (p) Urinal male/female.
- (17) Personal and/or comfort items, including but not limited to the following:
 - (a) Bathroom and hygiene items, such as antiperspirant, astringent, bath gel, conditioner, deodorant, moisturizer, mouthwash, powder, shampoo, shaving cream, shower cap, shower curtains, soap (including antibacterial soap), toothpaste, towels, and weight scales;
 - (b) Bedding items, such as mattress pads, blankets, mattress covers/bags, pillows, pillow cases/covers, sheets, and bumper pads;
 - (c) Bedside items, such as bed trays, carafes, and over-the-bed tables;
 - (d) Clothing and accessories, such as coats, gloves (including wheelchair gloves), hats, scarves, slippers, socks, custom vascular supports (CVS), surgical stockings, gradient compression stockings, and custom compression garments and lumbar supports for pregnancy;
 - (e) Clothing protectors, surgical masks, and other protective cloth furniture coverings;
 - (f) Cosmetics, including corrective formulations, hair depilatories, and products for skin bleaching, commercial sun screens, and tanning;
 - (g) Diverter valves and handheld showers for bathtub;
 - (h) Eating/feeding utensils;
 - (i) Emesis basins, enema bags, and diaper wipes;
 - (j) Health club memberships;
 - (k) Hot or cold temperature food and drink containers/holders;

- (l) Hot water bottles and cold/hot packs or pads not otherwise covered by specialized therapy programs;
- (m) Impotence devices;
- (n) Insect repellants;
- (o) Massage equipment;
- (p) Medication dispensers, such as med-collators and count-a-dose, except as obtained under the compliance packaging program. See chapter 388-530 WAC;
- (q) Medicine cabinet and first-aid items, such as adhesive bandages (e.g., Band-Aids, Curads), cotton balls, cotton-tipped swabs, medicine cups, thermometers, and tongue depressors;
- (r) Page turners;
- (s) Radio and television;
- (t) Telephones, telephone arms, cellular phones, electronic beepers, and other telephone messaging services;
- (u) Toothettes and toothbrushes, waterpics, and periodontal devices whether manual, battery-operated, or electric;
- (18) Certain wheelchair features and options including, but not limited to, the following:
 - (a) Attendant controls (remote control devices);
 - (b) Canopies, including those used for strollers and other equipment;
 - (c) Clothing guards to protect clothing from dirt, mud, or water thrown up by the wheels (similar to mud flaps for cars);
 - (d) Decals;
 - (e) Hub Lock brake;
 - (f) Identification devices (such as labels, license plates, name plates);
 - (g) Lighting systems;
 - (h) Replacement key or extra key;
 - (i) Speed conversion kits; and
 - (j) Trays for clients in a skilled nursing facility.
- (19) New durable medical equipment, supplies, or related technology that the department has not evaluated for coverage. See WAC 388-543-2100.

NEW SECTION

WAC 388-543-7000 Authorization. (1) The department requires providers to obtain authorization for covered durable medical equipment (DME) and related supplies, prosthetics, orthotics, medical supplies and related equipments as required in this chapter, chapters 388 501 and 388 502 WAC, and in published department billing instructions and/or numbered memoranda or when the clinical criteria required in this chapter are not met.

(a) For prior authorization (PA), a provider must submit a written request to the department as specified in the department's published billing instructions (see WAC 388-543-7100). All requests for prior authorization must be accompanied by a completed General Information for Authorization form (DSHS 13-835) in addition to any program specific DSHS forms as required within this chapter. The department's electronic forms are available online at: <http://www.dshs.wa.gov/msa/forms/eforms.html>.

(b) For expedited prior authorization (EPA), a provider must meet the clinically appropriate EPA criteria outlined in the department's published billing instructions. The appro-

priate EPA number must be used when the provider bills the department (see WAC 388-543-7200).

(2) When a service requires authorization, the provider must properly request authorization in accordance with the department's rules, billing instructions, and numbered memoranda.

(3) The department's authorization of service(s) does not necessarily guarantee payment.

(4) When authorization is not properly requested, the department rejects and returns the request to the provider for further action. The department does not consider the rejection of the request to be a denial of service.

(5) Authorization requirements in this chapter are not a denial of service to the client.

(6) The department may recoup any payment made to a provider if the department later determines that the service was not properly authorized or did not meet the EPA criteria. Refer to WAC 388 502 0100 (1)(c).

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.

NEW SECTION

WAC 388-543-7100 Prior authorization. (1) The department requires providers to obtain prior authorization for certain items and services before delivering that item or service to the client, except for dual-eligible medicare/medicaid clients when medicare is the primary payer. The item or service must also be delivered to the client before the provider bills the department.

(2) All prior authorization requests must be accompanied by a completed General Information for Authorization form (DSHS 13-835), in addition to any program specific department forms as required within this chapter. Department forms are available online at <http://www.dshs.wa.gov/msa/forms/eforms.html>.

(3) When the department receives the initial request for prior authorization, the prescription(s) for those items or services must not be older than three months from the date the department receives the request.

(4) The department requires certain information from providers in order to prior authorize the purchase or rental of equipment. This information includes, but is not limited to, the following:

- (a) The manufacturer's name;
- (b) The equipment model and serial number;
- (c) A detailed description of the item; and
- (d) Any modifications required, including the product or accessory number as shown in the manufacturer's catalog.

(5) For prior authorization requests, the department requires the prescribing provider to furnish patient-specific justification for base equipment and each requested line item accessory or modification as identified by the manufacturer as a separate charge. The department does not accept general standards of care or industry standards for generalized equipment as justification.

(6) The department considers requests for new durable medical equipment (DME) and related supplies, prosthetics, orthotics, medical supplies and related equipments that do not have assigned healthcare common procedure coding system

(HCPCS) codes and are not listed in the department's published issuances, including billing instructions or numbered memoranda. These items require prior authorization. The provider must furnish all of the following information to the department to establish medical necessity:

(a) A detailed description of the item(s) or service(s) to be provided;

(b) The cost or charge for the item(s);

(c) A copy of the manufacturer's invoice, price-list or catalog with the product description for the item(s) being provided; and

(d) A detailed explanation of how the requested item(s) differs from an already existing code description.

(7) The department does not pay for the purchase, rental, or repair of medical equipment that duplicates equipment the client already owns or rents. If the provider believes the purchase, rental, or repair of medical equipment is not duplicative, the provider must request prior authorization and submit the following to the department:

(a) Why the existing equipment no longer meets the client's medical needs; or

(b) Why the existing equipment could not be repaired or modified to meet the client's medical needs.

(c) Upon request, documentation showing how the client's condition met the criteria for PA or EPA.

(8) A provider may resubmit a request for prior authorization for an item or service that the department has denied. The department requires the provider to include new documentation that is relevant to the request.

NEW SECTION

WAC 388-543-7200 Limitation extension (LE). (1) The department limits the amount, frequency, or duration of certain covered MSE, DME, and related supplies, prosthetics, orthotics, medical supplies, and related services, and reimburses up to the stated limit without requiring prior authorization.

(2) Certain covered items have limitations on quantity and frequency. These limits are designed to avoid the need for prior authorization for items normally considered medically necessary and for quantities sufficient for a thirty-day supply for one client.

(3) The department requires a provider to request prior authorization for a limitation extension (LE) in order to exceed the stated limits for nondurable medical equipment and medical supplies. All requests for prior authorization must be accompanied by a completed General Information for Authorization form (DSHS 13-835) in addition to any program specific DSHS forms as required within this chapter. Department forms are available online at <http://www.dshs.wa.gov/msa/forms/eforms.html>.

(4) The department evaluates such requests for LE under the provisions of WAC 388-501-0169.

NEW SECTION

WAC 388-543-7300 Expedited prior authorization (EPA). (1) The expedited prior authorization process (EPA) is designed to eliminate the need for written and telephonic

requests for prior authorization for selected DME procedure codes.

(2) The department requires a provider to create an authorization number for EPA for selected DME procedure codes. The process and criteria used to create the authorization number is explained in the department published DME-related billing instructions. The authorization number must be used when the provider bills the department.

(3) Upon request, a provider must provide documentation to the department showing how the client's condition met the criteria for EPA.

(4) A written or telephone request for prior authorization is required when a situation does not meet the EPA criteria for selected DME procedure codes.

(5) The department may recoup any payment made to a provider under this section if the provider did not follow the expedited authorization process and criteria.

NEW SECTION

WAC 388-543-8000 DME—Billing general. (1) A provider must not bill the department for the rental or purchase of equipment supplied to the provider at no cost by suppliers/manufacturers.

(2) The department does not pay a DME provider for medical supplies used in conjunction with a physician office visit. The department pays the office physician for these supplies when appropriate. Refer to the department's physician-related services billing instructions.

NEW SECTION

WAC 388-543-8100 DME—Billing for managed care clients. If a fee-for-service (FFS) client enrolls in a department-contracted managed care organization (MCO), the following apply:

(1) The department stops paying for any rented equipment on the last day of the month preceding the month in which the client becomes enrolled in the MCO.

(2) The plan determines the client's continuing need for the equipment and is responsible for paying the provider.

(3) A client may become an MCO enrollee before the department completes the purchase of prescribed medical equipment. The department considers the purchase complete when the product is delivered and the department is notified of the serial number. If the client becomes an MCO enrollee before the department completes the purchase:

(a) The department rescinds the department's authorization with the vendor until the MCO's primary care provider (PCP) evaluates the client; then

(b) The department requires the PCP to write a new prescription if the PCP determines the equipment is still medically necessary as defined in WAC 388-500-0005; then

(c) The MCO's applicable reimbursement policies apply to the purchase or rental of the equipment.

(4) A client may be disenrolled from an MCO and placed into fee-for-service before the MCO completes the purchase of prescribed medical equipment.

(a) The department rescinds the MCO's authorization with the vendor until the client's primary care provider (PCP) evaluates the client; then

(b) The department requires the PCP to write a new prescription if the PCP determines the equipment is still medically necessary as defined in WAC 388-500-0005; then

(c) The department's applicable reimbursement policies apply to the purchase or rental of the equipment.

NEW SECTION

WAC 388-543-8200 DME—Billing for clients eligible for medicare and medicaid. If a client is eligible for both medicare and medicaid, the following apply:

(1) The department requires a provider to accept medicare assignment before any medicaid reimbursement;

(2) In accordance with WAC 388-502-0110(3):

(a) If the service provided is covered by medicare and medicaid, the department pays only the deductible and/or coinsurance up to medicare's or medicaid's allowed amount, whichever is less.

(b) If the service provided is covered by medicare but is not covered by the department, the department pays only the deductible and/or coinsurance up to medicare's allowed amount.

NEW SECTION

WAC 388-543-9000 DME and related supplies, prosthetics, orthotics, medical supplies and related services—General reimbursement. (1) The department pays qualified providers who meet all of the conditions in WAC 388-502-0100, for durable medical equipment (DME), supplies, repairs, and related services provided on a fee-for-service (FFS) basis as follows:

(a) To department-enrolled DME providers, pharmacies, and home health agencies under their national provider identifier (NPI) numbers, subject to the limitations of this chapter, and according to the procedures and codes in the department's current DME billing instructions; and

(b) In accordance with the healthcare common procedure coding system (HCPCS) guidelines for product classification and code assignment.

(2) The department sets, evaluates, and updates the maximum allowable fees for DME and related supplies, prosthetics, orthotics, medical supplies and related services at least once yearly using available published information, including but not limited to:

(a) Commercial databases;

(b) Manufacturers' catalogs;

(c) Medicare fee schedules; and

(d) Wholesale prices.

(3) The department may adopt policies, procedure codes, and/or rates that are inconsistent with those set by medicare if the department determines that such actions are necessary.

(4) The department updates the maximum allowable fees for DME and related supplies, prosthetics, orthotics, medical supplies and related services at least once per year, unless otherwise directed by the legislature or deemed necessary by the department.

(5) The department's maximum payment for DME and related supplies, prosthetics, orthotics, medical supplies and related services is the lesser of either of the following:

(a) Providers' usual and customary charges; or

(b) Established rates, except as provided in WAC 388-543-8200.

(6) The department is the payor of last resort for clients with medicare or third party insurance.

(7) The department does not pay for medical equipment and/or services provided to a client who is enrolled in a department-contracted managed care plan, but who did not use one of the plan's participating providers.

(8) The department's reimbursement rate for purchased or rented covered DME and related supplies, prosthetics, orthotics, medical supplies and related services includes all of the following:

(a) Any adjustments or modifications to the equipment that are required within three months of the date of delivery or are covered under the manufacturer's warranty. This does not apply to adjustments required because of changes in the client's medical condition;

(b) Any pick-up and/or delivery fees or associated costs (e.g., mileage, travel time, gas, etc.);

(c) Telephone calls;

(d) Shipping, handling, and/or postage;

(e) Routine maintenance of DME that includes testing, cleaning, regulating, and assessing the client's equipment;

(f) Fitting and/or set-up; and

(g) Instruction to the client or client's caregiver in the appropriate use of the equipment, device, and/or supplies.

(9) DME, supplies, repairs, and related services supplied to eligible clients under the following reimbursement methodologies are included in those methodologies and are not reimbursed under fee-for-service:

(i) Hospice providers' per diem reimbursement;

(ii) Hospitals' diagnosis-related group (DRG) reimbursement;

(iii) Managed care plans' capitation rate;

(iv) Skilled nursing facilities' per diem rate; and

(v) Professional services' resource-based relative value system reimbursement (RBRVS) rate.

(10) The provider must make warranty information, including date of purchase, applicable serial number, model number or other unique identifier of the equipment, and warranty period, available to the department upon request.

(11) The dispensing provider who furnishes the equipment, supply or device to a client is responsible for any costs incurred to have a different provider repair the equipment when:

(a) Any equipment that the department considers purchased requires repair during the applicable warranty period;

(b) The provider refuses or is unable to fulfill the warranty; and

(c) The equipment, supply or device continues to be medically necessary.

(12) If the rental equipment, supply or device must be replaced during the warranty period, the department recoups fifty percent of the total amount previously paid toward rental and eventual purchase of the equipment, supply or device delivered to the client if:

(a) The provider is unwilling or unable to fulfill the warranty; and

(b) The equipment, supply or device continues to be medically necessary.

(13) See WAC 388-543-9100, 388-543-9200, 388-543-9300, and 388-543-9400 for other reimbursement methodologies.

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.

NEW SECTION

WAC 388-543-9100 Reimbursement method—Other DME. (1) The department sets, evaluates and updates the maximum allowable fees for purchased other durable medical equipment (DME) at least once yearly using one or more of the following:

(a) The current medicare rate, as established by the federal centers for medicare and medicaid services (CMS), for a new purchase if a medicare rate is available;

(b) A pricing cluster; or

(c) On a by-report basis.

(2) Establishing reimbursement rates for purchased other DME based on pricing clusters.

(a) A pricing cluster is based on a specific healthcare common procedure coding system (HCPCS) code.

(b) The department's pricing cluster is made up of all the brands/models for which the department obtains pricing information. However, the department may limit the number of brands/models included in the pricing cluster. The department considers all of the following when establishing the pricing cluster:

(i) A client's medical needs;

(ii) Product quality;

(iii) Introduction, substitution or discontinuation of certain brands/models; and/or

(iv) Cost.

(c) When establishing the fee for other DME items in a pricing cluster, the maximum allowable fee is the median amount of available manufacturers' list prices for all brands/models as noted in subsection (2)(b) of this section.

(3) The department evaluates a by report (BR) item, procedure, or service for medical necessity, appropriateness and reimbursement value on a case-by-case basis. The department calculates the reimbursement rate for these items at eighty-five percent of the manufacturer's list price.

(4) Monthly rental reimbursement rates for other DME. The department's maximum allowable fee for monthly rental is established using one of the following:

(a) For items with a monthly rental rate on the current medicare fee schedule as established by the federal centers for medicare and medicaid services (CMS), the department equates its maximum allowable fee for monthly rental to the current medicare monthly rental rate;

(b) For items that have a new purchase rate but no monthly rental rate on the current medicare fee schedule as established by the federal centers for medicare and medicaid services (CMS), the department sets the maximum allowable fee for monthly rental at one-tenth of the new purchase price of the current medicare rate;

(c) For items not included in the current medicare fee schedule as established by the federal centers for medicare and medicaid services (CMS), the department considers the maximum allowable monthly reimbursement rate as by-

report. The department calculates the monthly reimbursement rate for these items at one-tenth of eighty-five percent of the manufacturer's list price.

(5) Daily rental reimbursement rates for other DME. The department's maximum allowable fee for daily rental is established using one of the following:

(a) For items with a daily rental rate on the current medicare fee schedule as established by the centers for medicare and medicaid services (CMS), the department equates its maximum allowable fee for daily rental to the current medicare daily rental rate;

(b) For items that have a new purchase rate but no daily rental rate on the current medicare fee schedule as established by CMS, the department sets the maximum allowable fee for daily rental at one-three-hundredth of the new purchase price of the current medicare rate;

(c) For items not included in the current medicare fee schedule as established by CMS, the department considers the maximum allowable daily reimbursement rate as by-report. The department calculates the daily reimbursement rate at one-three-hundredth of eighty-five percent of the manufacturer's list price.

(6) The department does not reimburse for DME and related supplies, prosthetics, orthotics, medical supplies, related services, and related repairs and labor charges under fee-for-service (FFS) when the client is any of the following:

(a) An inpatient hospital client;

(b) Eligible for both medicare and medicaid, and is staying in a skilled nursing facility in lieu of hospitalization;

(c) Terminally ill and receiving hospice care; or

(d) Enrolled in a risk-based managed care plan that includes coverage for such items and/or services.

(7) The department rescinds any purchase order for a prescribed item if the equipment was not delivered to the client before the client:

(a) Dies;

(b) Loses medical eligibility;

(c) Becomes covered by a hospice agency; or

(d) Becomes covered by a managed care organization.

(8) A provider may incur extra costs for customized equipment that may not be easily resold. In these cases, for purchase orders rescinded in subsection (7) of this section, the department may pay the provider an amount it considers appropriate to help defray these extra costs. The department requires the provider to submit justification sufficient to support such a claim.

NEW SECTION

WAC 388-543-9200 Reimbursement method—Wheelchairs. (1) The department reimburses a DME provider for purchased wheelchairs based on the specific brand and model of wheelchair dispensed. The department decides which brands and/or models of wheelchairs are eligible for reimbursement based on all of the following:

(a) A client's medical needs;

(b) Product quality;

(c) Cost; and

(d) Available alternatives.

(2) The department sets, evaluates and updates the maximum allowable fees at least once yearly for wheelchair purchases, wheelchair rentals, and wheelchair accessories (e.g., cushions and backs) using the lesser of the following:

(a) The current medicare fees;

(b) The actual invoice for the specific item; or

(c) A percentage of the manufacturer's list price. The department uses the following percentages:

(i) For basic standard wheelchairs, sixty-five percent;

(ii) For add-on accessories and parts, eighty-four percent;

(iii) For up-charge modifications and cushions, eighty percent;

(iv) For all other manual wheelchairs, eighty percent; and

(v) For all other power-drive wheelchairs, eighty-five percent.

NEW SECTION

WAC 388-543-9300 Reimbursement method—Prosthetics and orthotics. (1) The department sets, evaluates and updates the maximum allowable fees for prosthetics and orthotics at least once yearly as follows:

(a) For items with a rate on the current medicare fee schedule, as established by the federal centers for medicare and medicaid services (CMS), the department equates its maximum allowable fee to the current medicare rate; and

(b) For those items not included in the medicare fee schedule, as established by CMS, the rate is considered by-report. The department evaluates a by-report item, procedure, or service based upon medical necessity criteria, appropriateness, and reimbursement value on a case-by-case basis. The department calculates the reimbursement for these items at eighty-five percent of the manufacturer's list price.

(2) The department follows healthcare common procedure coding system (HCPCS) guidelines for product classification and code assignment.

(3) The department's reimbursement for a prosthetic or orthotic includes the cost of any necessary molds, fitting, shipping, handling or any other administrative expenses related to provision of the prosthetic or orthotic to the client.

(4) The department's hospital reimbursement rate includes any prosthetics and/or orthotics required for surgery and/or placed during the hospital stay.

NEW SECTION

WAC 388-543-9400 Reimbursement method—Medical supplies and related services. (1) The department sets, evaluates and updates the maximum allowable fees for medical supplies and nondurable medical equipment (DME) items at least once yearly using one or more of the following:

(a) The current medicare rate, as established by the federal centers for medicare and medicaid services (CMS), if a medicare rate is available;

(b) A pricing cluster;

(c) Based on input from stakeholders or other relevant sources that the department determines to be reliable and appropriate; or

(d) On a by-report basis.

(2) Establishing reimbursement rates for medical supplies and non-DME items based on pricing clusters.

(a) A pricing cluster is based on a specific healthcare common procedure coding system (HCPCS) code.

(b) The department's pricing cluster is made up of all the brands for which the department obtains pricing information. However, the department may limit the number of brands included in the pricing cluster if doing so is in the best interests of its clients as determined by the department. The department considers all of the following when establishing the pricing cluster:

- (i) A client's medical needs;
- (ii) Product quality;
- (iii) Cost; and
- (iv) Available alternatives.

(c) When establishing the fee for medical supplies or other nonDME items in a pricing cluster, the maximum allowable fee is the median amount of available manufacturers' list prices.

(3) The department evaluates a by report (BR) item, procedure, or service for its medical necessity, appropriateness and reimbursement value on a case-by-case basis. The department calculates the reimbursement rate at eighty-five percent of the manufacturer's list price.

(4) For clients residing in skilled nursing facilities, see WAC 388-543-5700.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-543-1150	Limits and limitation extensions.
WAC 388-543-1200	Providers who are eligible to provide services.
WAC 388-543-1225	Provider requirements.
WAC 388-543-1300	Equipment, related supplies, or other nonmedical supplies, and devices that are not covered.
WAC 388-543-1400	General reimbursement for DME and related services, prosthetics, orthotics, medical supplies and related services.
WAC 388-543-1500	When MAA purchases DME and related supplies, prosthetics, and orthotics.
WAC 388-543-1600	Items and services which require prior authorization.
WAC 388-543-1700	When the department covers rented DME.
WAC 388-543-1800	Prior authorization—General policies for DME and related supplies, prosthetics,

WAC 388-543-1900	orthotics, medical supplies and related services. Expedited prior authorization criteria for DME and related supplies, prosthetics, orthotics, medical supplies, and related services.
WAC 388-543-2400	Hospital beds.
WAC 388-543-2500	Reimbursement methodology for other durable medical equipment.
WAC 388-543-2600	Prosthetics and orthotics.
WAC 388-543-2700	Prosthetics and orthotics—Reimbursement.
WAC 388-543-2800	Reusable and disposable medical supplies.
WAC 388-543-2900	Medical supplies and nondurable medical equipment (MSE)—Reimbursement methodology.

**WSR 11-09-071
PROPOSED RULES
NORTHWEST CLEAN
AIR AGENCY**

[Filed April 19, 2011, 11:59 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: REGULATION OF THE NORTHWEST CLEAN AIR AGENCY.

Hearing Location(s): Northwest Clean Air Agency, 1600 South Second Street, Mount Vernon, WA 98273, on June 7, 2011, at 9:00 a.m.

Date of Intended Adoption: June 9, 2011.

Submit Written Comments to: Mark Buford, Northwest Clean Air Agency, 1600 South Second Street, Mount Vernon, WA 98273, e-mail mark@nwcleanair.org, fax (360) 428-1620, by June 7, 2011, at 11:00 a.m.

Assistance for Persons with Disabilities: Contact Margarita Smith by June 1, 2011, (360) 428-1617 ext. 215.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To update agency adoptions of external regulations by reference; readopt specific rule sections to refer to most recent version of chapter 173-401 WAC.

NWCAA Regulation Revision Summary

Amendatory Sections:

SECTION 104 - ADOPTION OF STATE AND FEDERAL LAWS AND RULES

- Editorial changes.

- Update to accommodate new or revised rules.
- Replace "as it now exists or may be hereafter amended" with "that are in effect as of May 18, 2011" from 104.1 to make clear which versions of the Washington Administrative Code (WAC) and Revised Code of Washington (RCW) are being adopted by reference. This change will make it consistent with the verbiage in NWCAA 104.2.
- Update effective date in NWCAA 104.2.
- Remove reference to NWCAA 155 to avoid duplicating the adoptions by reference.
- Adopt by reference subparts under 40 C.F.R. 63 that trigger issuance of Title V permits.
- Delete subparts under 40 C.F.R. 60 that are emission guidelines that cannot be adopted by reference or delegated by EPA.
- Readopt to ensure that the reference to chapter 173-401 WAC is to the most recent version.

SECTION 300 - NEW SOURCE REVIEW

- Update NWCAA 300.14 to be consistent with NWCAA 104.
- Readopt to ensure that the reference to chapter 173-401 WAC is to the most recent version.

SECTION 305 - PUBLIC INVOLVEMENT

SECTION 321 - EXEMPTIONS FROM REGISTRATION

SECTION 322 - AIR OPERATING PERMIT PROGRAM (AOP)

- No changes except to readopt to ensure that the reference to chapter 173-401 WAC is to the most recent version.

SECTION 320 - REGISTRATION PROGRAM

- No changes except to readopt to ensure that the reference to WAC 173-401-531 is to the most recent version.

Reasons Supporting Proposal: The NWCAA regulation references many rules written by other agencies (e.g., EPA, Washington department of ecology). When the external rules are referenced, the version that is incorporated is that as of the date of adoption. If an external rule is modified, by EPA, for instance, the version of the federal rule referenced in the NWCAA regulation remains that as of the date of adoption. This causes confusion because both the previous version as referenced in the NWCAA regulation and the new version both apply. As such, the NWCAA is updating the references in these portions of the regulation to the most recent versions of the external rules.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: Chapter 70.94 RCW.

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

Name of Proponent: Northwest Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mark Asmundson, 1600 South Second Street, Mount Vernon, WA, (360) 428-1617.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable under RCW 70.94.141.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable under RCW 70.94.141.

April 19, 2011

Mark Buford

Assistant Director

AMENDATORY SECTION

Section 104 - ADOPTION OF STATE AND FEDERAL LAWS AND RULES

104.1 All provisions of State Law that are in effect as of May 18, 2011 (~~as it now exists or may be hereafter amended~~), which are (~~is~~) pertinent to the operation of the NWCAA, are (~~is~~) hereby adopted by reference and made part of the Regulation of the NWCAA. Specifically, there is adopted by reference the portions pertinent to the operation of the NWCAA of the Washington State Clean Air Act (~~RCW~~) chapter 70.94 RCW, the Administrative Procedures Act (~~RCW~~) chapter 34.05 RCW and (~~RCW~~) chapters 43.21A and 43.21B RCW and the following state rules: chapter (~~WAC~~) 173-400 WAC, (except - 035, 036, 070(8), 075, 099, 100, 101, 102, 103, 104, 105(8), 110, 114, 115, 116, 171, 560, 930), chapter (~~WAC~~) 173-401 WAC, (~~WAC 173-406~~) chapter (~~WAC~~) 173-407 WAC, chapter (~~WAC~~) 173-420 WAC, chapter (~~WAC~~) 173-425 WAC, chapter (~~WAC~~) 173-430 WAC, chapter (~~WAC~~) 173-433 WAC, chapter (~~WAC~~) 173-434 WAC, chapter (~~WAC~~) 173-435 WAC, chapter 173-441 WAC, chapter (~~WAC~~) 173-450 WAC, chapter (~~WAC~~) 173-460 WAC, chapter (~~WAC~~) 173-470 WAC, chapter (~~WAC~~) 173-474 WAC, chapter (~~WAC~~) 173-475 WAC, chapter (~~WAC~~) 173-481 WAC, chapter (~~WAC~~) 173-490 WAC, chapter (~~WAC~~) 173-491 WAC, chapter (~~WAC~~) 173-492 WAC, and chapter (~~WAC~~) 173-495 WAC. (~~and portions of WAC 197-11 contained in Section 155~~).

104.2 All provisions of the following federal rules that are in effect as of May 18, 2011 (~~April 5, 2010~~) are hereby adopted by reference and made part of the Regulation of the NWCAA: 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans) Appendix M; 40 CFR Part 60 (Standards of Performance For New Stationary Sources) subparts A, (B, C, Cb, Ce, Cd, Ce), D, Da, Db, Dc, E, Ea, Eb, Ec, F, G, H, I, J, Ja, K, Ka, Kb, L, M, N, Na, O, P, Q, R, T, U, V, W, X, Y, Z, AA, AAa, CC, DD, EE, GG, HH, KK, LL, MM, NN, PP, QQ, RR, SS, TT, UU, VV, VVa, WW, XX, AAA, BBB, DDD, FFF, GGG, GGGa, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW, AAAA, (BBBB,) CCCC, (DDDD,) EEEE, (FFFF, HHHH) IIII, JJJJ, KKKK and Appendix A - I; and 40 CFR Part 61 (National Emission Standards For Hazardous Air Pollutants) Subparts A((-B)), C, D, E, F((-H)), J, L, M, N, O, P, V, Y, BB, FF and 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) Subparts A, B, C, D, F, G, H, I, ((J)) L, M, N, O, Q, R, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, TTT, UUU, VVV, XXX,

AAAA, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, JJJJ, KKKK, MMMM, NNNN, OOOO, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYY, ZZZZ, AAAAA, BBBB, CCCCC, DDDDD, EEEEE, FFFFF, GGGGG, HHHHH, IIIII, ((~~JJJJ~~, ~~KKKK~~)) LLLLL, MMMM, NNNNN, PPPPP, QQQQQ, RRRRR, SSSSS, TTTT, YYYYY, CCCCC, EEEEE, FFFFF, GGGGG, MMMMM, NNNNN, SSSSS, VVVVV; and 40 CFR 72, 73, 74, 75, 76, 77 and 78 (Acid Rain Program).

Amended: April 14, 1993, September 8, 1993, December 8, 1993, October 13, 1994, May 11, 1995, February 8, 1996, May 9, 1996, March 13, 1997, May 14, 1998, November 12, 1998, November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, June 10, 2010, June 9, 2011.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Northwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SECTION 300 - NEW SOURCE REVIEW

300.1 A Notice of Construction and/or PSD permit application must be filed by the owner or operator and an Order of Approval and/or PSD permit issued by the NWCAA, or other designated permitting agency, prior to the establishment of any new source, except for:

a) Those stationary sources exempt under NWCAA 300.4 (categorical) or NWCAA 300.5 (emission thresholds); and

b) Relocation of any temporary source operating in accordance with NWCAA Section 301.

For purposes of this section "establishment" shall mean to "begin actual construction", as that term is defined in NWCAA Section 200, and "new source" shall include any "modification" to an existing "stationary source", as those terms are defined in NWCAA Section 200.

300.2 Regardless of any other subsection of this section, a Notice of Construction or PSD permit application must be filed and an order of approval or PSD permit issued by the NWCAA prior to establishment of any of the following new sources:

a) Any project that qualifies as construction, reconstruction or modification of an affected facility, within the meaning of 40 CFR Part 60 (New Source Performance Standards), except Subpart AAA (Wood stoves) and such provisions of Subpart IIII pertaining to owners and operators of emergency stationary compression ignition internal combustion engines;

b) Any project that qualifies as a new or modified source within the meaning of 40 CFR 61.02 (National Emission Standards for Hazardous Air Pollutants), except for asbestos demolition and renovation projects subject to 40 CFR 61.145;

c) Any project that qualifies as a new source within the meaning of 40 CFR 63.2 (National Emission Standards for Hazardous Air Pollutants for Source Categories), except Subpart M (Dry Cleaning Facilities) pertaining to area source perchloroethylene dry cleaners, and Subpart ZZZZ pertaining

to emergency and limited-use stationary reciprocating internal combustion engines;

d) Any project that qualifies as a new major stationary source, or a major modification;

e) Any modification to a stationary source that requires an increase either in a plant-wide cap or in a unit specific emission limit.

300.3 New source review of a modification shall be limited to the emission unit or units proposed to be added to an existing stationary source or modified and the air contaminants whose emissions would increase as a result of the modification; provided, however, that review of a major modification must comply with WAC 173-400-112 and/or 173-400-113, as applicable.

300.4 Emission unit and activity exemptions.

Except as provided in NWCAA 300.1 and 300.2 of this section, establishment of a new emission unit that falls within one of the categories listed below is exempt from new source review. Modification of any emission unit listed below is exempt from new source review, provided that the modified unit continues to fall within one of the listed categories. The installation or modification of a unit exempt under this subsection does not require the filing of a Notice of Construction application.

a) Maintenance/construction:

1) Cleaning and sweeping of streets and paved surfaces;

2) Concrete application, and installation;

3) Dredging wet spoils handling and placement;

4) Paving application and maintenance, excluding asphalt plants;

5) Plant maintenance and upkeep activities (grounds keeping, general repairs, routine house keeping, routine plant painting, welding, cutting, brazing, soldering, plumbing, retarring roofs, etc.);

6) Plumbing installation, plumbing protective coating application and maintenance activities;

7) Roofing application;

8) Insulation application and maintenance, excluding products for resale;

9) Janitorial services and consumer use of janitorial products.

b) Storage tanks:

Note: It can be difficult to determine requirements for storage tanks therefore it is recommended that the owner or operator contact the NWCAA to determine the exemption status of storage tanks prior to their installation.

1) Lubricating oil storage tanks except those facilities that are wholesale or retail distributors of lubricating oils; 2) Polymer tanks and storage devices and associated pumping and handling equipment, used for solids dewatering and flocculation;

3) Storage tanks, reservoirs, pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions;

4) Process and white water storage tanks;

5) Operation, loading and unloading of storage tanks and storage vessels, with lids or other appropriate closure and less than 260 gallon capacity (35 cft);

6) Operation, loading and unloading of storage tanks, less than or equal to 1100 gallon capacity, with lids or other

appropriate closure, not for use with materials containing toxic air pollutants, as defined in chapter 173-460 WAC, max. VP 550 mm Hg @21° C;

7) Operation, loading and unloading storage of butane, propane, or liquefied petroleum gas with a vessel capacity less than 40,000 gallons;

8) Tanks, vessels and pumping equipment, with lids or other appropriate closure for storage or dispensing of aqueous solutions of inorganic salts, bases and acids.

c) A project with combined aggregate heat input capacity from combustion units, less than or equal to any of the following:

1) Less than or equal to 500,000 Btu/hr coal with less than or equal to 0.5% sulfur or other fuels with less than or equal to 0.5% sulfur;

2) Less than or equal to 500,000 Btu/hr used oil, per the requirements of RCW 70.94.610;

3) Less than or equal to 400,000 Btu/hr wood waste or paper;

4) Less than 1,000,000 Btu/hr kerosene, #1, or #2 fuel oil and with less than or equal to 0.05% sulfur;

5) Less than or equal to 10,000,000 Btu/hr natural gas, propane, or LPG.

Note: the heat input capacity of each combustion unit shall be based on the higher heating value of fuel to be used.

d) Material handling:

1) Continuous digester chip feeders;

2) Grain elevators not licensed as warehouses or dealers by either the Washington State Department of Agriculture or the U.S. Department of Agriculture;

3) Storage and handling of water based lubricants for metal working where organic content of the lubricant is less than or equal to 10%;

4) Equipment used exclusively to pump, load, unload, or store high boiling point organic material in tanks less than one million gallon, material with initial atmospheric boiling point not less than 150°C or vapor pressure not more than 5 mm Hg @21°C, with lids or other appropriate closure.

e) Water treatment:

1) Septic sewer systems, not including active wastewater treatment facilities;

2) NPDES permitted ponds and lagoons used solely for the purpose of settling suspended solids and skimming of oil and grease;

3) De-aeration (oxygen scavenging) of water where toxic air pollutants as defined in chapter 173-460 WAC are not emitted;

4) Process water filtration system and demineralizer vents;

5) Sewer manholes, junction boxes, sumps and lift stations associated with wastewater treatment systems;

6) Demineralizer tanks;

7) Alum tanks;

8) Clean water condensate tanks.

f) Environmental chambers and laboratory equipment:

1) Environmental chambers and humidity chambers not using toxic air pollutant gases, as regulated under chapter 173-460 WAC;

2) Gas cabinets using only gases that are not toxic air pollutants regulated under chapter 173-460 WAC;

3) Installation or modification of a single laboratory fume hood;

4) Laboratory calibration and maintenance equipment.

g) Monitoring/quality assurance/testing:

1) Equipment and instrumentation used for quality control/assurance or inspection purpose;

2) Hydraulic and hydrostatic testing equipment;

3) Sample gathering, preparation and management;

4) Vents from continuous emission monitors and other analyzers.

h) Dry Cleaning: Unvented, dry-to-dry, dry-cleaning equipment that is equipped with refrigerated condensers and carbon absorption to recover the cleaning solvent.

i) Emergency Stationary Compression Ignition (CI) Internal Combustion Engines (ICE): Any stationary internal combustion engine whose operation is limited to emergency situations and required testing and maintenance and operating less than 500 hours a year. Examples include stationary ICE used to produce power for critical networks or equipment (including power supplied to portions of a facility) when electric power from the local utility (or the normal power source, if the facility runs on its own power production) is interrupted, or stationary ICE used to pump water in the case of fire or flood, etc. Stationary CI ICE used to supply power to an electric grid or that supply power as part of a financial arrangement with another entity are not considered to be emergency engines.

j) Miscellaneous:

1) Single-family residences and duplexes;

2) Plastic pipe welding;

3) Primary agricultural production activities including soil preparation, planting, fertilizing, weed and pest control, and harvesting;

4) Comfort air conditioning;

5) Flares used to indicate danger to the public;

6) Natural and forced air vents and stacks for bathroom/toilet activities;

7) Personal care activities;

8) Recreational fireplaces including the use of barbecues, campfires, and ceremonial fires;

9) Tobacco smoking rooms and areas;

10) Noncommercial smokehouses;

11) Blacksmith forges for single forges;

12) Vehicle maintenance activities, not including vehicle surface coating;

13) Vehicle or equipment washing (see c) of this subsection for threshold for boilers);

14) Wax application;

15) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment not including internal and external combustion equipment;

16) Ozone generators and ozonation equipment;

17) Solar simulators;

18) Ultraviolet curing processes, to the extent that toxic air pollutant gases as defined in chapter 173-460 WAC are not emitted;

19) Electrical circuit breakers, transformers, or switching equipment installation or operation;

20) Pulse capacitors;

- 21) Pneumatically operated equipment, including tools and hand held applicator equipment for hot melt adhesives;
 - 22) Fire suppression equipment;
 - 23) Recovery boiler blow-down tank;
 - 24) Screw press vents;
 - 25) Drop hammers or hydraulic presses for forging or metal working;
 - 26) Production of foundry sand molds, unheated and using binders less than 0.25% free phenol by sand weight;
 - 27) Kraft lime mud storage tanks and process vessels;
 - 28) Lime grits washers, filters and handling;
 - 29) Lime mud filtrate tanks;
 - 30) Lime mud water;
 - 31) Stock cleaning and pressurized pulp washing down process of the brown stock washer;
 - 32) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities and transportation marketing facilities;
 - 33) Nontoxic air pollutant, as defined in chapter 173-460 WAC, solvent cleaners less than 10 square feet air-vapor interface with solvent vapor pressure not more than 30 mm Hg @21°;
 - 34) Surface coating, aqueous solution or suspension containing less than or equal to 1% (by weight) VOCs, and/or toxic air pollutants as defined in chapter 173-460 WAC;
 - 35) Cleaning and stripping activities and equipment using solutions having less than or equal to 1% VOCs (by weight); on metallic substances, acid solutions are not exempt;
 - 36) Dip coating operations, using materials less than 1% VOCs (by weight) and/or toxic air pollutants as defined in chapter 173-460 WAC.
- 300.5 Exemptions Based on Emissions Thresholds
- a) Except as provided in NWCAA 300.1 and 300.2 of this section and in this subsection:
 - 1) A new emissions unit that has an uncontrolled potential to emit below each of the threshold levels listed in the table contained in (d) of this subsection is exempt from new source review provided that the conditions of (b) of this subsection are met.
 - 2) A modification to an existing emissions unit that increases the unit's actual emissions by less than each of the threshold levels listed in the table contained in (d) of this subsection is exempt from new source review provided that the conditions of (b) of this subsection are met.
 - b) The owner or operator seeking to exempt a project from new source review under this section shall notify, and upon request, file a brief project summary with the NWCAA thirty (30) days prior to beginning actual construction on the project. If the NWCAA determines that the project will have more than a de Minimus impact on air quality as defined in 300.5 d), the NWCAA shall require the filing of a Notice of Construction or PSD permit application. The NWCAA may require the owner or operator to demonstrate that the emissions increase from the new emissions unit is smaller than all of the thresholds listed below. In accordance with NWCAA 324.2, a filing and NOC applicability determination fee shall apply when the NWCAA issues a written determination that a project is exempt for new source review.

c) The owner or operator may begin actual construction on the project thirty-one (31) days after the NWCAA receives the project summary, unless the NWCAA notifies the owner or operator within thirty (30) days that the proposed new source requires a Notice of Construction or PSD permit application.

d) Exemption threshold table:

POLLUTANT THRESHOLD LEVEL (ton per year)

- 1) Total Suspended Particulates: 1.25
- 2) PM-10: 0.75
- 3) Sulfur Oxides: 2.0
- 4) Nitrogen Oxides: 2.0
- 5) Volatile Organic Compounds: total 2.0
- 6) Carbon Monoxide: 5.0
- 7) Lead: 0.005
- 8) Ozone Depleting Substances: total 1.0 (in effect on July 1, 2000)
- 9) Toxic Air Pollutants: as specified in chapter 173-460 WAC.

