

WSR 11-10-028
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed April 27, 2011, 9:28 a.m., effective April 29, 2011]

Effective Date of Rule: April 29, 2011.

Purpose: The purpose of the new language in chapters 388-71, 388-112, 388-829A, and 388-829C WAC is to implement and clarify the training requirements and the criminal history background check requirements as directed in chapter 74.39A RCW. These rules were originally filed as an emergency CR-103 as WSR 11-02-033, effective January 1, 2011. This emergency rule filing will extend these emergency rules beyond April 28, 2011. Chapter 74.39A RCW requires training for long-term care workers which includes seventy-five hours of entry-level training and also requires federal and state criminal history background checks for all long-term care workers. This law increases the basic training hour requirements for long-term care workers from thirty-two hours to seventy-five hours and increases their continuing education hour requirement from ten to twelve hours annually.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-71-05665, 388-71-05670, 388-71-05675, 388-71-05680, 388-71-05685, 388-71-05690, 388-71-05695, 388-71-05700, 388-71-05705, 388-71-05710, 388-71-05715, 388-71-05720, 388-71-05725, 388-71-05730, 388-71-05735, 388-71-05740, 388-71-05745, 388-71-05750, 388-71-05755, 388-71-05760, 388-71-05765, 388-71-05770, 388-71-05775, 388-71-05780, 388-71-05785, 388-71-05790, 388-71-05795, 388-71-05799, 388-71-05805, 388-71-05810, 388-71-05815, 388-71-05820, 388-71-05825, 388-71-05830, 388-71-05832, 388-71-05835, 388-71-05840, 388-71-05845, 388-71-05850, 388-71-05855, 388-71-05860, 388-71-05865, 388-71-05870, 388-71-05875, 388-71-05880, 388-71-05885, 388-71-05890, 388-71-05895, 388-71-05899, 388-71-05905, 388-71-05909, 388-71-0801, 388-71-0806, 388-71-0811, 388-71-0816, 388-71-0821, 388-71-0826, 388-112-0025, 388-112-0030, 388-112-0050, 388-112-0060, 388-112-0065, 388-112-0080, 388-112-0085, 388-112-0090, 388-112-0095, 388-112-0100, 388-112-0105, 388-112-0245, 388-112-02610, 388-112-02615, 388-112-02620, 388-112-02625, 388-112-02630, and 388-112-0375; and amending WAC 388-71-0500, 388-71-0505, 388-71-0510, 388-71-0513, 388-71-0515, 388-71-0520, 388-71-0540, 388-71-0546, 388-71-0551, 388-71-0560, 388-112-0001, 388-112-0003, 388-112-0005, 388-112-0010, 388-112-0015, 388-112-0035, 388-112-0040, 388-112-0045, 388-112-0055, 388-112-0070, 388-112-0075, 388-112-0110, 388-112-0115, 388-112-0120, 388-112-0125, 388-112-0130, 388-112-0135, 388-112-0140, 388-112-0145, 388-112-0150, 388-112-0155, 388-112-0160, 388-112-0165, 388-112-0195, 388-112-0200, 388-112-0205, 388-112-0210, 388-112-0220, 388-112-0225, 388-112-0230, 388-112-0235, 388-112-0240, 388-112-0255, 388-112-0260, 388-112-0270, 388-112-0295, 388-112-0300, 388-112-0315, 388-112-0320, 388-112-0325, 388-112-0330, 388-112-0335, 388-112-0340, 388-112-0345, 388-112-0350, 388-112-0355, 388-112-0360, 388-112-0365, 388-112-0370, 388-112-0380,

388-112-0385, 388-112-0390, 388-112-0395, 388-112-0405, 388-112-0410, 388-829A-050, and 388-829C-040.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, Washington state 2009-11 budget (ESHB 1244, 206(5)).

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

Reasons for this Finding: Emergency adoption of these rules is necessary in order to comply with state law which requires implementation of these training rules by January 1, 2011. These rules were to be adopted by August 1, 2010. However, given the significant number of stakeholder comments received after the CR-102 hearing, the department needed to fully vet the additional comments and thus the rules could not be adopted by August 1, 2010. They were adopted as emergency rules in order to comply with the January 1, 2011, legislatively mandated date for implementation. This emergency rule filing will extend these emergency rules beyond April 28, 2011.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 83, Amended 67, Repealed 74.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 83, Amended 67, Repealed 74.