300.6 The Control Officer may require that a new source, that would otherwise be exempt under this section, submit a Notice of Construction application and be granted approval as specified in this section. This discretionary determination shall be based on the nature of air pollution emissions from the stationary source and its potential effect on health, economic and social factors, or physical effects on property. Upon request, the proponent shall submit to the Control Officer, appropriate information as necessary to make this determination.

300.7 Notice of Construction - Submittal Requirements

Each Notice of Construction application shall:

- a) be submitted on forms provided by the NWCAA;
- b) be accompanied by the appropriate fee specified in NWCAA 324.2;
- c) be accompanied by a completed State Environmental Policy Act (SEPA) checklist consistent with NWCAA 155; and
- d) include a "top down" BACT analysis, as defined at the time of submittal, except where the Federal Clean Air Act requires LAER; and
- e) An applicant filing a Notice of Construction application for a project described in WAC 173-400-117(2), Special protection requirements for Class I areas, shall send a copy of the application to the responsible federal land manager.

300.8 Notice of Construction - Completeness Determination.

a) Within thirty (30) days after receiving a Notice of Construction or PSD permit application, the NWCAA shall either notify the applicant in writing that the application is complete or notify the applicant in writing of additional information necessary to complete the application.

b) For a project subject to the Special protection requirements for federal Class I areas in WAC 173-400-117(2), a completeness determination includes a determination that the application includes all information required for review of that project under WAC 173-400-117(3).

c) For a project subject to PSD review under WAC 173-400-720 through -750, a completeness determination includes a determination that the application provides all information required to conduct the PSD review.

300.9 Notice of Construction - Final Determination

a) Within sixty (60) days of receipt of a complete Notice of Construction or PSD permit application, the NWCAA shall either issue a final decision on the application or initiate public notice under NWCAA Section 305 on a proposed decision, followed as promptly as possible by a final decision.

b) A person seeking approval to construct or modify a stationary source that requires an operating permit may elect to integrate review of the operating permit application or amendment required under RCW 70.94.161 and the Notice of Construction or PSD permit application required by this section. A Notice of Construction or PSD permit application designated for integrated review shall be processed in accordance with operating permit program procedures and deadlines in chapter 173-401 WAC. A PSD permit application under WAC 173-400-720 through -750, a notice of nonattainment area construction application for a major modification in a nonattainment area, or a Notice of Construction application for a major stationary source in a nonattainment area must also comply with WAC 173-400-171.

c) Every final determination on a Notice of Construction or PSD permit application shall be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the NWCAA.

d) If the new source is a major stationary source or the change is a major modification, the application shall be processed in accordance with the applicable sections of WAC 173-400-112, 113, 117 and 171. The permitting agency shall:

1) Submit any control technology determination included in a final Order of Approval or PSD permit to the RACT/BACT/LAER clearinghouse maintained by EPA; and

2) Send a copy of the final Order of Approval or PSD permit to EPA.

300.10 Order of Approval - Appeals

An Order of Approval or PSD permit, any conditions contained in an Order of Approval or PSD permit, or the denial of a Notice of Construction or PSD permit application may be appealed to the Pollution Control Hearings Board as provided in chapter 43.21B RCW. The NWCAA shall promptly mail copies of each order approving or denying a Notice of Construction or PSD permit application to the applicant and to any other party who submitted timely comments on the application, along with a notice advising parties of their rights of appeal to the Pollution Control Hearings Board.

300.11 Order of Approval - Time Limitations.

An Order of Approval or PSD permit becomes invalid if construction is not commenced within eighteen months after receipt of the approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The NWCAA may extend the eighteen-month period upon a satisfactory showing that an extension is justified. An extension for a project operating under a PSD permit must also comply with public notice requirements in WAC 173-400-171. This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each

phase must commence construction within eighteen months of the projected and approved commencement date.

300.12 Order of Approval - Change of Conditions.

a) The owner or operator may request, at any time, a change in conditions of an Order of Approval or PSD permit and the NWCAA may approve the request provided the NWCAA finds that:

1) The change in conditions will not cause the stationary source to exceed an emissions standard;

2) No ambient air quality standard or PSD increment will be exceeded as a result of the change;

3) The change will not adversely impact the ability of Ecology or the NWCAA to determine compliance with an emissions standard;

4) The revised order will continue to require BACT, as defined at the time of the original approval, for each new source approved by the order except where the Federal Clean Air Act requires LAER; and

5) The revised order meets the requirements of this section and WAC 173-400-110, 173-400-112, 173-400-113 and 173-400-720 through -750, as applicable.

b) Actions taken under this subsection are subject to the public involvement provisions of NWCAA Section 305 or WAC 173-400-171 as applicable.

c) This rule does not prescribe the exact form such requests must take. However, if the request is filed as a Notice of Construction application, that application must be acted upon using the timelines found in NWCAA 300.8 and NWCAA 300.9 and the fee schedule found in NWCAA 324.

300.13 Replacement or Substantial Alteration of Emission Control Technology at an Existing Stationary Source.

a) Any person proposing to replace or substantially alter the emission control technology installed on an existing stationary source or emission unit shall file a Notice of Construction application with the NWCAA. Replacement or substantial alteration of control technology does not include routine maintenance, repair or similar parts replacement.

b) For projects not otherwise reviewable under NWCAA Section 300, the NWCAA may:

1) Require that the owner or operator employ RACT for the affected emission unit;

2) Prescribe reasonable operation and maintenance conditions for the control equipment; and

3) Prescribe other requirements as authorized by chapter 70.94 RCW.

c) Within thirty (30) days of receipt of a Notice of Construction application under this section the NWCAA shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Within thirty (30) days of receipt of a complete Notice of Construction application under this section the NWCAA shall either issue an Order of Approval or a proposed RACT determination for the proposed project.

d) Construction shall not "commence," as defined in NWCAA Section 200, on a project subject to review under this section until the NWCAA issues a final Order of Approval. However, any Notice of Construction application filed under this section shall be deemed to be approved without conditions if the NWCAA takes no action within thirty

(30) days of receipt of a complete Notice of Construction application.

e) Approval to replace or substantially alter emission control technology shall become invalid if construction is not commenced within eighteen months after receipt of such approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The NWCAA may extend the eighteen-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen months of the projected and approved commencement date.

300.14 (~~Incorporation~~) Adoption of State NSR Regulations

In order to facilitate complete implementation of this section, WAC 173-400-112, -113, -117, (~~-560,~~) -700, -710, -720, -730, -740, and -750 are hereby incorporated by reference.

300.15 Order of Approval - Requirements to Comply

It shall be unlawful for an owner or operator of a source or emission unit to not abide by the operating and reporting conditions in the Order of Approval.

Passed: November 12, 1998 Amended: November 12, 1999, March 9, 2000, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, June 10, 2010, June 9, 2011

Reviser's note: The typographical error in the above material occurred in the copy filed by the Northwest Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SECTION 305 - PUBLIC INVOLVEMENT

305.1 Internet Notice

(A) A notice shall be published on the NWCAA website for each Notice of Construction (NOC) application received by the NWCAA, and for each proposed revision to an Order of Approval to Construct (OAC) for which there is no associated NOC application. The internet notice shall remain on the NWCAA website for a minimum of 15 consecutive days and shall include the following information:

- (1) name and location of the affected facility,
- (2) brief description of the proposed action, and
- (3) a statement that a public comment period may be requested within 15 days of the initial date of the internet posting.

(B) Requests for a public comment period shall be received by the NWCAA via letter, facsimile, or electronic mail within 15 days of the initial date of the internet posting. A public notice and comment period shall be provided in accordance with this Section, for any NOC application or proposed OAC revision that receives such a request. Any NOC application or proposed OAC revision for which a public comment period is not requested may be processed without further public involvement at the end of the 15-day request period.

305.2 Actions Requiring Public Notice and Comment Period

(A) The NWCAA shall provide public notice and a public comment period in accordance with 305.3 through 305.8 of this Section, before approving or denying any of the following types of applications or other actions:

(1) Any use of a modified or substituted air quality model, other than a guideline model in Appendix W of 40 CFR Part 51 (in effect on July 1, 2005) as part of review under Section 300 of this Regulation;

(2) Any order to determine Reasonably Available Control Technology (RACT);

(3) Any order to establish a compliance schedule or a variance;

(4) Any order to demonstrate the creditable height of a stack which exceeds the good engineering practice (GEP) formula height and sixty-five meters, by means of a fluid model or a field study, for the purposes of establishing an emission limitation;

(5) Any order to authorize an emissions bubble pursuant to WAC 173-400-120;

(6) Any regulatory order to establish or debit of emission reduction credits (ERC);

(7) Any order issued under WAC 173-400-091 that establishes limitations on a source's potential to emit;

(8) Any extension of the deadline to begin actual construction of a "major stationary source" or "major modification" in a nonattainment area;

(9) The original issuance and any revisions to a general Order of Approval issued under WAC 173-400-560;

(10) Any Notice of Construction application or other proposed action for which the NWCAA determines there is substantial public interest;

(11) Any Notice of Construction application or proposed Order of Approval to Construct revision that receives a request for a public comment period in accordance with 305.1 of this Section.

(12) Any Notice of Construction application or proposed Order of Approval to Construct revision that would result in a significant emissions increase defined as follows.

Air Pollutant	Potential to Emit in Tons per Year
Carbon Monoxide (CO)	100.0
Volatile Organic Compounds (VOC)	40.0
Sulfur Dioxide (SO ₂)	40.0
Nitrogen Oxides (NO _x)	40.0
Particulate Matter (PM)	25.0
Fine Particulate Matter (PM-10)	15.0
Lead	0.6
Fluorides	3.0
Sulfuric Acid Mist (H ₂ SO ₄)	7.0
Hydrogen Sulfide (H ₂ S)	10.0
Total Reduced Sulfur (including H ₂ S)	10.0

(B) Any Notice of Construction application designated for integrated review with an application to issue or modify an Air Operating Permit shall be processed in accordance with the Air Operating Permit program procedures and deadlines set forth in WAC 173-401.

305.3 Public Comment Period

If required, a public comment period shall be initiated through publication of a legal notice in a local newspaper. The public comment period shall be initiated only after the NWCAA has made a preliminary determination. The cost of providing legal notice shall be borne by the applicant. Public notice of any NOC application requiring a public comment period shall include the following:

(A) The NOC application and any written preliminary determination by the NWCAA shall be available on the NWCAA's internet website, excluding any confidential information as provided in Section 114 of this Regulation. In addition, the NOC application and any written determination shall be made available for public inspection in at least one location near the proposed project. The NWCAA's written preliminary determination shall include the conclusions, determinations and pertinent supporting information from the NWCAA's analysis of the effect of the proposed project on air quality.

(B) Publication of a legal notice in a newspaper of general circulation in the area of the proposed project which provides each of the following:

- (1) Name, location and a brief description of the project;
- (2) Location of documents made available for public inspection;
- (3) The deadline for submitting written comments;
- (4) A statement that any person, interested governmental agency, group, or the applicant may request a public hearing;
- (5) A statement that a public hearing may be held if the NWCAA determines within a 30-day period that significant public interest exists;
- (6) The date of the close of the public comment period in the event of a public hearing;

(C) Notice to the US Environmental Protection Agency Region 10 Regional Administrator.

305.4 Extent of Public Comment Period

The public comment period shall be the 30-day period following the date the public notice is first published, unless a public hearing is held. If a public hearing is held, the public comment period shall extend through the hearing date and thereafter for such period, as specified in the notice of public hearing.

305.5 Public Hearings

Any person, interested governmental entity, group or the applicant, may request a public hearing within the comment period specified in the public notice. Any such request shall indicate, in writing, the interest of the entity filing it and why a hearing is warranted. The NWCAA may, in its discretion, hold a public hearing if it determines that significant public interest exists. Any such hearing shall be held upon such notice and at a time and place as the NWCAA deems reasonable. The NWCAA shall provide at least 30 days prior notice of any hearing.

305.6 Consideration of Public Comments

No final decision on any NOC application or OAC revision shall be made until all public comment periods have ended and any comments received have been considered.

305.7 Other Requirements of Law

Whenever procedures permitted or mandated by law will accomplish the objectives of public notice and opportunity for comment, those procedures may be used in lieu of the provisions of this section (e.g., SEPA). This subsection does not apply to an application for a "major modification" or an application from a "major stationary source".

305.8 Public Information.

All information provided to the public in accordance with this Section, except information protected from disclosure under any applicable law, including, but not limited to, NWCAA Section 114 and RCW 70.94.205, shall be available for public inspection at the NWCAA. This includes copies of Notices of Construction applications, orders, and modifications.

Passed: July 14, 2005 Amended: November 8, 2007,
June 9, 2011

AMENDATORY SECTION

SECTION 320 - REGISTRATION PROGRAM

320.1 Program Authority, Applicability and Purpose. As authorized by RCW 70.94.151, the Board, by this Regulation, classifies air contaminant sources which may cause or contribute to air pollution. This classification is made according to levels and types of emissions and other characteristics that cause or contribute to air pollution. The Board requires both registration and reporting for these classes of air contaminant sources. The classifications are made for the entire area of jurisdiction of the NWCAA and are made with special reference to effects on health, economic and social factors, and physical effects on property. Information collected through the registration program is used to evaluate the effectiveness of air pollution control strategies and to verify source compliance with applicable air pollution requirements.

320.2 Registration and Reporting. Any person operating or responsible for the operation of an air contaminant source for which registration and reporting are required, shall register the source with the NWCAA. The owner or operator shall make reports to the NWCAA containing information as may be required by the NWCAA concerning location, size, and height of contaminant outlets, processes employed, nature of the air contaminant emission, and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

320.3 Annual Registration Fees. An annual registration fee shall be paid by all registered sources. The Board has determined the fee for each class of air contaminant source to be as shown in Section 324.1. The amount of fees collected shall not exceed the costs of administering this registration program, which shall be defined as:

- a) initial registration and annual or other periodic reports from the source owner or operator providing the information directly related to air pollution registration;
- b) on-site inspections necessary to verify compliance with registration requirements;

c) data storage and retrieval systems necessary for support of the registration program;

d) emission inventory reports and emission reduction credits computed from information provided by sources pursuant to the requirements of the registration program;

e) staff review, including engineering analysis for accuracy and completeness, of information provided by sources pursuant to the requirements of the registration program;

f) clerical and other office support provided in direct furtherance of the registration program; and

g) administrative support provided in directly carrying out the registration program.

320.4 Any registered source which does not pay the annual registration fee by the end of the registration period shall be considered a new source and shall submit a "Notice of Construction and Application for Approval" and receive approval from the Board prior to resumption of operation or re-entry into the jurisdiction of the NWCAA.

320.5 Registration Required

320.5.1 Source classification list. The following source categories shall register with the NWCAA:

- a) abrasive blasting operations;
- b) aerosol can-filling facilities;
- c) agricultural chemical facilities engaged in the manufacturing of liquid or dry fertilizers or pesticides;
- d) agricultural drying and dehydrating operations;
- e) alumina processing;
- f) ammonium sulfate manufacturing plants;
- g) any source category subject to a federal standard of performance (NSPS) under 40 CFR Part 60, other than Subpart S (Primary Aluminum Reduction Plants), Subpart BB (Kraft Pulp Mills), or Subpart AAA (Standards of Performance for New Residential Wood Heaters);
- h) any source category subject to a federal standard under Section 112 of the Federal Clean Air Act (FCAA) other than 40 CFR Part 61 Subpart M;
- i) any source that has elected to opt-out of the operating permit program by limiting its potential-to-emit (synthetic minor) or is required to report periodically to demonstrate nonapplicability to EPA requirements under Sections 111 or 112 of the FCAA;
- j) any source that has equipment or control equipment, with an approved Notice of Construction from the NWCAA;
- k) any source, stationary source or emission unit with significant emissions;
- l) any source or emission unit from which emissions exceed the threshold levels for toxic air pollutants as specified in Chapter 173-401-531 WAC;
- m) asphalt and asphalt products production facilities, not including asphalt laying equipment;
- n) automobile and light-duty truck surface coating operations;
- o) baker's yeast manufacturing;
- p) brick and clay manufacturing plants, including tiles and ceramics;
- q) casting facilities and foundries, ferrous and nonferrous;
- r) cattle feedlots with operational facilities which have an inventory of one thousand or more cattle in operation between June 1 and October 1, where vegetation forage

growth is not sustained over the majority of the lot during the normal growth season;

- s) chemical manufacturing plants;
- t) coal preparation plants;
- u) coffee roasting facilities;
- v) composting operations, including commercial, industrial and municipal, but exempting residential and agricultural composting activities;
- w) concrete product manufacturers and ready mix and premix concrete plants;
- x) crematoria or animal carcass incinerators;
- y) dry cleaning plants;
- z) ethylene dichloride, polyvinyl chloride, or vinyl chloride plants;
- aa) explosives production;
- bb) flexible polyurethane foam production;
- cc) flexible vinyl and urethane coating and printing operations;
- dd) gasoline stations (>200,000 gallons per year) and bulk gasoline plants (>200,000 gallons per year);
- ee) gelcoat, polyester, resin, or vinyl ester coating manufacturing operations at commercial or industrial facilities;
- ff) glass manufacturing plants;
- gg) grain, seed, animal feed, legume, and flour processing operations and handling facilities;
- hh) graphic art systems;
- ii) hay cubers and pelletizers;
- jj) hazardous waste treatment and disposal facilities;
- kk) hospitals, specialty and general medical surgical;
- ll) ink manufacturers;
- mm) insulation fiber manufacturers;
- nn) lead-acid battery manufacturing plants;
- oo) lime manufacturing plants;
- pp) materials handling and transfer facilities that generate fine particulate, which may include pneumatic conveying, cyclones, baghouses, and industrial housekeeping vacuuming systems that exhaust to the atmosphere;
- qq) meat packing plants;
- rr) metal plating and anodizing operations;
- ss) metallic and nonmetallic mineral processing plants, including rock crushing plants, and sand and gravel operations;
- tt) mills: such as lumber, plywood, shingle, woodchip, veneer operations, dry kilns, pulpwood insulating board, or any combination thereof;
- uu) mills: wood products (cabinet works, casket works, furniture, wood byproducts);
- vv) mineral wool production;
- ww) mineralogical processing plants;
- xx) municipal waste combustors;
- yy) natural gas transmission and distribution (SIC 4953);
- zz) nitric acid plants;
- bbb) other metallurgical processing plants;
- ccc) paper manufacturers;
- ddd) petroleum refineries;
- eee) pharmaceuticals production;
- fff) plastics and fiberglass product fabrication facilities;
- ggg) pneumatic materials conveying operations and industrial housekeeping vacuuming systems that exhaust more than 1000 acfm to the atmosphere;

- hhh) portland cement plants;
 - iii) primary copper smelters, lead smelters, magnesium refining and zinc smelters, but excluding primary aluminum plants;
 - jjj) refuse systems including: incinerators, dumps and landfills (active and inactive, including covers, gas collection systems or flares);
 - kkk) rendering plants;
 - lll) salvage operations (scrap metal, junk);
 - mmm) semiconductor manufacturing;
 - nnn) shipbuilding and ship repair (surface coating);
 - ooo) soil and groundwater remediation projects;
 - ppp) soil vapor extraction (active), thermal soil desorption, or groundwater air stripping remediation projects;
 - qqq) sulfuric acid plants;
 - rrr) surface coating manufacturers;
 - sss) surface coating operations including: metal, cans, pressure sensitive tape, labels, coils, wood, plastic, rubber, glass, paper and other substrates, excluding surface coating by use of aqueous solution or suspension;
 - ttt) synthetic fiber production facilities;
 - uuu) tire recapping facilities;
 - vvv) utilities (combination of electrical and gas, and other utility services (SIC 4931, 4932, 4939);
 - www) vegetable oil production;
 - xxx) wastewater treatment plants;
 - yyy) wood treatment; and
 - zzz) any source, including any listed above, that has been determined through review by the Control Officer to warrant registration, due to the amount and nature of air contaminants produced, or the potential to contribute to air pollution, with special reference to effects on health, economic and social factors, and physical effects on property.
- 320.5.2 Equipment classification list. The owner or operator of the following equipment shall register with the NWCAA:
- a) all natural gas only fired boilers above 10 million Btu per hour input;
 - b) chemical concentration evaporators;
 - c) degreasers of the cold or vapor type in which more than five percent of the solvent is comprised of halogens or such aromatic hydrocarbons as benzene, ethylbenzene, toluene or xylene;
 - d) flares utilized to combust any gaseous material;
 - e) fuel burning equipment with a heat input of more than one million Btu per hour, except heating, air conditioning systems, or ventilating systems not designed to remove contaminants generated by or released from equipment;
 - f) ovens, burn-out or heat-treat;
 - g) stationary internal combustion engines and turbines rated at five hundred horsepower or more;
 - h) storage tanks, reservoirs, or containers:
 - 1) with a rated capacity greater than 6,000 gallons storing volatile organic liquids, other than petroleum liquids, having a true vapor pressure equal to or greater than 1.5 psia.
 - 2) With a rated capacity greater than 40,000 gallons storing petroleum liquids having a true vapor pressure equal to or greater than 1.5 psia.
 - i) vapor collection systems within commercial or industrial facilities;

- j) waste oil burners above 0.5 million Btu heat output; and
 - k) woodwaste incinerators.
- Passed: November 12, 1998 Amended: November 12, 1999, July 14, 2005, June 9, 2011

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Northwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SECTION 321 - EXEMPTIONS FROM REGISTRATION

Exclusion from registration does not absolve the owner, lessee, or his registered agent from all other requirements of the Regulation of the NWCAA. Exemption from registration does not apply to any control facility or device required to be installed in order to meet the emission and/or ambient standards of this Regulation.

The following sources of air pollution are exempt from registration:

- 321.1 Motor vehicles.
- 321.2 Non-road engines (as defined in Section 216 of the FCAA).
- 321.3 Non-road vehicles (as defined in Section 216 of the FCAA).
- 321.4 Sources that require an air operating permit per Chapter 173-401 WAC.
- 321.5 The Control Officer may exempt sources having the potential to emit (uncontrolled) criteria air pollutants under the following thresholds:
 - a) 5 tons per year of carbon monoxide (CO);
 - b) 2 tons per year of nitrogen oxides (NO_x);
 - c) 2 tons per year of sulfur dioxide (SO₂);
 - d) 1.25 tons per year of particulate matter (PM);
 - e) 0.75 tons per year of fine particulate matter (PM₁₀);
 - f) 2 tons per year of volatile organic compounds (VOC's);
 - g) 0.005 tons per year of lead.
- 321.6 The Control Officer may exempt sources that do not emit measurable amounts of Class A or Class B toxic air pollutants specified in Chapter 173-460-150 WAC and Chapter 173-460-160 WAC.

PASSED: November 12, 1998 Amended: June 9, 2011

AMENDATORY SECTION

SECTION 322 - AIR OPERATING PERMIT PROGRAM (AOP)

322.1 Purpose. The purpose of this section is to provide for a comprehensive operating permit program consistent with the requirements of Title V of the Federal Clean Air Act (FCAA) Amendments of 1990 and its implementing regulation 40 CFR Part 70, and RCW 70.94.161 and its implementing regulation Chapter 173-401 of the Washington Administrative Code (WAC).

322.2 Applicability. The provisions of this section shall apply to all sources within the NWCAA jurisdiction excluding those regulated by the Washington State Department of Ecology Industrial Section subject to the requirements of Section 7661(a) of the FCAA or Chapter 173-401-300 WAC.

322.3 Compliance. It shall be unlawful for any person to cause or allow the operation of any source subject to the requirements of Chapter 173-401 WAC without complying with the provisions of Chapter 173-401 WAC and any permit issued under its authority.

322.4 Air Operating Permit Fees.

a) The NWCAA shall levy annual operating permit program fees as set forth in this section to cover the cost of administering its operating permit program.

b) Commencing with the effective date of the operating permit program, the NWCAA shall assess and collect annual air operating permit fees in its jurisdiction for any source specified in Section 7661(a) of Title V of the FCAA or Chapter 173-401-300 WAC (excluding sources regulated by the Washington State Department of Ecology Industrial Section). The total fees required by the NWCAA to administer the program shall be determined by a workload analysis conducted by the staff and approved annually by a resolution by the Board of Directors. Allocation of the fees to individual affected sources shall be based on the following:

1) Ten percent (10%) of the total fees shall be allocated equally among all affected sources.

2) Ninety percent (90%) of the total fees shall be allocated based on actual emissions of regulated pollutants identified in the most recent annual emission inventory or potential emissions if actual data are unavailable. A regulated pollutant for fee calculation shall include:

Nitrogen oxides (NO_x);

Volatile organic compounds (VOC's);

Particulate matter with an aerodynamic particle diameter less than or equal to 10 μ (PM₁₀);

Sulfur dioxide (SO₂);

Lead; and

Any pollutant subject to the requirements under Section 112(b) of the FCAA not included in any of the above categories.

c) Upon assessment by the NWCAA, fees are due and payable and shall be deemed delinquent if not fully paid within 90 days. Any source that fails to pay a fee imposed under this section within 90 days of the due date shall be assessed a late penalty in the amount of 50 percent of the fee. This late penalty shall be in addition to the fee assessed under this section.

d) The NWCAA shall collect and transfer to the Washington State Department of Ecology a surcharge established by the Department of Ecology to cover the Department of Ecology's program development and oversight costs attributable to subject sources within the NWCAA jurisdiction. Fees for the Department of Ecology shall be allocated to affected sources in the same manner specified in this section.

e) An affected source subject to the operating permit program that is required to pay an annual operating permit program fee shall not be required to pay a registration fee as specified in Section 324.

PASSED: November 12, 1998 Amended: November 12, 1999, June 9, 2011

WSR 11-09-081
PROPOSED RULES
DEPARTMENT OF
EARLY LEARNING

[Filed April 20, 2011, 8:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-24-051.

Title of Rule and Other Identifying Information: Proposing new chapter 170-296A WAC, Licensed family home child care standards, and repealing all sections of current chapter 170-296 WAC.

Hearing Location(s): The public may join the following hearings at anytime during the posted times:

1. Saturday, June 11, 2011, at 11:00 a.m. to 1:30 p.m. by video conference at Renton, Educational Service District 121, Puyallup Room, 800 Oaksdale [Oakesdale] Avenue S.W., Renton, WA 98057, and University Center at Everett Community College, Gray Wolf Hall, Room 160, 2000 Tower Street, Everett, WA 98201-1390, free parking is in lots B and C west of Gray Wolf Hall.

2. Wednesday, June 15, 2011, at 6:30 p.m. to 9:00 p.m. by video conference at Vancouver, Educational Service District 112, Clark/Pacific Rooms, 2500 N.E. 65th Avenue, Vancouver, WA 98661-6812, and Olympia/Tumwater, Educational Service District 113, 6005 Tyee Drive S.W., Olympia, WA 98512 (new location - between Costco and Home Depot, 1/2 mile south of I-5 exit 102).

3. Saturday, June 18, 2011, at 11:00 a.m. to 1:30 p.m., Yakima, Children's Village, 3801 Kern Road, Yakima, WA 98902.

4. Saturday, June 25, 2011, at 11:00 a.m. to 1:30 p.m. by video conference at Spokane, Northeast Washington Educational Service District 101, 4202 South Regal, Spokane, WA 98223-7738, and Pasco, Educational Service District 123, Blue Mountain Room, 3918 West Court Street, Pasco, WA 99301.

The deadline for sending written comments on the proposed rules is midnight on Sunday, June 26, 2011. See the "submit written comments to" section of this notice about how to submit written input on this proposed rule.

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*. This statement is also available to anyone who requests it, by contacting the department of early learning (DEL) rules coordinator, or by e-mailing Rules@del.wa.gov.

DEL encourages the public to use the department Facebook and DEL 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 department's concise explanatory statement, 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."

Date of Intended Adoption: After July 1, 2011.

Submit Written Comments to: DEL Rules Coordinator, P.O. Box 40970, Olympia, WA 98504-0970, DEL Online Comment Web Site <https://apps.del.wa.gov/PolicyPropos->

alComment/Detail.aspx, e-mail Rules@del.wa.gov, fax (360) 725-4939, by 11:59 p.m., June 26, 2011.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by 5:00 p.m., June 2, 2011, (360) 725-4397.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to adopt a new WAC chapter setting requirements for obtaining and maintaining a DEL family home child care license. The rules set the health, safe and early learning standards for persons who provide care in the family living quarters of their own home for not more than twelve children under RCW 43.215.010 (1)(c).

Reasons Supporting Proposal: The current chapter 170-296 WAC was adopted in 2004 when child care licensing was under the department of social and health services (DSHS). In 2006, DEL was created as a separate state agency, and the legislature transferred child care licensing authority from DSHS to DEL (see chapter 265, Laws of 2006). Child care licensing rules were transferred from DSHS to DEL in July 2006, including the rules that became DEL chapter 170-296 WAC, Child care business regulations for family home child care (see WSR 06-15-075).

RCW 43.215.200 establishes the DEL director's authority to establish requirements for licensing child care facilities regulated under chapter 43.215 RCW, including family home child care (FHCC).

The 2004 DSHS FHCC rules resulted in one hundred thirty-eight rule-making petitions filed under RCW 34.05.330 requesting that various sections of chapter 388-296 WAC be revised or repealed. DSHS accepted some of those petitions and planned to open the FHCC for revision. But by mid-2006, DSHS had not begun rule making related to these petitions when DEL was created and chapter 388-296 WAC was transferred from DSHS to DEL.

In the same year DEL was created, the legislature passed a law (now RCW 43.215.350) requiring then DSHS and now DEL to engage in "negotiated rule making" with FHCC providers, their exclusive bargaining representative (Service Employees International Union Local 925 (SEIU)) and other affected interests before adopting requirements that affect FHCC licensees. Negotiated rule making is a process briefly described in RCW 34.05.310 (the Washington Administrative Procedure Act) where the individuals or businesses regulated by a set of rules participate directly in developing or revising the rules.

In autumn 2006, DEL staff began discussions with SEIU on revising the FHCC rules to respond to the 2004 rule-making petitions, and on using a negotiated rule-making process.

DEL and SEIU held joint public forums in January 2007 on how the rule development process should proceed. A joint decision was made to review the entire FHCC WAC chapter, rather than review only the sections subject to the rule-making petitions. A thirty member negotiated rule-making team (NRMT) was formed comprised of FHCC licensees, SEIU staff, parent advocates, provider advocates, child care resource and referral (CCR&R) network representatives and DEL staff. The NRMT's charge was to review the current FHCC rules, research child development and child health and safety resources plus other state regulations, and make com-

prehensive recommendations for revising chapter 170-296 WAC.

There were no examples found of negotiated rule making used to develop other state agency regulations. DEL and SEIU used the state office of financial management *Guide to Negotiated Rule Making* as a resource. However, the process for reviewing, researching and making recommendations about the DEL FHCC rules was developed by the NRMT and an independent contractor hired to facilitate the process. This included adopting NRMT: *Protocols* for orderly decision making; a set of *Guiding Principles* that recommendations would be based upon (including that the rules must support a child's right to have safe and health[y] child care); and other organizing procedures.

Rule Development Process. From March 2007 through December 2009, the full NRMT met in-person twenty-nine times to discuss the rules. In addition, three regional subteams of the NRMT met approximately one hundred times (mostly by conference call) during this period to conduct the detailed research and to make preliminary recommendations to the full NRMT. The subteams organized their work on matrixes (for thirteen major topic areas and about two hundred subtopics) that included the: Current WAC content; child development research and/or other state regulations; possible alternatives to the current rules; potential concerns or areas of controversy; and finally the subteam's recommended rule changes to the full NRMT. The full NRMT reviewed each subteam's work, discussed issues and concerns, and then voted on in-depth "concept" recommendations to DEL for changing most of the current rules. In some instances the NRMT recommended that certain existing FHCC requirements remain, but with revised structure or wording (an early team recommendation was to rewrite the FHCC rules without the current question-and-answer format and to restructure the WAC chapter).

Using the NRMT's in-concept notes, a drafting team comprised of one FHCC licensee and one DEL staff person wrote an initial working draft of the new WAC chapter. A rule review group of three FHCC licensees, two DEL staff and a CCR&R representative reviewed the draft WAC for consistency with the NRMT recommendations and current law.

As portions of the NRMT working draft rules were completed in 2009, nearly forty small forums statewide were held to gather preliminary input, mostly sponsored by the FHCC local and statewide associations or by SEIU, with participation at several forums by DEL staff and other NRMT members. The process culminated in a NRMT working draft of the new FHCC WAC that was circulated for public input in March and April 2010. See this link <http://www.del.wa.gov/laws/development/negotiated.aspx> for more information on the NRM[T] process.

DEL director Bette Hyde met with the NRMT on March 27, 2010, to personally present nearly thirty pages of her comments and observations of the NRMT's working draft rules. Dr. Hyde noted that about ninety-five percent of the NRMT's concept recommendations DEL could enact with little or no substantive change. But Dr. Hyde said the remainder of NRMT recommendations DEL would need to revise further into more robust standards to protect the safety and

health of children in care. Dr. Hyde directed DEL staff to gather more public and staff input on the NRMT working draft before the department prepared the next draft of the FHCC WAC.

Public Input on NRMT Working Draft Rules. DEL held eight forums statewide in April 2010 to take input on the draft, in Tumwater, Vancouver, Everett, Seattle, Kent, Spokane, Pasco and Wenatchee. Comments were also received on the DEL web site, by e-mail, fax and postal mail. In all, DEL received more than three hundred pages of comments, which are summarized at this link <http://www.del.wa.gov/publications/laws/docs/NRMTPublicComments.pdf>.

DEL Develops Proposed Rules. DEL reviewed the NRMT working draft and comments, and decided to:

- Reorganize and revise the NRMT's working draft;
- Repeal of the entire current chapter 170-296 WAC and replace it with new chapter 170-296A WAC; and
- Postpone proposing some changes recommended by the NRMT that would have required resources that are unavailable to DEL in the state's current budget climate, including but not limited to: Developing preservice training prior to an applicant receiving a new FHCC license; establishing new specialty licenses (and required training) for infant-toddler-only child care, age two to five-only care, and school-age-only care; and creating a comprehensive guidebook to accompany the new rules. DEL plans to continue work on these elements, and the department may propose additional rules as appropriate at a later date.

SEIU/Licensees Seek More Discussion. DEL planned to file the proposed FHCC rules in October 2010 for public review and formal comment. However, SEIU and members of the Washington State FHCC Association requested more time to discuss changes DEL made since the NRMT working draft. From October 2010 through mid-January 2011, DEL met with SEIU and FHCC providers. DEL agreed to make some of the SEIU/licensee's requested changes, did not agree to make others, and offered to gather more research before completing the proposed rules.

As a result, DEL developed the rules in this proposal. Please see the DEL family home child care rules web site at <http://www.del.wa.gov/laws/development/negotiated.aspx> for comparisons of the proposed rules to the NRMT's first draft, and compared to the current chapter 170-296 WAC.

Statutory Authority for Adoption: RCW 43.215.060, 43.215.070, 43.43.832(6), and chapter 43.215 RCW.

Statute Being Implemented: Chapter 43.215 RCW, RCW 43.215.350 and 34.05.330.

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

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Judy Jaramillo and Andy Fernando, DEL, 649 Woodland Square Loop S.E., Lacey, WA, (360) 725-4665; Implementation: DEL child care licensing offices, statewide; and Enforcement: DEL director or designees, DEL, 649 Woodland Square Loop S.E., Lacey, WA, (360) 725-4665.

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

Small Business Economic Impact Statement

(The department has filed this preliminary small business economic impact statement (SBEIS) with the proposed new chapter 170-296A WAC as required by RCW 34.05.320. DEL welcomes input on the preliminary SBEIS. As appropriate or based on comments received, DEL may revise this analysis, and the department will make a final SBEIS available to the public when the permanent rules are filed.)

DEL is proposing a complete revision of the current family home child care licensing rules in chapter 170-296 WAC. The proposed new rules are chapter 170-296A WAC, Licensed family home child care standards. The current chapter 170-296 WAC would be repealed. DEL has determined that the proposed rules are likely to impose "more than minor" costs on small businesses that must comply, and an SBEIS is required.¹

NAICS Code. Child care services in the provider's own home are included under code number 624410 under the North American industry classification system (NAICS). However, this NAICS code also encompasses child care centers, group homes, head start programs, preschools and baby-sitting services. Therefore, obtaining state or federal revenue or employment data specific to licensed family home child care for this impact statement is not feasible using NAICS number 624410.

Background

Statutory Authority. Under RCW 43.215.010 (1)(c), a family home child care (FHCC) subject to licensing by DEL is a "child care provider who regularly provides child day care and early learning services for not more than twelve children in the provider's home in the family living quarters." RCW 43.215.200 establishes the DEL director's authority to establish minimum requirements for licensing child care agencies regulated under chapter 43.215 RCW, including FHCC. RCW 43.215.060 and 43.215.070 (2)(c) provide DEL authority to adopt rules to implement chapter 43.215 RCW. In addition, RCW 43.43.832(6) directs DEL to adopt rules for and investigate the background of anyone seeking a child care license, as well as employees, volunteers, persons living on the premises of a child care, and others having unsupervised access to children in care [center].

In 2006 the legislature stated its objectives in creating DEL and adopting chapter 43.215 RCW, including to, "...safeguard and promote the health, safety, and well-being of children receiving child care and early learning assistance, which is paramount over the right of any person to provide care..." RCW 43.215.005 (4)(c). DEL rules establish standards for child care licensee and staff qualifications, supervision, training, safe spaces, food handling, cleanliness, program activities, nurturing, guidance and discipline, fire and emergency preparedness, medication management, and other aspects of providing a safe, healthy and nurturing child care and early learning environment.

Licensing Data. The department licenses and monitors more than 7,470 child care centers, school age center pro-

grams and FHCC in Washington state. In the state fiscal year ending June 30, 2010, there were 5,354 active FHCC licenses. In the previous fiscal year there were 5,536 active licenses. Child care is a dynamic industry. In each year, some licensed family home providers close for various reasons, and new individuals apply for FHCC licenses. The number of licensed family child care homes has declined in recent years. The current weakened economy and unemployment climate in Washington has reduced the number of families needing or able to afford out-of-home child care. Reduced access to state/federally subsidized child care has also affected the number of families seeking child care and likely has also depressed the numbers of active licensed child care providers.

FHCC Licensing. A full FHCC license is valid for three years. Roughly one-third of active licensees are completing their license renewal each year. Each child care license applicant and active licensee has an assigned DEL licensor. The licensor is responsible for: Processing new or renewal license applications; completing portions of the background check process for each licensee and all individuals who are required to have a background check; giving technical assistance to licensees; following up on complaints about licensed homes or individuals providing unlicensed child care; preparing and following up facility license compliance agreements; preparing enforcement actions when appropriate and approved by the department; maintaining child care licensee files; and various other training and outreach activities.

FHCC Monitoring. DEL licensors monitor each licensed child care [center] to verify compliance with state laws and DEL rules. A licensor completes an on-site monitoring visit before an FHCC receives an initial license, before the FHCC upgrades from an initial to a full license, and then about every eighteen months thereafter. The licensor may visit more often if the licensee requests or needs technical assistance, or when the licensor must revisit to follow up on facility licensing compliance agreements or probationary licenses issued for violation of the licensing rules.

Small Business Data. Every DEL-licensed FHCC meets the definition of a "small business" under RCW 19.85.020.² (*Note: There are no large FHCC businesses (more than fifty employees), so this SBEIS does not contain a comparison of impacts of small businesses compared to ten percent of the large businesses who must comply with the rules. See RCW 19.85.040.*) Many FHCCs are operated by the licensee with no employees, or with members of the licensee's household acting in the capacity of staff, either paid or unpaid. Some FHCC licensees - particularly those who are licensed to care for seven to twelve children, or who care for more than two children under age two - may employ paid staff in order to meet the required staff-to-child ratios in the rules.

In the 2008 DEL "Market Rate Survey"³ 1,189 FHCC providers were surveyed, about nineteen percent of the total FHCC licensees at that time. Statewide, the average annual income for licensed FHCC providers statewide was \$39,910. The highest average annual FHCC income - \$51,149 - was in King County. The lowest annual licensee income was in Spokane County, \$26,428 per year. Average annual FHCC

income in other counties in the state was more than Spokane County but less than [than] in King County.

Fifty-two percent of FHCC licensees surveyed reported that child care was their main income source. For those providers, the average child care income was \$43,834 per year. For licensees who reported that child care was not their main income source, the average annual child care income was \$28,521.

The market rate survey did not ask questions about other income sources or amounts that some FHCC licensees earned outside of providing licensed child care.

The survey also found that FHCC providers statewide charged the following average monthly private pay rates: Infants - \$721; toddlers - \$626; preschoolers - \$590; kindergarteners - \$525; school-age children - \$449. The 2008 survey found private pay rates have decreased since 2006, but are slightly higher than in 2004. Sixty-five percent of FHCC licensees surveyed cared for children under various child care subsidy programs; these licensees averaged 2.7 subsidized children cared for in a typical week during the survey period. (*DEL, in conjunction with the department of social and health services, operates two of the state's largest child care subsidy programs: Working connections child care and seasonal child care.*)

The survey did not ask questions about employment of staff or volunteers in licensed FHCC.

Rule-Development Process

Negotiated Rule Making. Proposed chapter 170-296A WAC was developed using a "negotiated rule making" process under RCW 34.05.310 and 43.215.350.⁴ From March 2007 through December 2009, a thirty member negotiated rule-making team (NRMT) met twenty-nine times to review current chapter 170-296 WAC and recommend comprehensive changes. The NRMT included FHCC licensees, the Service Employees International Union (SEIU) Local 925 that represents FHCC licensees, DEL licensing and policy staff, provider and parent advocates, and the statewide child care resource and referral (CCR&R) network representatives.

In addition, three regional subteams of the NRMT met approximately one hundred times during this period to review child care research, best practice and other states' child care laws and rules to make evidence-based preliminary recommendations to the full NRMT. The NRMT voted on nearly two hundred "in-concept" recommendations regarding the current FHCC rules. In some instances, the group recommended that requirements from the current WAC remain, with revised wording. (An early recommendation from the group was to rewrite the entire chapter 170-296 WAC and eliminating the question-and-answer structure of the current rules.) Throughout the NRMT's deliberations, the group relied on *Caring for Our Children - Health and Safety Standards, 2nd Edition*, a child care guidebook published by the American Academy of Pediatrics, as the group's primary reference source, although many other resources were used.

Using the NRMT's in-concept recommendations, a drafting team comprised of one licensed FHCC provider and one DEL staff person wrote an initial draft of the new WAC chapter. A rule review group comprised of four FHCC licensees,

four DEL staff and a CCR&R representative refined the drafting team's work. The process culminated in a thirteen-part NRMT preliminary working draft of the new FHCC WAC that was released for public input in January 2010. See this link for more information on the NRM [NRMT] process <http://www.del.wa.gov/laws/development/negotiated.aspx>.

Input on the NRMT Preliminary Working Draft. As portions of the draft rules were completed in 2009, nearly forty forums statewide were held to gather preliminary input, mostly sponsored by the local or statewide family home child care associations or by SEIU, with participation at several forums by DEL staff and other NRMT members. After the complete NRMT working draft was released, several local FHCC associations sponsored provider work groups to review the draft and organize comments.

On March 27, 2010, DEL director Bette Hyde met with the NRMT to respond to the team's work. Dr. Hyde said that after gathering input from public health officials and DEL staff, she could endorse about ninety-five percent of the NRMT recommendations either without change or with minor technical changes. The director noted, however, that there were several of the NRMT's recommendations that DEL would need to revise into more robust requirements to promote a safe, healthy and nurturing child care and early learning environment. She said that DEL would gather more public and DEL staff input, and the department would be responsible for writing the next drafts of the FHCC rules.

DEL held eight public forums during April 2010 - in Everett, Seattle, Kent, Tumwater, Vancouver, Spokane, Pasco and Wenatchee - to take input on the NRMT's preliminary working draft. Comments were also received on the DEL website, by e-mail, fax and postal mail. In all, DEL received more than three hundred pages of comments, which are summarized at this web site <http://www.del.wa.gov/publications/laws/docs/NRMTPublicComments.pdf>.

DEL Develops Proposed Rules. From May through August 2010, DEL reviewed the comments on the NRMT's working draft rules, and prepared a comprehensive revision of chapter 170-296 WAC. The department decided to:

- Develop the next public draft as the formal rule proposal under RCW 34.05.320.
- Do more research in appropriate areas, including but not limited to septic inspection and water testing costs, playground safety, lighting safety, child injuries including drowning, fire safety, minimum education and training, and healthy home environments.
- Reorganize the NRMT's working draft (which was grouped in thirteen broad topic areas as reviewed by the NRMT, and was not necessarily intended as the order of the proposed or final WAC).
- Repeal the entire current chapter 170-296 WAC; and replace it with completely new rules.
- Postpone proposing some changes recommended by the NRMT that would have required resources that are unavailable to DEL in the state's current budget climate, including: Requiring more extensive preservice training prior to an applicant receiving a new FHCC license; establishing new specialty licenses and required training for: Infant/toddler-only child care, age two to five-only care, and school-age-only care;

and creating a comprehensive guidebook to accompany the new rules. DEL plans to continue work on these elements, and the department may propose additional rules as appropriate at a later date.

By early October 2010, DEL was ready to file proposed rules and begin formal public hearings. But at the request of SEIU and members of the statewide FHCC association, the department delayed the proposal pending discussion of changes DEL made since the January 2010, NRMT working draft. DEL met with FHCC licensees, SEIU and CCR&R representatives from October 2010 to January 2011. From these meetings DEL agreed to make some additional changes to the rules, decided not to make certain changes requested by SEIU or providers, and agreed to continue researching some topics to assure the rules are evidence-based and are consistent with the current law.

As a result, DEL developed the rules in this proposal. Please see the DEL family home child care rules web site at <http://www.del.wa.gov/laws/development/negotiated.aspx> for comparisons of the proposed rules to current chapter 170-296 WAC.

Proposed Rule Changes That May Impose New Costs on Affected Small Businesses

1. Licensee Minimum Education.

Proposed WAC 170-296A-1725 would require prospective new FHCC licensees to have a high school diploma or equivalent education. Under proposed WAC 170-296A-1735, current licensees would need to meet this requirement within five years after the final rule is adopted. "Equivalent education[\""] is defined as:

A. Passing the general educational development (GED) tests;

B. Documentation of completing twelve years of primary and secondary education; or

C. Completing forty-five college credit hours in early childhood education (ECE).

Why the rule is needed. In December 2010, the Washington professional development consortium (a group convened under chapter 406, Laws of 2009, to recommend a cohesive system of early learning professional development) made as its recommendations to the legislature in December 2010 on core competencies in child care and early learning:⁵ The group's first recommendation was:

"A-1: Increase minimum educational requirements for early learning professionals:

A-1(a): Licensed family child care providers will have high school completion or equivalent and thirty hours of approved preservice training before becoming licensed."

The consortium (whose advisory committee included FHCC licensees and SEIU staff) went on to say in support of this recommendation:

"Higher levels of education and training in the early learning and care professional will increase professionals' knowledge, skills and competencies, which will improve their practices. Establishing clear educational requirements for positions in the early learning field will support alignment and consistency of hiring across the field and will professionalize the field of early learning and school-age care."

The current rules do not require any minimum education for FHCC licensees. An estimated sixteen percent of current licensees do not have a high school or equivalent education. Licensees having basic literacy skills - such as being able to read a medication label, first aid manual, or sanitizing cleanser warnings - are essential to ensuring the health and safety of children. These literacy skills are generally attained through completing primary and secondary education. Caring for Our Children Standard 1.019 suggests that a family home child care licensee have an associate's degree in early childhood education or child development before obtaining a license. The proposed minimum education rules are lower than the CFOC standard, but are consistent with the state's professional development consortium recommendations.

Costs of Obtaining an Equivalent Education to a High School Diploma:

Option A - GED test: Passing the GED test gives the student a certificate that is considered comparable to obtaining a high school diploma. The test has five sections. Taking the test typically costs seventy-five dollars for all five test sections. Completing all five sections takes about six hours, and in many cases takes two days to complete all five sections. Many individuals also take the five tests individually on separate days. All Washington state community colleges and technical colleges, and some four year colleges offer GED testing and preparation classes. At community colleges the cost of GED preparation classes is twenty-five dollars per college quarter. Some colleges offer a free pretest to help assess the student's GED readiness. Adult basic education classes are also available for students who need more remedial education or for those who have limited English proficiency. The number and length of classes an individual may need would vary depend[ing] on his or her individual GED testing readiness. For this analysis, we have assumed that an

individual choosing to take the GED tests would take at least one preparatory class. GED study guides are available for less than sixteen dollars new (Amazon.com) or on-line guides are available for approximately thirty dollars.

Limiting Factors: GED tests must be taken at a college or other testing site and cannot be taken on-line. Most colleges offer GED testing only on weekdays. GED preparation classes are generally available weekdays and evenings, but may not be available on weekends. A current licensee taking the GED tests may incur costs of having replacement staff on duty while the licensee travels to a college or test site. If the tests are taken individually, the licensee may need to hire replacement staff up to five times. Testing is typically done in English - there are a limited number of sites that provide the GED tests in Spanish or French. Licensees with limited English proficiency may need to take adult education or English as a second language courses to attain skills needed to take the GED tests in English. These classes are available at twenty-five dollars per college quarter. The number and length of classes an individual may need would depend on his or her GED-readiness and cannot be estimated in this analysis.

Option B - Documenting twelve years of primary and secondary education: The cost would depend on how difficult it may be for the applicant or licensee to obtain these records. For some, the cost may be copying local school records and mailing, probably less than ten dollars. This task may be more difficult for those applicants or licensees who attended school in countries where such records may not be readily available or if they attended a school that is now closed. Circumstances may vary greatly, and no cost estimate is available for retrieving such records.

Option C - Obtaining forty-five college credits:

Table 1. Sample of Five Washington Community College Tuition Rates (In-State Resident Rates):

	Seattle Central CC	Spokane CC	Yakima Valley CC	Clark College	Whatcom CC
Per credit for 1 to 10 credits/quarter	\$87 per credit	\$81 per credit	\$95 per credit	\$92.35 per credit	\$93 per credit
45 credits if taken singly	\$3,915	\$3,645	\$4,275	\$4,156	\$4,185
Per credit fee for 11 to 18 credits/quarter	\$82 down to \$63 per credit	\$76 down to \$59 per credit	\$90 down to \$70 per credit	\$88 down to \$67 per credit	\$88 down to \$67 per credit

Costs above do not include books and other required college fees that may vary significantly.

2. State Training and Registry System (STARS) Twenty Hour Basic Training Required Prior to Obtaining a License.

Proposed WAC 170-296A-1775 would require a new license applicant to complete the twenty hour basic STARS training before obtaining an initial license. A primary staff person must complete the STARS basic training before working unsupervised with children in care.

Why the rule is needed. The professional development consortium's first recommendation to the legislature in December 2010 stated:

"A-1: Increase minimum educational requirements for early learning professionals:

A-1(a): Licensed family child care providers will have high school completion or equivalent and *thirty hours of approved preservice training before becoming licensed.*"

Currently the only prelicense training requirement is to complete first aid/CPR and bloodborne pathogens training. The current FHCC rules allow the licensee to complete the STARS twenty hour basic child care training within six months after receiving an initial license. Yet some licensees have received up to the maximum of three initial license extensions without completing the STARS basic training, meaning those licensee[s] may have been providing child care for nearly two years without any additional child care training. The STARS twenty hour basic course includes essential fundamentals of child growth and development, child guidance, health and safety that are a cornerstone of operating a successful licensed child care business.

CFOC Standard 1.019 recommends that a prospective family home licensee have preservice training in health management and knowledge of child development before obtaining a state child care license. The NRMT also recommended that a new license applicant complete DEL-approved preservice training prior to obtaining an initial license.

Cost: Depending on the license applicant's location and whether training is taken in a classroom or by distance/online learning, the STARS twenty hour basic training may be free or cost up to \$190. The following examples of the twenty hour basic training costs are from DEL's MERIT "Find Training" web site at <https://apps.del.wa.gov/merit/Public/TrainingSearch.aspx>.

- Seattle Child Care Resources: On-line - \$150
- Bloom Training & Consulting: Classroom or correspondence course - \$150
- Patricia Fowler - Clarkston: Classroom - \$100
- Big Bend Community College - Royal City: Classroom - free
- Tacoma/Pierce County CCR&R: Classroom - \$75
- Ashley Lind - Olympia: Classroom - \$150
- Bellingham Technical College: Classroom - \$189.63
- Mickie Guberlet: Self-paced correspondence course - \$85
- Bellevue Community College: On-line - \$178
- Educational Training Partners: On-line - \$75
- Lisa Sandige: On-line - \$95

Limiting Factors: The current rules allow a licensed FHCC provider to start earning income before they must complete the twenty hour basic training. Under the proposed rule, a prospective licensee would need to pay for and complete the training before earning child care income. To a certain extent this requirement would pose a barrier to becoming a licensed FHCC. However, for most other occupations (including DEL-licensed child care centers), the owner or licensee must obtain required training hours, experience and/or certifications at their own expense prior to applying for and obtaining a license.

A limited number of scholarships of up to one hundred fifty dollars are available through the Washington Association for the Education of Young Children (WAEYC) to help pay for the twenty hour basic STARS training. WAEYC provides a reimbursement of the STARS tuition - the prospective FHCC licensee would need to pay for the twenty hour class upfront and provide proof of payment and of completing the training.

3. Noncriminal Background Checks for Persons Thirteen to Sixteen Years Old. The current and proposed rules require a criminal history background check for the licensee, staff and each individual residing in the licensee's home age sixteen and older. Proposed WAC 170-296A-1225 would require a new noncriminal background check for individuals age thirteen through sixteen who reside in the licensee's home, and for child care assistants and volunteers age fourteen to sixteen.

Why the rule is needed. DEL is limited to conducting criminal background checks to individuals age sixteen or older (see RCW 43.43.832(6)). Yet some individuals younger than sixteen may have a history of incidents, charges

or behaviors that raise questions about the individual's suitability to have access to children in child care. The proposed rule would allow DEL to review noncriminal indexes or databases for any household members age thirteen to sixteen, or assistants/volunteers age fourteen to sixteen. DEL could review criminal convictions only if the juvenile had a conviction as an adult for a disqualifying crime listed in WAC 170-06-0120 (DEL background check rules).

Cost. There would be no direct cost to the licensee for a basic noncriminal background check - DEL currently provides in-state background checks at no charge.⁷ The license applicant or licensee would need to spend an estimated one hour or less to complete a noncriminal background check form for each covered individual. However, if DEL found that a household member age thirteen to sixteen could not be cleared to have access to children in child care, it could affect the application for a new license or result in DEL placing conditions on an existing licensee. The licensee could not hire or retain a volunteer or assistant age fourteen to sixteen if the individual could not be cleared by the noncriminal background check.

4. Private Septic System Inspection.

This requirement was recommended by the NRMT. Proposed WAC 170-296A-1375 requires that if the licensee has an on-site septic system and the local public health jurisdiction does not require periodic septic system inspection, the licensee must have the system inspected before applying for a license and every three years after licensure. This proposed rule would:

- Apply only to an FHCC with a single-family home septic system.
- Apply in counties where the local health jurisdiction does not require periodic septic system inspection. Currently, this includes all counties in eastern Washington, and some counties in the southwest part of the state. All counties surrounding Puget Sound and Hood Canal plus Clark, Grays Harbor and Lewis counties require periodic inspection and pumping of home septic systems at the homeowner's expense.
- Not apply to family child care homes connected to a municipal sewer system or community septic system. These homes would pay the costs of system inspection and maintenance in their sewer bills.

Why the rule is needed. Septic systems are a source of coliform bacteria, nitrates and other sewage contaminants. A failing or malfunctioning septic system may threaten groundwater quality, children may be exposed to harmful above-ground discharges, or a failing system may cause toilets or sinks to back up into the home. Septic drain fields are typically covered by grass fields or lawns that may double as outdoor play areas.

Cost: In counties where the rule applies, the license applicant or licensee must have a qualified septic system inspector inspect the system, and complete system maintenance or pumping as the inspection requires. Usually the local health jurisdiction certifies professional septic inspectors. Some counties will certify the homeowner to self-inspect after he or she completes a septic system inspection class. A professional septic system inspection typically costs

\$250 to \$500; the higher cost applying if the septic tank needs to be pumped for the inspection. An FHCC licensee who inspects his or her own system would still need to pay for septic tank pumping every two to five years depending on the tank size and the home's septic usage.

5. Well Water Testing.

This requirement was recommended by the NRMT. Proposed WAC 170-296A-1400 would require an FHCC license applicant or licensee to have their water tested for coliform bacteria and nitrates only if:

- The licensed home is served by a private well and water system located on the licensee's premises, and
- The local public health jurisdiction does not require periodic water testing. Currently, this proposed rule would apply in all counties except Island, San Juan and Whatcom. These three counties require periodic well-water testing at the homeowner's expense.

A license applicant or licensee would need to have their water tested within three months before submitting an initial license application, and every three years afterward. The test must indicate that the water is "safe" by state department of health (DOH) standards (no presence of coliform bacteria; ten milligrams of nitrate or less per liter of water).⁸

Why the rule is needed. The presence of coliform bacteria or unsafe levels of nitrates in drinking water is a sign of likely fecal contamination of the well or water system. Unsafe levels of nitrates reduce the blood's ability to carry oxygen through the body, especially in children. Not all coliform bacteria are dangerous, but the presence of coliform bacteria is an indicator of unsafe water conditions. The proposed rules require the licensee to serve safe water to children in care. DOH and local public health jurisdictions regulate the installation of new drinking water wells. DOH does not require periodic water testing for single-family well water systems but recommends annual testing. Public and group water systems are tested often, with testing costs normally included as part of the homeowner's water bill.

Costs. Separate tests for coliform bacteria or nitrates cost between twenty and thirty dollars each. Combined tests may be done at a cost of twenty-five to forty-five dollars. The homeowner typically takes a water sample from a faucet in the home, using a bottle and instructions supplied by the local public health department or a private testing lab. The homeowner then mails the water sample or may deliver it to the local health department. Some local health departments conduct the water tests in-house; in other counties the licensee would need to send the water sample to a private testing lab. If coliform bacteria or unsafe levels of nitrates are found, the proposed rules list several actions a licensee must take to protect the health of children in care.

6. Lifeguard or Staff With Lifeguard Training Required When Swimming Pools Are in Use. This requirement was recommended by the NRMT. Proposed WAC 170-296A-5200 would require that when a swimming pool on the licensed premises is in use by children in care, the licensee must have one person at the pool with lifeguard training.

Why the rule is needed. Drowning is the leading cause of injury [or] death for children age one to four, and the third

leading cause of injury [or] death for children age five to nine.⁹ The United States Centers for Disease Control and Prevention also notes that for every child who drowns, another four children are treated in emergency rooms for non-fatal near-drowning injuries. Near-drowning incidents can result in long-term brain injury including learning disabilities, memory problems, or permanent functional losses.¹⁰ In a 2007 DOH report on drowning deaths in Washington state, about twenty-five percent of total drowning deaths in Washington state occurred in a bathtub, hot tub, swimming pool or wading pool; half of drowning deaths of children one to four years old occurred in these types of tubs or pools. Most of the 2007 swimming pool deaths in the state were children one to four years old. DOH cited inadequate supervision as a leading factor in sixty-eight percent of the drowning deaths of children under age five.¹¹

Cost. To meet the requirement in the proposed rule, the licensee may hire a trained lifeguard for an estimated fifteen to twenty dollars per hour through the local American Red Cross chapter or through some city or county parks and recreation departments. The licensee, staff person or household member could obtain lifeguard training classes and certification from most Red Cross chapters for about one hundred fifty dollars. An alternative to the cost of having or hiring a lifeguard is not allowing children in care to have access to the swimming pool.

No estimates are available of the number of current FHCC licensees who have a swimming pool and who use it with children in care. Regardless of whether children in care use the swimming pool, the current and proposed rules require that if the licensee has a swimming pool, it must be surrounded with a minimum five-foot-high fence with locked gates.

7. Door Alarms.

This requirement was recommended by the NRMT. Proposed WAC 170-296A-4400 and 170-296A-5175 would require the licensee to install a device on exterior doors that are not locked during operating hours, and any door that opens to a wading or swimming pool area to alert staff when the door is opened.

Why the rule is needed. See the notes in section 6 above on child drowning. Children are known to have left licensed FHCC homes and premises when not adequately supervised. This had led to at least one child drowning death in Washington state and other cases where children were found wandering unattended off the FHCC premises. Installing a device to alert the licensee or staff when a door is opened is expected to reduce the risk of children in care leaving an FHCC unnoticed.

Cost. Various types of effective door alarms are available, from simple bells/chimes, to battery-powered units that sound when the electric contact is interrupted by opening the door costing \$4.15 to \$6.50 each (Improvements on-line catalog, Lowes [Lowe's], Ace Hardware), to commercial grade infrared motion detector systems costing sixty-nine to one hundred forty-five dollars per door (EZtone Chime on-line). A bell/chime and bracket is estimated to cost the same or less than a battery-powered alarm. For the purposes of this analysis, it is assumed that the typical licensee would need to

place an "alarm" device on three doors that open to the exterior of the FHCC.

8. Tamper-Resistant Outlet Covers and Outlets.

Proposed WAC 170-296A-4350 requires: Tamper resistant outlet covers or outlets be used in the licensed space; tamper resistant ground fault circuit interrupter (GFCI) outlet covers or outlets be used near sinks or tubs; or that the outlet be made inaccessible to children.

Why the rule is needed. Electrical outlets are a significant source of injury to young children, capable of causing electrical shock, burns, and more serious injury or death. The United States Consumer Product Safety Commission estimates that one-third of emergency room visits for electrical shock injuries are for young children who have inserted metal objects into electrical outlets.¹²

Cost: Costs vary significantly for standard indoor tamper resistant outlet covers:

A. Tamper-resistant outlet covers. These covers may be used by removing the existing outlet cover and mounting the tamper-resistant cover in its place, usually with a single screw. (These covers may be installed by the homeowner without special electrical knowledge, although power to the outlet should be turned off for safety.) An electrical plug is inserted part way into the outlet, then the plug must be moved (slid) sideways for the plug to be fully inserted. When not in use, the cover prevents objects from being inserted into an active outlet. Styles vary, from utility covers costing \$0.97 each (Lowes [Lowe's]), to decorative outlet covers costing \$4.95 each (Amazon.com). For this analysis, ten tamper-resistant outlet covers could be installed by the licensee for between \$9.70 to \$49.50 plus tax.

B. Tamper-resistant outlets. This type of wired-in outlet is required in new home construction and home renovations. The outlet has an internal spring device that prevents objects from being inserted other than an electrical plug. Prices range from \$0.97 each (Sears) for standard outlets, up to four dollars each (Amazon.com) for decorative types. Tamper-resistant GFCI outlets, used near sinks, tubs and in kitchens, range from \$11.72 to \$29.99 each (both Sears). Installation by a qualified electrician is recommended. Electrician rates may run thirty dollars per hour to nearly seventy-five dollars per hour and may not include travel. For this analysis, a rate of sixty dollars an hour and two hours to replace ten regular outlets and four GFCI outlets with tamper-resistant outlets is assumed. Total estimated cost, including outlets: \$177 to \$280.

9. On-Going Training (Continuing Education).

Proposed WAC 170-296A-1800 requires the licensee and primary staff persons to complete thirty hours of on-going training every three years. Ten hours of annual on-going training was required prior to 2004, but was inadvertently left out of the 2004 (current) FHCC rules. The NRMT recommended reinstating the on-going training requirement, but allowing the licensee to complete the thirty hours anytime over the three-year span of the license.

Why the rule is needed. On-going training is important to help child care professionals maintain and develop their child development knowledge and skills, and is recommended by Caring for Our Children, the National Family Home Child Care Association, child care specialists and

other national child development and early learning organizations.

Cost. There is a wide variety of on-going training available to child care professionals in classroom[s], on-line or hybrid settings. Training costs range from zero up to fifty-five dollars for ten hours of training. See the DEL's MERIT "Find Training" web site at <https://apps.del.wa.gov/merit/> for available courses and costs. Limited scholarships may be available from WAEYC or other resources, usually on a reimbursement basis after the individual completes a training.

10. Annual Chimney Inspection.

Proposed WAC 170-296A-2650 requires a licensee who has a woodstove, fireplace or similar device to have the device inspected by a qualified chimney, fireplace or woodstove specialist annually.

Why the rule is needed. Fire in homes is a leading cause of child death in Washington state. Many fires start when a fireplace or woodstove has not been properly maintained and excessive creosote in the chimney or flue ignites. Chimneys and flues should also be checked for cracks or leaks where smoke or carbon monoxide may enter the home, which the homeowner may not have the training to detect. The state fire marshal recommends annual inspection by a qualified chimney specialist.¹³

Cost. A chimney inspection typically costs between \$50 and \$100, with additional charges possible if cleaning or maintenance is required. The licensee or homeowner may buy or rent tools to clean the chimney or flue themselves.

11. Ground Cover Under Swings.

The current rules require ground cover under outdoor climbing/play equipment to help reduce injury from children falling. Proposed WAC 170-296A-5075 would also require groundcover under and around swing sets. The required groundcover area would be six feet beyond the farthest arc of the swing seat in both directions. For example, for a swing seat that swings six feet out to its farthest point, ground cover would need to be placed twelve feet out both directions that the swing extends. (The Consumer Protection Safety Commission (CPSC) recommends that groundcover in front and back of swings be twice the height of the swing's top bar,¹⁴ this would generally be a larger area than the proposed rule requires.) Typical types of ground cover include pea gravel, engineered playground wood chips or ground/shredded rubber mulch. Under the proposed rule, grass would not be an acceptable surface under swings.

Why the rule is needed. Injuries related to outdoor play equipment are a significant safety concern. The CSPC estimates that there are more than 200,000 playground injuries each year associated with playground equipment. A 2001 CSPC study¹⁵ of playground-related emergency room visits over a twelve-month period of children under age two only found that:

- There were 8,250 reported playground related emergency room visits.
- Thirty percent of the injuries involved fractures, sprains or strains.
- Fifty-three percent involved head injuries, and nineteen percent of head injuries involved fractures, concussions or internal injuries.

- Thirty-three percent of the injuries involved home-use equipment (twenty-six percent were unspecified as home or public equipment).
- The most common injuries were falls (fifty percent), and colliding with or being struck by playground equipment second most common (twenty-two percent).
- **Swings and swing set injuries were one-third (820 out of 2,730 injuries) of all home playground equipment injuries, second only to slides (1,050 injuries).**

The CPSC report noted that, *"Overall more injuries occurred where a grass surface was present (under or around play equipment) than any other type of surfacing... Grass was the most common surfacing associated with the home use equipment-related injuries (forty-five percent)."*

In a similar 2000 CPSC study of playground injuries to children birth to age fifteen, sixty-seven percent of home playground equipment injuries involved swings.¹⁶ The report said of one hundred twenty-eight playground deaths reported in the study year, seventy percent (ninety child deaths) occurred in a home setting.

In both CPSC studies, three percent of the playground equipment-related injuries occurred in home child care settings.

A 2001-2008 CPSC study found that swing injuries to children were the highest (twenty-two percent) number of reported emergency room treated injuries involving playground equipment, out of 2,691 injuries studied.¹⁷ The same study found forty-four percent of playground equipment injuries occurred in home settings ("day care" in this study referred to child care centers; no data was apparent that referred specifically to home child care settings).

The NRMT recommended that grass be allowed under swings as ground cover, citing a recommendation from an outdoor play advisor who addressed the group. However, in several CPSC publications and the Outdoor Home Playground Safety Handbook, the CPSC states that grass is not an adequate protective surface under playground equipment. *"Overall more injuries occurred where a grass surface was present than any other type of surfacing... Grass was the most common surfacing associated with the home use equipment-related injuries (45 percent)."*¹⁸ The grass area under the swing may easily become dry or compacted, providing little or no impact fall-absorbing protection. An installed ground cover of adequate depth provides greater fall protection for children in child care settings.

Other alternatives. An FHCC licensee is not required to have a swing set. A licensee with a swing [set] may also choose to make it unusable or inaccessible during child care hours. In these cases there would be no cost of complying with this proposed rule.

Cost and availability. All costs below assume that the FHCC licensee has a swing set and chooses to use it with children in care. Costs assume:

- An eight foot long and seven foot high swing, with a swing seat arch of six feet front and back (twelve feet total). Ground cover extends six feet from furthest arc front and back, the required coverage area for this swing would be one hundred ninety-two square feet (8 x 24). Actual swing sets may be smaller or larger.

- Except for rubber mulch purchased by the bag, ground cover material prices are as delivered, but not installed, which may be done by the licensee. Some pea gravel or wood chip suppliers may charge for hauling materials outside the supplier's local area.
- Costs do not include digging out existing soil in the swing area, which could vary widely depending on the soil conditions and source of labor (free labor to hiring a contractor and/or renting excavating equipment).
- Taxes are not included.
- DEL checked prices from at least two suppliers for each type of ground cover product in each of the department's three service areas. Local prices may vary.

A. Pea gravel (3/8 inch) is available from many soil, construction or landscape material providers at \$15.75 to \$33.95 per cubic yard delivered, with a five-yard minimum order in most areas. It would take up to six cubic yards to fill one hundred ninety-six square feet to a depth of nine inches, at an estimated cost of \$95 to \$204.

B. Engineered playground wood chips are available from selected local landscape material suppliers or outdoor playground equipment retailers, at a cost of \$31 to \$55 per cubic yard delivered, typically with a five-yard minimum order (one supplier priced chips at \$16.25, but with a twenty-yard minimum order). It would take up to six cubic yards to fill one hundred ninety-six square feet to a depth of nine inches, at an estimated cost of \$186 to \$330.

C. Ground/shredded rubber mulch is available on-line or at selected retail outlets. Prices range from \$35 for a thirty-pound bag (66.7 bags/ton), to \$850 per ton delivered (Costco.com). It would take nearly one ton of rubber mulch to create a one hundred ninety-two square foot area six inches deep, costing an estimated \$850 if purchased in bulk or up to \$2,300 in thirty pound bags.

11 [12]. Food Handler [Handler] Permit.

Proposed WAC 170-296A-7675 would require an FHCC license applicant to obtain a ten dollar state food handler permit (food worker card) before being licensed. Current licensees would need to obtain a permit within one year after the final rules are effective. If the licensee is not present, one other staff person with a food handler permit must be present if food is being prepared or served to children in care.

Why a rule is needed. The NRMT recommended that FHCC licensees and staff must follow the state food worker's manual (DOH Food and Beverage Workers Manual) when preparing and serving food. However, drafting such a rule would be subject to interpretation, and DEL licensors may need to observe the licensee in a variety of food preparation and serving examples to assure that the licensee is following all of the manual's requirements.

Instead, requiring the licensee obtain a state food handler permit assures that the licensee is adequately familiar with food handling principles and methods to pass the state test required to obtain the permit. Permit applicants must attend a sixty to ninety minute class offered by the local public health department, with the test typically taken as part of the class.

Cost. A state food handler permit/card costs ten dollars. The first permit/card is good for two years, and the next

renewals are due every three years. By the third year, the annualized permit/card cost is \$3.33 per year.

Limiting Factors: Few. Many public health departments offer food handler permit classes in multiple locations and times, and some offer the classes in the evenings. Study guides and the state food and beverage worker's manual are available free. Classes are offered in several languages in most counties.

Efforts to Mitigate (Reduce) Costs of the Proposed Rules

RCW 19.85.030 requires DEL, where legal and feasible to meet the stated objectives of the statute upon which the rule is based, to reduce or mitigate the impact of costs imposed by the proposed rules on small businesses. The new or increased costs described in this SBEIS are directly or indirectly related to protecting the health and safety of children in licensed family home child care. RCW 43.215.005(4) states the legislature's objectives in establishing DEL, including: "(c) *To safeguard and promote the health, safety and well-being of children receiving child care and early learning assistance, which is paramount over the right of any person to provide care.*"

DEL is proposing the following to offset costs of complying with the proposed rules:

A. WAC 170-296A-1725 Minimum education, DEL plans to develop resources to help current licensees who do not have a high school education meet the requirements of this rule by 2016.

B. WAC 170-296A-1550, reducing paperwork involved in the license renewal process. Under current rules, the licensee submits nearly identical material for a license renewal as for an initial license. The proposed WAC 170-296A-1550 focuses on items or circumstances that have changed since the previous license review. This change is expected to reduce the amount of duplicated paperwork and allow the licensee and licenser to focus on changes in the child care program, or technical assistance the licensee may wish to have from DEL.

C. WAC 170-296A-5700, clarifying the maximum capacity allowed in a licensed family child care home. The current rule is confusing for licensees and DEL licensers, and may hamper the licensee from achieving the highest capacity (the maximum number of children allowed for the licensee's staffing, experience or space) she or he may be eligible to receive, which affects the licensee's earning capacity.

D. Forms and policies, DEL plans to update or create several templates of forms and policies required in the proposed rules, so that licensees will not need to create their own documents.

E. Generally, the proposed rules are less proscriptive than the current rules, allowing the licensee more options for achieving the rule requirement.

F. Streamlining the fingerprint process, in February 2011, DEL began implementing electronic fingerprinting for individuals in child care who are required to be fingerprinted by law as part of their background check. Manual ink-and-roll fingerprint errors (caused by unclear fingerprints that cannot be read by the FBI) have sometimes delayed background checks for months, creating frustration both for child

care providers and DEL. The new electronic fingerprint system has a very low error rate, and costs of fingerprinting have been reduced.

DEL is also researching the following processes that are expected to reduce costs for child care licensees:

G. DEL is considering "nonexpiring licensing," a more streamlined method for the licensee to maintain an ongoing license. This process could involve even less paperwork for the licensee than required under proposed WAC 170-296A-1550. Portions of a continuing licensing process may be done by rule, but other aspects may require statutory changes. As of this date this SBEIS was drafted, a bill was in process in the 2011 legislature to create a nonexpiring child care license process.

H. DEL is also considering "portable certification" for child care staff. Current law and rules tie the background check for child care staff to the facility that the staff person is working in. Each time a staff person changes child care employers, the new employer must complete new background check paperwork for the individual and a new background check is done. Portable certification could allow the background check (and training history) to travel with the staff person. DEL is researching the technology and other resources needed to make portable certification available, but current resources limit DEL's ability to implement such a system. As of the date this SBEIS was being prepared, a bill to create a portable certification process was being considered by the 2011 legislature.

Impact of the Proposed Rules on Job Creation or Loss— RCW 19.85.040

New costs of complying with the proposed rules are summarized to provide a basis for determining whether compliance will have an impact on small business job creation or loss.

One-Time Costs: New one-time costs imposed by the proposed rules on small businesses are estimated to range from \$150 to as much as \$7,440. Actual costs to a new or current licensee will depend on individual factors (e.g., whether a new or current licensee does or does not have a high school diploma), and individual choices (e.g., whether a new or current licensee plans to take the GED test or seek college credits to meet the minimum education requirement; whether to allow children in care to use a swing in the licensed outdoor space; etc.).

Table 2. New One-Time Costs Imposed by the Proposed Rules (Cost[s] are NOT Cumulative):

	Estimated low-end cost	Estimated high-end cost	Notes
Minimum education - new or current licensee with a HS diploma, GED or twelve years education.	\$0	\$20	High end represents cost to obtain proof of diploma, GED or education years within the United States.
Minimum education - new licensees who do not have a HS diploma.	\$100	\$4,275	Low end is the cost of completing the five GED tests and one prep class; high end is cost of completing forty-five college credits.
Minimum education - existing licensees who do not have a HS diploma. Applies in 2016.	\$100	\$4,275	Low end is the cost of completing the GED tests and one prep class; high end is the cost of completing forty-five college credits individually.
Twenty hour STARS basic training prelicense.	\$90	\$190	Required for new licensees only. Some scholarships are available.
Door "alarm" device (assumes installation on up to three doors).	\$12.50 (bell, chime or battery-powered alarm)	\$435 (infrared door alarm)	
Tamper-resistant outlet covers - standard, owner installed.	\$10	\$50	Based on replacing ten covers.
Tamper-resistant outlet covers - GFCI type, owner installed.	\$47	\$120	Based on replacing four covers.
Tamper-resistant outlets - standard and GFCI, professionally installed.	\$188	\$280	Based on replacing ten standard and four GFCI outlets, including electrician labor.
Ground cover under swings.	\$0 (no swing or licensee chooses not to allow use of the swing)	\$2,300 (shredded rubber mulch, six inches deep)	Materials only based on swing eight feet long with six foot swing arc front/back.

On-Going Costs: The new on-going costs imposed by the proposed rule on small businesses, converted to annualized costs, are estimated to range from \$10 to \$544. On-going training and food handler permits are the only new on-going costs that every new or current FHCC licensee would incur. Other costs noted will be incurred only if specific conditions exist on the FHCC licensee's premises. Costs of on-going training will vary by the licensee's choice and/or availability and cost of training selected.

Table 3. New On-Going Costs Imposed by the Proposed Rules (Costs are NOT Cumulative):

	Initial cost of compliance (prelicense)	High-end or annualized cost of continued compliance	Notes
Septic system inspection and maintenance. ¹⁹	\$250 to \$500 (prelicense)	\$171	Annualized cost assumes inspection and pumping every three years.
Well water testing (coliform bacteria and nitrates). ²⁰	\$30 to \$45 (prelicense)	\$15	Annualized cost assumes testing every three years.
Lifeguard on duty when a swimming pool is in use.	\$0 (if no pool on the premises or pool not used)	\$200 to \$400	Annualized cost assumes ten to twenty hours of swim time with a hired lifeguard.
Chimney inspection. ²¹	\$50 to \$100	\$50 to \$100	Required annually.
On-going training (thirty hours every three years after licensure).	\$0	\$0 to 55	Annual costs will vary by type of training and cost - some training is available free.

	Initial cost of compliance (prelicense)	High-end or annualized cost of continued compliance	Notes
Food handler permit/card - new licensees prelicense; current licensees by 2012. ²²	\$10	\$3.33	After the first renewal at two years, the \$10 permit is renewed every three years.

Job Loss: Based on how the licensee chooses to meet the requirements of the proposed rules that impose costs, and whether certain conditions exist on the FHCC premises (e.g. private septic system in a county that does not require periodic septic inspection), these costs may impact the licensee's decision to employee [employ] paid staff, or the number of hours that the licensee uses paid staff in a given year. At an hourly rate of \$8.40 to \$8.50 per hour, the low end of one-time and on-going compliance costs may result in the licensee foregoing paying about sixty to sixty-five hours of staff time per year. At the very high end, compliance costs may result in the licensee foregoing paying an estimated nine hundred ninety hours of staff time in the first year (approximate one half-time staff person), and an estimated sixty-five hours per year each year thereafter (about 8.125 full work days). For the very high end, all the rules that create new one-time and on-going costs would need to apply to the licensee, and the licensee would need to choose all of the highest cost means of complying with the rules. Licensees may choose less costly options to comply with the rules, which would have lower impact on their ability to hire staff.

Job Creation: The rules are not expected to result in significant job creation. Additional part-time staff may be needed to meet staff-to-child ratio requirements on an occasional basis during outings or water-related activities, but these staffing requirements may also be met by using unpaid volunteers.

¹ An SBEIS is prepared under chapter 19.85 RCW when a proposed Washington state agency rule may impose "more than minor" costs on businesses that must comply with the rule. A small business is one that is independently owned and employs fifty or fewer employees. "More than minor" is defined as cost of compliance with new or revised requirements greater than either 3/10 of one percent of annual business revenue, or 1/10 of one percent of annual payroll. Using the revenue calculation, 3/10 of one percent of the average annual FHCC licensee income (\$39,910) equals \$119.73.

² Under RCW 19.85.020, a "small business" is independently owned and employs fifty or fewer employees (including businesses with no employees).

³ Washington State 2008 Child Care Study. Prepared for DEL by Walter R. McDonald & Associates, Inc. (hereafter "2008 Market Rate Study").

⁴ Under RCW 43.215.350 DEL is required to engage in NRM [NRMT] for revisions to the family home child care rules.

⁵ December 2010. Early Learning Professional Development System Report and Recommendations. Submitted to the Washington state legislature by the professional development consortium.

⁶ 2008 Market rate survey.

⁷ At the time this SBEIS was prepared, the 2011 legislature was considering bills to charge fees for background checks.

⁸ June 2010, Questions and Answers - Nitrate in Drinking Water. DOH.

⁹ 2007, 10 Leading Causes of Injury Deaths by Age Group. United States CPSC.

¹⁰ Not dated. Unintentional Drowning: Fact Sheet. United States CPSC.

¹¹ February 2007. Childhood Drowning Deaths in Washington State. DOH.

¹² Not dated. Electrical Receptacle Outlets - CSPC Document #524. United States CPSC.

¹³ August 2006. Home Heating: Prevent Fires Due to Home Heating. Washington state fire marshal publication.

¹⁴ 2005. Outdoor Home Playground Safety Handbook. United States CPSC.