Date Adopted: April 15, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-71-0500 **What is the purpose of WAC 388-71-0500 through ((~~388-71-05952~~) [~~388-71-05909~~]) 388-71-0562 and 388-71-0836 through 388-71-1006?** ((A client/legal representative may choose an individual provider or a home care agency provider.)) The ((intent)) purpose of WAC 388-71-0500 through ((~~388-71-05952~~) [~~388-71-05909~~]) 388-71-0562 and WAC 388-71-0836 through 388-71-1006 is to describe the:

(1) Qualifications of an individual provider, as defined in WAC 388-106-0010;

(2) Qualifications of a long-term care worker employed by a home care agency ((provider)), as defined in WAC 388-106-0010 and chapter 246-336 WAC;

(3) Conditions under which the department or the area agency on aging (AAA) will pay for the services of an indi-

vidual provider or a home care agency (~~(provider)~~) long-term care worker;

(4) Training requirements for an individual provider and home care agency (~~(provider)~~) long-term care worker.

A client, as described in WAC 388-71-0836 eligible to receive long-term care services, or his/her legal representative on the client's behalf, may choose to receive personal care services in the client's home from an individual provider or a long-term care worker from a home care agency. If the client chooses to receive services from a home care agency, the agency will assign a long-term care worker employed by the agency to provide services to the client. Individual providers and home care agency long-term care workers are "long-term care workers" as defined in RCW 74.39A.009 and are subject to background checks under RCW 74.39A.055 and 43.20.710.

AMENDATORY SECTION (Amending WSR 01-11-019, filed 5/4/01, effective 6/4/01)

WAC 388-71-0505 How does a client hire an individual provider? The client, or legal representative:

(1) Has the primary responsibility for locating, screening, hiring, supervising, and terminating an individual provider;

(2) Establishes an employer/employee relationship with the individual provider; and

(3) May receive assistance from the social worker/case manager or other resources in this process.

AMENDATORY SECTION (Amending WSR 04-16-029, filed 7/26/04, effective 8/26/04)

WAC 388-71-0510 How does a person become an individual provider? In order to become an individual provider, a person must:

(1) Be eighteen years of age or older;

(2) Provide the social worker/case manager/designee with:

(a) A valid Washington state driver's license or other valid picture identification; and either

(b) A Social Security card; or

(c) Proof of authorization to work in the United States as required on the employment verification form.

(3) ~~((Complete and submit to the social worker/case manager/designee))~~ Prior to January 1, 2012, be screened through the department's ~~((criminal conviction))~~ background ~~((inquiry application, unless the provider is also the parent of the adult DDD client and exempted, per chapter 74.15 RCW;))~~ check process:

(a) Preliminary results may require a thumb print for identification purposes;

(b) ~~((An FBI))~~ A fingerprint-based background check is required if:

(i) The person has lived in the state of Washington less than three consecutive years immediately before the date of the background check; or

(ii) The department has reasonable cause to believe the person has a conviction, pending charges, and/or negative actions in another state.

(4) Effective January 1, 2012, be screened through the department's fingerprint-based background check, as required by RCW 74.39A.055. As provided in RCW 43.20A.710, results of the background check are provided to the department and employer for the purpose of determining:

(a) Whether the person is disqualified based on a disqualifying crime or negative action; or

(b) Whether the person should or should not be employed as an individual provider based on his or her character, competence, and/or suitability.

(c) Disqualifying crimes and negative actions are those listed in WAC 388-71-0540 (5) and (6).

(5) Sign a home and community-based service provider contract/agreement to provide services to a COPES, MNIW, PACE, WMIP, or medicaid personal care client, or sign a contract as an individual provider to provide services to a New Freedom waiver, WMIP, or PACE client under chapter 388-106 WAC.

NEW SECTION

WAC 388-71-0512 What is included in the department's fingerprint-based background check? The department's fingerprint-based background check includes a check of:

(1) Records contained in databases maintained by the Washington state patrol and the Federal Bureau of Investigation, including records of:

(a) Pending charges; and

(b) criminal conviction.

(2) Records maintained:

(a) In the national sex offenders registry;

(b) By the Washington state department of corrections;

(c) By Washington courts; and

(d) In the justice information system.

(3) Records of negative actions, final findings, or civil adjudication proceedings of any agency or subagency including, but not limited to:

(a) DSHS adult protective services;

(b) DSHS residential care services;

(c) DSHS children's protective services;

(d) The Washington state department of health;

(e) The nursing assistant registry; and

(f) Any pending charge, criminal conviction, civil adjudicative proceeding and/or negative action disclosed by the applicant.

(4) Any "civil adjudication proceeding", which is a judicial or administrative adjudicative proceeding that results in a finding of, or upholds any agency finding of, domestic violence, abuse, sexual abuse, exploitation, financial exploitation, neglect, abandonment, violation of a child or vulnerable adult under any provision of law, including but not limited to chapters 13.34, 26.44, or 74.34 RCW or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

(5) Negative actions which include the denial, suspension, revocation, or termination of a license, certification, or

contract for the care of children, as defined in RCW 26.44.020, or vulnerable adults, as defined in RCW 74.34.020, for noncompliance with any state or federal regulation.

(6) Except as prohibited by federal law, results are shared with the employer or prospective employer and with the department of health as authorized.

AMENDATORY SECTION (Amending WSR 01-11-019, filed 5/4/01, effective 6/4/01)

WAC 388-71-0513 Is a background check required of a long-term care worker employed by a home care agency ((provider))? In order to be a long-term care worker employed by a home care agency ((provider)), a person who works for a home care agency that has a contract with the department must ((complete)):

(1) Prior to January 1, 2012, be screened through the department's ((criminal conviction)) background ((inquiry application, which is submitted by the agency to the department. This includes an FBI fingerprint-based background check if the home care agency provider has lived in the state of Washington less than three years)) check process:

(a) Preliminary results may require a thumb print for identification purposes; and

(b) A fingerprint-based background check is required if the long-term care worker employed by a home care agency has lived in the state of Washington for less than three consecutive years immediately before the date of the background check.

(2) Effective January 1, 2012, be screened through the department's fingerprint-based background check, as required by RCW 74.39A.055. As provided by RCW 43.20A.710, results are provided to the department and home care agency for the purpose of determining:

(a) Whether the person is disqualified from being a home care agency long-term care worker based on a disqualifying crime, civil adjudication proceeding, or negative action as defined under WAC 388-71-0512; and

(b) Whether the person should or should not be employed as a home care agency long-term care worker based on his or her character, competence, and/or suitability. Except as prohibited by federal law, results are shared with the employer or prospective employer and the department of health for purposes of making this determination.

(3) Disqualifying crimes, civil adjudicative proceedings, and negative actions are listed in WAC 388-71-0540.

(4) Effective January 1, 2012, all home care agencies, including those that do not have a contract to provide in-home care services to department clients, must initiate the required background check upon the date of the long-term care worker's hire.

(5) The required background check on long-term care workers employed by home care agencies will be performed at department expense; home care agencies are not responsible for payment for the required background check.

NEW SECTION

WAC 388-71-0514 Can an individual provider or home care agency long-term care worker work pending the outcome of the fingerprint-based background check?

An individual provider or home care agency long-term care worker may work up to one hundred twenty days pending the outcome of the fingerprint-based background check provided that the person is not disqualified as a result of the department's background check.

AMENDATORY SECTION (Amending WSR 10-06-112, filed 3/3/10, effective 4/3/10)

WAC 388-71-0515 What are the responsibilities of an individual provider ((or home care agency provider)) when ((employed to provide)) providing care to a client? An individual provider ((or home care agency provider)) must:

(1) Understand the client's plan of care that is signed by the client or legal representative ((and social worker/case manager)), and which may be translated or interpreted, as necessary, for the client and the provider;

(2) Provide the services as outlined on the client's plan of care, as ((defined)) described in WAC 388-106-0010;

(3) Accommodate the client's individual preferences and ((differences)) unique needs in providing care;