¹⁵ 2002, Special Study: Injuries and Deaths Involving Children Under Age Two Associated with Playground Equipment. United States CPSC Directorate of Epidemiology.

¹⁶ 2001, Special Study: Injuries and Deaths Associated with Children's Playground Equipment. United States CPSC. Directorate of Epidemiology.

¹⁷ 2009. Injuries and Investigated Deaths Associated with Playground Equipment, 2001-2008. United States CPSC.

¹⁸ 2002, Special Study: Injuries and Deaths Involving Children Under Age Two Associated with Playground Equipment. United States CPSC Directorate of Epidemiology.

¹⁹ Applies only if the licensee has private septic system and the local public health department does not require periodic inspection.

²⁰ Applies only if the licensee has a private single-family well and the local public health department does not require periodic water testing.

²¹ Chimney inspection applies only if the licensee has a fireplace or wood-burning heating device, and the licensee plans to use the fireplace or device.

²² The licensee is required to have a food handler permit/card. However, if the licensee is not present, one staff person present must have a food handler permit whenever food is being prepared or served to children in care.

A copy of the statement may be obtained by contacting DEL Rules Coordinator, DEL, P.O. Box 40972, Olympia, WA 98504-0972, phone (360) 725-4397, fax (360) 725-4939, e-mail Rules@del.wa.gov.

The department invites public input on the preliminary small business economic impact statement (SBEIS) is [as] provided above. DEL will respond to comments on the SBEIS in the concise explanatory statement required under RCW 34.05.325. A final SBEIS, with revisions as appropriate, will be available to the public when the permanent rules are filed.

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.

April 20, 2011
Elizabeth M. Hyde
Director

Chapter 170-296A WAC

LICENSED FAMILY HOME CHILD CARE STANDARDS

NEW SECTION

WAC 170-296A-0001 Authority. The department of early learning was established under chapter 265, Laws of 2006. Chapter 43.215 RCW establishes the department's responsibility and authority to set and enforce licensing requirements and standards for licensed child care agencies in Washington state, including the authority to adopt rules to implement chapter 43.215 RCW.

NEW SECTION

WAC 170-296A-0005 Intent. This chapter reflects the department's commitment to quality early learning experiences for children, and promotes the health, safety, and positive development of children receiving care in a licensed family home setting.

NEW SECTION

WAC 170-296A-0010 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates otherwise:

"Accessible to children" means areas of the facility and materials that the children can easily get to on their own.

"Agency" as used in this chapter, has the same meaning as in RCW 43.215.010 (1) and (1)(c).

"Available" means accessible and ready for use or service.

"Capacity" means the maximum number of children the licensee is authorized by the department to have in care at any given time.

"Child abuse or neglect" has the same meaning as "abuse or neglect" under RCW 26.44.020 and chapter 388-15 WAC.

"Child care" means providing temporary custody, supervision, feeding, guidance, early learning program and activities of children, including transporting children in care.

"Clean" means to remove dirt and debris (such as soil, food, blood, urine, or feces) by scrubbing and washing with a soap or detergent solution and rinsing with water.

"Confidential" means the protection of personal information, such as the child's records, from persons who are not authorized to see or hear it.

"Department" or **"DEL"** means the Washington state department of early learning.

"Developmentally appropriate" means curriculum, materials or activities provided at a level that is consistent with the abilities or learning skills of the child.

"Discipline" means a method used to redirect a child in order to achieve a desired behavior.

"DOH" means the Washington state department of health.

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

"Enforcement action" means a department issued:

- (a) Denial, suspension, revocation or modification of a license;
- (b) Probationary license;
- (c) Civil monetary penalty (fine); or
- (d) Disqualification from having unsupervised access to children in care.

"Family home child care" means an individual licensed by the department to provide direct care, supervision, and early learning opportunities for twelve or fewer children in the home where the licensee resides as provided in RCW 43.215.010 (1)(c).

"Fine" has the same meaning as "civil monetary penalty," "civil fines," or "monetary penalty" under chapter 43.215 RCW.

"Inaccessible to children" means an effective method or barrier that reasonably prevents a child's ability to reach, enter, or use items or areas.

"Infant" means a child age birth through eleven months of age.

"Licensed space" means the indoor and outdoor space on the premises approved by the department for the purpose of providing licensed child care.

"Licensee" for the purposes of this chapter, means the individual listed on a family home child care license issued by the department of early learning authorizing that individual to provide child care under the requirements of this chapter and chapter 43.215 RCW.

"Licensor" means an individual employed by the department and designated by the director to inspect and monitor an agency as defined in RCW 43.215.010(1) or child care facility for compliance with the requirements of this chapter and chapter 43.215 RCW.

"MERIT" means the managed education registry information tool.

"Modification of a license" means department action to change the conditions identified on a current license.

"Nonprescription medication" means any of the following:

- (a) Nonaspirin and aspirin fever reducers or pain relievers;
- (b) Nonnarcotic cough suppressants;
- (c) Ointments or lotions specially intended to relieve itching;
- (d) Diaper ointments and talc free powders specially used in the diaper area of children;
- (e) Sun screen;
- (f) Hand sanitizer gels; or
- (g) Hand wipes with alcohol.

"One year of experience" means at least twelve months of early learning experience as demonstrated by a resume and references:

- (a) In a supervisory role in a child care setting where the individual was responsible for supervising staff and complying with licensing standards; or
- (b) As a Washington state:
 - (i) Child care center or school age center director, program supervisor, or lead teacher as defined in chapters 170-151 and 170-295 WAC; or
 - (ii) Family home child care licensee or qualified primary staff person.

"Physical restraint" means the practice of rendering a child helpless or keeping a child in captivity.

"Poison" for the purposes of this chapter includes, but is not limited to, substances, chemicals, chemical compounds (other than naturally occurring compounds such as water or salt), or similar items, that even in small quantities are likely to cause injury or illness if it is swallowed or comes into contact with a child's skin, eyes, mouth, or mucus membranes.

"Premises" means the licensed or unlicensed space including, but not limited to, buildings, land and residences at the licensed address.

"Preschool age child" means a child age thirty months through five years of age who is not attending kindergarten or elementary school.

"Primary staff person" means a staff person other than the licensee who has been authorized by the department to care for and have unsupervised access to children in care.

"RCW" means Revised Code of Washington.

"Sanitize" means to reduce the number of microorganisms on a surface by the process of using:

(a) A bleach and water solution;

(b) Other sanitizer product if used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry; or

(c) For laundry and dishwasher use only, a bleach and water solution or temperature control.

"School age child" means a child not less than five years of age through twelve years of age who is attending kindergarten or school.

"Screen time" means watching, using or playing television, computers, video games, video or DVD players, mobile communication devices, and similar devices.

"Sleeping equipment" means (reserved).

"Staff" unless referring specifically to a "primary staff person," means any primary staff person, assistant, or volunteer helping to provide child care, or a household member acting in the capacity of a primary staff person, assistant or volunteer, whether compensated or not compensated.

"STARS" means the state training and registry system.

"Toddler" means a child age twelve months through twenty-nine months of age.

"Unlicensed space" means the indoor and outdoor areas of the premises, not approved as licensed space by DEL, that the licensee must make inaccessible to the children during child care hours.

"Unsupervised access" has the same meaning as "unsupervised access" in WAC 170-06-0020.

"WAC" means the Washington Administrative Code.

"Weapons" means an instrument or device of any kind that is designed to be used to inflict harm including, but not limited to, rifles, handguns, shotguns, antique firearms, knives, swords, bows and arrows, BB guns, pellet guns, air rifles, electronic or other stun guns, or fighting implements.

LICENSING PROCESS

NEW SECTION

WAC 170-296A-1000 License required. (1) An individual who provides care for children in his or her home must be licensed by the department unless exempt under RCW 43.215.010(2).

(2) The individual claiming an exemption must provide to the department proof that they qualify for an exemption using a department approved form.

NEW SECTION

WAC 170-296A-1025 Who must be licensed. An individual must be licensed to care for children if any of the following apply:

(1) Care is provided in the individual's home for one or more children not related to the licensee, outside the child's

home on a regular and ongoing basis, not to exceed twelve children as provided by statute; or

(2) Care is provided in the individual's home for preschool age children for more than four hours a day.

NEW SECTION

WAC 170-296A-1050 The licensee. (1) The licensee is the individual or individuals:

(a) Who resides in the home licensed for family home child care under this chapter;

(b) Whose name appears on the license issued by the department;

(c) Licensed by the department to provide child care and early learning services for not more than twelve children in the licensee's home in the family living quarters. As used in this section, "family living quarters" may include:

(i) The licensee's or license applicant's residence; and
(ii) Other spaces and buildings on the premises that meet the facility requirements of this chapter and are approved by the department for child care;

(d) Responsible for the overall management of the licensed family child care home;

(e) Responsible for complying with the standards in this chapter, chapter 43.215 RCW, chapter 170-06 WAC DEL background check rules, and other applicable laws or rules; and

(f) Responsible for training staff on the licensing standards in this chapter.

(2) The licensee must comply with all requirements in this chapter, unless another code or ordinance is more restrictive. Local officials are responsible for enforcing city or county ordinances and codes, such as zoning, building or environmental health regulations.

(3) The licensee may hold only one current family home child care license.

NEW SECTION

WAC 170-296A-1075 Child care subsidy. A licensee who receives child care subsidy payments must follow the requirements of the applicable subsidy program. A licensee who receives subsidy payments under the working connections child care or seasonal child care programs must follow the requirements of chapter 170-290 WAC.

NEW SECTION

WAC 170-296A-1100 Tribal or military regulated or operated child care—Certification for payment. (1) A family home child care that is regulated by an Indian tribe or the federal Department of Defense is exempt from licensing.

(2) A tribe or a child care regulated by the federal Department of Defense may request certification:

(a) For subsidy payment only; or

(b) As meeting licensing standards of this chapter.

(3) A child care seeking certification under this section must be located on the premises over which the tribe or federal Department of Defense has jurisdiction.

NEW SECTION

WAC 170-296A-1125 Orientation required. An individual applying for an initial license must complete an orientation provided by the department within twelve months prior to submitting a license application.

NEW SECTION

WAC 170-296A-1150 Preservice training. (Reserved.) The department intends to develop rules on required preservice training standards at a later date.

NEW SECTION

WAC 170-296A-1175 STARS basic twenty-hour training. A license applicant must complete the basic twenty-hour STARS training prior to an initial license being granted by the department.

NEW SECTION

WAC 170-296A-1200 Background checks. (1) The license applicant or licensee must submit a completed background check form and obtain an authorization letter from the department consistent with the requirements of chapter 170-06 WAC for each of the following:

- (a) Any license applicant;
- (b) The licensee;
- (c) Each staff person or volunteer age sixteen or older; and
- (d) Each individual age sixteen or older who resides in the home.

(2) Any individual who must undergo a background check under chapter 170-06 WAC and who has resided in Washington state for less than three years must complete the department fingerprint process. See WAC 170-06-0040(1) and RCW 43.215.215.

(3) The licensee must keep background check authorization letters from the department on file for each individual listed in this section.

(4) A completed background check form and department authorization is required for each new staff or volunteer age sixteen or older, any person residing in the home who becomes sixteen years old, or for any person age sixteen or older who moves into the home. See WAC 170-06-0040.

(5) The licensee must not allow any individual who has not obtained a background check authorization letter from the department to have unsupervised access to the children at any time.

NEW SECTION

WAC 170-296A-1225 Noncriminal background checks for individuals thirteen to sixteen years of age. (1) Each volunteer or assistant in the licensed family home child care age fourteen to sixteen years old, and each individual residing in the licensee's home age thirteen to sixteen years old, must undergo a noncriminal background check.

(2) The licensee must submit a signed and dated non-criminal background check application on a form approved by the department:

(a) Within seven days after the volunteer or assistant age fourteen to sixteen starts work in the licensed child care; and

(b) For each individual residing in the home age thirteen to sixteen:

(i) With the licensee's initial license application or renewal application;

(ii) Within seven days after an individual residing in the home reaches age thirteen; and

(iii) Within seven days after an individual age thirteen to sixteen moves into the home.

(3) The department conducts a noncriminal background check, and authorizes or disqualifies an individual age thirteen to sixteen as described in chapter 170-06 WAC, except that the department does not:

(a) Review convictions or pending charges for disqualifying crimes under WAC 170-06-0050(1), unless the conviction was the result of prosecution of the juvenile as an adult; and

(b) Disqualify an individual for a conviction under WAC 170-06-0070 (1) and (2), unless the conviction was the result of prosecution of the juvenile as an adult.

(4) An individual who is disqualified from providing child care or having access to children in care following a noncriminal background check as described in this section has the right to appeal the department's decision under WAC 170-06-0090.

(5) The licensee must keep authorization letters from the department on file for each individual listed in this section.

NEW SECTION

WAC 170-296A-1250 License application packet—Contents. (1) The individual seeking a license under this chapter is the license applicant.

(2) A license applicant must submit a license application packet that includes:

(a) A completed department application form and copy of the applicant's orientation certificate;

(b) Copy of license applicant's current government issued photo identification;

(c) Documentation of the licensee's high school diploma or equivalent education under WAC 170-296A-1725;

(d) Resume for the license applicant;

(e) References from three individuals not related to the license applicant;

(f)(i) Copy of license applicant's Social Security card pursuant to 42 U.S.C. 666 (a)(13) and RCW 26.23.150 regarding child support;

(ii) If the license applicant does not have a Social Security card, the applicant must provide a sworn declaration stating that he or she does not have a Social Security card;

(g) Copy of the federal Internal Revenue Service letter showing the applicant's employer identification number (EIN) if the applicant plans to employ staff;

(h) Tuberculosis test results for the license applicant, each staff person, and household members sixteen years old or older. See WAC 170-296A-1750;

(i) Copy of first-aid/CPR/bloodborne pathogens training certificates for the license applicant and each staff person as described in WAC 170-296A-1825;

(j) Copy of the license applicant's state food handler permit as described in WAC 170-296A-7675;

(k) Completed background clearance forms for the license applicant and each staff person, household members sixteen years old and older, and anyone sixteen years and older who may have unsupervised access to the children in care;

(l) A completed noncriminal background check application form for each assistant and volunteer fourteen to sixteen years of age, and each individual age thirteen to sixteen residing in the home;

(m) Parent, staff and operation policies (handbooks). See WAC 170-296A-2350, 170-296A-2375, 170-296A-2400, and 170-296A-2425;

(n) Floor plan, including proposed licensed and unlicensed space;

(o) Septic system inspection report if applicable under WAC 170-296A-1375;

(p) Well water testing report if applicable under WAC 170-296A-1400;

(q) Lead or arsenic evaluation agreement, only for a site located in the Tacoma smelter plume under WAC 170-296A-1360; and

(r) The license fees under WAC 170-296A-1325 and 170-296A-1350.

(3) If there will be more than one individual whose name will appear on the license, each individual license applicant must provide information required in subsection (2)(b) through (f) and (2)(h) through (k) of this section.

NEW SECTION

WAC 170-296A-1275 Application processing. (1) The department may take up to ninety days to complete the licensing process. The ninety days begins when the license applicant's signed and dated application packet, fees and background check forms have been received by the department.

(2) If an incomplete application packet is submitted the department will inform the license applicant of the deficiencies and provided a time frame in which to provide the required information. If an application remains incomplete after ninety days the department may deny the license.

NEW SECTION

WAC 170-296A-1300 Withdrawing an incomplete application. (1) If the license applicant is unable to successfully complete the licensing process within ninety days the license applicant may withdraw the application and reapply when the applicant is able to meet licensing requirements.

(2) A license applicant who has not withdrawn his or her incomplete application and is unable to meet the application requirements will be denied a license. See RCW 43.215.300.

NEW SECTION

WAC 170-296A-1325 License fee—When due. (1) A license applicant must pay a nonrefundable license fee with the license application.

(2) After a license is issued, the licensee must pay the license fee annually. The fee is due on or before the anniversary date of the license.

(3) Payment must be in the form of a check or money order.

NEW SECTION

WAC 170-296A-1350 License fee amount. The license fee is twenty-four dollars, or as otherwise set by the legislature.

NEW SECTION

WAC 170-296A-1360 Lead and arsenic hazards—Tacoma smelter plume. A license applicant who lives in the designated Tacoma smelter plume (counties of King, Pierce, and Thurston) must contact the state department of ecology (DOE) and complete a signed access agreement with DOE for further evaluation of the applicant's property and possible arsenic and lead soil sampling.

NEW SECTION

WAC 170-296A-1375 Private septic system—Inspection and maintenance. (1) If the licensed premises is served by a private septic system (not connected to a sewer system) the septic system must be maintained in a manner acceptable to the local public health authority.

(2) The licensee must follow the local public health authority's requirements for periodic septic system inspection and maintenance.

(3) If there are no local public health requirements for periodic septic system inspections the licensee must:

(a) Have the system inspected by a septic system inspector certified by the local public health authority:

(i) Within six months prior to submitting a license application under WAC 170-296A-1250; and

(ii) Every three years after a license is issued under this chapter.

(b) Maintain the septic system as required by the inspection report.

(4) Septic system inspection and maintenance records must be kept on the premises and made available to the department upon request.

NEW SECTION

WAC 170-296A-1400 Private well and water system. (1) If the licensed family home child care gets water from a private well on the premises, the licensee must follow the local public health authority's requirements for periodic water testing.

(2) If there are no local public health requirements for periodic water testing, the licensee must have the water tested

for coliform bacteria and nitrates by the local public health authority or qualified private testing laboratory:

(a) Within six months prior to submitting a license application under WAC 170-296A-1250; and

(b) Every three years after a license is issued under this chapter. The test must indicate no presence of coliform bacteria, and "safe" levels of nitrates as defined by the state department of health (DOH).

(3) If test results indicate the presence of coliform bacteria or unsafe nitrate levels as defined by DOH, the licensee must:

(a) Immediately stop using the well water in the child care and inform the local public health authority and the department;

(b) Take steps required by the local public health authority to repair the well or water system; and

(c) Test the water as often as required by the local public health authority until tests indicate no presence of coliform bacteria and safe levels of nitrates.

(4)(a) If directed by the local public health authority or the department, the licensee must suspend child care operations until repairs are made; or

(b) If the local public health authority and the department determine that child care operations may continue with an alternate source of safe water, provide the safe water as directed.

(5) Water testing and system repair records must be kept on the premises and made available to the department upon request.

NEW SECTION

WAC 170-296A-1410 Department inspection. (1) Prior to the department issuing a license, a department licensor must inspect the proposed indoor and outdoor spaces to be used for child care to verify compliance with the requirements of this chapter.

(2) The licensee must grant reasonable access to the department licensor during the licensee's hours of operation for the purpose of announced or unannounced monitoring visits to inspect the indoor or outdoor licensed space to verify compliance with the requirements of this chapter.

NEW SECTION

WAC 170-296A-1420 Licensee declaration. When compliance with a requirement in this section is being met in unlicensed space in the licensee's home, the licensee must provide a signed and dated declaration, on a department approved form, for the purpose of verifying that the licensee is in compliance with the requirements of this chapter regarding:

(1) The furnace area safety under WAC 170-296A-2600;

(2) Guns and weapons storage under WAC 170-296A-4725;

(3) Smoke detector locations and working condition under WAC 170-296A-2950; or

(4) Medication storage under WAC 170-296A-3325.

NEW SECTION

WAC 170-296A-1430 Initial license. An applicant who demonstrates compliance with health and safety requirements of this chapter, but may not be in full compliance with all requirements, may be issued an initial license.

(1) An initial license is valid for six months from the date issued.

(2) At the department's discretion, an initial license may be extended for up to three additional six month periods.

(3) The department may limit the number of children or ages of children that the licensee may care for (capacity) under an initial license based on the licensee's child care experience.

NEW SECTION

WAC 170-296A-1450 Full license—License issued for three years. A licensee operating under an initial license who demonstrates full or substantial compliance with the requirements of this chapter may be issued a full license. The full license is valid for three years from the date a first initial license was issued, unless otherwise suspended or revoked, or the department issues a probationary license.

NEW SECTION

WAC 170-296A-1475 Moves. If the licensee moves the child care to a different residence than currently licensed, even if located on the same premises, the department must inspect the new location and must approve that it meets the requirements of this chapter. The licensee must:

(1) Notify the department of the proposed move and the date the licensee plans to move;

(2) Submit an application as soon as the licensee plans to move and has an identified address, but not more than ninety days before moving;

(3) Submit the application before the move; and

(4) Not operate more than two weeks following the move as provided by statute without a department inspection of the new location.

NEW SECTION

WAC 170-296A-1500 Moving without submitting application. If the licensee moves, and does not notify the department and submit an application prior to the move, the license becomes invalid and is closed by the department as of the date of the move.

NEW SECTION

WAC 170-296A-1525 Change in circumstances. (1) The licensee must report the following changes in the licensee's circumstances to the department within twenty-four hours, including:

(a) The facility;

(b) Household members; or

(c) The child care operation.

(2) The licensee must report to the department within twenty-four hours after the licensee, staff, or a household member is:

(a) Charged or convicted with a disqualifying crime under WAC 170-06-0120; or

(b) Alleged to have committed, or received a finding of abuse or neglect of a child or vulnerable adult.

LICENSE RENEWAL

NEW SECTION

WAC 170-296A-1550 Renewal application. The licensee who wishes to continue providing licensed child care must submit a completed renewal application packet every three years. The renewal application packet must be received by the department at least ninety days prior to the license expiration date. The packet must include all of the following required documentation:

(1) Renewal application, on a form provided by the department;

(2) New background clearance forms for the licensee, staff, household members sixteen years old and older, and anyone sixteen years old and older having unsupervised access to the children in care as described in WAC 170-06-0040;

(3) Completed noncriminal background check application forms for each volunteer and assistant age fourteen to sixteen; and each individual age thirteen to sixteen residing on the premises as described in WAC 170-296A-1225;

(4) Copies of licensee and staff's current first aid and CPR certificates required under WAC 170-296A-1825;

(5) Copy of the licensee's current state food handler permit required under WAC 170-296A-7675;

(6) Copy of licensee's current government issued picture identification;

(7) Current parent handbook as described in WAC 170-296A-2375;

(8) Revised floor plan if applicable;

(9) Septic inspection report if applicable under WAC 170-296A-1375;

(10) Water test report if applicable under WAC 170-296A-1400; and

(11) If applicable, any other changes to the program.

NEW SECTION

WAC 170-296A-1575 Failure to submit a renewal application. If the department does not receive a completed renewal application at least ninety days prior to the license expiration date, the license may lapse or renewal may be denied. A new license application must be submitted under WAC 170-296A-1250 if the license lapses or renewal is denied.

NEW SECTION

WAC 170-296A-1600 Multiple licenses, certifications or authorizations. (1) The licensee must have department approval to have a department-issued child care license and

another care giving license, certification or similar authorization.

(2) If the department determines that the health and safety needs of the children in licensed child care are not being met:

(a) The department and licensee may agree to a modification to the child care license;

(b) The licensee may give up one of the licenses, certifications or authorizations; or

(c) The department may suspend, deny or revoke the child care license.

NEW SECTION

WAC 170-296A-1625 Exception to rule. (1) The department cannot waive a requirement in state or federal law.

(2) The department may approve an exception to a rule in this chapter.

(3) An exception to rule request must be:

(a) In writing on a department form;

(b) Submitted by the licensor; and

(c) Approved by the director or director's designee.

(4) The department may approve an exception only for a specific purpose or child.

(5) An exception is time limited and may not exceed the specific time approved or the expiration date of the license.

(6) If the exception request is approved, the licensee must post notice of an approved exception with other notices that must be posted for parent and public view, unless the exception is for a specific child.

(7) The department's denial of an exception request is not subject to appeal under chapter 170-03 WAC.

NEW SECTION

WAC 170-296A-1650 Exception to rule—Alternate method of meeting a requirement. The department may approve an alternate method of achieving a specific requirement's intent as an exception to rule. The process for requesting and approving an exception is described in WAC 170-296A-1625 (3) through (5).

(1) The alternate method must not jeopardize the health, safety or welfare of the children in care.

(2) A copy of the department approved exception must be posted on the premises for parent and public view.

STAFF QUALIFICATIONS

NEW SECTION

WAC 170-296A-1700 Licensee minimum age. The minimum age to be a licensee is eighteen years old.

NEW SECTION

WAC 170-296A-1725 Licensee minimum education. (1) As of (the effective date of this section), an applicant for a family home child care license must have a high school diploma.

(2) If the applicant does not have a high school diploma, he or she must submit written evidence of equivalent education. As used in this section, "equivalent education" means:

(a) Passing the general educational development (GED) tests;

(b) Completion of twelve years of elementary and secondary education; or

(c) Completion of forty-five credits of post secondary education.

NEW SECTION

WAC 170-296A-1735 Minimum education—Individuals licensed prior to (the effective date of this section). Effective (five years from the effective date of this section), every family home child care licensee, including individuals licensed prior to (the effective date of this section), must meet the minimum education requirements of WAC 170-296A-1725.

NEW SECTION

WAC 170-296A-1750 Tuberculosis. The applicant, and each staff person fourteen years old and older, and each household member sixteen years old and older, must provide documentation of tuberculosis (TB) testing or treatment consisting of:

(1) A negative Mantoux test (also known as a tuberculin skin test (TST)) or negative interferon gamma release assay (IGRA) completed within twelve months before license application or employment; or

(2) A previous or current positive TST or positive IGRA with:

(a) Proof of treatment or negative chest X ray;

(b) Certification from a medical professional that the individual does not have an active TB infection; or

(c) Medication therapy to treat TB.

NEW SECTION

WAC 170-296A-1800 Ongoing training. (1) The licensee and each primary staff person must complete thirty hours of department approved ongoing training every three years. The training may include:

(a) Licensee's or primary staff person's choice; and

(b) Department directed training.

(2) The licensee must complete the ongoing training requirement prior to obtaining a license renewal.

(3) A primary staff person must complete the ongoing training requirement every three years beginning from the date of initial employment.

NEW SECTION

WAC 170-296A-1825 First aid and cardio pulmonary resuscitation (CPR) certification. (1) The licensee and each staff person must have a current first aid and cardio pulmonary resuscitation (CPR) certification as established by the expiration date of the document.

(2) Proof of certification may be a card, certificate or instructor letter.

(3) The first aid and CPR training and certification must:

(a) Be certified by the American Red Cross, American Heart Association, American Safety and Health Institute or other nationally recognized certification approved by the department;

(b) Include infant, child, and adult CPR; and

(c) Include a hands-on component.

NEW SECTION

WAC 170-296A-1850 Bloodborne pathogens training. The licensee and each staff person must have written proof of attending a U.S. Occupational Safety and Health Administration (OSHA) certified or comparable bloodborne pathogens training.

NEW SECTION

WAC 170-296A-1875 Primary staff person. An individual meeting all the qualifications of primary staff person is qualified to be left unsupervised with the children in the licensed child care.

NEW SECTION

WAC 170-296A-1900 Primary staff minimum age. A primary staff person must be a minimum of eighteen years of age.

NEW SECTION

WAC 170-296A-1910 Basic twenty-hour STARS training. A primary staff person must complete the basic twenty hours of STARS training prior to working unsupervised with the children.

NEW SECTION

WAC 170-296A-1925 Assistants and volunteers—Supervision. (1) Assistants and volunteers are the individuals who help in the licensed child care but are supervised by the licensee or primary staff at all times.

(2) The licensee or primary staff person must be within visual or auditory range of an assistant or volunteer sixteen years old or older, and must be available and able to respond.

(3) The licensee or primary staff member must be within visual and auditory range of an assistant or volunteer fourteen years to sixteen years old, and must be available and able to respond. When the licensee or primary staff person is the only supervisor, the assistant or volunteer may be in visual or auditory range for brief periods of time while the licensee or primary staff person attends to their toileting, medical, or other personal needs on the premises.

NEW SECTION

WAC 170-296A-1950 Assistants and volunteers—Minimum age. The minimum age to be an assistant or volunteer is fourteen years of age.

NEW SECTION

WAC 170-296A-1975 Licensee/staff qualifications and requirements table. The following table summarizes the licensee and staff qualifications and requirements found in WAC 170-296A-1700 through 170-296A-1950, and 170-296A-7675. An "X" indicates a requirement.

Licensee and Staff Qualifications Table

Position	Minimum age	High school diploma or equivalent	Back-ground check	TB test	DEL orientation	Basic 20-hour STARS	Ongoing training	Fire safety training	First aid/CPR	Blood-borne pathogens	Food handler permit
Licensee	18	X	X	X	X	X	X	X	X	X	X
Primary staff person	18		X	X		X	X	X	X	X	*
Assistant/volunteer (cannot be left alone with the children)	14		X Noncriminal background check only age 14-15	X				X	X	X	*

* See WAC 170-296A-7675(3) regarding when other staff must have a food handler permit.

RECORDKEEPING, REPORTING AND POSTING

NEW SECTION

WAC 170-296A-2000 Recordkeeping—Records available to the department. The licensee must:

- (1) Keep all records for a minimum of five years.
- (2) Keep all current records (from the previous twelve months) in the licensed space as defined in WAC 170-296A-0010.
- (3) Provide to the department upon request any records twelve months to five years old within two weeks of the date of the department's written request.

NEW SECTION

WAC 170-296A-2025 Child records—Confidentiality. (1) The licensee must maintain records for all children in a confidential manner.

(2) Each enrolled child's health record must be available to staff when needed for medical administration or emergencies.

NEW SECTION

WAC 170-296A-2050 Child records—Contents. (1) The licensee must have an enrollment record for every child who is enrolled and counted in capacity. Each child's enrollment record must include the following:

- (a) Beginning enrollment date;
- (b) End of enrollment date for children no longer in the licensee's care;
- (c) The child's birth date;
- (d) The child's current immunization record, on a DOH child immunization status form or comparable form completed by a health care professional;
- (e) The child's known allergies;
- (f) Names of persons authorized to pick up the child;

(g) Emergency contacts. If no emergency contact is available, a written emergency contact plan may be accepted;

(h) Parent or guardian information including name, phone numbers, address, and contact information for reaching the family while the child is in care;

(i) Medical and dental care provider names and contact information, if the child has providers. If the child has no medical or dental provider, the licensee and parent or guardian must have a written plan for medical or dental injury or incident; and

(j) Consent to seek medical care and treatment of minor child in the event of injury or illness, signed by the child's parent or guardian.

(2) If applicable, a child's records must include:

(a) Injury/incident reports (see WAC 170-296A-3575 and 170-296A-3600);

(b) Medication authorization and administration log (see WAC 170-296A-3375);

(c) Plan for special or individual needs of the child (see WAC 170-296A-6725); or

(d) Documentation of use of physical restraint (see WAC 170-296A-6250).

(3) The child's records must include signed parent permissions (see WAC 170-296A-6400) as applicable for:

- (a) Field trips;
- (b) Picture taking;
- (c) Transportation; and
- (d) Visiting health professionals.

NEW SECTION

WAC 170-296A-2075 Licensee and staff records. Records for the licensee and each staff person must include documentation of:

- (1) Current first aid and infant, child and adult CPR training certification;
- (2) Bloodborne pathogens training certification;

(3) TB test results or documentation as required under WAC 170-296A-1750;

(4) Current state food handler permit for the licensee, and for other staff if required under WAC 170-296A-7675(3);

(5) Completed background check form, or noncriminal background check form if applicable under WAC 170-296A-1225, and copy of the department-issued authorization letter;

(6) Copy of a current government issued picture identification;

(7) Emergency contact information;

(8) Completed application form or resume for staff when hired;

(9) Documentation of the licensee's and primary staff only:

(a) Twenty-hour basic STARS training; and

(b) Ongoing training completed;

(10) Record of training provided by the licensee to staff and volunteers; and

(11) Resume for the licensee only.

NEW SECTION

WAC 170-296A-2100 Required records for household members. The licensee must keep the following records for household members:

(1) Completed background check form and the department-issued clearance letter under chapter 170-06 WAC for each individual sixteen years old and older;

(2) The department-issued clearance letter for household members age thirteen to sixteen years old and any assistant or volunteer fourteen to sixteen years old under WAC 170-296A-1225; and

(3) TB test results under WAC 170-296A-1750 for:

(a) Household members sixteen years old or older; and

(b) Any household member fourteen to sixteen years old who is an assistant or volunteer.

NEW SECTION

WAC 170-296A-2125 Child attendance records—Staff to child ratio records. The licensee must also keep records of:

(1) Daily attendance for each child counted in capacity that includes the:

(a) Child's dates of attendance;

(b) Time the child arrives or returns to the child care, including signature of the person authorized by the child's parent or guardian to sign the child in; and

(c) Time the child leaves from the licensee's care including signature of the person authorized by the child's parent or guardian to sign the child out.

(2) Names of staff being counted to meet the daily staff-to-child ratio requirements.

NEW SECTION

WAC 170-296A-2150 Facility records. The licensee must keep the following facility records:

(1) Monthly fire inspections required under WAC 170-296A-3050;

(2) Fire extinguisher maintenance or receipts indicating annual purchase of new fire extinguisher(s), under WAC 170-296A-3000;

(3) Septic system inspection and maintenance, if required under WAC 170-296A-1375;

(4) Water testing results if required under WAC 170-296A-1400;

(5) Installation or assembly instructions for play equipment under WAC 170-296A-5000(3);

(6) Emergency preparedness evacuation drills under WAC 170-296A-2925;

(7) Documents from any department visits, inspections or monitoring checklists; and

(8) As applicable, compliance agreements or safety plans between the licensee and the department.

NEW SECTION

WAC 170-296A-2175 Materials that must be posted.

The following must be posted in the licensed space during operating hours and clearly visible to the parents, guardians and staff:

(1) A statement of the licensee's philosophy of child development;

(2) Emergency information:

(a) 911 or emergency services number;

(b) Name of the licensee, telephone number(s), address, and directions from the nearest major arterial street or nearest cross street to the licensed home;

(c) Washington poison center toll-free phone number; and

(d) DSHS children's administration intake (child protective services) toll-free telephone number.

(3) Emergency preparedness plan and drills with the following information:

(a) Dates and times of previous drills;

(b) Procedure for sounding alarm;

(c) Monthly smoke detector check;

(d) Annual fire extinguisher check;

(e) Floor plan with escape routes and emergency exits identified;

(f) Emergency medical information or explanation of where that information can be found; and

(g) Emergency contact information for the licensee;

(4) Child care licensing information:

(a) The current department-issued child care license;

(b) If applicable, a copy of current department-approved exceptions to the rules;

(5) If applicable, notice of any current or pending department enforcement action. Notice must be posted:

(a) Immediately upon receipt; and

(b) For at least two weeks or until the violation causing the enforcement action is corrected, whichever is longer.

(6) A notice stating that additional information about the child care license is available upon request to the licensee. This information includes:

(a) Copies of department monitoring checklists;

(b) If applicable, any facility licensing compliance agreements (FLCA);

(c) If applicable, copy of any enforcement action taken by the department for the previous three years; and

(d) If applicable, notice that the licensee does not have liability insurance coverage, or that the coverage has lapsed or been terminated. See RCW 43.215.535;

(7) A statement on how the licensee will communicate with the parent or guardian on their child's development and parenting support; and

(8) A typical daily schedule as described in WAC 170-296A-6550.

NEW SECTION

WAC 170-296A-2200 Reporting incidents to 911 (emergency services). The licensee or primary staff person must report to 911 emergency services the following:

(1) A child missing from care, as soon as the licensee or staff realizes the child is missing;

(2) Medical emergency (injury or illness) that requires immediate professional medical care;

(3) Incorrect administration of any medication, except nonprescription topical creams or ointments;

(4) Overdose of any oral, inhaled or injected medication;

(5) Fire and other emergencies;

(6) Poisoning or suspected poisoning; or

(7) Other incidents requiring emergency response.

NEW SECTION

WAC 170-296A-2225 Reporting incidents to Washington poison center. The licensee or primary staff person must report to the Washington poison center, after calling 911, and follow any instructions of the poison center:

(1) Any poisoning or suspected poisoning;

(2) Incorrect administration of any medication, except nonprescription topical creams or ointments;

(3) Overdose of any oral, inhaled or injected medication.

NEW SECTION

WAC 170-296A-2250 Reporting incidents to a child's parent or guardian and the department. The licensee must report to a child's parent or guardian and the department:

(1) Immediately:

(a) Any incident reported under WAC 170-296A-2200, after calling 911;

(b) Any incident reported under WAC 170-296A-2225, after calling 911 and Washington poison center;

(c) A child's demonstrated acts, gestures or behaviors that may cause serious intentional harm to self, others or property; or

(d) Use of physical restraint with a child.

(2) Within twenty-four hours:

(a) Injury or other health concerns to a child that does not require professional medical treatment (report to parent only);

(b) Change in child care staff, including serious illness or incapacity of the licensee that may impact child care staffing;

(c) Additions to the household of persons sixteen years old or older;

(d) The licensee's plans to move, including the date of the move;

(e) Change in the licensee's phone number or e-mail;

(f) Child's exposure to a reportable communicable disease from the list in WAC 246-110-010(4); or

(g) Updates to the parent handbook.

NEW SECTION

WAC 170-296A-2275 Other incident reporting to the department. (1) The licensee must report to the department any incidents or changes as required under WAC 170-296A-2200, or 170-296A-2225, 170-296A-2250, 170-296A-2300, and 170-296A-2325.

(2) The licensee must report to the department within twenty-four hours:

(a) Serious illness or incapacity of the licensee, staff or member of household, if the licensee:

(i) Has a reasonable expectation that the illness or incapacity will affect the licensee's ability to provide care; and

(ii) Is going to continue to provide care.

(b) For the licensee, staff, volunteer or household member age fourteen or older, any:

(i) Charge or conviction for a crime listed in WAC 170-06-0120;

(ii) Allegation or finding of child abuse or neglect under chapter 26.44 or 74.15 RCW;

(iii) Allegation or finding of abuse or neglect of a vulnerable adult under chapter 74.34 RCW; or

(iv) Other charge or conviction for a crime that could be reasonably related to the individual's suitability to provide care for or have unsupervised access to children in care;

(c) Fire that results in damage to the license space or other parts of the premises;

(d) Structural damage to the licensed child care space or other parts of the premises;

(e) Prior to making structural changes to the licensed space; or

(f) Change in the required licensee policies.

NEW SECTION

WAC 170-296A-2300 Reporting to DSHS children's administration intake. The licensee and each staff person are required to report the following to DSHS children's administration intake-child protective services (CPS) or law enforcement as required under RCW 26.44.030, and to the licensor:

(1) Any suspected child abuse or neglect;

(2) A child's disclosure of sexual or physical abuse;

(3) Sexual contact between two or more children;

(4) A child's attempted suicide or talk about attempting suicide; or

(5) Death of a child while in the licensee's care or from injury or illness that may have occurred while the child was in the licensee's care.

NEW SECTION

WAC 170-296A-2325 Reporting notifiable condition to health department. The licensee must report a child diag-

nosed with a notifiable condition as defined in chapter 246-105 WAC to the local public health jurisdiction or the state department of health. Contact the local public health jurisdiction for the list of notifiable conditions and reporting requirements.

NEW SECTION

WAC 170-296A-2350 Policies. (1) The licensee must have written policies for:

- (a) Parents and guardians, also known as the parent handbook;
 - (b) Program and staff.
- (2) The licensee must submit all policies to the department.

NEW SECTION

WAC 170-296A-2375 Parent/guardian policies (handbook). The licensee's written parent/guardian policies (handbook) must include:

- (1) Hours of operation including closures and vacations;
- (2) Information on how children's records are kept current, including immunization records;
- (3) Enrollment and disenrollment process;
- (4) Access to children during child care hours;
- (5) Program philosophy (the licensee's view of child learning and development);
- (6) Typical daily schedule, including food and rest periods;
- (7) Communication plan with parents/guardians including:
 - (a) How the parent or guardian may contact the licensee with questions or concerns; and
 - (b) How the licensee will communicate the child's progress with the parent or guardian at least twice a year;
 - (c) How the licensee will support parents regarding parenting;
 - (8) Written plan for any child's specific needs if applicable;
 - (9) Fee and payment plans;
 - (10) Religious activities and how families' specific religious preferences are addressed;
 - (11) How holidays are recognized in the program;
 - (12) Confidentiality policy including when information may be shared. See WAC 170-296A-2025;
 - (13) Items that the licensee requires the parent or guardian to provide;
 - (14) Guidance and discipline policy. See WAC 170-296A-6050;
 - (15) If applicable, infant/toddler care including SIDS prevention, feeding, diapering and toilet training;
 - (16) Reporting suspected child abuse or neglect;
 - (17) Food service practices;
 - (18) Off-site field trips requirements. See WAC 170-296A-2450;
 - (19) Transportation requirements. See WAC 170-296A-6475;
 - (20) Staffing plan;
 - (21) Access to licensee's and staff training and professional development records;

(22) Pet policies. See WAC 170-296A-4800;

(23) Health care and emergency preparedness policies including:

- (a) Emergency preparedness and evacuation plans. See WAC 170-296A-2825;
- (b) Injury or medical emergency response and reporting;
- (c) Medication management including storage and dispensing. See WAC 170-296A-3325;
- (d) Exclusion/removal policy of ill persons. See WAC 170-296A-3225;
- (e) Reporting of notifiable conditions to public health;
- (f) Immunization tracking. See WAC 170-296A-3250; and
- (g) Infection control methods, including:
 - (i) Handwashing (WAC 170-296A-3625) and, if applicable, hand sanitizers (WAC 170-296A-3650); and
 - (ii) Cleaning and sanitizing procedures including the sanitizing method and products used. See WAC 170-296A-3850 through 170-296A-3925;
- (24) Napping/sleeping;
- (25) No smoking policy. See WAC 170-296A-4050;
- (26) Drug and alcohol policy. See WAC 170-296A-4025;
- (27) If applicable, guns and weapons storage. See WAC 170-296A-4725; and
- (28) If applicable, overnight care requirements. See WAC 170-296A-6850.

NEW SECTION

WAC 170-296A-2400 Program/operations policies.

The licensee must have written program/operations policies that include:

- (1) All information in the parent/guardian handbook under WAC 170-296A-2375;
- (2) Plans to keep required program/staff records current;
- (3) Child supervision requirements;
- (4) Mandatory reporting requirement of suspected child abuse and neglect and other incidents under WAC 170-296A-2300;
- (5) Plan for off-site field trips;
- (6) Plan for transporting children;
- (7) Plans for restricting children's access to unlicensed space;
- (8) Medical emergency, fire, disaster and evacuation responsibilities;
- (9) Guidance and discipline responsibilities;
- (10) Overnight care, if applicable; and
- (11) Plan for staff (when applicable) to include:
 - (a) Staff responsibilities;
 - (b) Staff training;
 - (c) Staff expectations; and
 - (d) Professional development.

NEW SECTION

WAC 170-296A-2425 Staff policies. If the licensee hires staff or uses volunteers, the licensee must have written staff policies and provide training on the policies to all staff and volunteers. Staff policies must include:

- (1) All the information in the parent/guardian handbook under WAC 170-296A-2375, except fees;
- (2) Plan for keeping staff records current including:
- (a) Completed background check forms and department clearance letters;
- (b) First aid and CPR certification;
- (c) TB test results;
- (d) Required training and professional development for primary staff persons; and
- (e) Training that the licensee must provide to staff;
- (3) Job description;
- (4) Staff responsibilities for:
- (a) Child supervision requirements;
- (b) Guidance/discipline techniques;
- (c) Food service practices;
- (d) Off-site field trips;
- (e) Transporting children;
- (f) Restricting children's access to unlicensed space;
- (g) Health, safety and sanitization procedures;
- (h) Medical emergencies, fire, disaster and evacuations;
- (i) Mandatory reporting of suspected child abuse and neglect; and
- (j) Overnight care, if applicable.

NEW SECTION

WAC 170-296A-2450 Off-site activity policy. The licensee must have a written policy for off-site activities that includes:

- (1) Parent notification and permissions. See WAC 170-296A-6400;
- (2) Supervision plan;
- (3) Transportation plan. See WAC 170-296A-6475;
- (4) Emergency procedures including bringing each child's:
- (a) Emergency contact information;
- (b) Medical records;
- (c) Immunization records;
- (d) Individual medications for children who have them; and
- (e) Medication administration log;
- (5) Medication management;
- (6) Maintaining a complete first-aid kit; and
- (7) Charging of fees if any.

FIRE AND EMERGENCY PREPAREDNESSNEW SECTION

WAC 170-296A-2525 Building codes. A single-family residence used for licensed family home child care is considered a group R (residential), division 3 occupancy structure by the state building code.

NEW SECTION

WAC 170-296A-2550 Requesting local fire department visit. (1) The licensee must request the local fire department to visit the home to become familiar with the facility and to assist in planning evacuation or emergency procedures.

- (2) If the local fire department does not provide this service, the licensee must have written documentation on file that the request was made.

NEW SECTION

WAC 170-296A-2575 Flammable materials. (1) The licensee must not allow combustible materials (including, but not limited to, lint, grease, oils, or solvent soaked rags) or rubbish to accumulate; those items must be removed from the building or stored in closed metal containers.

- (2) The licensee must store items labeled "flammable," in areas that are inaccessible to children and away from exits.

NEW SECTION

WAC 170-296A-2600 Furnaces. (1) The licensee must keep paper, rubbish, or combustible materials at least three feet away from any furnace.

- (2) The furnace must be inaccessible to the children, isolated, enclosed or protected.

NEW SECTION

WAC 170-296A-2625 Electrical motors. The licensee must keep electrical motors on appliances free of accumulated dust or lint.

NEW SECTION

WAC 170-296A-2650 Fireplaces, wood stoves, similar heating devices. (1) If the home has a fireplace, wood stove or similar heating device that will be in use, the licensee must:

- (a) Have the device inspected annually by a qualified fireplace, wood stove or chimney specialist; and
- (b) Maintain the heating device as required by the inspection.
- (2) The fireplace, wood stove or similar heating device must be inaccessible to the children during operating hours.
- (3) The licensee may provide a written statement if the fireplace, wood stove or similar heating device will not be used at any time.

NEW SECTION

WAC 170-296A-2675 Open flame devices, candles, matches and lighters. (1) Except as provided in WAC 170-296A-2650 or kitchen ranges using natural gas or propane, the licensee must not use or allow the use of open flame devices in the licensed space or any space accessible to the children during operating hours.

- (2) The licensee must not use or allow the use of candles during operating hours.
- (3) The licensee must keep matches and lighters inaccessible to children.

NEW SECTION

WAC 170-296A-2700 Emergency flashlight. The licensee must have a working flashlight available for use as an emergency light source.

NEW SECTION

WAC 170-296A-2725 Portable heaters and generators. The licensee must not use or allow the use of portable heaters or fuel powered generators in any area inside of the family home child care or building during operating hours.

NEW SECTION

WAC 170-296A-2750 House numbers. The licensee must place house numbers or address where the numbers are legible and plainly visible from the street or road in front of the premises.

NEW SECTION

WAC 170-296A-2775 Telephone. (1) The licensee must have a working telephone in the licensed space.

(2) The licensee must have a landline telephone readily available that does not require electricity. Voice over internet telephone or cable telephone service are not acceptable substitutes for a landline telephone.

NEW SECTION

WAC 170-296A-2800 Access for emergency vehicles. The licensed family home child care must be accessible to emergency vehicles.

NEW SECTION

WAC 170-296A-2825 Fire evacuation plan. (1) The licensee must develop a written fire evacuation plan and post it at a place that is clearly visible to the staff, parents and guardians. The evacuation plan must be evaluated annually and updated as needed.

(2) The evacuation plan must include:

- (a) An evacuation floor plan that identifies emergency exit pathways, doors, and windows;
- (b) Method(s) to be used for sounding an alarm;
- (c)(i) Calling 911; and
- (ii) Actions to be taken by the person discovering the fire;
- (d) How the licensee and staff will evacuate all children, especially children who cannot walk;
- (e) How the licensee and staff will account for all of the children in attendance;
- (f) Where children and staff will gather away from the building pending arrival of the fire department or emergency response; and
- (g) How the licensee will inform parents or guardians and arrange pick up of children if needed.

NEW SECTION

WAC 170-296A-2850 Disaster plan. (1) The licensee must have a written disaster plan for emergencies other than fire. The plan must be reviewed annually and updated as needed.

(2) The written disaster plan must cover at minimum the following:

- (a) For disasters that require evacuation:
 - (i) How the licensee and staff will evacuate all children, especially those who cannot walk.
 - (ii) What to take when evacuating the children, including:
 - (A) First aid kit;
 - (B) Child medication records; and
 - (C) If applicable, individual children's medication;
 - (iii) Where to go; and
 - (iv) How the licensee and staff will account for all of the children in attendance.
 - (b) Earthquake procedures including:
 - (i) What the licensee and staff will do during an earthquake;
 - (ii) How the licensee and staff will account for all of the children in attendance; and
 - (iii) After an earthquake, how the licensee will assess whether the licensed space is safe for the children;
 - (c) Lockdown of the facility or shelter-in-place, including:
 - (i) How doors and windows will be secured if needed; and
 - (ii) Where children will stay safely inside the facility; and
 - (d) How parents and guardians will be contacted after the emergency situation is over.
- (3) The licensee must keep on the premises a three-day supply of food, water, and medications required by individual children for use in a disaster, lockdown, or shelter-in-place incident.

NEW SECTION

WAC 170-296A-2875 Fire, disaster training for staff and volunteers. (1) The licensee must provide fire, evacuation and disaster training for all staff and volunteers. The training must include:

- (a) All elements of the fire, evacuation and disaster plans;
 - (b) Operation of the fire extinguishers;
 - (c) How to test the smoke detectors and replace smoke detector batteries; and
 - (d) Staff responsibilities in the event of a fire or disaster.
- (2) The training must be documented in the staff's or volunteer's personnel file.

NEW SECTION

WAC 170-296A-2900 Emergency drills. The licensee and staff must practice emergency drills with the children as follows:

- (1) Fire/evacuation drill: Once each calendar month;

- (2) Earthquake drill: Once every three calendar months; and
 (3) Lockdown/shelter-in-place drill: Once annually.

NEW SECTION**WAC 170-296A-2925 Record of emergency drills.**

The licensee must keep records of emergency drills performed, and post the records as required in WAC 170-296A-2175. Records must include:

- (1) The date and time the drill took place;
- (2) Staff who participated;
- (3) Number of children who participated;
- (4) Length of drill; and
- (5) Notes about how the drill went including:
 - (a) What the licensee learned; and
 - (b) What the licensee thinks should be done differently at the next drill.

NEW SECTION**WAC 170-296A-2950 Smoke detectors.**

(1) The licensee must have and maintain working smoke detectors in the home.

- (2) At least one smoke detector must be located:
 - (a) In each licensed sleeping area;
 - (b) On each level of the home; and
 - (c) In the kitchen area.
- (3) Smoke detectors must be placed on the ceiling or wall, but not on the wall above any door.
- (4) One extra battery for each smoke detector must be kept on the premises.

NEW SECTION**WAC 170-296A-2975 Additional method to sound an alarm.**

In addition to working smoke detectors, the licensee must have an additional method to sound an alarm that is used only in a fire, emergency situation or drill.

NEW SECTION**WAC 170-296A-3000 Fire extinguishers.**

(1) The licensee must have working fire extinguishers, minimum 2 A: 10 BC, readily available. A fire extinguisher must be:

- (a) Located on each level of the home used for child care; and
- (b) Mounted:
 - (i) Within seventy-five feet of an exit; and
 - (ii) Along the path of an exit.
- (2) A fire extinguisher may be mounted in a closed unlocked closet. There must be:
 - (a) A sign on the closet door to indicate that a fire extinguisher is mounted inside; and
 - (b) No obstructions blocking access to the closet.
- (3) The licensee must have documentation on file of annual:
 - (a) Fire extinguisher maintenance; or
 - (b) Proof of purchasing new extinguishers.

NEW SECTION

WAC 170-296A-3025 Fire extinguisher, smoke detector use and testing. The licensee and staff must demonstrate to the licensor how to:

- (1) Use fire extinguishers;
- (2) Test and operate the smoke detectors; and
- (3) Test alternate alarm device(s).

NEW SECTION

WAC 170-296A-3050 Monthly fire inspection. The licensee must inspect the home once each calendar month to identify possible fire hazards and take action to eliminate any hazards found. If the licensee employs a primary staff person, the primary staff person must participate in monthly fire hazard inspections. The licensee must keep records of monthly inspections.

HEALTHNEW SECTION

WAC 170-296A-3200 Health plan. The licensee must have a written health plan. The health plan must include:

- (1) Communicable disease notification under WAC 170-296A-3210;
- (2) Exclusion of ill person under WAC 170-296A-3225;
- (3) Immunization tracking under WAC 170-296A-3250 through 170-296A-3300;
- (4) Medication management under WAC 170-296A-3325 through 170-296A-3550;
- (5) Medication storage;
- (6) Injury treatment under WAC 170-296A-3375 through 170-296A-3600; and
- (7) Handwashing and hand sanitizers under WAC 170-296A-3625 through 170-296A-3675.

NEW SECTION

WAC 170-296A-3210 Communicable disease—Notice and procedure. When the licensee becomes aware that he or she, a household member, staff person or child in care has been diagnosed with a communicable disease as described in DOH WAC 246-110-010(4), the licensee must:

- (1) Notify:
 - (a) The local public health jurisdiction or DOH;
 - (b) DEL within twenty-four hours from time the licensee receives notification of the diagnosis;
 - (c) Parents and guardians of all the children in care; and
- (2) Follow the health plan before providing care or before readmitting the household member, staff person or child into the child care.

NEW SECTION

WAC 170-296A-3225 Exclusion of ill persons. The licensee's health plan includes provisions for excluding or separating a child, staff person, or household member with communicable disease as described in WAC 246-110-010(4) or any of the following:

- (1) Fever of one hundred one degrees Fahrenheit or higher;
- (2) Vomiting that occurs two or more times in a twenty-four-hour period;
- (3) Diarrhea with three or more watery stools in a twenty-four-hour period;
- (4) Rash not associated with heat, diapering or an allergic reaction; or
- (5) Drainage of thick mucus and pus from the eye.

NEW SECTION

WAC 170-296A-3250 Immunization tracking. The licensee is required to track each child's immunization status. The licensee must:

- (1) Except as provided in WAC 170-296A-3200 or 170-296A-3275, have a complete current certificate of immunization status (CIS) form or similar form supplied by a health care professional for each child, submitted on or before the child's first day of child care;
- (2) Develop a system to update and keep individual immunization records current to include when immunizations are received; and
- (3) Have the CIS or similar forms for each currently enrolled child available in licensed space for review by the licenser.

NEW SECTION

WAC 170-296A-3275 Accepting a child who does not have current immunizations. (1) The licensee may accept a child who is not current with immunizations on a conditional basis if immunizations are:

- (a) Initiated before or on enrollment; and
 - (b) Completed as soon as medically possible.
- (2) The licensee must have on file a document signed and dated by the parent or guardian stating when the child's immunizations will be brought up to date.

NEW SECTION

WAC 170-296A-3300 Immunizations—Exemption. The licensee may accept a child without any immunizations if the parent or guardian:

- (1) Signs a statement expressing a religious, philosophical or personal objection to immunization.
- (2) Provides a DOH certificate of exemption form or similar statement.

NEW SECTION

WAC 170-296A-3325 Medication storage. The licensee must store all medications (except rescue medications under WAC 170-296A-3350 and topical nonprescription medications described in WAC 170-296A-4100), vitamins, herbal remedies, dietary supplements and pet medications in a locked cabinet or locked container.

NEW SECTION

WAC 170-296A-3350 Child's emergency rescue medications. The licensee must keep emergency rescue medications inaccessible but available for emergency use to meet a child's emergency medical needs.

NEW SECTION

WAC 170-296A-3375 Medication permission. (1) The licensee must have written permission from a child's parent or guardian to give a child any medication. The permission must include:

- (a) Child's name;
 - (b) Name of the medication and condition being treated;
 - (c) Dose to be given;
 - (d) Start and stop date for administering medication not to exceed thirty calendar days, except as provided in subsection (2) of this section;
 - (e) Parent or guardian signature; and
 - (f) Date of signature.
- (2) A parent or guardian may give the licensee ninety calendar days permission for use of the following:
- (a) Diaper ointments and talc free powders intended specifically for use in the diaper area of children;
 - (b) Sun screen;
 - (c) Hand sanitizers; or
 - (d) Hand wipes with alcohol.
- (3) The licensee must keep a written record of medication administration (medication log) that includes the:
- (a) Child's name;
 - (b) Name of medication;
 - (c) Dose given;
 - (d) Dates and time of each medication given; and
 - (e) Name and signature of the person administering the medication.
- (4) The licensee must allow the parent or guardian to review their own child's written medication administration records.
- (5) The licensee must return any unused medication to the child's parent or guardian.
- (6) Medication permission forms must be kept confidential.
- (7) Medication permission forms and medication logs for the previous twelve months must be kept in the licensed space and be available for review by the licenser.

NEW SECTION

WAC 170-296A-3400 Administering medications. (1) Only the licensee or primary staff person may administer medication, or observe a child administering their own medication as described in WAC 170-296A-3550.

- (2) The licensee or primary staff person must not administer or allow administration of an expired medication.

NEW SECTION

WAC 170-296A-3425 Medication requirements. The licensee or primary staff person must follow the medication directions for managing and administering prescription and

nonprescription medication for the individual children in care.

NEW SECTION

WAC 170-296A-3450 Sedating a child prohibited.

The licensee or primary staff person must not administer or allow administration of any medication for the purpose of sedating a child unless the medication has been prescribed for that purpose by a qualified health care professional.

NEW SECTION

WAC 170-296A-3475 Administering prescription medication. The licensee or primary staff must administer a prescribed medication only:

- (1) To the child that the medication is prescribed for;
- (2) In amount and frequency prescribed by a health care professional with prescription authority;
- (3) For the purpose or condition that the medication is prescribed to treat;
- (4) When the medication:
 - (a) Is in the original container;
 - (b) Is labeled with the child's first and last name;
 - (c) Has a nonexpired expiration date;
- (5) If the parent or guardian provides information from the pharmacy about:
 - (a) Medication storage;
 - (b) Potential adverse reactions or side effects; and
- (6) If the medication is stored at the proper temperature noted on the container label or pharmacy instructions.

NEW SECTION

WAC 170-296A-3525 Nonprescription medications.

The licensee or primary staff may administer nonprescription medications, as defined in this chapter, only when:

- (1) The nonprescription medication is:
 - (a) Given to or used with a child only in the dosage and as directed on the manufacturer's label;
 - (b) Given in accordance to the age or weight of the child needing the medication;
 - (c) Given only for the purpose or condition that the medication is intended to treat;
 - (d) Is in the original container; and
 - (e) Has a nonexpired expiration date, if applicable.
- (2) The container includes, or the parent or guardian provides information about:
 - (a) Medication storage;
 - (b) Potential adverse reactions or side effects.
- (3) The medication is stored at the proper temperature noted on the container label or pharmacy instructions.

NEW SECTION

WAC 170-296A-3550 Children taking their own medication. The licensee may permit a child to take his or her own medication if:

- (1) The licensee follows all of the requirements in WAC 170-296A-3475 (1) through (6);

(2) The child is physically and mentally capable of properly taking the medicine;

(3) The licensee has on file the child's parent or guardian written approval for the child to take his or her own medication;

(4) The medication and related medical supplies are locked and inaccessible to other children and unauthorized persons, except emergency rescue medications that may be stored inaccessible to other children but not locked; and

(5) The licensee or a primary staff person observes and documents in the child's medication administration record that the medication was taken.

NEW SECTION

WAC 170-296A-3575 Injuries requiring first aid only. When a child has an injury that requires first aid only, a written or verbal notice must be given to the parent or guardian and keep a record of the notice on file.

NEW SECTION

WAC 170-296A-3600 Injuries or illness requiring professional medical treatment. (1) When the licensee becomes aware that a child's injury or illness may require professional medical treatment, the licensee must:

- (a) Call 911, when applicable and follow their recommendations;
 - (b) Administer first aid;
 - (c) Call the child's parent or guardian;
 - (d) Call the department; and
 - (e) Within twenty-four hours, submit an injury/incident report form to the department.
- (2) The injury/incident report form must include:
- (a) The name of child;
 - (b) The date, time and location where the injury or illness occurred;
 - (c) A description of the injury or illness;
 - (d) The names of staff present;
 - (e) The action taken by staff; and
 - (f) The signature of licensee.

NEW SECTION

WAC 170-296A-3625 Handwashing. (1) The licensee and staff must follow and teach children proper handwashing procedures. Proper handwashing procedures include:

- (a) Wetting hands with warm water;
- (b) Apply soap to the hands;
- (c) Washing hands;
- (d) Rinsing hands;
- (e) Drying hands with a paper towel, single-use cloth towel or air hand dryer; and
- (f) Turning off the water with paper towel or single use cloth towel.

(2) Paper towels must be disposed of after a single use.

(3) If cloth towels are used, the licensee must wash and sanitize each hand towel after a single use.

(4) If an air hand dryer is used, it must have a heat guard to prevent burning and must turn off automatically.

NEW SECTION

WAC 170-296A-3650 Hand sanitizers. (1) If the licensee has a written and signed parent or guardian permission as described in WAC 170-296A-3375(2), the licensee may use hand sanitizer products only with children over twelve months old. Hand sanitizer products may be used:

- (a) When handwashing facilities are not available, such as an outing, emergency, or disaster; or
 - (b) After proper handwashing.
- (2) Hand sanitizer gels must not be used in place of proper handwashing if handwashing facilities are available.

NEW SECTION

WAC 170-296A-3675 When handwashing is required. The licensee, staff and children must wash their hands and follow proper handwashing techniques:

- (1) After using the toilet;
- (2) After diapering a child;
- (3) After outdoor play;
- (4) After playing with animals;
- (5) After touching an animal's toys;
- (6) After touching body fluids;
- (7) Before and after the child eats or participates in food activities; or
- (8) As needed.

NEW SECTION

WAC 170-296A-3700 Carpets. The licensee must clean installed carpet in the licensed space at least once each calendar year or more often when soiled.

NEW SECTION

WAC 170-296A-3725 Sleeping. (1) The licensee must provide mats, cots, or other sleeping equipment long enough and wide enough for the size of the child.

- (2) The licensee must never place the children directly on the floor to sleep.
- (3) When children are sleeping there must be enough space between children to give staff access to each child.

NEW SECTION

WAC 170-296A-3750 Mats, cots and other sleeping equipment. (1) The licensee must provide mats, cots, or other approved sleeping equipment that are made of material that can be cleaned and sanitized.

- (2) Mats, cots or other sleeping equipment must be cleaned, sanitized, and air dried:
 - (a) At least once a week or as needed if used by one child; or
 - (b) Between each use if used by different children.
- (3)(a) If a bleach solution is used to sanitize, the solution must be one-quarter teaspoon of bleach to one quart of cool water;
- (b) If another sanitizer product is used, it must be used strictly according to manufacturer's label instructions includ-

ing, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.

(4) Mats, cots, and other sleeping equipment must be stored so that the sleeping surfaces are not touching each other, unless they are cleaned and sanitized after each use.

NEW SECTION

WAC 170-296A-3760 Cribs. In order to meet federal requirements, a licensee who uses a crib with children in care must comply with this section.

(1) Effective December 28, 2012, each crib in use in licensed child care must meet U.S. Consumer Product Safety Commission (CPSC) requirements for full-size cribs as defined in 16 Code of Federal Regulations (CFR) 1219, or nonfull-size cribs as defined in 16 CFR 1220.

(2) A crib meets the requirements of this section if the crib is labeled by the manufacturer as made on or after June 28, 2011.

(3) A crib labeled as made from July 1, 2010 through June 27, 2011 may meet the requirements of this section if the licensee has obtained a certificate of compliance from the crib manufacturer or importer, or the licensee has other documentation from the manufacturer that the crib is certified as meeting the CPSC regulations.

(4) A crib that does not meet the requirements of subsection (2) or (3) of this section must be removed from the child care facility not later than December 28, 2012.

(5) The licensee must keep in the licensed space a log documenting that each crib in use meets the requirements of this section.

NEW SECTION

WAC 170-296A-3775 Bedding. Each child's bedding, including sleeping bags and slumber bags, must:

- (1) Meet the child's developmental needs;
- (2) Consist of a clean sheet or blanket to cover the sleeping surface;
- (3) Include a waterproof moisture barrier under the sheet or blanket;
- (4) Have a clean, suitable cover for the child; children must not nap directly on the waterproof moisture barrier or the floor;
- (5) Be laundered weekly or more often if soiled or used by different children; and
- (6) Be stored separately from bedding used by another child.

NEW SECTION

WAC 170-296A-3800 Overnight sleeping. If the licensee is approved by the department to provide overnight care, the licensee must provide every child a bed or other sleeping equipment to sleep that:

- (1) Is safe and in good condition;
- (2) Is waterproof or washable; and
- (3) Meets the child's developmental needs.

NEW SECTION

WAC 170-296A-3825 Loft style and bunk beds. The licensee must not allow children less than six years of age to use:

- (1) Loft style beds; or
- (2) Upper bunks of bunk beds.

NEW SECTION

WAC 170-296A-3850 Cleaning laundry. The licensee must wash child care laundry using:

- (1) Laundry soap or detergent; and
- (2)(a) Temperature control (warm or hot cycle); or
- (b) Bleach.

NEW SECTION

WAC 170-296A-3875 Cleaning and sanitizing toys.

(1) The licensee must clean and sanitize toys:

- (a) After they have been in a child's mouth;
- (b) After being contaminated with body fluids or visibly soiled; or
- (c) Not less than weekly when the toys have been used by the children.

(2)(a) If a bleach solution is used to sanitize, the solution must be one-quarter teaspoon of bleach to one quart of cool water;

(b) If another sanitizer product is used, it must be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.

NEW SECTION

WAC 170-296A-3925 Cleaning and sanitizing table.

The following table describes the minimum frequency for cleaning or sanitizing items in the licensed space.

CLEANING AND SANITIZING TABLE			
	CLEAN	SANITIZE	FREQUENCY
(a) Kitchens.			
(i) Countertops/tabletops, floors, doorknobs, and cabinet handles.	X	X	Daily or more often when soiled.
(ii) Food preparation/surfaces.	X	X	Before/after contact with food activity; between preparation of raw and cooked foods.
(b) Carpets and large area rugs/small rugs.	X		1. Vacuum daily. 2. Installed carpet must be cleaned yearly or more often when soiled. Small rugs shake outdoors or vacuum daily. Launder weekly or more often when soiled. Removable rugs may be used in the bathroom. They must be easily removable and able to be washed when needed. If used daily when children are in care, rugs must be washed daily.
(c) Toys, other surfaces.			
(i) Utensils, surfaces/toys that go in the mouth or have been in contact with other body fluids.	X	X	After each child's use; or use disposable, one-time utensils or toys.
(ii) Toys that are not contaminated with body fluids and machine-washable cloth toys. Dress-up clothes (not worn on the head or come into contact with the head while dressing). Combs/hair-brushes, (none of these items should be shared among children).	X		Weekly or more often when visibly soiled.
(d) Bedding, blankets, sleeping bags, individual sheets, pillowcases, and washcloths, (if used).	X	X	Weekly or more often when soiled. Items that are put in the washing machine must be cleaned by using laundry detergent and sanitized by temperature (hot water at 140°F) or a chemical sanitizer such as bleach.
(e) Hats and helmets.	X		After each child's use or use disposable hats that only one child wears.
(f) Cribs and crib mattresses.	X	X	Weekly, before use by different child, and more often whenever soiled or wet.
(g) Toilet and diapering areas.			
(i) Handwashing sinks, faucets, surrounding counters, soap dispensers, doorknobs.	X	X	Daily or more often when soiled.

CLEANING AND SANITIZING TABLE			
	CLEAN	SANITIZE	FREQUENCY
(ii) Toilet seats, toilet training rings, toilet handles, doorknobs or cubicle handles, floors.	X	X	Daily or immediately if visibly soiled.
(iii) Toilet bowls.	X	X	Daily or more often as needed (e.g., child vomits or has explosive diarrhea, etc.).
(iv) Changing tables, potty chairs (use of potty chairs in child care is discouraged because of high risk of contamination).	X	X	After each child's use.
(h) Waste receptacles.	X		Daily or more often as needed.

NEW SECTION

WAC 170-296-3950 Pest control. When pests are present in the licensed space, the licensee must:

- (1) Take action to remove or eliminate pests; and
- (2)(a) Use the least poisonous method possible; or
- (b) If chemical pesticides are used, post a notice visible to parents, guardians and any other interested party forty-eight hours in advance of the application of pesticides.

NEW SECTION

WAC 170-296A-3975 Poisons. The licensee must:

- (1) Store poisons inaccessible to children and away from food.
- (2) Label the containers when poisons are not in their original containers.

NEW SECTION

WAC 170-296A-4000 Lead, asbestos and arsenic.

The licensee must take action to prevent child exposure when the licensee becomes aware that any of the following are present in the indoor or outdoor licensed space:

- (1) Lead based paint;
- (2) Plumbing containing lead or lead solders;
- (3) Asbestos; or
- (4) Arsenic or lead in the soil.

NEW SECTION

WAC 170-296A-4025 Drugs and alcohol. (1) The licensee staff, volunteers, or household members must not:

- (a) Have or use illegal drugs on the premises;
- (b) Consume alcohol during operating hours; or
- (c) Be under the influence of alcohol, illegal drugs or misused prescription drugs when working with or in the presence of children in care.

(2) The licensee must keep and store all alcohol, including closed and open containers, inaccessible to children.

NEW SECTION

WAC 170-296A-4050 No smoking. (1) As required by chapter 70.160 RCW, the licensee must, under the following conditions, prohibit smoking by anyone during operating hours:

- (a) Inside the home;

(b) In any outdoor or indoor licensed space;

(c) Within twenty-five feet from any entrance, exit, window, or ventilation intake of the home; or

(d) In motor vehicles while transporting children.

(2) The licensee must keep tobacco products, cigarettes and containers holding cigarette butts, cigar butts, or ashes inaccessible to the children.

NEW SECTION

WAC 170-296A-4075 First aid kit. (1) The licensee must have a complete first aid kit at all times:

(a) In the licensed space;

(b) On any off-site trip; and

(c) In any vehicle used to transport children in care.

(2) A complete first aid kit must include clean:

(a) Disposable nonporous protective gloves;

(b) Adhesive bandages of various sizes;

(c) Small scissors;

(d) Tweezers;

(e) An elastic wrapping bandage;

(f) Sterile gauze pads;

(g) Ice pack;

(h) Mercury free thermometer for taking a child's temperature;

(i) Large triangular bandage, for use as a sling;

(j) Adhesive tape; and

(k) One-way CPR barrier or mask.

(3) The first aid kit must include a current first aid manual.

NEW SECTION

WAC 170-296A-4100 Storage of medications, chemicals and other substances. The following table describes medications, chemicals and other substances that must be:

(1) Stored in a locked container or cabinet until use; or

(2) Stored inaccessible to children. Rescue medications described in subsection (3) of the table must be available for the licensee or primary staff to administer to a child if needed.

Medication/Chemical/Other Substance Storage		
This list is not inclusive of all possible items in each category. Medications must be stored as directed on label, including refrigeration if applicable.		
If the medication is a (an):	The medication must be stored in a locked container or cabinet	The medication must be stored inaccessible to children
(3) Individual child's rescue medications		
(a) Any medication used to treat an allergic reaction		X
(b) Nebulizer medication		X
(c) Inhaler		X
(d) Bee sting kit		X
(e) Seizure medication		X
(f) Medicine needed for emergencies		X
(4) Nonprescription medication, including herbal or natural		
(a) Pain reliever, cough syrup, cold, or flu medication	X	
(b) Vitamins, all types including natural	X	
(c) Topical nonprescription medication		X
(5) Prescription medication		
(a) Intended use – topical		X
(b) Intended use – ingestible or by injection	X	
(6) Chemicals		
(a) Nail polish remover		X
(b) Disinfectant and sanitizers		X
(c) Household cleaners		X
(d) Toxic paints		X
(e) Plant fertilizer		X
(f) Ice melt		X
(g) Pool chemicals		X
(h) Pesticides/herbicides		X
(i) Fuels, oil, lighter fluid, matches		X
(j) Air freshener, aerosols		X
(7) Other substances		
(a) Lotions, creams, toothpaste and diaper creams when not in use		X
(b) Liquid, powder or cream personal hygiene products when not in use		X
(c) Shampoo		X
(d) Bubble bath		X
(e) Dish soap		X
(f) Make-up/cosmetics		X
(g) Pet medications	X	
(h) Tobacco products, including cigarette butts and ash trays		X
(i) Alcohol (liquor), opened or unopened		X

ENVIRONMENTS

NEW SECTION

WAC 170-296A-4200 Removing recalled items. The licensee must maintain equipment, toys or other items in the child care in good and safe working condition. The licensee must maintain awareness of equipment, toys or other items used in child care listed for recall by the U.S. Consumer Product Safety Commission.

NEW SECTION

WAC 170-296A-4225 Indoor licensed space—Minimum space. (1) The indoor licensed space must have thirty-five square feet per child for the maximum number of chil-

dren stated on the license, measured to include only the space intended for use by children in care.

(2) The space under furniture used by the children is counted in square footage.

(3) Indoor space that is not counted in the minimum square footage requirement includes:

- (a) Unlicensed space that is made inaccessible to children in care;
- (b) Space under furniture not used by the children;
- (c) Hallway space that leads to an exit;
- (d) Bathrooms; and
- (e) Closets not used for child care activities.

(4) An office or kitchen that is made inaccessible to the children and is not intended for their use may be included as licensed space but is not counted as part of the minimum square footage.

NEW SECTION

WAC 170-296A-4250 Indoor temperature. The indoor temperature must be no less than:

- (1) Sixty degrees Fahrenheit when children are sleeping or napping; and
- (2) Sixty-five degrees Fahrenheit when the majority of the children are awake.

NEW SECTION

WAC 170-296A-4275 Fans, air conditioning or cross ventilation. The licensee must use a fan, air conditioner or cross ventilation in licensed space when the inside temperature exceeds eighty degrees Fahrenheit. Fans and air conditioners must be kept inaccessible to the children.

NEW SECTION

WAC 170-296A-4300 Window coverings. (1) Window coverings with pull cords or inner cords capable of forming a loop are prohibited as provided by RCW 43.215.360.

(2) Window coverings may be allowed that have been manufactured or altered to eliminate the formation of a loop.

(3) A window covering may not be secured to the frame of a window or door used as an emergency exit in any way that would prevent the window or door from opening easily.

NEW SECTION

WAC 170-296A-4325 Stairs. (1) If there are stairs in the licensed space, the licensee must:

- (a) Keep the stairway well lit;
- (b) Keep the stairway free of clutter; and
- (c) Have a handrail or vertical slats on one side of the stairs that children can reach.

(2) The licensee must keep the stairs inaccessible to the children when not in use with a:

- (a) Barrier;
- (b) Nonpressure gate; or
- (c) Door.

ELECTRICAL AND LIGHTINGNEW SECTION

WAC 170-296A-4350 Electrical outlets, cords and power strips. (1) The licensee must provide tamper-resistant outlet covers or receptacles in areas accessible to children. As used in this section "tamper-resistant receptacle" also means tamper-resistant outlets or child safety outlets that have automatic shutters which allow insertion of electrical plugs but block insertion of other objects.

(2) Interior outlets near sinks, tubs or toilets must be:

- (a) Tamper-resistant ground fault circuit interrupter (GFCI) type; or
- (b) Made inaccessible to the children.
- (3) Electrical cords must be:
 - (a) Secured to prevent a tripping hazard;
 - (b) In good working order, not torn or frayed and without any exposed wire; and

- (c) Plugged directly into an outlet or a surge protector.
- (4) Power strips with a surge protector may be used and must be made inaccessible to the children.
- (5) Extension cords may be used only for a brief or temporary purpose and must be plugged directly into an outlet or into a surge protected power strip.

NEW SECTION

WAC 170-296A-4360 Area lighting. (1) In the licensed space, lighting must be bright in the children's activity areas, eating areas and the bathroom.

(2) All other areas in the licensed space must have lighting so children are safe.

NEW SECTION

WAC 170-296A-4375 Lighting safety. (1) When ceiling-mounted light fixtures are in the play space, the licensee must provide one or more of the following:

- (a) Shatter-resistant covers;
- (b) Shatter-resistant light bulbs; or
- (c) Otherwise make the light fixtures safe.

(2) The licensee must not:

- (a) Allow bare light bulbs in any play space; or
- (b) Use lights or light fixtures indoors that are intended or recommended for outdoor use; or
- (c) Use halogen lamps in any area accessible to children during operating hours.

EXITSNEW SECTION

WAC 170-296A-4400 Exit doors. (1) "Exit door" means any door in the licensed space that opens to the exterior of the home. Emergency exit doors are covered in WAC 170-296A-4500.

(2) The licensee must have a method on exit doors to alert the licensee or staff when an exit door is opened. The licensee may use a chime, bell, alarm, or other device as an alert method.

(3) An exit door that is not designated as an emergency exit door may be locked during operating hours. The door knob or handle must be of the type that can be opened from the inside without use of a key, tools, or special knowledge, and must automatically unlock when the door knob or handle is turned.

(4) At least one exit door must be of the pivoted or side-hinged swinging type. Other exit doors may be sliding glass doors.

NEW SECTION

WAC 170-296A-4425 Night latches, deadbolts and security chains. When overnight care is provided, the licensee must have a department approved safety plan in place before using any of the following on an exit door that is not used as an emergency exit:

- (1) Night latches;
- (2) Deadbolts; or

- (3) Security chains.

NEW SECTION

WAC 170-296A-4450 Interior door locks. An interior door is any door that does not exit to the exterior of the home. Any interior door that locks must be able to be unlocked from either side. An unlocking device must be readily available for staff to unlock any interior door when a child is locked in.

NEW SECTION

WAC 170-296A-4475 Emergency exit pathways. The licensee must keep pathways to all emergency exits free from clutter and obstructions. Emergency exits and pathways to emergency exits are licensed space.

NEW SECTION

WAC 170-296A-4500 Emergency exits—General. (1) Each floor used for licensed child care space must have at least two emergency exits that open directly to the exterior of the home.

(a) The emergency exits on each floor must be remotely located from each other, at opposite ends of the building or as widely spaced as possible.

(b) One exit must be an emergency exit door as defined in WAC 170-296A-4525 and the other exit may be a door or an emergency window as defined in WAC 170-296A-4550.

(2) Every room used for child care, except bathrooms, must have:

(a) A door leading to two separate emergency exit pathways; or

(b) An emergency exit door leading directly to the exterior of the building.

See WAC 170-296A-4575 for additional requirements for rooms used for sleeping or napping.

(3) If child care is provided in a basement or floor level accessed by an interior stairway, the stairway must have a self closing door at the top or bottom.

(4) Any basement approved for licensed child care must have two means of emergency exit, which may be one of the following:

(a) Two emergency exit doors that exit directly to the exterior of the home without entering the first floor; or

(b) One of the two emergency exits is an emergency exit window or emergency exit door, and the other exit is an interior stairway that leads to an emergency exit.

NEW SECTION

WAC 170-296A-4525 Emergency exit doors. (1) An emergency exit door must open to the exterior of the home.

(2) Any door used as an emergency exit door must:

(a) Remain unlocked during operating hours;

(b) Be designed to open from the inside without the use of keys, tools, or special knowledge and automatically unlocks when the door knob or handle is turned; and

(c) Be easy to open to the full open position.

(3) If the emergency exit door opens to a landing that is four feet (forty-eight inches) or more above grade, the landing must lead to a stairway or ramp to get to ground level.

NEW SECTION

WAC 170-296A-4550 Emergency exit windows. (1) Any window used as an emergency exit window must:

(a) Remain unlocked during operating hours, except a manufacturer-installed latch may be latched;

(b) Be designed to open from the inside of the room without the use of keys, tools or special knowledge; and

(c) Be easy to open to the full open position.

(2) An emergency exit window must be at least five point seven square feet in area, except emergency exit windows on the ground floor may be five square feet in area. When open, the window opening must be at least:

(a) Twenty inches wide; and

(b) Twenty-four inches tall.

(3) An emergency exit window must have an interior sill height of forty-four inches or less above the interior floor. If the interior sill height is more than forty-four inches above the interior floor, a sturdy platform (which may be a table or other device) may be used to make the distance forty-four inches or less to the interior window sill. The platform must be in place below the window sill at all times during operating hours.

(4) An emergency exit window must have a place to land outside that is forty-eight inches or less below the window which may be either:

(a) The ground; or

(b) A deck, landing or platform constructed and inspected by local building officials as meeting current building codes.

NEW SECTION

WAC 170-296A-4575 Emergency exits from sleeping/napping areas. Each room used for sleeping or napping must have:

(1) Interior doors leading to two separate emergency exit pathways; or

(2) An emergency exit door leading directly to the exterior of the building; or

(3) An interior door leading to an emergency exit pathway and an emergency exit window exiting to the exterior of the building. The emergency exit window must meet the requirements stated in WAC 170-296A-4550(3).

NEW SECTION

WAC 170-296A-4600 Commercial use areas—Fire wall. (1) The licensed space must have a fire resistant wall separating the child care space from any space used as a commercial:

(a) Kitchen;

(b) Boiler;

(c) Maintenance shop;

(d) Laundry;

(e) Woodworking shop;

- (f) Storage where flammable or combustible materials are stored;
 - (g) Painting operation;
 - (h) Automobile or boat building or repair;
 - (i) Parking garage; or
 - (j) Other similar commercial operation.
- (2) Emergency exits pathways must not exit to or go through the commercial space.