(4) Contact the ((client's)) client, client's representative and case manager when there are changes ((which)) that affect the personal care and other tasks listed on the plan of care;

(5) Observe ((the client for)) and consult with the client or representative, regarding change(s) in health, take appropriate action, and respond to emergencies;

(6) Notify the case manager immediately when the client enters a hospital, or moves to another setting;

(7) Notify the case manager immediately ((#)) in the event of the ((client dies)) client's death;

(8) Notify the department or AAA immediately when unable to staff/serve the client; and

(9) Notify the department/AAA when the individual provider ((or home care agency)) will no longer provide services. ((Notification to the client/legal guardian)) The individual provider must:

(a) Give at least two weeks' notice, and

(b) ((Be)) Notify the client or legal guardian in writing.

(10) Complete and keep accurate time sheets that are accessible to the social worker/case manager; and

(11) Comply with all applicable laws and regulations.

((12) A home care agency must not bill the department for in-home medicaid-funded personal care or DDD respite services when the agency employee providing care is a family member of the client served, unless approved to do so through an exception to rule under WAC 388-440-0001. For purposes of this section, family member means related by blood, marriage, adoption, or registered domestic partnership.))

NEW SECTION

WAC 388-71-0516 What are the responsibilities of home care agency when providing care to a client? In providing care to a client, a home care agency must:

(1) Ensure that the assigned home care agency long-term care worker(s) understands the client's plan of care that is signed by the client or legal representative, and which may be

translated or interpreted, as necessary, for the client and the assigned home care agency long-term care worker(s);

(2) Provide services as outlined in a client's plan of care, as described in WAC 388-106-0010;

(3) Accommodate the client's individual preferences and unique needs in providing care;

(4) Contact the client, client's representative and case manager when there are changes observed by the assigned home care agency long-term care worker that affect the personal care and other tasks listed on the plan of care;

(5) Ensure that the assigned home care agency long-term care worker(s) observes the client for and consults with the client or representative, regarding change(s) in health, takes appropriate action, and responds to emergencies;

(6) Notify the case manager immediately when the client enters a hospital, or moves to another setting;

(7) Notify the case manager immediately in the event of the client's death;

(8) Notify the department or AAA immediately when unable to staff/serve the client;

(9) Notify the department/AAA when the home care agency will no longer provide services. The home care agency must:

(a) Give at least two weeks' notice; and

(b) Notify the client or legal guardian in writing.

(10) Complete and keep accurate time sheets that are accessible to the social worker/case manager; and

(11) Comply with all applicable laws and regulations.

NEW SECTION

WAC 388-71-0517 What are the responsibilities of a home care agency when the home care agency long-term care worker is a family member of the client and the client is receiving in-home medicaid-funded personal care or DDD respite services? A home care agency must not bill the department for in-home medicaid-funded personal care or DDD respite services when the agency employee providing care is a family member of the client served, unless approved to do so through an exception to rule under WAC 388-440-0001. For purposes of this section, family member means related by blood, marriage, adoption, or registered domestic partnership.

AMENDATORY SECTION (Amending WSR 09-03-066, filed 1/14/09, effective 2/14/09)

WAC 388-71-0520 ((Are there)) What are the training requirements for an individual provider or a home care agency ((provider of an adult client)) long-term care worker? An individual provider or a home care agency ((provider for an adult client)) long-term care worker must meet the training requirements ((in)) under WAC ((388-71-05665)) 388-71-0836 through ((388-71-05865 and WAC 388-71-0801 through 388-71-0826)) 388-71-1006.

AMENDATORY SECTION (Amending WSR 10-06-112, filed 3/3/10, effective 4/3/10)

WAC 388-71-0540 When will the department, AAA, or department designee deny payment for services of an

individual provider or home care agency ((provider)) long-term care worker? The department, AAA, or department designee will deny payment for the services of an individual provider or home care agency ((provider if)) long-term care worker:

(1) When the services are provided by ((an employee of the)) a home care agency ((who is)) employee that is a family member, as described under RCW 74.39A.326, of the client, including individuals related by blood, marriage, adoption, or registered domestic partnership to the ((client:

The department, AAA, or department designee will deny payment for the services of an individual provider or home care agency provider who:

((+)) client, except in circumstances described in RCW 74.39A.326 (1)(b):

(2) Who is the client's spouse((per)) in accordance with 42 C.F.R. 441.360(g), except in the case of an individual provider for a chore services client. Note: For chore spousal providers, the department pays a rate not to exceed the amount of a one-person standard for a ((continuing general assistance)) disability lifeline grant, per WAC 388-478-0030;

((=)) (3) Who is the natural/step/adoptive parent of a minor client aged seventeen or younger receiving services under medicaid personal care;

((=)) (4) Who is a foster parent providing personal care to a child residing in ((their)) the foster parent's licensed foster home;

((=)) Has been convicted of a disqualifying crime, under RCW 43.43.830 and 43.43.842 or of a crime relating to drugs as defined in RCW 43.43.830;))

(5) With any of the pending or disqualifying convictions, history, or findings, described below:

(a) A history of noncompliance with federal or state laws or regulations in the provision of care or services to children or vulnerable adults;

(b) A conviction for a crime in federal court or in any other state, and the department determines that the crime is equivalent to a crime under subsections (5)(c) through (g) of this section;

(c) A conviction for a "crime against children or other persons" as described under RCW 43.43.830, unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years has passed since conviction;

(d) A conviction for "crimes related to financial exploitation" as described under RCW 43.43.830, unless the crime is theft in the third degree and more than three years have passed since conviction, or unless the crime was forgery or theft in the second degree and more than five years have passed since conviction;

(e) Has been convicted of the manufacture, delivery, or possession with intent to manufacture or deliver drugs under one of the following laws:

(i) Violation of the imitation controlled substances act (VISCA);

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

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

or
(iv) Violation of the uniform precursor drug act (VUPDA).

(f) Has been convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;

(g) Has been convicted of criminal mistreatment;

(h) Has been found to have abused, neglected, abandoned, or financially exploited a minor or vulnerable adult by court of law or a disciplining authority, ((as defined in)) including the department of health. Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceedings under title 26 RCW, and vulnerable adult protection proceedings under chapter 74.34 RCW;

(i) Has a finding of abuse or neglect of a child, per RCW 26.44.020 and chapter 388-15 WAC that is:

(i) Listed on the department's background check central unit (BCCU) report; or

(ii) Disclosed by the individual, except for findings made before December, 1998. Findings made before December, 1998, require a character, competence and suitability determination.

(j) Has a finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult that is:

(i) Listed on any registry, including the department's registry;

(ii) Listed on the department's background check central unit (BCCU) report; or

(iii) Disclosed by the individual, except for adult protective services findings made before October, 2003. Findings made before October, 2003, require a character, competence, and suitability determination.

(6) Has had a ((license, certification, or a contract for the care of children or vulnerable adults denied, suspended, revoked, or terminated for noncompliance with state and/or federal regulations)) medicaid or medicare provider agreement or any other contract for the care and treatment of children or vulnerable adults terminated, cancelled, suspended, revoked, or not renewed by any public agency, including a state medicaid agency;

(7) Who does not successfully complete ((the)) applicable training requirements, within ((the time limits required in WAC 388-71-05665 through 388-71-05865;)) one hundred and twenty days of hire or the begin date of authorization or within the timeframes described in WAC 388-71-0875, 388-71-0880, 388-71-0890, and 388-71-0991. If an individual provider or long-term care worker employed by a home care agency does not complete required training within the required timeframe;

(a) If certification is not required as described in WAC 246-980-070, then the long-term care worker may not provide care until the training is completed.

(b) If home care aide certification is required, then the long-term care worker may not provide care until the certification has been granted.

(8) ((Is already meeting)) Who does not successfully complete the certification or recertification requirements as described under WAC 388-71-0975;

(9) Who has had a home care aide certification denied, suspended, or revoked and is not eligible to work until his or her certification has been reissued;

(10) When the client's needs are already being met on an informal basis, and the client's assessment or reassessment does not identify any unmet need; and/or

(((9))) (11) Who is terminated by the client (in the case of an individual provider) or by the home care agency (in the case of ((an)) a home care agency ((provider)) long-term care worker).