NEW SECTION

WAC 170-296A-4625 Bathrooms. (1) The licensee must provide at least one indoor bathroom with:

- (a) A flush-type toilet;
 - (b) Privacy for toileting for children of the opposite sex who are four years of age or older and for other children demonstrating a need for privacy;
 - (c) A mounted toilet paper dispenser and toilet paper for each toilet; and
 - (d) A toilet of an appropriate height and size for children, or have a platform for the children to use that is safe, easily cleanable and resistant to moisture.
- (2) Bathroom and toileting areas must be ventilated by the use of a window that can be opened or an exhaust fan.

NEW SECTION

WAC 170-296A-4650 Bathroom floors. (1) Floors in a bathroom or toileting area must have a washable surface and be resistant to moisture. The floor must be cleaned and sanitized daily or more often if needed.

- (a) If a bleach solution is used to sanitize, the solution must be one teaspoon of bleach to one gallon of cool water;
 - (b) If another sanitizer product is used, it must be used strictly according to manufacturer's label instructions, including but not limited to quantity used, time the product must be left in place, and adequate time to allow the product to dry.
- (2) Removable rugs may be used in the bathroom. The rugs must be washed when soiled or at least weekly.

NEW SECTION

WAC 170-296A-4675 Bathroom sinks. A sink used for handwashing must be located in or next to bathrooms or other areas used for toileting. The sink must:

- (1) Have warm running water; and
- (2) Be of appropriate height and size for children, or have a platform for the children to use that is safe, easily cleanable and resistant to moisture.

NEW SECTION

WAC 170-296A-4700 Water temperature. Hot water must be kept at temperature not less than eighty degrees and not more than one hundred twenty degrees Fahrenheit.

NEW SECTION

WAC 170-296A-4725 Guns and other weapons. (1) The licensee must store guns, ammunition and other weapons inaccessible to children in a:

- (a) Locked gun safe; or
 - (b) Locked room.
- (2) If stored in a locked room, each gun must be stored unloaded and with a trigger lock or other disabling feature.

NEW SECTION

WAC 170-296A-4750 Storage for each child's belongings. The licensee must provide separate storage for each child's belongings. Belongings of children from the same family may be stored together.

PETSNEW SECTION

WAC 170-296A-4800 Pet policy. A licensee who has a pet or pets must:

- (1) Inform children's parents and guardians that the licensee has a pet; and
- (2) Have a pet policy in the parent handbook that includes:
 - (a) How children will have access to pets;
 - (b) How children will be kept safe around pets;
 - (c) Pet immunizations; and
 - (d) Handling of pet waste.

NEW SECTION

WAC 170-296A-4850 Pet health and safety. (1) Pets that have contact with children must:

- (a) Have current immunizations for communicable diseases;
 - (b) Show no signs of disease, worms or parasites; and
 - (c) Be nonaggressive.
- (2) Children and staff must wash their hands as required under WAC 170-296A-3625 after interacting with pets or handling pet toys or equipment.

NEW SECTION

WAC 170-296A-4875 Pets interacting with children. The licensee:

- (1) Must have a written plan to keep a pet inaccessible to the children if the pet is known to be dangerous or aggressive.
- (2) Must directly supervise, or instruct staff to directly supervise, children preschool age and younger when the children are interacting with pets.
- (3) Must make reptiles and amphibians inaccessible to the children due to the risk of Salmonella.

NEW SECTION

WAC 170-296A-4900 Pet wastes. The licensee must:

- (1) Keep litter boxes inaccessible to the children.
- (2) Have a designated area outside the fenced licensed outdoor space for pets to relieve themselves.
- (3) Remove feces right away if an animal relieves itself in the outdoor licensed space.

(4) Pet feces, urine, blood, or vomit when found in the indoor licensed space must be cleaned up immediately and the area sanitized.

NEW SECTION

WAC 170-296A-4925 Licensed outdoor space. (1) The licensee must provide a safe outdoor play area on the premises.

(a) The outdoor play space must contain seventy-five square feet of usable space per child for the number of children stated on the license.

(b) If the premises does not have seventy-five square feet of available outdoor space per child, the licensee may provide an alternative plan, approved by the department, to meet the requirement for children to have daily outdoor play opportunities.

(2) The licensed outdoor play space must be securely enclosed with a fence of a minimum height of four feet. When a fence has slats, openings between the slats must be no wider than three and one-half inches.

(3) When the licensed outdoor play space is not adjacent to the home the licensee must:

(a) Identify and use a safe route to and from licensed outdoor space that is approved by the department; and

(b) Supervise the children at all times when passing between the licensed outdoor space and the home.

(4) The licensee must provide a written plan, approved by the department, to make roadways and other dangers adjacent to the licensed outdoor play space inaccessible to children.

NEW SECTION

WAC 170-296A-4950 Rails on platforms, decks, and stairs. (1) Platforms or decks (not including play equipment) used at any time for child care activities with a drop zone of more than eighteen inches must have guardrails in any area where there are no steps.

(2) Outdoor stairs with four or more steps must have vertical slats (balusters) or a hand rail on at least one side. Openings between the slats must be no wider than three and one-half inches. This requirement does not apply to outdoor play equipment with stairs.

NEW SECTION

WAC 170-296A-4975 Outdoor supervision. (1) The licensee or primary staff person must be within sight and hearing range when children preschool age or younger are using the licensed outdoor space and be available and able to respond if the need arises for the safety of the children.

(2) The licensee or primary assistant must be within sight or hearing range of school age children when in the licensed outdoor space and be available and able to respond if the need arises for the safety of the children.

(3) The required staff-to-child ratio must be maintained when the children are in the licensed outdoor space, except as provided in subsection (4) of this section.

(4) A second staff person or assistant may engage in other child care activities temporarily as long as he or she is

in sight or hearing range and is available and able to respond if the need arises for the safety of the children.

NEW SECTION

WAC 170-296A-5000 Play equipment. (1) The licensee must have play equipment that is developmentally appropriate and maintained in a safe working condition. Unsafe equipment must be repaired immediately or must be made inaccessible to children until repairs are made.

(2) Play equipment must be arranged so that it does not interfere with other play equipment when in use.

(3) The licensee must install or assemble play equipment according to manufacturer specifications, and keep specifications on file for review by the licenser.

NEW SECTION

WAC 170-296A-5025 Outdoor physical activities. The licensee must have an outdoor play area that promotes a variety of age and developmentally appropriate physical activities for the children in care.

NEW SECTION

WAC 170-296A-5050 Bouncing equipment prohibited. The licensee must not use or allow the use of bouncing equipment including, but not limited to, trampolines, rebounders and inflatable equipment. This requirement does not apply to bounce balls with handles for use by individual children.

NEW SECTION

WAC 170-296A-5075 Ground cover—Fall zones. (1) The licensee must not place climbing play equipment on concrete, asphalt, packed soil, lumber, or similar hard surfaces when being used by children.

(2) The ground under play equipment intended to be climbed must be covered by a shock absorbing material. Grass alone is not an acceptable ground cover material under swings or play equipment intended to be climbed.

(3) A six-foot fall zone must surround all equipment that has a platform over forty-eight inches tall that is intended to be climbed.

(4) The fall zone area must extend at least six feet beyond the perimeter of the equipment. For swings, the area must extend six feet from the furthest arc of the swing.

(5) Swings must be positioned so that the furthest arc of the swing is at least ten feet from a fence, building or other play equipment.

NEW SECTION

WAC 170-296A-5125 Daily outdoor activity. The licensee or staff must provide outdoor activities at least thirty minutes each day unless conditions pose a health and safety risk to the children. Conditions that may pose a health and safety risk include, but are not limited to:

(1) Heat in excess of one hundred degrees Fahrenheit;

(2) Cold less than twenty degrees Fahrenheit;

- (3) Lightning storm, tornado, hurricane, or flooding, if there is immediate or likely danger to the children;
- (4) Earthquake;
- (5) Air quality emergency ordered by a local or state air quality authority or public health authority;
- (6) Lockdown order by a public safety authority; or
- (7) Other similar incidents.

NEW SECTION**WAC 170-296A-5150 Water activity—Supervision.**

(1) Unless attending a swimming or water play activity, when outside the licensed premises the licensee must keep children from having access to bodies of water that pose a drowning hazard.

(2) When the licensee takes children near a body of water outside the licensed premises that is accessible and more than four inches deep, there must be:

- (a) A certified lifeguard on duty; or
- (b)(i) One additional staff member more than the required staff-to-child ratio as provided in WAC 170-296A-5700 to help with the children; and
- (ii) At least one staff person in attendance must be able to swim.

NEW SECTION**WAC 170-296A-5175 Wading pools—Defined—Supervision.** (1) A wading pool:

- (a) Is an enclosed pool with water depth of two feet or less measured without children in the pool; and
 - (b) Can be emptied and moved.
- (2) When a wading pool on the premises is intended for use by the children, the licensee must:
- (a) Directly supervise or have a primary staff person directly supervise the children;
 - (b) Obtain written permission from each child's parent or guardian to allow the child to use a wading pool;
 - (c) Maintain staff-to-child ratios when children are in a wading pool;
 - (d) Keep infants or toddlers in the wading pool within reach of the licensee or staff;
 - (e) Use a door alarm or bell to warn staff that children are entering the outdoor area when pool water could be accessed, or keep the wading pool empty when not in use; and
 - (f) Empty, clean and sanitize the pool daily or immediately if the pool is soiled with urine, feces, vomit, or blood:
 - (i) If a bleach solution is used to sanitize, the solution must be one teaspoon of bleach to one gallon of cool water;
 - (ii) If another sanitizer product is used, it must be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.

NEW SECTION

WAC 170-296A-5200 Swimming pools defined—Barriers and supervision. (1) A swimming pool is a pool that has a water depth greater than two feet.

(2) When there is a swimming pool on the premises the licensee must:

- (a) Have a five-foot high fence that blocks access to the swimming pool;
 - (b) Lock the entrance and exit points to the swimming pool;
 - (c) Have an unlocking device that is inaccessible to children but readily available to the licensee or staff;
 - (d) Maintain the swimming pool according to manufacturer's specifications; and
 - (e) Clean and sanitize the swimming pool using the manufacturer's specifications.
- (3) When the swimming pool on the premises is used by the children the licensee must:
- (a) Obtain written permission from each child's parent or guardian to allow the child to use the swimming pool;
 - (b) Have one person present at the swimming pool with lifeguard training;
 - (c) Provide a one-to-one staff-to-child ratio for infants or toddlers in the swimming pool. Staff must hold or be in constant touch contact with infants or toddlers in the swimming pool; and
 - (d) Provide one additional staff person more than the required staff-to-child ratio as provided in WAC 170-296A-5700 to help supervise children other than infants or toddlers.

NEW SECTION

WAC 170-296A-5225 Bodies of water or water hazards on the licensed premises. (1)(a) As used in WAC 170-296A-5150 through 170-296A-5250, a "body of water" is a natural area or man-made area or device that contains or holds more than two inches of water.

(b) "Body of water" does not include a wading pool as defined in WAC 170-296A-5175, a water activity table, small bird baths or rain puddles with a water depth of two inches or less.

(2) When children are in care the licensee must:

- (a) Make any body of water in the licensed space inaccessible with a fence or a physical barrier that is at least five feet tall, except as provided in subsection (c) of this section;
- (b) Directly supervise or have a primary staff person directly supervise children, with the staff-to-child ratios observed, whenever children play in any area with a body of water;
- (c) Make hot tubs, spas, or jet tubs inaccessible with a tub cover that is locked; and
- (d) Not use five gallon buckets or similar containers for infant or toddler water play.

NEW SECTION

WAC 170-296A-5250 Safety plan for bodies of water outside and near licensed space. The licensee must make the following bodies of water inaccessible to children in care, and have a written safety plan approved by the department for:

- (1) Bodies of water, including ditches, located outside and near (in close proximity to) the licensed space, regardless of whether the body of water is on or off the premises; or
- (2) Any uncovered well, septic tank, below grade storage tank; farm manure pond or similar hazards that are on the premises.

SUPERVISION, CAPACITY AND RATIO

NEW SECTION

WAC 170-296A-5400 Infant-toddler only license (birth to two years old). (Reserved.) The department plans to consider specialized licenses for specific age groups at a later date.

NEW SECTION

WAC 170-296A-5450 Two through five year old only license. (Reserved.) The department plans to consider specialized licenses for specific age groups at a later date.

NEW SECTION

WAC 170-296A-5500 School age only license (over five years through twelve years). (Reserved.) The department plans to consider specialized licenses for specific age groups at a later date.

NEW SECTION

WAC 170-296A-5550 Birth through twelve years license. (1) The department issues a full license for the licensee to care for not more than twelve children birth through twelve years of age.

(2) The department may issue a full licensee for fewer than twelve children if the total square footage of licensed indoor or outdoor space is less than the minimum square footage required to care for twelve children.

(3) If the licensee has less than one year of child care experience, the department may issue an initial license limited to:

- (a) Caring for not more than six children; or
- (b) Caring for children older than eighteen months of age and walking independently.

(4) See the table in WAC 170-296A-5700 for the number and ages of children a licensee may care for and the staff-to-child ratios required based on the licensee's experience and staffing levels.

NEW SECTION

WAC 170-296A-5600 Staff-to-child ratio. (1) The licensee must provide qualified staff to fulfill the staffing requirements and ratios described in WAC 170-296A-5700 at

all times during all operating hours, including off-site trips or when transporting children in care.

(2) The licensee must provide additional staff as described in WAC 170-296A-5150, 170-296A-5175, or 170-296A-5225 when children are participating in water activities or near water.

NEW SECTION

WAC 170-296A-5625 Capacity. The licensee must not exceed the total number or ages of children in care (capacity) stated on the child care license.

NEW SECTION

WAC 170-296A-5650 Children counted in ratio and capacity. (1) Children enrolled in the child care program count in ratio through twelve years of age.

(2) All children through twelve years of age in attendance on the premises or being transported by the licensee or staff are counted in the total number of children in the licensee's care.

(3) Any child within the age range on the license count in ratio, including licensee's own children, staff's own children or visiting children who are not accompanied by an adult.

(4) The licensee must receive department approval to care for a child with special needs as documented in WAC 170-296A-6725 if the child is older than the maximum age identified on the license. A child with documented special needs may be in care up to age nineteen and must be counted in ratio.

(5) If an individual child with special needs requires individualized supervision, a staff member providing individualized supervision for that child does not count in the staff-to-child ratio for the other children in care.

NEW SECTION

WAC 170-296A-5700 Capacity and ratio table—Birth through twelve year license. The table in this section describes the required staff-to-child ratio, age composition of children in care, and maximum licensed capacity permitted in a licensed family home child care depending on the:

- (1) Licensee's years of experience;
- (2) Number and qualifications of staff providing care;
- (3) Capacity and ratio table:

Staff	Licensee Minimum Experience and Requirements	Staff-Child Ratio	Age Range	Maximum Number of Children by Age Group:	Maximum Capacity
(a) Licensee working alone	Less than one year of experience	1:6	Birth through 12 years of age	Under 18 months of age 2 or	6 Maximum of 2 children under the age of two not walking independently
				Under two years of age (One must be walking independently) 3	

Staff	Licensee Minimum Experience and Requirements	Staff-Child Ratio	Age Range	Maximum Number of Children by Age Group:	Maximum Capacity
(b) Licensee working alone	At least one year of experience	1:8	18 months through 12 years of age	18 months to 2 years (Must be walking independently) 2 or	8
				Under three years of age (Not more than two under two years of age and must be walking independently) 4	
(c) Licensee working alone	At least two years of experience and 30 hours of ongoing early childhood education equivalent STARS training	1:10	Three years through 12 years of age	Not Applicable	10
(d) Licensee working with primary staff or assistant (2 staff total)	Licensee has at least one year of experience	2:9	Birth through 12 years of age	Under 18 months of age 2 and	9
				18 months to two years of age and walking independently 1 and	
				Two years to three years of age 4	
(e) Licensee working with primary staff or assistant (2 staff total)	Licensee has two or more years child care experience and 30 hours of ongoing early childhood education equivalent STARS training	2:12	Birth through 12 years of age	Under 18 months of age 4 and	12
				18 months to two years of age and walking independently 2 and	
				Two years to three years of age 4	
(f) Licensee working with primary staff or assistant (2 staff total)	Licensee has two or more years child care experience and 30 hours of ongoing early childhood education equivalent STARS training	2:12	Two years of age through 12 years of age	Not Applicable	12

(4) As used in this section, "walking independently" means being able to stand and move about easily without the aid or assistance of or holding on to an object, wall, equipment or other person.

LICENSEE RESPONSIBILITIES

NEW SECTION

WAC 170-296A-5750 Supervising staff. When the licensee or primary staff are supervising staff, they must be:

- (1) Aware of what staff are doing; and

(2) Available and able to promptly assist to protect the health and safety of children in care.

NEW SECTION

WAC 170-296A-5775 Licensee absence. (1) The licensee must have a written policy and procedure for staff to follow any time the licensee is absent from the child care. The policy and procedure must include, but is not limited to:

- (a) A staffing plan to include:
 - (i) That qualified primary staff will be present and in charge at all times during the licensee's absence;

(ii) Staff roles and responsibilities;
 (iii) How staff-to-child ratios will be met; and
 (iv) How staff will meet the individual needs of children in care;

(b) How parents will be notified in writing of the licensee's absence;

(c) Responsibility for meeting the requirements of this chapter and chapter 43.215 RCW;

(d) Emergency contact information for the licensee; and
 (e) Licensee's expected outside work schedule if applicable.

(2) The department must approve the licensee's plan. The department may require modifications to the proposed plan if it does not meet licensing requirements.

(3) Prior to engaging in employment or ongoing activities outside of the child care home during child care hours the licensee must inform the department in writing.

NEW SECTION

WAC 170-296A-5800 Orientation for staff. The licensee must provide an orientation to all staff on licensing standards in this chapter, including the licensee's policies and procedures, and document when the training occurred and identify staff that received the training.

NEW SECTION

WAC 170-296A-5825 Licensee absence—Retraining for staff if standards are violated. If the department issues a facility license compliance agreement as a result of staff not following the licensing standards of this chapter in the licensee's absence, the licensee must:

- (1) Retrain the staff on the licensing standards in this chapter; and
- (2) Document that the retraining occurred.

NEW SECTION

WAC 170-296A-5850 Licensee notice of absences. (1) The licensee must notify the department forty-eight hours prior to the following absences during child care hours:

- (a) Outside employment;
- (b) Vacation or absence exceeding seven consecutive days when the child care will remain open; or
- (c) Regularly scheduled absences during child care hours.

(2) The licensee must inform the department of the following regarding the licensee's absence:

- (a) Time period of the absence;
- (b) Written plan including who will be left in charge of the child care;
- (c) Contact information for licensee; and
- (d) How parents will be informed prior to the absence.

NEW SECTION

WAC 170-296A-5875 Notifying parents of closures, absences, staff changes. The licensee must notify parents in writing of:

- (1) Closures;

- (2) Licensee's potential absences; and
- (3) Staffing changes.

NEW SECTION

WAC 170-296A-5900 Notifying the licensor regarding the licensee's absence. The licensee or another person must notify the licensor:

- (1) Of the licensee's emergency absence, as soon as possible and not later than twenty-four hours after the start of the emergency absence; or
- (2) When the licensee's physical or mental health prevents the licensee from providing direct care as required by this chapter.

NURTURE AND GUIDANCE

NEW SECTION

WAC 170-296A-6000 Interactions with children. The licensee and staff members must:

- (1) Demonstrate positive interactions when children are present;
- (2) Interact with children through listening and responding to what the children have to say;
- (3) Be in frequent verbal communication with children in a positive, reinforcing, cheerful and soothing way. Explain actions, even to very young babies;
- (4) Treat each child with consideration and respect;
- (5) Appropriately hold, touch and smile at children;
- (6) Speak to the children at their eye level when possible and appropriate;
- (7) Be responsive to children, encouraging them to share experiences, ideas and feelings;
- (8) Respond to and investigate cries or other signs of distress immediately;
- (9) Perform age or developmentally appropriate nurturing activities that:
 - (a) Take into consideration the parent's own nurturing practices;
 - (b) Promote each child's learning self-help and social skills; and
 - (c) Stimulate the child's development.
- (10) Provide each child opportunities for vocal expression. Adult voices must not always dominate the overall sound of the group.

NEW SECTION

WAC 170-296A-6025 Prohibited interactions. In the presence of the children in care the licensee and staff must not:

- (1) Use profanity, obscene language, "put downs," or cultural or racial slurs;
- (2) Have angry or hostile interactions;
- (3) Use name calling or make derogatory, shaming or humiliating remarks; or
- (4) Use or threaten to use any form of physical harm or inappropriate discipline, such as, but not limited to:
 - (a) Spanking children;
 - (b) Biting, jerking, kicking, hitting, or shaking;

- (c) Pulling hair;
- (d) Pushing, shoving or throwing a child; or
- (e) Inflicting pain or humiliation as a punishment.

NEW SECTION

WAC 170-296A-6050 Guidance and discipline. The licensee and staff must use consistent, fair and positive guidance and discipline methods. These methods must be appropriate to the child's developmental level, abilities, culture and are related to the child's behavior.

(1) Only the licensee or primary staff person trained in the licensee's expected standards may discipline a child in care.

(2) The licensee is responsible for developing a written policy including:

- (a) Setting standards for guidance and discipline;
- (b) Communicating to parents, guardians, and children in care what the policy is;
- (c) Training staff and volunteers in the standards of guidance and discipline policy; and
- (d) Any disciplinary actions by the licensee or staff that occur during child care hours.

NEW SECTION

WAC 170-296A-6075 Positive options for discipline. The licensee and staff must use positive guidance methods. The guidance methods may include any of the following:

- (1) Distracting;
- (2) Redirecting;
- (3) Planning ahead to prevent problems;
- (4) Encouraging appropriate behavior;
- (5) Explaining consistent, clear rules;
- (6) Allowing children to be involved in solving problems; and
- (7) Explaining to the child the reasonable and age appropriate natural and logical consequences related to the child's behaviors.

NEW SECTION

WAC 170-296A-6100 Separating a child from the group. (1) The licensee or staff may separate a child three years or older from other children as a form of discipline only long enough to allow the child to regain control of him or her self. The child must remain under the direct supervision of the licensee or primary staff person.

- (2) The licensee or primary staff must:
 - (a) Take into account the child's developmental level and ability to understand the consequences of his or her actions;
 - (b) Communicate to the child the reason for being separated from the other children;
 - (c) Not discipline any child by separating the child from the group and placing him or her in a closet, a bathroom, a locked room, outside or in unlicensed space; or
 - (d) Not use high chairs, car seats and other confining space or equipment for the purpose of punishment or restricting a child's movements.

NEW SECTION

WAC 170-296A-6125 Preventing harmful or aggressive acts. The licensee and staff must:

- (1) Take steps to protect children from the harmful acts of other children; and
- (2) Immediately intervene when a child becomes physically aggressive.

NEW SECTION

WAC 170-296A-6150 Prohibited actions. The licensee, staff or a household member must not:

- (1) Restrict a child's breathing;
- (2) Deprive a child of:
 - (a) Sleep, food, clothing or shelter;
 - (b) Needed first aid; or
 - (c) Required or emergency medical or dental care;
- (3) Interfere with a child's ability to take care of his or her own hygiene and toileting needs; or
- (4) Withhold hygiene care, toileting care or diaper changing to any child unable to provide such care for him or herself.

NEW SECTION

WAC 170-296A-6175 Using alternate methods before using physical restraint. (1) The licensee must train primary staff on alternate methods to use before using physical restraint.

(2) Before using physical restraint, the licensee and staff must first use other methods described in WAC 170-296A-6075 to redirect or de-escalate a situation.

NEW SECTION

WAC 170-296A-6200 Physical restraint—Prohibited uses or methods. The licensee, staff, or household members must not use:

- (1) Physical restraint as a form of punishment or discipline;
- (2) Mechanical restraints including, but not limited to, handcuffs and belt restraints;
- (3) Locked time-out or isolation space;
- (4) Bonds, ties, tape, or straps to restrain a child; or
- (5) Physical restraint techniques that restrict breathing or inflict pain. These include, but are not limited to:
 - (a) Restriction of body movement by placing pressure on joints, chest, heart, or vital organs;
 - (b) Sleeper holds, which are holds used by law enforcement officers to subdue a person;
 - (c) Arm twisting;
 - (d) Hair holds;
 - (e) Choking or putting arms around the throat; or
 - (f) Chemical restraint such as mace or pepper spray.

NEW SECTION

WAC 170-296A-6225 Physical restraint—holding method allowed. When a child's behavior makes it necessary for his or her own or other's protection, the licensee or pri-

mary staff may restrain the child, by holding the child as gently as possible. A child must not be physically restrained longer than necessary to control the situation.

NEW SECTION

WAC 170-296A-6250 Notice and documenting use of physical restraint. If physical restraint is used the licensee must:

- (1) Report use of physical restraint to the child's parent or guardian and the department as required under WAC 170-296A-2250;
- (2) Assess any incident of physical restraint to determine if the decision to use physical restraint and its application were appropriate;
- (3) Document the incident in the child's file; and
- (4) Develop a safety plan with the licensor if required by the department.

NEW SECTION

WAC 170-296A-6275 Abuse and neglect—Protection and training. (1) The licensee and staff must:

- (a) Protect children in child care from all forms of child abuse or neglect as defined in RCW 26.44.020; and
 - (b) Report suspected or actual abuse or neglect as required under RCW 26.44.030 to DSHS children's administration intake (child protective services) or law enforcement.
- (2) The licensee must provide training for staff, volunteers and household members on:
- (a) Prevention of child abuse and neglect as defined in RCW 26.44.020; and
 - (b) Mandatory reporting requirements under RCW 26.44.030.

PROGRAM

NEW SECTION

WAC 170-296A-6400 Off-site activities—Parent or guardian permission. The licensee must:

- (1) Have written permission from the parent or guardian prior to the child engaging in off-site activities. The written permission must be kept in the child's file.
- (2) Have a separate permission for activities that occur less often than once per calendar month.
- (3) Inform parents of planned off-site activities at least twenty-four hours before the activity.

NEW SECTION

WAC 170-296A-6425 Off-site activity supervision. When on an off-site activity, the licensee and staff responsible for the care of the children must at all times provide supervision, and be able to promptly assist or redirect the children's activities.

NEW SECTION

WAC 170-296A-6450 Off-site activity—Emergency information and supplies. When on an off-site activity, the licensee must have available:

- (1) An emergency consent form for each child that includes:
 - (a) Emergency contact information;
 - (b) Permission to obtain medical treatment for the child in the event of a medical emergency;
 - (c) A list of the child's allergies, if applicable; and
 - (d) Permission to administer medications, if applicable.
- (2) A working cellular phone or other telecommunication device, and inform parents how to contact the licensee or staff; and
- (3) Emergency supplies, including:
 - (a) A first aid kit; and
 - (b) Each child's required medication or emergency medicine, if applicable.

NEW SECTION

WAC 170-296A-6475 Transportation. When transporting children the licensee, staff, and volunteers must:

- (1) Follow RCW 46.61.687 and other applicable law regarding child restraints and car seats;
- (2) Carry in the vehicle all items required under WAC 170-296A-6450 and a current copy of each child's completed enrollment form;
- (3) Maintain the vehicle in safe operating condition;
- (4) Have a valid driver's license;
- (5) Have a current insurance policy that covers the driver, the vehicle, and all occupants;
- (6) Take attendance each time children are getting in or getting out of the vehicle;
- (7) Never leave children unattended in the vehicle; and
- (8) Maintain required staff-to-child ratio and capacity.

NEW SECTION

WAC 170-296A-6500 Using public transportation. The licensee may transport children using public transportation, provided that children are supervised at all times and required staff-to-child ratios are maintained. The licensee or staff must not allow or send children on public transportation unsupervised.

NEW SECTION

WAC 170-296A-6525 Transporting children—Limited periods. The licensee must not transport children for periods of more than two hours per day on a regular and ongoing basis.

NEW SECTION

WAC 170-296A-6550 Developmental activities. (1) The licensee must have and post a typical daily schedule that includes program activities.

- (2) The typical daily schedule must include:
 - (a) Hours of operation;

- (b) Types of activities, including screen time;
 - (c) General timelines for activities;
 - (d) Routine transportation times;
 - (e) Meal service;
 - (f) Rest periods;
 - (g) Outdoor times; and
 - (h) If applicable, overnight care.
- (3) Evidence of daily activities may be shared or demonstrated through:
- (a) Display;
 - (b) Writing; or
 - (c) A checklist.

NEW SECTION

WAC 170-296A-6575 Activities to promote child growth and development. The licensee must provide activities that support each child's growth and development including:

- (1) Social, emotional and self development;
- (2) Positive self concepts;
- (3) Language and literacy;
- (4) Physical development, including daily opportunities to develop the child's small and large muscles;
- (5) Spatial concepts (for example: size, position); and
- (6) Numeracy (counting and numbers).

NEW SECTION

WAC 170-296A-6600 Toys and play materials. The licensee must provide toys, objects, and other play materials that are:

- (1) Washable and clean;
- (2) Nonpoisonous; and
- (3) Large enough to avoid swallowing or choking for infants and toddlers, or children at those developmental levels.

NEW SECTION

WAC 170-296A-6625 Art materials. (1) All art materials used by children under the age of three must be labeled nontoxic.

(2) Art materials without a nontoxic designation may be used by children age three years or older, and must be used under direct supervision and according to the manufacturer's label.

NEW SECTION

WAC 170-296A-6650 Screen time. If the licensee or staff provide screen time for children in care, the screen time must:

- (1) Be developmentally and age appropriate;
- (2) Have child-appropriate content; and
- (3) Not have violent or adult content.

NEW SECTION

WAC 170-296A-6675 Screen time—Limitations. The licensee or staff must:

- (1) Limit screen time for any child to less than two hours per day;
- (2) Not require children to participate in screen time;
- (3) Provide alternative activities to screen time; and
- (4) Place children at least three feet from a television screen.

NEW SECTION

WAC 170-296A-6700 Limiting screen time for children under two. The licensee must minimize exposure to screen time for any child under the age of two by:

- (1) Providing alternative activities for the child;
- (2) Moving the child away from direct view of the screen; and
- (3) Positioning the child so the child is not able to view the screen.

NEW SECTION

WAC 170-296A-6725 Special needs accommodations. The provisions of this section apply to any requirement in this chapter.

(1) The department may approve accommodations to requirements in these rules for the special needs of an individual child when:

- (a) The licensee submits to the department a written plan, signed by the parent or guardian, that describes how the child's needs will be met in the licensed child care; and
- (b) The licensee has supporting documentation of the child's special needs provided by a licensed or certified:
 - (i) Physician or physician's assistant;
 - (ii) Mental health professional;
 - (iii) Education professional;
 - (iv) Social worker with a bachelors degree or higher degree with a specialization in the individual child's needs; or
 - (v) Registered nurse or advanced registered nurse practitioner.

(2) The documentation described in subsection (2) of this section must be in the form of an:

- (a) Individual education plan (IEP);
 - (b) Individual health plan (IHP); or
 - (c) Individual family plan (IFP).
- (3) The licensee's written plan and all documentation required under this section must be kept in the child's file and a copy submitted to the department.

(4) See WAC 170-296A-5650 regarding supervision, capacity, and staff-to-child ratios for children with documented special needs.

NEW SECTION

WAC 170-296A-6775 Diversity. The licensee must:

- (1) Provide an environment that reflects each child's daily life, family culture and language.
- (2) Describe or demonstrate to the licensor, or have a written plan for how:

(a) The licensee will discuss with parents how the child care reflects that child's daily life and family's culture or language; and

(b) The child care environment reflects the diversity in society.

NEW SECTION

WAC 170-296A-6800 Rest periods. (1) The licensee must offer a daily supervised rest period for children.

(2) The supervised rest period must be:

(a) Offered to all children five years of age and younger who remain in care more than six hours;

(b) Offered to any child who shows a need for rest; and

(c) A minimum of thirty minutes but not more than two hours, unless the child is under twenty-four months old.

(3) The licensee must:

(a) Not force a child to sleep;

(b) Provide quiet activities for the children who do not require rest. These activities must be offered with a minimum of disruption to sleeping children; and

(c) Communicate with the parent or guardian about the child's sleep needs and patterns.

(4) See WAC 170-296A-3725 through 170-296A-3825 regarding sleeping equipment and bedding requirements.

NEW SECTION

WAC 170-296A-6850 Overnight care. If the licensee provides overnight child care:

(1) The licensee or primary staff person must be awake until all children in care are asleep;

(2) The licensee or a primary staff person must be on the same level of the home as the children in care;

(3) The licensee or primary staff person must maintain required staff-to-child ratios; and

(4) The daily schedule under WAC 170-296A-6550 must include evening or overnight care.

See WAC 170-296A-3725 through 170-296A-3825 regarding sleeping equipment and bedding requirements.

See WAC 170-296A-4400 and 170-296A-4425 regarding door alarms, night latches, deadbolts, and security chains.

INFANT CARE

NEW SECTION

WAC 170-296A-7000 Wheeled baby walkers prohibited. The licensee must not use or allow the use of wheeled baby walkers in the child care during operating hours.

NEW SECTION

WAC 170-296A-7025 Infant "tummy time" positioning. When infants are awake, the licensee or staff must allow each infant tummy time daily. As used in this section, "tummy time" means placing the infant in a prone position, lying on his or her stomach.

NEW SECTION

WAC 170-296A-7050 Infant and toddler supervision. (1) The licensee or a primary staff person must be within sight and hearing of infants and toddlers in the

licensed indoor or outdoor space, or during any off-site activity when infants or toddlers in care are present.

(2) When infants or toddlers are indoors, the licensee or primary staff person must be within sight and hearing. The licensee or primary staff person may be in sight or hearing range for brief periods of time while the licensee or primary staff person attends to toileting, medical, or other personal needs on the premises.

(3) A baby monitor or video monitor must not be used in place of direct supervision of children.

NEW SECTION

WAC 170-296A-7075 Infant sleeping or napping. (1)

The licensee must:

(a) Provide and use a single level crib, toddler bed, playpen or other sleeping equipment for each infant or toddler in care that is safe and not subject to tipping. The equipment must be of a design approved for infants or toddlers by the U.S. Consumer Product Safety Commission (see WAC 170-296A-3760 regarding approved cribs).

(b) Provide sleeping or napping equipment with clean, firm, and snug-fitting mattresses that do not have tears or holes or is repaired with tape.

(c) Provide mattresses covered with waterproof material that is easily cleaned and sanitized.

(i) If a bleach solution is used to sanitize, the solution must be one-quarter teaspoon of bleach to one quart of cool water.

(ii) If another sanitizer product is used, it must be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.

(d) Arrange sleeping equipment to allow staff access to children;

(e) Remove sleeping children from car seats, swings or similar equipment; and

(f) Consult with a child's parent or guardian before the child is transitioned from infant sleeping equipment to other approved sleeping equipment.

(2) Children that may climb out of their sleeping equipment must be transitioned to an alternate sleeping surface.

(3) If a crib with vertical slats is used, the slats must be spaced not more than two and three-eighths inches apart.

NEW SECTION

WAC 170-296A-7100 Infant supervision—Procedures to reduce the risk of sudden infant death syndrome (SIDS). To reduce the risk of sudden infant death syndrome (SIDS), the licensee or staff must:

(1) Place an infant to sleep on his or her back. If the infant has turned over while sleeping, the infant does not need to be returned to his or her back;

(2) Place an infant in sleeping equipment that has a snug-fitting mattress and a tight-fitting sheet;

(3) Not allow soft fluffy bedding, stuffed toys, pillows, crib bumpers and similar items in the infant sleeping equipment;

(4) Not cover an infant's head and face during sleep;

(5) Take steps so infants do not get too warm during sleep; and

(6) Place the infant in another sleeping position other than on their backs if required by a written directive or medical order from the infant's health care provider. This directive or medical order must be in the infant's file.

NEW SECTION

WAC 170-296A-7125 Infant bottles. The licensee must:

- (1) If heating a bottle, heat the bottle in warm water that is not warmer than one hundred twenty degrees Fahrenheit;
- (2) Not use a microwave oven to warm the contents of a bottle;
- (3) Clean and sanitize bottles and nipples before each use;
- (4) Keep bottle nipples covered if bottles are prepared ahead, and label the bottle with the date it was prepared;
- (5) Not allow infants to share bottles or infant cups;
- (6) Have a method to identify the individual child's bottle or cup;
- (7) Keep the contents of a child's bottle inaccessible to other children; and
- (8) Throw away milk (except breast milk) or formula if it has been sitting at room temperature for more than one hour.

NEW SECTION

WAC 170-296A-7150 Breast milk. When breast milk is provided for a child, the licensee must:

- (1) Label the contents with the child's name and date the milk was brought to the child care;
- (2) Store frozen breast milk at ten degrees Fahrenheit or less;
- (3) Thaw breast milk in the refrigerator, under warm running water, or in warm water that is not warmer than one hundred twenty degrees Fahrenheit;
- (4) Never thaw or heat breast milk in a microwave oven or on the stove;
- (5) Keep frozen breast milk for no more than two weeks; and
- (6) Use frozen breast milk within twenty-four hours after thawing; and
- (7) Throw away breast milk if it has been sitting at room temperature for more than two hours.

NEW SECTION

WAC 170-296A-7175 Bottle feeding infants. (1) When bottle feeding, the licensee or staff must:

- (a) Test the bottle contents before feeding, to avoid scalding or burning the infant's mouth;
 - (b) Hold infants when bottle feeding;
 - (c) Not prop bottles when feeding an infant; and
 - (d) Not give a bottle or cup to an infant who is lying down.
- (2) When an infant can hold his or her own bottle, the licensee or staff must:
- (a) Place the infant in a semi-reclining or upright position during bottle feeding; and

(b) Be in the same room within visual range of the infant during feeding.

(3) The licensee or staff must take the bottle from the infant when the child finishes feeding.

NEW SECTION

WAC 170-296A-7200 Feeding solid food to infants.

- (1) The licensee must consult with and have approval from an infant's parent or guardian before introducing solid food to the infant.
- (2) When serving infants solid food the licensee or staff must:
 - (a) Sit the infant in a semi-reclining or upright position;
 - (b) Not allow infants to share the same dish or utensil;
 - (c) Stir and test for safe temperature after heating food and before serving;
 - (d) Throw away any uneaten food from the serving container;
 - (e) Serve solid food by utensil or let the child feed themselves; and
 - (f) Feed the infant on demand unless the parent or guardian gives written instructions for an alternative feeding schedule.

NEW SECTION

WAC 170-296A-7225 High chairs. (1) If the licensee uses high chairs in the child care, each high chair must:

- (a) Have a base that is wider than the seat;
 - (b) Have a safety device that prevents the child from climbing or sliding down the chair;
 - (c) Be free of cracks and tears; and
 - (d) Have a washable surface.
- (2) When a child is seated in a high chair, the chair's safety device must be used to secure the child.
- (3) The licensee or staff must clean and sanitize high chairs after each use.
- (a) If a bleach solution is used to sanitize, the solution must be one-quarter teaspoon of bleach to one quart of cool water.
 - (b) If another sanitizer product is used, it must be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.

NEW SECTION

WAC 170-296A-7250 Diapering and toileting. (1)

- The licensee must provide a diaper changing area that is separate from any area where food is stored, prepared or served.
- (2) The diaper changing area must:
 - (a) Have a sink with hot and cold running water close to the diaper changing area. The sink must not be used for food preparation and clean up;
 - (b) Have a sturdy, easily cleanable mat with a surface large enough to prevent the area underneath from being contaminated with bodily fluids; and
 - (c) Be cleaned and sanitized between each use:
 - (i) If a bleach solution is used to sanitize, the solution must be one tablespoon of bleach to one quart of cool water;

(ii) If another sanitizer product is used, it must be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.

(3) A nonabsorbent, disposable covering that is discarded after each use may be used on the diaper changing mat.

NEW SECTION

WAC 170-296A-7275 Diaper disposal. (1) The licensee must provide a container specifically for diaper disposal that is not used for other household trash. The diaper disposal container must:

- (a) Have a tight cover;
- (b) Be lined with a disposable plastic trash bag; and
- (c) Be within arm's reach of the diaper changing area.

(2) If disposable diapers are used, the diaper disposal container must be emptied to the outside garbage can or container daily.

(3) If cloth diapers are used, the diapers must be:

- (a) Kept in the diaper disposal container until picked up by the diaper service; or
- (b) Placed in a securely closed plastic bag and sent home with the child daily.

NEW SECTION

WAC 170-296A-7300 Diaper changing. (1) The licensee or staff must:

- (a) Check diapers at least every two hours;
 - (b) Change the diaper when necessary, or whenever the child indicates discomfort;
 - (c) Attend to the child at all times when diapering a child;
 - (d) Not rinse soiled diapers; and
 - (e) Place soiled diapers directly into a diaper waste container.
- (2) Diapers used must be:
- (a) Disposable; or
 - (b) Cloth diapers supplied by a commercial diaper service; or
 - (c) Reusable cloth diapers supplied by the child's family.
- (3) When cloth diapers are used a washable barrier must be used between the diaper and the child's clothes.
- (4) The licensee or staff must wash their hands and the child's hands immediately after diapering a child.

NEW SECTION

WAC 170-296A-7350 Toilet training. The licensee must discuss toilet training with the child's parent or guardian when a child is ready for training. The licensee or staff must use:

- (1) Positive reinforcement;
- (2) Culturally sensitive methods;
- (3) Developmentally appropriate methods; and
- (4) A routine developed in agreement with the parent or guardian.

NEW SECTION

WAC 170-296A-7375 Potty chairs or modified toilet seats. (1) When potty chairs are used, the licensee or staff must immediately after each use:

- (a) Empty the potty chair into the toilet; and
- (b) Clean and sanitize the potty chair.

(2) The floor under the potty chairs must be made of a material that is resistant to moisture.

(3) When a modified toilet seat is used, it must be cleaned and sanitized daily or more often when soiled.

(4)(a) If a bleach solution is used to sanitize, the solution must be one tablespoon of bleach to one quart of cool water;

(b) If another sanitizer product is used, it must be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.

FOOD SERVICE AND NUTRITION

NEW SECTION

WAC 170-296A-7500 Food must meet USDA guidelines. The licensee must provide meals and snack foods to children in care according to the March 2007 edition of the U.S. Department of Agriculture (USDA) - creditable food guide, child and adult care food program charts for the ages of children in the licensee's care. The food program charts are available on-line at <http://www.k12.wa.us/ChildNutrition/pubdocs/CreditableFoodsGuideMAR2007FINAL.pdf>.

NEW SECTION

WAC 170-296A-7525 Parent or guardian-provided food. (1) A parent or guardian may provide alternative food for their child if a written food plan is completed and signed by the parent or guardian and the licensee. This written food plan includes accommodations for:

- (a) The child's medical needs;
- (b) Special diets;
- (c) Religious or cultural preference; or
- (d) Family preference.

(2) The licensee must supplement the food provided by the parent or guardian with foods listed in the USDA creditable food guide foods if the food provided by the parent or guardian does not meet the nutritional needs of the child.

NEW SECTION

WAC 170-296A-7550 Home canned foods. The licensee must not serve home canned foods due to the risk of botulism poisoning.

NEW SECTION

WAC 170-296A-7575 Drinking water. The licensee must supply safe drinking water for the children in care. Drinking water must be served in a safe and sanitary manner and be available throughout the day. See WAC 170-296A-1400 for water testing requirements for a family home child

care that receives its drinking water from a private well and water system.

NEW SECTION

WAC 170-296A-7600 Serving milk. The licensee must serve milk according to the ages of the children in care. The licensee is responsible to serve:

(1) Breast milk or formula to children from birth to twelve months old, or until the parent or guardian is ready for their child to be served whole pasteurized milk.

(2) Whole pasteurized milk to children from twelve months through twenty-four months old if the child is ready to be served whole milk.

(3) Pasteurized milk or pasteurized milk product to children over twenty-four months old.

NEW SECTION

WAC 170-296A-7625 Meal and snack schedule. The licensee must offer meals and snacks to the children at intervals of at least two hours apart and no more than three hours unless the child is asleep.

NEW SECTION

WAC 170-296A-7650 Serving foods. (1) The licensee or staff may:

(a) Serve each child individually; or

(b) Serve family style in serving containers that allow each child the opportunity to serve themselves.

(2) The licensee or staff must:

(a) Stir and test for safe temperature any heated food before serving;

(b) Closely supervise all children when eating;

(c) Not force or shame a child to eat or try any food;

(d) Not punish a child for refusing to try or eat foods;

(e) Serve meals in a safe and sanitary manner and be respectful of each child's cultural food practices; and

(f) Sit with children during meals when possible.

NEW SECTION

WAC 170-296A-7675 Food handler permits. (1) New license applicants must obtain a current state food handler permit prior to being licensed.

(2) By (one year after the effective date of this section) every licensee must obtain and maintain a current state food handler permit.

(3) When the licensee is not present, one staff person with a current state food handler permit must be present whenever food is prepared or served to children in care.

(4) The licensee must keep a copy of each individual's food handler permit on file.

NEW SECTION

WAC 170-296A-7680 Safe food handling. (1) The licensee and staff must follow the safe food storage, preparation, cooking, holding proper temperature, and serving guide-

lines in the current edition of the food workers manual prepared by the state department of health.

(2) The licensee and staff must:

(a) Wash their hands prior to preparing food and after handling raw meats, poultry, or fish; and

(b) Not prepare food when ill with vomiting or diarrhea.

NEW SECTION

WAC 170-296A-7700 Washing dishes. The licensee or staff must wash dishes thoroughly after each use by one of the following methods:

(1) Automatic dishwasher; or

(2) Handwashing method, by emersion in hot soapy water, rinse, sanitize and air dry:

(a) If a bleach solution is used to sanitize, the solution must be one teaspoon of bleach to one gallon of cool water;

(b) If another sanitizer product is used, it must be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.

NEW SECTION

WAC 170-296A-7725 Food containers and utensils.

(1) The licensee must not use or allow plastic containers to be used to cook or reheat food in a microwave oven, unless the container is certified by the manufacturer as made without the chemical bisphenol-A.

(2) The licensee may use disposable serving containers, dishes and utensils that are sturdy, used only once and thrown away after use.

(3) The licensee must keep sharp utensils and other utensils that may cause serious injury or a choking hazard inaccessible to children when the utensils are not in use.

(4) The licensee must not serve food to infants or toddlers using polystyrene (styrofoam) cups, bowls and plates.

NEW SECTION

WAC 170-296A-7750 Food preparation area. (1) The licensee or staff must clean and sanitize food preparation and eating surfaces before and after use. The licensee's food preparation area must:

(a) Have surfaces that are free of cracks and crevices; and

(b) Have a floor area made of a material that is resistant to moisture.

(2) The licensee must not allow pets in the food preparation area while food is being prepared or served.

(3) The licensee may use the kitchen for other child care activities provided there is continual supervision of the children.

(4)(a) If a bleach solution is used to sanitize surfaces, the solution must be one teaspoon of bleach to one gallon of cool water;

(b) If another sanitizer product is used, it must be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.

ENFORCEMENT OF LICENSING STANDARDSNEW SECTION

WAC 170-296A-8000 Facility licensing compliance agreements. At the department's discretion, when a licensee is in violation of this chapter or chapter 43.215 RCW, a facility licensing compliance agreement may be issued in lieu of the department taking enforcement action.

(1) The facility licensing compliance agreement contains:

(a) A description of the violation and the rule or law that was violated;

(b) A statement from the licensee regarding proposed plan to comply with the rule or law;

(c) The date the violation must be corrected;

(d) Information regarding other licensing action that may be imposed if compliance does not occur by the required date; and

(e) Signature of the licensor and licensee.

(2) The licensee must return a copy of the completed facility license compliance agreement to the department by the date indicated when corrective action has been completed.

(3) The licensee may request a supervisory review regarding the violation of rules or laws identified on the facility license compliance agreement.

(4) A facility license compliance agreement is not subject to appeal under chapter 170-03 WAC.

NEW SECTION

WAC 170-296A-8010 Nonreferral status. In addition to or in lieu of an enforcement action under this chapter, the department may place a family home child care on nonreferral status as provided in RCW 43.215.300(4).

NEW SECTION

WAC 170-296A-8025 Time period for correcting a violation. The length of time the licensee has to make the corrections depends on:

(1) The seriousness of the violation;

(2) The potential threat to the health, safety and well-being of the children in care; and

(3) The number of times the licensee has violated rules in this chapter or requirements under chapter 43.215 RCW.

NEW SECTION

WAC 170-296A-8050 Civil monetary penalties (fines). A civil monetary penalty (fine) may be imposed when the licensee violates a rule in this chapter or a requirement in chapter 43.215 RCW.

(1) A fine of seventy-five dollars per day may be imposed for each violation.

(2) The fine may be assessed and collected with interest for each day a violation occurs.

(3) A fine may be imposed in addition to other action taken against the license including probation, suspension, revocation or denial of a license renewal.

(4) At the department's discretion, the fine may be withdrawn or reduced if the licensee comes into compliance during the notification period in WAC 170-296A-8075.

(5) When a fine is assessed the licensee has the right to a hearing under chapter 170-03 WAC. The fine notice will include information about the licensee's hearing rights and how to request a hearing.

NEW SECTION

WAC 170-296A-8060 When fines are levied. The department may base a fine for violation of a rule under this chapter or a requirement in chapter 43.215 RCW, according to whether the licensee:

(1) Has allowed the existence of any condition that creates a serious safety and health risk;

(2) Or any staff person or household member uses corporal punishment or humiliating methods of control or discipline;

(3) Or any staff person fails to provide the required supervision;

(4) Fails to provide required light, ventilation, sanitation, food, water, or heating;

(5) Provides care for more than the highest number of children permitted by the license; or

(6) Repeatedly fails to follow the rules in this chapter or the requirements in chapter 43.215 RCW. As used in this section, "repeatedly" means a violation that has been the subject of a facility license compliance agreement that occurs more than once in a twelve-month time period.

NEW SECTION

WAC 170-296A-8075 Fines—Payment period. A fine must be paid within twenty-eight calendar days after the licensee receives the notice unless:

(1) The department approves a payment plan if requested by the licensee; or

(2) The licensee requests a hearing as provided in RCW 43.215.307(3).

NEW SECTION

WAC 170-296A-8100 Notice of fine—Posting. The licensee must post the department letter notifying the licensee of a final notice of a civil penalty:

(1) Immediately upon receipt;

(2) In the licensed space where it is clearly visible to parents and guardians; and

(3) For two weeks or until the violation causing the fine is corrected, whichever is longer.

NEW SECTION

WAC 170-296A-8125 Failure to pay a fine—Department action. If the licensee fails to pay a fine within twenty-eight calendar days after the fine assessment becomes final the department may suspend, revoke or not renew the license.

NEW SECTION

WAC 170-296A-8150 Denial, suspension, revocation or modification of a license. A license may be denied, suspended, modified or revoked when the licensee fails to comply with the requirements in this chapter or any provisions of chapter 43.215 RCW.

NEW SECTION

WAC 170-296A-8175 Violations that will result in enforcement action. The department will deny, suspend or revoke a license when:

(1) The licensee is unable to provide the required care for the children in a way that promotes their health, safety and well-being;

(2) The licensee is disqualified under chapter 170-06 WAC (DEL background check rules);

(3) The licensee or household member has been found to have committed child abuse or child neglect;

(4) The licensee has been found to allow staff or household members to commit child abuse or child neglect; or

(5) The licensee has a current charge or conviction for a disqualifying crime under WAC 170-06-0120.

NEW SECTION

WAC 170-296A-8200 Violations or conditions that may result in enforcement action. The department may deny, suspend or revoke a license when:

(1) There is an allegation of child abuse or neglect against the licensee, staff, or household member;

(2) The licensee fails to report to DSHS children's administration intake or law enforcement any instances of alleged child abuse or child neglect;

(3) The licensee tries to obtain or keep a license by deceitful means, such as making false statements or leaving out important information on the application;

(4) The licensee commits, permits or assists in an illegal act at the child care premises;

(5) The licensee uses illegal drugs, alcohol in excess, or abuses prescription drugs;

(6) The licensee knowingly allowed a staff or household member to make false statements on employment or background check application related to their suitability or competence to provide care;

(7) The licensee fails to provide the required level of supervision for the children in care;

(8) The licensee cares for more children than the maximum number stated on the license;

(9) The licensee refuses to allow department authorized staff access during child care operating hours to:

- (a) Requested information;
- (b) The licensed space;
- (c) Child, staff, or program files; or
- (d) Staff and children in care.

(10) The licensee is unable to manage the property, fiscal responsibilities or staff in the facility;

(11) The licensee cares for children outside the ages stated on the license;

(12) A staff person or a household member residing in the licensed home is disqualified under chapter 170-06 WAC (DEL background check rules);

(13) The licensee, staff person, or household member residing in the licensed home has a current charge or conviction for a crime described in WAC 170-06-0120;

(14) A household member residing in the licensed home had a license to care for children or vulnerable adults denied or revoked;

(15) The licensee does not provide the required number of qualified staff to care for the children in attendance; or

(16) The department is in receipt of information that the licensee has failed to comply with any requirement described in WAC 170-296A-1420.

NEW SECTION

WAC 170-296A-8225 Notice of license denial, suspension, revocation, or modification. (1) The department notifies the licensee of the denial, suspension, revocation, or modification of the license by sending a certified letter or by personal service.

(2) The letter contains information on what the licensee may do if the licensee disagrees with the decision to deny, suspend, revoke, or modify the license.

(3) The licensee has a right to appeal the denial, suspension, revocation or modification of the license. The department notice will include information on hearing rights and how to request a hearing.

NEW SECTION

WAC 170-296A-8250 Probationary license. A probationary license as provided in RCW 43.215.290 may be issued as part of a corrective action plan.

NEW SECTION

WAC 170-296A-8275 Probationary license—Cause. A department decision to issue a probationary license must be based on the following:

(1) Negligent or intentional noncompliance with the licensing rules;

(2) A history of noncompliance with the licensing rules;

(3) Current noncompliance with the licensing rules; or

(4) Any other factors relevant to the specific situation.

NEW SECTION

WAC 170-296A-8300 Issuing a probationary license. When the department issues a probationary license, the licensee must:

(1) Provide the parents and guardians of enrolled children notice of the probationary license in a department approved format within five working days of the licensee receiving the probationary license;

(2) Provide documentation to the department that parents or guardians of enrolled children have been notified;

(3) Inform new parent or guardians of the probationary status before enrolling new children;

- (4) Post documentation of the approved written probationary license as required by RCW 43.215.525; and
 (5) Return the licensee's full license to the department.

NEW SECTION

WAC 170-296A-8325 Refusing a FLCA or probationary license. (1) The licensee has the right to:

- (a) Refuse or refuse to sign a facility licensing compliance agreement; or
 (b) Refuse to agree to a probationary license.
 (2) Refusing a facility license compliance agreement or probationary license may result in one of the following enforcement actions:
- (a) Modification of the license;
 (b) Denial of a renewal license;
 (c) Suspension of the license; or
 (d) Revocation of the license.

NEW SECTION

WAC 170-296A-8350 Providing unlicensed care—Notice. (1) If the department determines that an individual is providing unlicensed child care in his or her home, the department will send the individual written notice within ten calendar days to explain:

- (a) Why the department suspects that the individual is providing child care without a license;
 (b) That a license is required and why;
 (c) That the individual must immediately stop providing child care;
 (d) That if the individual wishes to obtain a license, within thirty calendar days from the date of the department's notice in this subsection (1) the individual must submit a written agreement, on a department form, stating that he or she agrees to:
- (i) Attend the next available department child care licensing orientation; and
 (ii) Submit a child care licensing application after completing orientation; and
 (e) That the department has the authority to issue a fine of (the dollar amount provided in law) per day for each day that the individual continues to provide child care without a license.

(2) The department's written notice in subsection (1) of this section must inform the individual providing unlicensed child care:

- (a) How to respond to the department;
 (b) How to apply for a license;
 (c) How a fine, if issued, may be suspended or withdrawn if the individual applies for a license;
 (d) That the individual has a right to request an adjudicative proceeding (hearing) if a fine is assessed; and
 (e) How to ask for a hearing.

(3) If an individual providing unlicensed child care does not submit an agreement to obtain a license as provided in subsection (1)(d) of this section within thirty calendar days from the date of the department's written notice, the department will post information on its web site that the individual is providing child care without a license.

NEW SECTION

WAC 170-296A-8375 Unlicensed care—Fines and other penalties. A person providing unlicensed child care may be:

- (1) Assessed a fine of (the dollar amount provided by law) a day for each day unlicensed child care is provided;
 (2) Guilty of a misdemeanor; or
 (3) Subject to an injunction.

NEW SECTION

WAC 170-296A-8400 Hearing process. (1) Department notice of an enforcement action includes information about the individual's or licensee's right to request an adjudicative proceeding (hearing) and how to request a hearing.

(2) The hearing process is governed by chapter 34.05 RCW Administrative Procedure Act, applicable sections of chapter 43.215 RCW department of early learning, and chapter 170-03 WAC, DEL hearing rules.

WSR 11-10-006**WITHDRAWAL OF PROPOSED RULES****DEPARTMENT OF HEALTH**

[Filed April 21, 2011, 2:40 p.m.]

The department is withdrawing the CR-102 for WAC 246-851-235 which was filed October 20, 2010, and published in WSR 10-21-104. The proposal allows continuing education credit to optometrists for courses or materials related to the awareness of health disparities among different populations and the ability to effectively provide health services in cross cultural situations.

Executive Order 10-06, dated November 17, 2010, orders the suspension of noncritical rule development and adoption through December 31, 2011. For this reason, the CR-102 for WAC 246-851-235 is being withdrawn.

Individuals requiring information on this rule should contact Judy Haenke, program manager for the board of optometry at (360) 236-4947.

Mary C. Selecky
 Secretary

WSR 11-10-008**WITHDRAWAL OF PROPOSED RULES****DEPARTMENT OF
 FISH AND WILDLIFE**

[Filed April 22, 2011, 3:44 p.m.]

The Washington department of fish and wildlife is withdrawing WAC 220-16-950 filed as part of WSR 10-21-117 on October 20, 2010. This WAC was not included in the CR-103P for this project because the Washington fish and wildlife commission and the department of fish and wildlife are

complying with the governor's moratorium on noncritical rule making.

Lori Preuss
Rules Coordinator

WSR 11-10-036

PROPOSED RULES

DEPARTMENT OF TRANSPORTATION

[Filed April 27, 2011, 11:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-22-050.

Title of Rule and Other Identifying Information: WAC 468-38-290 Farm implements, the proposal is to include an overheight characteristic to the annual farm implement with a limit of sixteen feet in height, with special conditions and restrictions.

Hearing Location(s): Transportation Building, Commission Board Room, 1D2, 310 Maple Park Avenue S.E., Olympia, WA 98504, on June 15, 2011, at 1:00 p.m.

Date of Intended Adoption: June 15, 2011.

Submit Written Comments to: James L. Wright, P.O. Box 47367, Olympia, WA 98504-7367, e-mail wrightji@wsdot.wa.gov, fax (360) 704-6350, by June 15, 2011.

Assistance for Persons with Disabilities: Contact Grant Heap by June 8, 2011, TTY (800) 833-6388 or (360) 705-7760.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal will authorize the farming industry customers to purchase an annual permit for their implements with an overheight characteristic to include the larger farm implements commonly used. Currently, the overheight implements are required to purchase a separate permit for each time the implement is moved.

Reasons Supporting Proposal: The proposed rule change will aid the farming industry to move their implements continuously throughout the season. The safeguards within the proposal will ensure that overcrossings on the state highways are closely considered prior to and during the moving of these overheight farm implements.

Statutory Authority for Adoption: RCW 46.44.140.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The amended chapter will be a relatively seamless implementation due to the coordinated review with industry and enforcement prior to filing the document. There is no fiscal impact to any state or federal agency and no known negative impact to industry.

Name of Proponent: WSDOT traffic office, commercial vehicle services, WSP commercial vehicle division, WA Farm Bureau, WA Association of Wheat Growers, private and governmental.

Name of Agency Personnel Responsible for Drafting: Jim Wright, 7345 Linderson WA [Way] S.W., Tumwater,

WA, (360) 704-6345; Implementation: Anne Ford, 7345 Linderson WA [Way] S.W., Tumwater, WA, (360) 705-7341; and Enforcement: Captain Darrin Grondel, 210 11th Street, General Administration Building, Olympia, WA, (360) 753-0350.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The revision to rule adopts current state requirements of farm implements without material change as referenced in RCW 34.05.310 (4)(c).

A cost-benefit analysis is not required under RCW 34.05.328. There is no additional cost related to these proposals. The proposal identifies the conditions for farm implements and vehicles transporting farm implements when issued permits pursuant to RCW 46.44.290.

April 27, 2011

Steve T. Reinmuth

Chief of Staff

AMENDATORY SECTION (Amending WSR 08-13-042, filed 6/12/08, effective 6/12/08)

WAC 468-38-290 Farm implements. (1) **For purposes of issuing special farm implement permits and certain permit exemptions, what is considered a farm implement?** A farm implement includes any device that directly affects the production of agricultural products, including fertilizer and chemical applicator apparatus (complete with auxiliary equipment). For purposes of this section, the implement must be nondivisible, weigh less than sixty-five thousand pounds, and comply with the requirements of RCW 46.44.091. The implement must be less than twenty feet in width and not exceed ~~((fourteen))~~ sixteen feet ~~((high))~~ in height. However, for purposes of this section, farm implements must not exceed fourteen feet in height in the counties of Whatcom, Skagit, Island, Snohomish, and King. If the implement is self-propelled, it must not exceed forty feet in length, or seventy feet overall length if being towed. The implement must move on pneumatic tires, or solid rubber tracks ~~((having protuberances))~~ that will not damage public highways with parts that extend beyond the tracks. Implements exceeding any of these criteria must meet all ~~((appropriate))~~ requirements for special permits as referenced in other sections ((throughout)) in this chapter and chapter 46.44 RCW.

(2) **What dimensional criteria ~~((must be met before))~~ requires a special permit ((is required)) to move extra-legal farm implements?** Self-propelled farm implements, including a farm tractor pulling no more than two implements, that exceed~~((s))~~ fourteen feet in height or sixteen feet in width, but less than twenty feet ((wide)) in width, are required to get a special permit for movement of farm implements on state highways. Note: A tow vehicle capable of carrying a load (i.e., a truck of any kind) may not tow more than one trailing implement.

(3) **Will the ~~((ability))~~ opportunity to ((acquire)) purchase a special permit to move oversize farm implements be affected if the implement(s) is carried on another vehicle?** The ~~((ability to use))~~ opportunity to purchase a special permit for farm implements as defined in subsection (1) of

this section will not be affected unless one of the following circumstances occurs:

(a) The authorized users of the permit outlined in subsection (5) of this section use a commercial for-hire service to move the implement(s); or

(b) The loaded farm implement creates a combined height that exceeds ~~((fourteen))~~ sixteen feet; or

(c) The loaded farm implement causes the hauling vehicle to exceed legal weight limits. The farm implement weight may ~~((weigh up to forty-five))~~ exceed sixty-five thousand pounds when carried on another vehicle; however, the combined gross weight of the hauling unit carrying the implement ~~((and hauling unit))~~ may ~~((extend to))~~ not exceed the legal weight limits established in RCW 46.44.041 Maximum gross weights—Wheelbase and axle factors.

If any of ~~((the))~~ these circumstances occur, the provisions of this subsection will not apply to the movement of the farm implement. The movement will be required to comply with the ~~((appropriate))~~ requirements for special permits as ~~((referenced))~~ provided in chapter 46.44 RCW and in other sections ~~((throughout))~~ in this chapter.

(4) How does the special permit farm implement application process ~~((for a special permit for farm implements))~~ differ from the special permit process outlined in WAC 468-38-050? Due to the size of the implement and the potential for use in multiple jurisdictions, the written application must be submitted to the department's Olympia office for approval. Permits can be requested for ~~((a))~~ three-month periods up to one year. Once approved, ~~((the))~~ a special permit may be generated from the Olympia office by facsimile or a letter of authorization will be sent ~~((allowing))~~ authorizing the applicant to acquire a special permit at the nearest permit sales location. If the movement of the farm implement(s) is confined to a single department maintenance area, the applicant may make direct written application to that maintenance area office in lieu of the Olympia office.

(5) Who is authorized to ~~((acquire this specific))~~ purchase a farm implement special permit? The ~~((acquisition))~~ purchase and use of a special permit to move farm implements is restricted to a farmer, or anyone engaged in the business of selling, repairing and/or maintaining farm implements.

(6) ~~((Does))~~ Will the special permit restrict the movement to a specific area? The special permit to move farm implements is generally restricted to six contiguous counties or less. With proper justification, the area can be expanded. ~~((The))~~ Farm implements may only travel on highway structures that are designed to support the weight of the farm implement.

(7) ~~((Are))~~ Is department notification ~~((s of movement))~~ required before moving implement(s)? Affected department maintenance areas must be notified at least eight (8) hours in advance of implement(s) movements ~~((of vehicles))~~ in excess of sixteen feet wide ~~((must be communicated to all department maintenance areas affected at least eight hours in advance))~~. Movements of implements that exceed the legal weight limit established in RCW 46.44.041 must contact all ~~((of the))~~ affected department maintenance ~~((department))~~ areas ~~((affected))~~ at least eight hours in advance for weight restriction information. The ~~((communi-~~

~~cation))~~ notification is for the purpose of ensuring that there will not be any planned activity or weight restrictions that would restrict the move. Locations of department maintenance area offices and phone listings are provided with each letter authorizing the purchase of the farm implement special permit.

(8) What safety precautions must be taken when moving extra-legal farm implement(s)? The movement of extra-legal farm implements must comply with the ~~((following))~~ safety requirements following:

(a) Oversize load signs: If the farm implement exceeds ten feet ~~((wide))~~ in width or exceeds fourteen feet in height from the road surface, it must display an "OVERSIZE LOAD" sign(s) visible to both oncoming traffic and overtaking traffic. Signs must comply with the requirements of WAC 468-38-155(7). If the implement is both preceded and followed by pilot/escort vehicles, a sign is not required on the implement itself.

(b) Curfew/commuter hours: Movement of a farm implement in excess of ten feet wide or fourteen feet in height must comply with any published curfew or commuter hour restrictions, which are an attachment to the farm implement special permit.

(c) Red flags: If the farm implement is moving during daylight hours, and exceeds ten feet ~~((wide))~~ in width, the vehicle configuration must display clean, bright red flags. The red flags must measure at least ~~((twelve))~~ eighteen inches square and be able to wave freely. The red flags are to be positioned at all four corners, or extremities, of the overwidth implement and at the extreme ends of all protrusions, projections or overhangs. If a transported implement overhangs the rear of a transporting vehicle or vehicle combination by more than four feet, one red flag is required at the extreme rear. If the width of the rear overhang~~((+))~~ or protrusion exceeds two feet, ~~((there must be))~~ two red flags must be positioned at the rear to ~~((indicate))~~ show the maximum width of the overhang~~((+))~~ or protrusion.

(d) Warning lights and slow moving emblem: Lamps and other lighting must be in compliance with RCW 46.37.160. In addition to ~~((the))~~ lighting requirements, RCW 46.37.160 ~~((also))~~ requires the use of a "slow moving emblem" for moves traveling at twenty-five miles per hour or less.

(e) Convoys: Convoys, the simultaneous movement of two or more individually transported implements, are authorized when the ~~((following))~~ criteria are met following:

(i) A minimum of five hundred feet is maintained between vehicles to allow the traveling public to safely pass ~~((safely))~~;

(ii) If five or more vehicles are lined up behind any one of the convoy implements, the operator must pull off the road at the nearest point wide enough to accommodate the implement(s) and to allow the vehicles to safely pass ~~((safely))~~; and

(iii) The convoy is preceded and followed with properly equipped pilot/escort vehicles.

(9) Are there any unique requirements or exemptions regarding the use of farm implement(s) pilot/escort vehicles ~~((with farm implements))~~? Pilot/escort vehicles must comply with the requirements of WAC 468-38-100, except

for the (~~following~~) specific exemptions related only to special permits for moving farm implement(s) following:

(a) A farmer, farm implement dealer, or agri-chemical dealer (including employees of each) is exempt from WAC 468-38-100(4) regarding operator certification, WAC 468-38-100 (8)(a) and (b) regarding pilot/escort vehicle physical description, WAC 468-38-100 (10)(f) regarding use of height measuring device when the implement does not exceed fifteen feet in height measured from the road surface, and WAC 468-38-100(11) regarding passengers, when moving a farm implement off the interstate and (~~on~~) to the (~~following~~) interstate segments following:

(i) I-90 between Exit 109 (Ellensburg) and Exit 270 (Four Lakes);

(ii) I-82 between Junction with I-90 (Ellensburg) and Exit 31 (Yakima);

(iii) I-82 between Exit 37 (Union Gap) and Washington/Oregon border;

(iv) I-182 between Junction with I-82 (West Richland) and Junction with SR-395; (~~and~~) or

(v) I-5 between Exit 208 (Arlington) and Exit 250 (south of Bellingham).

(b) On two lane highways, one pilot/escort vehicle must precede and one must follow the implement(s) when the width exceeds twelve feet six inches. Implements up to twelve feet six inches wide are exempt from using pilot/escort vehicles.

(c) On all highways, one pilot/escort vehicle equipped with a height measuring device in compliance with WAC 468-38-100 (10)(f) and (14) must precede the farm implement when the height of the farm implement exceeds fifteen feet measured from the road surface. Movements within a sixty mile radius from the place where the implement(s) is principally used or garaged are exempt from this requirement.

(d) A flag person(s) may be used in lieu of a pilot/escort(~~(s))~~ vehicle for moves under five hundred yards. This allowance must be stated on any farm implement special permit that may be required for the move.

(~~(e)~~) (e) Posting a route may also be used in lieu of a pilot/escort vehicle(s) when the route is less than two miles. Signs must state, "OVERSIZE VEHICLE MOVING AHEAD" on a background square at least three feet on each side (in diamond configuration), with black lettering on orange background. The signs must be placed at points before the oversize implement enters or leaves the highway, and at access points along the way. Signs must be immediately removed (~~(immediately)~~) after the move has been completed.

Preproposal statement of inquiry was filed as WSR 09-04-073.

Title of Rule and Other Identifying Information: Amending WAC 388-546-5000 Nonemergency transportation program definitions, 388-546-5100 Nonemergency transportation program scope of coverage, 388-546-5200 Nonemergency transportation program broker and provider requirements, 388-546-5300 Nonemergency transportation program client requirements, 388-546-5400 Nonemergency transportation program general reimbursement limitations and 388-546-5500 Modifications of privately owned vehicles—Noncovered; and new sections WAC 388-546-5550 Nonemergency transportation—Exclusions and limitations, 388-546-5600 Nonemergency transportation—Intermediate stops or delays, 388-546-5700 Nonemergency transportation—Local provider and trips outside client's local community, 388-546-5800 Nonemergency transportation—Trips out-of-state/out-of-country, 388-546-5900 Nonemergency transportation—Meals, lodging, escort/guardian, 388-546-6000 Nonemergency transportation—Authorization, 388-546-6100 Nonemergency transportation—Noncovered, and 388-546-6200 Nonemergency transportation—Reimbursement.

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 21, 2011, at 10:00 a.m.

Date of Intended Adoption: Not sooner than June 22, 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 21, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by May 24, 2011, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of social and health services' medicaid purchasing administration (MPA) is proposing [changes] to WAC 388-546-5000 through 388-546-6200, Nonemergency medical transportation. The department reorganized the sections, added/removed/updated definitions, included a section on "covered trips," added a section for "exclusions and limitations," included a section for "intermediate stops or delays," added a new section regarding local provider and trips outside the client's local community, further clarified meals/lodging/escort/guardian, and expanded the section on reimbursement.

Reasons Supporting Proposal: These rule amendments are necessary to support the requirements for contracted non-emergency transportation brokers. Contracted brokers are responsible for the management of overall day-to-day operations necessary for the delivery of cost-efficient, appropriate medical transportation services, the maintenance of appropriate records, and meeting the requirements of these proposed

WSR 11-10-070
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Medicaid Purchasing Administration)

[Filed May 3, 2011, 7:32 a.m.]

Original Notice.

rules. These rules also protect the health and safety of DSHS clients and further ensure program integrity.

Statutory Authority for Adoption: RCW 74.04.057, 74.08.090, 74.09.500.

Statute Being Implemented: RCW 74.08.090.

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

Name of Proponent: DSHS, MPA, 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: Walter Neal, P.O. Box 45530, Olympia, WA 98504-5506 [98504-5530], (360) 725-1703.

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 Walter Neal, P.O. Box 45530, Olympia, WA 98504-5530, phone (360) 725-1703, fax (360) 586-9727, e-mail Nealw@dshs.wa.gov.

April 28, 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 11-11 issue of the Register.

WSR 11-10-071
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Medicaid Purchasing Administration)

[Filed May 3, 2011, 7:43 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 388-531-0100 Scope of coverage for physician-related and healthcare professional services—General and administrative, 388-531-0150 Noncovered physician-related and healthcare professional services—General and administrative, 388-531-0200 Physician-related and healthcare professional services requiring prior authorization, 388-531-0250 Who can provide and bill for physician-related and healthcare professional services, 388-531-0375 Audiology services, 388-531-0400 Client responsibility for reimbursement for physician-related services, 388-531-1000 Ophthalmic services, 388-531-1025 Oral healthcare services provided by dentists for clients age twenty-one and older—General, and 388-531-1300 Foot care services for clients twenty-one years of age and older.

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 21, 2011, at 10:00 a.m.

Date of Intended Adoption: Not sooner than June 22, 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 21, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by May 24, 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: Upon order of the governor, the medicaid purchasing administration (MPA) must reduce its budget expenditures for the current fiscal year ending June 30, 2011, by 6.3 percent. To achieve this expenditure reduction, MPA is eliminating optional medical services from program benefit packages for clients twenty-one years of age and older. These medical services include vision, hearing, and dental. Chapter 388-531 WAC is being amended to include medical services previously listed in the programs to be eliminated that are necessary to, and included within, appropriate mandatory medical services under federal statutes and rules.

Reasons Supporting Proposal: Governor Gregoire issued Executive Order 10-04 on September 13, 2010, under the authority of RCW 43.88.110(7). In the executive order, the governor required DSHS and all other state agencies to reduce their expenditures in state fiscal year 2011 by approximately 6.3 percent. As a consequence of the executive order, funding is no longer available as of January 1, 2011, for the benefits that are being eliminated as part of these regulatory amendments.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090.

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

Name of Proponent: DSHS, MPA, governmental.

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

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Ellen Silverman, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1570, fax (360) 586-9727, e-mail Ellen.Silverman@dshs.wa.gov.

April 28, 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 11-11 issue of the Register.

WSR 11-10-072
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Medicaid Purchasing Administration)

[Filed May 3, 2011, 7:45 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 388-517-0500 State payment of medicare prescription drug copayments for full-benefit dual-eligible clients.

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 1115 Washington Street S.E., 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 24, 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: Upon order of the governor (EO 10-04), the medicare purchasing administration (MPA) was required to reduce its budget expenditures for the current fiscal year ending June 30, 2011, by 6.3 percent. To help achieve this budget reduction, MPA eliminated payment of medicare prescription drug copayments for dual-eligible clients.

Reasons Supporting Proposal: Helps prevent MPA from over spending its budget.

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: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Kevin Sullivan, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1344; Implementation and Enforcement: Carole McRae, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1250.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule change does not impact small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Client eligibility rules for medical assistance are

exempt from the cost-benefit analysis requirement per RCW 34.05.328 (5)(b)(vii).

April 25, 2011

Katherine I. Vasquez
Rules Coordinator

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-517-0500	State payment of medicare prescription drug copayments for full-benefit dual-eligible clients.
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WSR 11-10-073
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Medicaid Purchasing Administration)

[Filed May 3, 2011, 7:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-03-080.

Title of Rule and Other Identifying Information: WAC 388-400-0010 Who is eligible for state family assistance?, 388-424-0001 Citizenship and alien status—Definitions, 388-424-0006 Citizenship and alien status—Date of entry, 388-424-0009 Citizenship and alien status—Social security number (SSN) requirements, 388-424-0010 Citizenship and alien status—Eligibility for TANF, medicare, and CHIP, 388-424-0015 Immigrant eligibility restrictions for the state family assistance, general assistance, and ADATSA programs, and 388-450-0156 When am I exempt from deeming?

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 21, 2011, at 10:00 a.m.

Date of Intended Adoption: Not sooner than June 22, 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 June 21, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by May 24, 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: To bring citizenship/alien status rules into compliance with the federal Center for Medicare and Medicaid (CMS) guidelines. It expands the eligibility group of legally residing individuals which will

allow: (1) Some children who are currently in a state-funded medical program to qualify for federally funded medical coverage, and (2) some pregnant women to have their postpartum period covered by federally funded medical.

Reasons Supporting Proposal: See Purpose statement.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, and 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.057, and 74.08.090.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kathy Johansen, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-9964.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not impact small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Client eligibility rules for medical assistance are exempt from the cost-benefit analysis requirement per RCW 34.05.328 (5)(b)(vii).

April 27, 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 11-11 issue of the Register.

WSR 11-10-077

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF LICENSING

(By the Code Reviser's Office)

[Filed May 3, 2011, 11:19 a.m.]

WAC 308-107-040, proposed by the department of licensing in WSR 10-21-096 appearing in issue 10-21 of the State Register, which was distributed on November 3, 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 11-10-078

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF HEALTH

(By the Code Reviser's Office)

[Filed May 3, 2011, 11:20 a.m.]

WAC 246-918-172 and 246-919-430, proposed by the department of health in WSR 10-21-098 appearing in issue 10-21 of the State Register, which was distributed on November 3, 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 11-10-079

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(By the Code Reviser's Office)

[Filed May 3, 2011, 11:23 a.m.]

WAC 388-534-0100, 388-534-0110, 388-534-0120, 388-534-0125, 388-534-0130 and 388-865-0350, proposed by the department of social and health services in WSR 10-21-116 appearing in issue 10-21 of the State Register, which was distributed on November 3, 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 11-10-088

PROPOSED RULES DEPARTMENT OF ECOLOGY

[Order 09-04—Filed May 4, 2011, 9:26 a.m.]

Supplemental Notice to WSR 11-01-105.

Preproposal statement of inquiry was filed as WSR 09-11-127.

Title of Rule and Other Identifying Information: Chapter 173-334 WAC, Children's safe products—Reporting rule.

As signed into law, the Children's Safe Product Act (CSPA) requires manufacturers of children's products to report the presence of chemicals of high concern to children (CHCC) to the department. The purpose of the rule is to clarify the following: The process to be used to update the reporting list for CHCC, definitions of several key terms, and the reporting process.

Hearing Location(s): Ecology Headquarters Building, 300 Desmond Drive S.E., Lacey, WA 98503, on June 8, 2011, at 7:00 p.m.

Date of Intended Adoption: July 8, 2011.

Submit Written Comments to: John R. Williams Jr., P.O. Box 47600, Olympia, WA 98504-7600, e-mail john.williams@ecy.wa.gov, fax (360) 407-6102, by June 15, 2011.

Assistance for Persons with Disabilities: Contact Michelle Payne, (360) 407-6129, by May 27, 2011, TTY 711 or (877) 833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: As signed into law, the CSPA requires manufacturers of children's products to report the presence of CHCC to the department. The purpose of the rule is to clarify the following: The process to be used to update the reporting list for CHCC, definitions of sev-

eral key terms, and the reporting process. Ecology made a number of changes to proposed rule language in response to comments received during the first comment period, which closed January 7, 2011. This new language is being proposed for additional public comment.

Reasons Supporting Proposal: The rule will make it easier for the regulated community to comply with the reporting requirements established by chapter 70.240 RCW.

Statutory Authority for Adoption: CSPA, RCW 70.240.-040.

Statute Being Implemented: CSPA, chapter 70.240 RCW.

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

Name of Proponent: Washington state department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John R. Williams, Jr., Waste 2 Resources, Headquarters, (360) 407-6940.

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

Small Business Economic Impact Statement

Executive Summary: The Washington state department of ecology (ecology) first proposed the new chapter called the children's safe products rule (chapter 173-334 WAC) based on the authority of the CSPA (chapter 70.240 RCW) in October 2010. Ecology revised the October 2010 version of the proposed rule based on comments from businesses and the public and is filing a supplemental proposal to allow another opportunity for public comment on the revised proposed rule.

The CSPA law requires ecology to identify high priority CHCC. This includes chemicals that have been: Found through biomonitoring studies that demonstrate the presence of the chemical in: Human umbilical cord blood, human breast milk, human urine, other bodily tissues or fluids.

Found through sampling and analysis to be present in: Household dust, indoor air, drinking water, elsewhere in the home environment. Added to, or present in, a consumer product used or present in the home.

Ecology estimated the direct compliance costs of the proposed rule, over twenty years, and assuming product testing (the most expensive option) is used, to be between \$22.4 million and \$34.8 million.

Ecology analyzed the degree of disproportionate impact of the proposed rule on small businesses (those with fifty or fewer employees; versus the largest ten percent of businesses in likely impacted industries), and has concluded that a disproportionate impact is likely. But it should be emphasized that only businesses falling within the definition of a manufacturer as defined in the law would be required to report. That would apply to retailers only if they are the importer in the United States and no other party reports on their behalf.

Based on the statutory authority created by the law, ecology could have done the following: Required reporting for hundreds of possible CHCC if they are added intentionally to a children's product. Based the reporting trigger on detection limit. Implemented the reporting requirement for all products and all manufacturers six months from the date the rule was

adopted. Required the reporting to be done at the individual stock-keeping unit (SKU) number.

Instead, ecology chose options, within the scope of the authorizing statute, to reduce this disproportionate burden, including: Phasing in timelines for first reporting based, in part, on business size. The first date for any reporting for those manufacturers with gross sales less than one hundred thousand dollars is five years from the date the rule is adopted. And these initial reports are only for those products intended most likely to cause harm because they are designed to be placed in the child's mouth or rubbed on the child's skin, or are mouthable products intended for use by children three and under.

Requiring reporting at the product category level based on the GS1 global product classification (GPC) standard. This standard is already in use globally and provides a standardized system for classifying consumer products. As a result the reporting burden is reduced. A manufacturer that produces ten individual products that fall into two product categories will have eighty percent fewer reports to make if all else is equal. Providing multiple examples of how a manufacturer can determine what if any CHCC are in their products. Testing is not required by the law or the rule.

Ecology estimated that the costs and payments created by the proposed rule will likely reduce employment in the state by up to 0.5 positions over twenty years, across the state economy, for all sizes of business, through a redistribution of jobs across industries resulting from respending of wages in the economy. This estimated job impact accounts for the flow of compliance expenditures through the economy as earnings, wages, and further spending by those receiving transfers in the form of payments or wages resulting from actions taken to comply with the proposed rule.

Section 1 - Background: Ecology is filing a supplemental proposal of the Children's safe products—Reporting rule, chapter 173-334 WAC, as part of the rule making it is allowed to perform by law in chapter 70.240 RCW (CSPA). This law was passed in 2008, and specifically allows ecology to, "adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter."

Based on research and analysis required by the Regulatory Fairness Act, RCW 19.85.070, ecology determined the proposed rule has a disproportionate impact on small business (those employing fifty or fewer employees). Therefore, ecology included cost-minimizing features in the rule where it is legal and feasible to do so.

The CSPA law requires ecology to identify high priority CHCC. This includes chemicals that have been:

Found through biomonitoring studies that demonstrate the presence of the chemical in: Human umbilical cord blood, human breast milk, human urine, other bodily tissues or fluids. Found through sampling and analysis to be present in: Household dust, indoor air, drinking water, elsewhere in the home environment. Added to or present in a consumer product used or present in the home.

In July 2009, ecology published a report (Ecology publication number 09-07-014) describing the work done by ecology and the state department of health (DOH) to: Comply with CSPA requirements. Address concerns raised by stakeholders. Implement direction from the governor.¹

This included discussion of the process the agencies used to determine chemicals of concern proposed as part of this rule making.

The majority of the CSPA law delineates requirements for manufacturers and sellers of children's products, including:

Prohibition on the manufacturing and sale of children's products containing lead, cadmium, or phthalates above the limits established in the law. At this time the agency believes federal programs have substantially preempted our agency for the enforcement of these limits. Therefore, the proposed rule only addresses the notification requirements.

Notification to ecology that a children's product contains an intentionally added high priority CHCC.

Notification to ecology that a children's product is contaminated with a (not intentionally added) CHCC at a level exceeding one hundred ppm, unless the manufacturer determines that the presence of any CHCC has been minimized through use of an appropriate due diligence program.

Actions that must be taken by - and penalties for - manufacturers in violation of the law.

Pilot Phase: Ecology conducted a stakeholder process and pilot rule phase to determine the content of the proposed rule. The pilot phase and the stakeholder process helped ecology:

Identify possible compliance difficulties for the regulated community without diminishing the effectiveness of the rule.

Get other input from the public, business, environmental interests, and health interests on the rule making.

Baseline: As there is no current state-level CSPA or similar rule, there is technically no baseline rule for comparison. There are no existing federal or Washington state requirements intended explicitly for children's products as under this rule. There are, however, a number of partially overlapping requirements and mitigating factors, including:²

Washington's toxics in packaging law (chapter 70.95G RCW, Toxics in packaging). This law requires manufacturers to have practices that may include contract specifications, quality control mechanisms, and/or testing protocols to determine the amount of a chemical in product materials.

Federal Consumer Product Safety Improvement Act of 2008 (CPSIA). This law requires manufacturers to have a process in place to test their products for some chemicals. Also some chemicals are restricted in cosmetic products under Food and Drug Administration (FDA) regulations.

Interstate toxics rules allowing manufacturers to employ economies of scale in producing a homogeneous product across multiple markets:

Manufacturers who sell children's products in Maine are subject to similar reporting requirements for priority chemicals (Me. Rev. Stat. Ann. tit. 38, §§ 1691-1699-B). The state of California has several reporting requirements applicable to manufacturers of children's products, including required reporting on use of specific ingredients in cosmetics (Cal. Health & Safety Code §§ 111791-111793.5).

Manufacturers who do business in California are also required to label products if exposure to certain chemicals from those products exceeds levels known to cause cancer or reproductive harm (California Proposition 65).

The European Union, for instance, enforces chemical limits in children's products through its Toy Directive (88/378/EEC) and Cosmetics Directive (76/768/EEC). Many companies have preexisting restricted substance lists (RSLs) to describe and codify procedures to meet chemical limits in a variety of product lines for sale in various countries.

See Appendix B for a full listing of existing interstate and international rules that will likely mitigate the compliance costs created by the proposed rule.

These factors will likely mitigate some of the compliance costs for a subset of businesses covered by the proposed rule.

The baseline also includes the explicit provisions of the authorizing statute. These are excepted from this analysis. For further discussion, see analytic exceptions, below in this chapter.

Changes Under Ecology's Proposed Rule: The revised proposed rule sets out requirements for:

Manufacturers or importers to notify ecology on an annual basis about:

All children's products they manufacture or import for sale in Washington state that contain intentionally added CHCCs. The notice must include information about the firm, the category of the product, and the amount (in categories) of CHCC in the product.

All children's products they manufacture or import for sale in Washington contaminated with greater than one hundred ppm of CHCCs, or be able to demonstrate that the presence of any CHCC has been minimized through use of an appropriate due diligence program.

The timing of first reporting phased in according to the product tier and size of manufacturer. Product tiers (1 - 4) represent the level of contact a child is likely to experience with various types of products. Product categories are based on levels of the GSI GPC standard - an industry standard for product classification.

Enforcement processes and penalties.

Analytic Exemptions: Ecology excluded from analysis the following elements, explicitly dictated or defined in the children's safe products statute (chapter 70.240 RCW): Definitions, including: Children's cosmetics, children's jewelry, children's product, cosmetics, high priority chemical, manufacturer, phthalates, toy, trade association, very bioaccumulative, very persistent.

Prohibition of the manufacturing and sale of children's products containing lead, cadmium, or phthalates.

Explicit reporting requirements, including:

The name of the chemical used or produced and its chemical abstracts service registry number.

A brief description of the product or the product component containing the substance.

A description of the function of the chemical in the product.

The amount of the chemical used in each unit of the product or product component. The amount may be reported in ranges, rather than the exact amount.

The name and address of the manufacturer and the name, address, and phone number of a contact person for the manufacturer.

Any other information the manufacturer deems relevant to the appropriate use of the product.

Notification of sellers and distributors.

Civil penalty.

Section 2: Analysis of Compliance Costs for Washington Businesses:

Analytic Approach: Ecology analyzed the costs and benefits of the proposed rule qualitatively, and quantified the impacts where possible. Ecology only analyzed those aspects of the proposed rule that were left to ecology's discretion in the rule-making process. In the case of the proposed rule, many of its elements were dictated explicitly by law, as is the general idea of manufacturer reporting.

Ecology only has particular discretion on reporting ranges and the phasing-in of first reporting time. Every chemical on the reporting list meets the standards set by the authorizing law. Ecology chose sixty-six chemicals from an initial list of two thousand prospective chemicals. Ecology believes the content of the list of CHCC is sufficiently dictated by statute, so that the chemicals on the final list were not entirely left to ecology's discretion. However, ecology also believes it is to the public and state's advantage to present the estimated costs of testing and reporting, to provide additional information to manufacturers and the public regarding compliance with the authorizing statute.

Section 3: Quantification of Costs and Ratios:

Quantified Costs of Ecology's Proposed Rule: Ecology estimated the quantitative costs of complying with the proposed rule, including those elements dictated by the authorizing law, based on:

The number of businesses expected to comply.

The number of chemicals that require testing or business practice or business supply chain knowledge.

The estimated costs of testing or business practices and reporting.

These estimates are conservatively high, and do not account for economies of scale, nonreporters, or interstate/international regulatory consistency. Moreover, as a means of estimating CHCC content and reporting into a range, testing is not specifically required by the proposed rule or the law. Other options for gauging CHCC content include supply-chain knowledge and knowledge of the manufacturing process.

Ecology assumed that known businesses operating in Washington state manufacturing or importing toys and games, children's clothing, and baby supplies and accessories may have to comply with the law. These businesses fall into multiple NAICS³ categories, including:

3399 (Other Miscellaneous Manufacturing; includes toys, games, baby products).

4243 (Apparel, Piece Goods, and Notions Merchant Wholesalers; includes children's clothing).

3256 (Soap, Cleaning Compound, and Toilet Preparation Manufacturing; includes baby care).

3371 (Household and Institutional Furniture and Kitchen Cabinet Manufacturing; includes baby furniture).

Based on Washington state employment security department information, there are currently about two hundred seventy-six such businesses in the state. Ecology was also able to categorize most of these businesses roughly into size cate-

gories by employment and, to a lesser degree, annual earnings. Ecology believes these businesses represent the majority of businesses operating in Washington state that will need to comply with the proposed rule. Ecology could not confidently determine the degree to which many of these businesses were:

Direct producers.

Assemblers of parts manufactured by other firms.

Importers.

Distributors.

Some retailers who act as importers or distributors for products made by companies with no presence in the United States may also need to report, but ecology assumes this number will be minimal.

To maintain the most conservative estimate of net benefit (by overestimating costs to compensate for uncertainty), ecology assumed all of these businesses would behave as though they had little or no process knowledge - as is likely for importers or distributors only. In reality, the majority of businesses will have some (if not complete) control or knowledge of the manufacturing process and content of their children's products. This is achieved through direct control or contracting. Ecology also expects that many businesses will already have contracted process knowledge to mitigate liability in the event of product recall.

Therefore, ecology assumed that any given business would maintain at least existing business practices and standards, and that a business might choose to test for a maximum of ten CHCC. This is likely an overestimate of costs, but as discussed in the above paragraph, ecology chose the most cautious approach to dealing with the limited knowledge of the scope of each business's process and chemical knowledge.

Based on surveys of current testing costs, ecology estimated that this cost of knowing the level of CHCC content in children's products for some manufacturers would be in the range of approximately \$1 thousand - \$10 thousand per year for all the CHCCs in their products. This value was based on a range of existing, approved analytical methods. It is possible that new test methods could need to be developed. Ecology multiplied these values to calculate a total conservatively high⁴ testing cost of the proposed rule and CSPA law of \$2.8 million - \$27.6 million the first year, followed by \$2.8 million annually in subsequent years, when testing has been established if necessary. This is if all covered businesses perform testing.

Sensitivity Analysis: Those businesses that have directly or indirectly sufficient information about the manufacturing process to know the intentionally added chemicals, and the quality assurance to minimize contamination with other chemicals will not need to test. This is more likely for manufacturers than for importers or distributors. If half of the covered businesses test, or if all businesses must test for only five chemicals because they don't have sufficient process knowledge or exhibit due diligence, then costs fall to \$1.4 million - \$13.8 million the first year, followed by \$1.4 million in subsequent years.

It is also unlikely that the proposed rule will require the creation of new tests for all possible unknown contaminants, for all covered businesses. If ecology assumes that no new

tests will need to be created for contaminants at or above a concentration of one hundred ppm, then the costs fall to \$2.8 million annually.

The above calculations generated at total likely present value (PV)⁵ cost of compliance, over twenty years, with the combined CSPA rule and CSPA law, of \$44.7 million to \$69.5 million. Requirements set forward in the latter of these, the CSPA law, are exempt from this analysis, but ecology included this total cost in this analysis because the contribution of ecology reducing the possible list of CHCCs (to only those meeting the requirements set forth in the authorizing law) was not separable from the overall impacts of the law.

If only half of businesses need to perform testing, only five (rather than ten) chemicals require testing for contamination, on average, then the PV falls to \$22.4 million - \$34.8 million.

If no new testing methods need to be created for the one hundred ppm level, then the PV falls to \$44.7 million in the all tests for all businesses scenario.

Overall, ecology considered the central range of these scenarios as a reasonable estimate of overall costs: \$22.4 million - \$34.8 million.

The costs estimated by ecology work under the assumption that costs are for a typical business, and are constant across them, on average. Obviously, the costs per business range of \$10 thousand to \$100 thousand divided by smaller numbers of employees will be larger, as it will [be] divided by each \$100 of sales recorded (for which records are much more sparse). For fifty employees or fewer, this is at least \$200 - \$2 thousand per employee. For the largest ten percent of likely affected businesses, this is at most nine - ninety cents per employee.

Section 4: Actions Taken to Reduce the Impact of the Rule on Small Business:

Based on the statutory authority created by the law, ecology could have done the following:

Required reporting for hundreds of CHHCs [CHCCs].

Based the reporting trigger on detection limit.

Implemented the reporting requirement for all products and all manufacturers six months from the date the rule was adopted.

Required the reporting to be done at the individual SKU number.

Instead ecology chose options, within the scope of the authorizing statute, to reduce this disproportionate burden, including:

Phasing in timelines for first reporting based, in-part, on business size. The first date for any reporting for those manufactures with gross sales in the less than one hundred thousand dollars is five years from the date the rule is adopted. And these initial reports are only for those products intended to be stuck in the child's mouth, rubbed on the child's skin, and all products for children 3 and under.

Requiring reporting at the product category level based on the GS1 GPC standard. This standard is already in use globally and provides a standardized system for classifying consumer products. As a result the reporting burden is reduced. A manufacturer that produces ten individual prod-

ucts that fall into two product categories will have eighty percent fewer reports to make if all else is equal.

Providing multiple examples of how a manufacture [manufacturer] can determine what if any CHHCs [CHCC] are in their products. Testing is not required by the law or the rule.

Allowing multiple courses for determining CHCC content, rather than requiring only testing.

Requiring reporting of contaminants in concentrations of one hundred ppm or higher, or demonstration of sufficient due diligence in production to minimize contaminant content.

Section 5: The Involvement of Small Business in the Development of the Proposed Rule Amendments: Advisory group meetings included representatives from Teaching Toys and Books, and from Find It Games. Small business industry groups were also represented.

Multiple attempts were made to involve small business in the pilot and advisory group phases but little actual input was provided. One Washington small business said they were willing to participate on the advisory group but after multiple efforts to get their input, none was provided. Another small business joined the pilot phase but they also did not provide any input. We assume that this was due to lack of resources. As a result, ecology relied upon input from trade organizations to represent concerns specific to small businesses. Industry associations include:

Toy Industry Association.

Juvenile Products Manufacturers Association.

American Apparel and Footware [Footwear] Association.

Others, to represent concerns specific to small businesses.

Ecology established a listserv (which has over two hundred members) to provide the public and small businesses, among others, with regular updates and information related to the proposed rule. Also a press release and focus sheet were issued at the start of the pilot phase.

Trade Associations and Likely Testing Facilities Representing or Related to Small Businesses Covered by the Proposed Rule			
Trade Associations	Chemical Companies, Consultants and Testing Labs		
American Apparel & Footwear Association	AkzoNobel	Eastman	Perkins Coie
American Chemistry Council	Antheil Maslow & MacMinn, LLP	Exponent	RegNet
American Forest & Paper Association	Arnold & Porter LLP	Foresite Systems	SGS

Trade Associations and Likely Testing Facilities Representing or Related to Small Businesses Covered by the Proposed Rule			
Trade Associations	Chemical Companies, Consultants and Testing Labs		
Apparel and Footwear International RSL Management Group	Brush Wellman Inc.	ICQ	Stateside Associates
Association of Washington Business	Bureau Veritas	Insight Labs	
Fashion Jewelry and Accessories Trade Association	Cascadia Consulting Group	Intertek	
Grocery Manufacturers Association	Cascadia Law Group PLLC	Keller and Heckman LLP	
Juvenile Products Manufacturers Association, Inc.	Chem ADVISOR	KSE FOCUS	
Personal Care Products Council	Compliance & Risks	Lab/Cor Materials, LLC	
Toy Industry Association™, Inc.	Consumer Testing Laboratories	MultiState Associates Inc.	
Washington Retail Association	Decernis	NVL Laboratories, Inc.	

Section 6: The SIC Codes of Impacted Industries: Ecology assumed that businesses operating in Washington state manufacturing or importing toys and games, children's clothing, and baby supplies and accessories may have to comply with the law. These businesses fall into multiple NAICS⁶ categories, including:

3399 (Other Miscellaneous Manufacturing; includes toys, games, baby products),

4243 (Apparel, Piece Goods, and Notions Merchant Wholesalers; includes children's clothing),

3256 (Soap, Cleaning Compound, and Toilet Preparation Manufacturing; includes baby care), and

3371 (Household and Institutional Furniture and Kitchen Cabinet Manufacturing; includes baby furniture).

Based on Washington state employment security department information, there are currently about two hundred seventy-six such businesses in the state. Ecology was also able to categorize most of these businesses roughly into size categories by employment and, to a lesser degree, annual earnings. Ecology believes these businesses represent the majority of children's product businesses operating in Washington state that will need to comply with the proposed rule.

Section 7: Impacts on Jobs: Ecology used the Washington state office of financial management's 2002 Washington input-output model (OFM-IO) to estimate the proposed rule's first-round impact on jobs across the state. This methodology estimates the impact of reductions or increases in spending in certain sectors of the state economy flow through to purchases, suppliers, and demand for other goods. Compliance costs incurred by an industry, or industries, are entered in the OFM-IO model as decreases in spending and investment.

Ecology calculated that between approximately zero and 0.5 jobs are likely to be permanently lost under the proposed rule. This result accounts for the labor income earned during efforts to research and report CHCC content. That income is respent by earners in the economy, providing income for other industries through retail purchases, wholesale, and so forth. Where jobs might be lost in the industries incurring additional process or testing expenditures, that money does not disappear, but rather is respent in the economy. The results of the IO model indicate a redistribution of jobs across industries, as shown in the table below.

OFM-IO Model Results: Employment Impacts of the Proposed Rule			
INDUSTRY	EMPLOYMENT IMPACT	INDUSTRY	EMPLOYMENT IMPACT
1. Crop Production	0.82	26. Furniture Product Manufacturing	-18.54
2. Animal Production	1.38	27. Other Manufacturing	-88.80
3. Forestry and Logging	-0.48	28. Wholesale	-38.58
4. Fishing, Hunting, and Trapping	0.20	29. Retail	38.05
5. Mining	0.08	30. Air Transportation	0.48
6. Electric Utilities	0.43	31. Water Transportation	0.28
7. Gas Utilities	0.10	32. Truck Transportation	0.25
8. Other Utilities	0.31	33. Other Transportation/Postal Offices	1.08
9. Construction	0.20	34. Support Activities for Storage, Transportation and Warehousing	-0.04

OFM-IO Model Results: Employment Impacts of the Proposed Rule			
INDUSTRY	EMPLOYMENT IMPACT	INDUSTRY	EMPLOYMENT IMPACT
10. Food, Beverage and Tobacco Manufacturing	1.46	35. Software Publishers & Internet Service Providers	0.03
11. Textiles and Apparel Mills	-0.13	36. Telecommunications	2.36
12. Wood Product Manufacturing	-1.12	37. Other Information	2.81
13. Paper Manufacturing	-0.17	38. Credit Intermediation and Related Activities	3.78
14. Printing and Related Activities	0.20	39. Other Finance and Insurance	3.31
15. Petroleum and Coal Products Manufacturing	0.06	40. Real Estate and Rental and Leasing	7.49
16. Chemical Manufacturing	-2.31	41. Legal/Accounting and Bookkeeping/Management Services	-1.21
17. Nonmetallic Mineral Products Manufacturing	-0.16	42. Architectural, Engineering, and Computing Services	0.29
18. Primary Metal Manufacturing	-0.20	43. Educational Services	5.62
19. Fabricated Metals Manufacturing	-0.406066466	44. Ambulatory Health Care Services	13.60538787
20. Machinery Manufacturing	-0.090763608	45. Hospitals	8.380215879

OFM-IO Model Results: Employment Impacts of the Proposed Rule			
INDUSTRY	EMPLOYMENT IMPACT	INDUSTRY	EMPLOYMENT IMPACT
21. Computer and Electronic Product Manufacturing	-0.071740411	46. Nursing and Residential Care Facilities, Social Assistance	14.89128539
22. Electrical Equipment Manufacturing	-0.005694654	47. Arts, Recreation, and Accommodation	7.011931267
23. Aircraft and Parts Manufacturing	0.00050651	48. Food Services and Drinking Places	24.7220975
24. Ship and Boat Building	0.099552202	49. Administrative/Employment Support Services	1.578830241
25. Other Transportation Equipment Manufacturing	0.020661761	50. Waste Management/Other, and Agriculture Services	11.52590511
Total			0.55

¹The governor expressed that ecology and DOH should rely on safety testing conducted in the European Union and California, to the extent they provide a reasonable assurance of safety, in order to help establish a degree of consistency for the industry.

²See Appendix B for a full listing of existing regulations that will likely mitigate the compliance costs created by the proposed rule.

³North American Industry Classification System (see <http://www.census.gov/eos/www/naics/index.html>).

⁴Assuming all covered businesses must test to determine whether and what to report.

⁵Accounting for expected inflation, using U.S. Treasury I-Bonds (see http://www.treasurydirect.gov/indiv/research/indepth/ibonds/res_ibonds_iratesandterms.htm).

⁶North American Industry Classification System (see <http://www.census.gov/eos/www/naics/index.html>).

A copy of the statement may be obtained by contacting John R. Williams, Jr., P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6940, fax (360) 407-6102, e-mail john.williams@ecy.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting John R. Williams, Jr., P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6940, fax (360) 407-6102, e-mail john.williams@ecy.wa.gov.

May 3, 2011
 Polly Zehm
 Deputy Director

Chapter 173-334 WAC

CHILDREN'S SAFE PRODUCTS - REPORTING
RULENEW SECTION

WAC 173-334-010 Introduction. Under the Children's Safe Product Act (CSPA), chapter 70.240 RCW, manufacturers of children's products are required to notify the department of ecology when a chemical of high concern to children (CHCC) is present in their products or, if the product contains more than one component, each product component.

The presence of a CHCC in a children's product does not necessarily mean that the product is harmful to human health or that there is any violation of existing safety standards or laws. The reported information will help fill a data gap that exists for both consumers and agencies.

The CSPA requires the department of ecology in consultation with the department of health to identify a list of chemicals for which manufacturers of children's products are required to provide notice. The CSPA specifies both the characteristics of these chemicals and the notice requirements.

NEW SECTION

WAC 173-334-020 What is the purpose of this chapter? The purpose of this chapter is to:

- (1) Establish the list of chemicals for which manufacturer notice is required;
- (2) Establish what manufacturers of children's products must do to comply with the notice requirements created by the CSPA; and
- (3) Clarify the enforcement processes the department of ecology will use if manufacturers fail to provide notice as required.

NEW SECTION

WAC 173-334-030 To whom does this chapter apply? This chapter applies to manufacturers of children's products.

NEW SECTION

WAC 173-334-040 What definitions apply to terms used in this chapter? "Chemical Abstracts Service number" means the number assigned for identification of a particular chemical by the Chemical Abstracts Service, a service of the American Chemical Society that indexes and compiles abstracts of worldwide chemical literature called *Chemical Abstracts*.

"CHCC list" means the reporting list of chemicals that the department has identified as high priority chemicals of high concern for children.

"Child" means an individual under twelve.

"Children's product" has the same meaning as defined in RCW 70.240.010.

(a) For the purposes of this rule, children's products only include products that are sold, or are to be offered for sale, to consumers in the state of Washington.

(b) In addition to the exemptions specified in RCW 70.240.010, for the purposes of this rule, "children's product" does not include over the counter drugs, prescription drugs, food, dietary supplements, packaging, medical devices, or products that are both a cosmetic and a drug regulated by the Food and Drug Administration.

(c) A product label that includes usage instructions for use of a product that apply to children does not in and of itself establish that the product is a children's product.

"Contaminant" means trace amounts of chemicals that are incidental to manufacturing. They serve no intended function in the product component. They can include, but are not limited to, unintended by-products of chemical reactions during the manufacture of the product component, trace impurities in feed-stock, incompletely reacted chemical mixtures, and degradation products.

"Department of health" means the Washington state department of health.

"Intentionally added chemical" means a chemical in a product that serves an intended function in the product component.

"Manufacturer" means the producer, importer, or wholesale domestic distributor of a children's product and is more specifically defined in RCW 70.240.010. For the purposes of this rule, a retailer of a children's product is not a manufacturer unless it is also the producer, manufacturer, importer, or domestic distributor of the product.

"Mouthable" means able to be brought to the mouth and kept in the mouth by a child so that it can be sucked and chewed. If the product can only be licked, it is not able to be placed in the mouth. If a product or part of a product in one dimension is smaller than five centimeters, it can be placed in the mouth.

"Practical quantification limit (PQL)" means the lowest concentration that can be reliably measured within specified limits of precision, accuracy, representativeness, completeness, and comparability during routine laboratory operating conditions. This value is based on scientifically defensible, standard analytical methods. The value for a given chemical could be different depending on the matrix and the analytical method used.

"Product category" means the "brick" level of the GS1 Global Product Classification (GPC) standard, which identifies products that serve a common purpose, are of a similar form and material, and share the same set of category attributes.

"Product component" means a uniquely identifiable material or coating (including ink or dye) that is intended to be included as a part of a finished children's product.

NEW SECTION

WAC 173-334-050 What is the purpose of the CHCC list? The CHCC list identifies the chemicals to which the notice requirements apply. A manufacturer must notify the department in accordance with WAC 173-334-080 if a chemical on the CHCC list is present in a children's product com-

ponent. The current CHCC list is set forth in WAC 173-334-130.

NEW SECTION

WAC 173-334-060 How can the department revise the CHCC list? The department can only add chemicals to, or remove chemicals from, the CHCC list by amending this rule in accordance with the requirements of the Administrative Procedure Act, chapter 34.05 RCW.

NEW SECTION

WAC 173-334-070 How will the department identify chemicals for inclusion in the CHCC list? (1) The department will consult with the department of health during the modification of the CHCC list.

(2) A chemical that the department determines to meet all of the following criteria may be included on the CHCC list:

(a) The toxicity, persistence, or bioaccumulativity criteria specified in RCW 70.240.010(6); and

(b) The exposure criteria specified in RCW 70.240.-030(1).

(3) The department will consider both the parent chemical and its degradation products when deciding whether a chemical meets the criteria of this section. If a parent chemical does not meet the criteria in this section but degrades into chemicals that do, the parent chemical may be included on the CHCC list.

(4) A person may submit a petition for consideration by the department to add a chemical to or remove a chemical from the CHCC list. The petition must provide the following information:

(a) Chemical Abstracts Service registry number;

(b) Chemical prime name; and

(c) Credible peer-reviewed scientific information documenting why the chemical meets or fails to meet the criteria required for inclusion on the list.

(5) The department shall review petitions in accordance with RCW 34.05.330, the Administrative Procedure Act.

NEW SECTION

WAC 173-334-080 What must the manufacturer include in its notice to the department? (1) The notice required by RCW 70.240.040 must be filed annually with the department in accordance with the following:

(a) Each chemical on the CHCC list that is an intentionally added chemical present in a product component must be reported at any concentration above the PQL.

(b) Each chemical on the CHCC list that is a contaminant present in a product component must be reported at any concentration above 100 ppm.

(c) A manufacturer need not file a notice with respect to any CHCC that occurs in a product component only as a contaminant if the manufacturer had in place a manufacturing control program and exercised due diligence to minimize the presence of the contaminant in the component.

(2) The notice must include all of the following information:

(a) The name of the CHCC and its Chemical Abstracts Service registry number.

(b) The product category or categories in which it occurs.

(c) The product component or components within each product category in which it occurs.

(d) A brief description of the function, if any, of the CHCC in each product component within each product category.

(e) The total amount of the CHCC by weight contained in each product component within each product category. The amount may be reported in ranges, rather than the exact amount. If there are multiple CHCC values for a given component in a particular product category, the manufacturer must use the largest value for reporting.

For the purpose of this rule, the reporting ranges are as follows:

(i) Equal to or more than the PQL but less than 100 ppm (0.01%);

(ii) Equal to or more than 100 ppm (0.01%) but less than 500 ppm (0.05%);

(iii) Equal to or more than 500 ppm (0.05%) but less than 1,000 ppm (0.10%);

(iv) Equal to or more than 1,000 ppm (0.10%) but less than 5,000 ppm (0.5%); or

(v) Equal to or more than 5,000 ppm (0.5%) but less than 10,000 ppm (1.0%); or

(vi) Equal to or more than 10,000 ppm (1.0%).

(f) The name and address of the reporting manufacturer or trade organization and the name, address and phone number of the contact person for the reporting manufacturer or trade organization. When a trade organization is the reporting party, the report must include a list of the manufacturers on whose behalf the trade organization is reporting, and all of the information that would otherwise be required of the individual manufacturers.

(g) Any other information the manufacturer deems relevant to the appropriate use of the product.

(3) Reporting parties are not required to include either:

(a) Any specific formula information; or

(b) The specific name and address of the facility which is responsible for the introduction of a CHCC into a children's product or product component.

(4) If a reporting party believes the information being provided is confidential business information (CBI), in whole or in part, it may request that the department treat the information as confidential business information as provided in RCW 43.21A.160. The department will use its established procedures to determine how it will handle the information.

(5) The department will make available the current version of the web form to be used for reporting on CHCCs. This same form may be used by the reporting party to flag the submitted information it thinks should be treated as CBI. The web form must be used when providing notification.

(6) Any information that is not determined to be confidential business information will be available to the public. As resources allow, the department will post this information on the department's web site.

NEW SECTION

WAC 173-334-090 Who is required to provide notice to the department? (1) The manufacturer of a children's product, or a trade organization on behalf of its member manufacturers, must provide notice to the department that the manufacturer's children's product component contains a chemical on the CHCC list.

(2) The definition of manufacturer in RCW 70.240.010 includes any person or entity that produces a children's product, any importer that assumes ownership of a children's product, and any domestic distributor of a children's product. However, it is only necessary for one person or entity to provide notice with respect to a particular children's product.

The following hierarchy will determine which person or entity the department will hold primarily responsible for ensuring that the department receives a complete, accurate, and timely notice for the children's product:

(a) The person or entity that had the children's product designed or manufactured, unless it has no presence in the United States.

(b) The person or entity that marketed the children's product under its name or trademark, unless it has no presence in the United States.

(c) The first person or entity, whether an importer or a distributor, that owned the children's product in the United States.

NEW SECTION

WAC 173-334-100 What time period is covered by the notice? Manufacturers must provide notice as required by WAC 173-334-110 on an annual basis for children's products that have been manufactured for sale in Washington during the twelve-month period that precedes the applicable due date for first notices set out in WAC 173-334-110(2). If the reporting party determines that there has been no change in the information required to be reported since the prior annual notice, the party may submit a written statement indicating that the previous reported data is still valid, in lieu of a new duplicate complete notice.

If a CHCC is subsequently removed from the children's product component for which notice was given, the manufacturer may provide notice to the department. Such updated notices will be documented in the department's records.

NEW SECTION

WAC 173-334-110 When must manufacturers begin to provide notice? (1) This section establishes when manufacturers must first provide notice to the department if a children's product contains a chemical on the CHCC list. The notice requirement will be phased in as provided in the schedule set out in subsection (2) of this section based on the manufacturer categories and children's product tiers established in subsections (3) and (4) of this section. Manufacturers conducting safer alternative assessments for CHCCs may obtain an extension of the first notice date as provided in subsection (5) of this section. After the first notice date, notice must be provided annually on the anniversary of the first notice.

(2) The following table specifies when the first annual notice must be provided to the department in compliance with RCW 70.240.040. The due date will be determined by counting the number of months specified in the table, beginning with the first calendar month following the calendar month in which this rule is adopted. The notice will be considered delinquent if not received by the department by the last day of the month indicated.

Notice due dates from adoption date of rule, values are in months.

Manufacturer categories	Product Tier 1	Product Tier 2	Product Tier 3	Product Tier 4
Largest	12	18	24	case-by-case
Larger	18	24	36	case-by-case
Medium	24	36	48	case-by-case
Small	36	48	60	case-by-case
Smaller	48	60	72	case-by-case
Tiny	60	72	84	case-by-case

(3) For the purpose of this rule the department recognizes six categories of manufacturers. The categories of manufacturers are as follows:

(a) "Largest manufacturer" means any manufacturer of children's products with annual aggregate gross sales, both within and outside of Washington, of more than one billion dollars, based on the manufacturer's most recent tax year filing.

(b) "Larger manufacturer" means any manufacturer of children's products with annual aggregate gross sales, both within and outside of Washington, of more than two hundred fifty million but less than or equal to one billion dollars, based on the manufacturer's most recent tax year filing.

(c) "Medium size manufacturer" means any manufacturer of children's products with annual aggregate gross sales, both within and outside of Washington, of more than one hundred million but less than or equal to two hundred fifty million dollars, based on the manufacturer's most recent tax year filing.

(d) "Small manufacturer" means any manufacturer of children's products with annual aggregate gross sales, both within and outside of Washington, of more than five million but less than or equal to one hundred million dollars, based on the manufacturer's most recent tax year filing.

(e) "Smaller manufacturer" means any manufacturer of children's products with annual aggregate gross sales, both within and outside of Washington, of more than one hundred thousand but less than or equal to five million dollars, based on the manufacturer's most recent tax year filing.

(f) "Tiny manufacturer" means any manufacturer of children's products with annual aggregate gross sales, both within and outside of Washington, of less than one hundred thousand dollars, based on the manufacturer's most recent tax year filing.

(4) For the purpose of this rule the department recognizes four tiers of products. The tiers or products are as follows:

(a) Tier 1 - children's products intended to be put into a child's mouth (e.g., children's products used for feeding, sucking, some toys) or applied to the child's body (e.g., children's products used as lotions, shampoos, creams), or any

mouthable children's product intended for children who are age three or under.

(b) Tier 2 - children's products intended to be in prolonged (more than one hour) direct contact with a child's skin (e.g., clothes, jewelry, bedding).

(c) Tier 3 - children's products intended for short (less than one hour) periods of direct contact with child's skin (e.g., many toys).

(d) Tier 4 - children's product components that during reasonable foreseeable use and abuse of the product would not come into direct contact with the child's skin or mouth (e.g., inaccessible internal components for all children's products). Any reporting requirements for Tier 4 components will be based on a case-by-case evaluation by the department and may be required by amendment of these rules.

(5) If a manufacturer presents documentation to show that it is conducting safer alternative assessments for CHCCs contained in its children's products and that these assessments are intended to result in the elimination or significant reduction of CHCCs from the manufacturer's products, the department may extend by twelve months the reporting requirement for that manufacturer.

NEW SECTION

WAC 173-334-120 How will this chapter be enforced? (1) The department may collect children's products subject to possible reporting, and analyze their components for the presence of CHCCs. If the department finds that a children's product component contains a chemical on the CHCC list that the manufacturer either has not reported, or has reported at a lesser amount, the department will notify the manufacturer in writing. The department will then afford the manufacturer forty-five days from receipt of the department's notification to respond to the findings before the department takes further enforcement action.

In determining whether a violation of the CSPA or these rules has occurred, the department will consider the manufacturer's timely explanation as to why it did not report the presence or accurate amount of the CHCC in the product component. If the manufacturer asserts that the CHCC is present in the component only as a contaminant, and that the manufacturer did not report the CHCC's presence based on WAC 173-334-080 (1)(c), then the manufacturer must present evidence that it conducted a reasonable manufacturing control program for the CHCC contaminant and exercised due diligence as described in subsections (2) and (3) of this section.

If the manufacturer contests the department's findings regarding the presence or amount of the CHCC in the product component, the manufacturer may further analyze the component in question for presence of CHCC and provide the department with a copy of its own laboratory findings for the component.

(2) Manufacturing control program. A reasonable manufacturing control program must include industry best manufacturing practices for the minimization of the CHCC in the children's product. Those practices may include, but are not limited to, methods and procedures for meeting relevant federal regulations, International Standards Organization (ISO) requirements, American Society for Testing and Materials

(ASTM) standards, and other widely established certification or standards programs.

(3) Due diligence. Actions demonstrating due diligence in ensuring the effectiveness of a manufacturing control program may include the use and enforcement of contract specifications, procedures to ensure the quality/purity of feedstock (whether raw or recycled), the use and enforcement of contract specifications for manufacturing process parameters (e.g., drying and curing times when relevant to the presence of high priority chemicals in the finished children's product components), periodic testing for the presence and amount of CHCCs, auditing of contractor or supplier manufacturing processes, and other practices reasonably designed to ensure the manufacturer's knowledge of the presence, use, and amount of CHCCs in its children's product components.

(4) If the department determines based on the process described in subsection (1) of this section, or on other grounds, that a manufacturer has violated a requirement of the CSPA or these rules, it may require the manufacturer to pay a civil penalty. A manufacturer of children's products in violation of this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation in the case of a first offense. Manufacturers who are repeat violators are subject to a civil penalty not to exceed ten thousand dollars for each repeat offense. Penalties collected under this section must be deposited in the state toxics control account created in RCW 70.105D.070.

(5) A single violation consists of a manufacturer failing to provide the required notice for the presence and accurate amount of each CHCC, in each applicable product category, in each applicable product component.

NEW SECTION

WAC 173-334-130 The reporting list of chemicals of high concern to children (CHCC list).

CAS	Chemical
50-00-0	Formaldehyde
62-53-3	Aniline
62-75-9	N-Nitrosodimethylamine
71-36-3	n-Butanol
71-43-2	Benzene
75-01-4	Vinyl chloride
75-07-0	Acetaldehyde
75-09-2	Methylene chloride
75-15-0	Carbon disulfide
78-93-3	Methyl ethyl ketone
79-34-5	1,1,2,2-Tetrachloroethane
79-94-7	Tetrabromobisphenol A
80-05-7	Bisphenol A
84-66-2	Diethyl phthalate
84-74-2	Dibutyl phthalate
84-75-3	Di-n-Hexyl phthalate
85-44-9	Phthalic anhydride
85-68-7	Butyl benzyl phthalate (BBP)

CAS	Chemical
86-30-6	N-Nitrosodiphenylamine
87-68-3	Hexachlorobutadiene
94-13-3	Propyl paraben
94-26-8	Butyl paraben
95-53-4	2-Aminotoluene
95-80-7	2,4-Diaminotoluene
99-76-3	Methyl paraben
99-96-7	p-Hydroxybenzoic acid
100-41-4	Ethylbenzene
100-42-5	Styrene
104-40-5	4-Nonylphenol; 4-NP and its isomer mixtures including CAS 84852-15-3 and CAS 25154-52-3
106-47-8	para-Chloroaniline
107-13-1	Acrylonitrile
107-21-1	Ethylene glycol
108-88-3	Toluene
108-95-2	Phenol
109-86-4	2-Methoxyethanol
110-80-5	Ethylene glycol monoethyl ester
115-96-8	Tris(2-chloroethyl) phosphate
117-81-7	Di-2-ethylhexyl phthalate
117-84-0	Di-n-octyl phthalate (DnOP)
118-74-1	Hexachlorobenzene
119-93-7	3,3'-Dimethylbenzidine and Dyes Metabolized to 3,3'-Dimethylbenzidine
120-47-8	Ethyl paraben
123-91-1	1,4-Dioxane
127-18-4	Perchloroethylene
131-55-5	Benzophenone-2 (Bp-2); 2,2',4,4'-Tetrahydroxybenzophenone
140-66-9	4-tert-Octylphenol; 1,1,3,3-Tetramethyl-4-butylphenol
140-67-0	Estragole
149-57-5	2-Ethylhexanoic acid
556-67-2	Octamethylcyclotetrasiloxane
608-93-5	Benzene, pentachloro
842-07-9	C.I. solvent yellow 14
872-50-4	N-Methylpyrrolidone
1163-19-5	2,2',3,3',4,4',5,5',6,6'-Decabromodiphenyl ether; BDE-209
1763-23-1	Perfluorooctanyl sulphonic acid and its salts; PFOS
1806-26-4	Phenol, 4-octyl-
5466-77-3	2-Ethyl-hexyl-4-methoxycinnamate
7439-97-6	Mercury & mercury compounds including methyl mercury (22967-92-6)
7439-98-7	Molybdenum & molybdenum compounds

CAS	Chemical
7440-36-0	Antimony & Antimony compounds
7440-38-2	Arsenic & Arsenic compounds including arsenic trioxide (1327-53-3) & dimethyl arsenic (75-60-5)
7440-43-9	Cadmium & cadmium compounds
7440-48-4	Cobalt & cobalt compounds
25013-16-5	Butylated hydroxyanisole; BHA
25637-99-4	Hexabromocyclododecane
26761-40-0	Diisodecyl phthalate (DIDP)
28553-12-0	Diisononyl phthalate (DINP)