(12) In addition, the department, AAA, or department designee may deny payment to or terminate the contract of an individual provider as provided under WAC 388-71-0543, 388-71-0546, and 388-71-0551((, and 388-71-0556)).

NEW SECTION

WAC 388-71-0543 When may the department, AAA, or department designee deny payment for the services of an individual provider? The department, AAA, or department designee may deny payment for the services of an individual provider:

(1) Who has been convicted of:

(a) Simple assault, theft in third degree, assault in the fourth degree, or prostitution and more than three years has passed since conviction;

(b) Forgery or theft in the second degree and more than five years has passed since conviction;

(c) Any conviction that the department determines is reasonably related to the competency of the person to provide care to a client; or

(d) A crime involving a firearm used in commission of a felony or in any act of violence against a person.

(2) Has engaged in the illegal use of drugs, or excessive use of alcohol or drugs without the evidence of rehabilitation;

(3) Has committed an act of domestic violence toward a family or household member;

(4) Has been found in any final decision of a federal or state agency to have abandoned, neglected, abused or financially exploited a vulnerable adult, unless such decision requires a denial of payment under this chapter;

(5) Has had a license for the care of children or vulnerable adults denied, suspended, revoked, terminated, or not renewed;

(6) Has had any health care provider license, certification or contract denied, suspended, revoked, terminated, even though the license was later reinstated after satisfactory completion of conditions or other requirements. This provision also applies to a long-term care worker who voluntarily relinquished a license, certification or contract in lieu of revocation or termination;

(7) Has had any residential care facility or health care facility license, certification, contract denied, suspended, revoked, terminated, even though the license, certification or contract was later reinstated after satisfactory completion of conditions or other requirements. This provision also applies to a long-term care worker who voluntarily relinquished a license, certification or contract in lieu of revocation or termination;

(8) Has been enjoined from operating a facility for the care and services of children or adults;

(9) Has been the subject of a sanction or corrective or remedial action taken by federal, state, county, or municipal

officials or safety officials related to the care or treatment of children or vulnerable adults;

(10) Has obtained or attempted to obtain a license, certification or contract by fraudulent means or misrepresentation;

(11) Knowingly, or with reason to know, made a false statement of material fact on his or her application for a license, certification, contract or any data attached to the application, or in any matter involving the department;

(12) Willfully prevented or interfered with or failed to cooperate with any inspection, investigation, or monitoring visit made by the department, including refusal to permit authorized department representatives to interview clients or have access to their records.

NEW SECTION

WAC 388-71-0544 When may the department, AAA, or department designee deny payment to a home care agency for the services of a long-term care worker that it employs? The department, AAA, or department designee may deny payment to a home care agency for services provided to a department client by a home care agency long-term care worker that it employs:

(1) Who has been convicted of:

(a) Simple assault, theft in third degree, assault in the fourth degree, or prostitution and more than three years has passed since conviction;

(b) Forgery or theft in the second degree and more than five years has passed since conviction;

(c) Any conviction that the department determines is reasonably related to the competency of the person to provide care to a client; or

(d) A crime involving a firearm used in commission of a felony or in any act of violence against a person.

(2) Has engaged in the illegal use of drugs, or excessive use of alcohol or drugs without the evidence of rehabilitation;

(3) Has committed an act of domestic violence toward a family or household member;

(4) Has been found in any final decision of a federal or state agency to have abandoned, neglected, abused or financially exploited a vulnerable adult, unless such decision requires a denial of payment under this chapter;

(5) Has had a license for the care of children or vulnerable adults denied, suspended, revoked, terminated, or not renewed;

(6) Has had any health care provider license, certification or contract denied, suspended, revoked, terminated, even though the license was later reinstated after satisfactory completion of conditions or other requirements. This provision also applies to a long-term care worker who voluntarily relinquished a license, certification or contract in lieu of revocation or termination;

(7) Has had any residential care facility or health care facility license, certification, contract denied, suspended, revoked, terminated, even though the license, certification or contract was later reinstated after satisfactory completion of conditions or other requirements. This provision also applies to a long-term care worker who voluntarily relinquished a

license, certification or contract in lieu of revocation or termination;

(8) Has been enjoined from operating a facility for the care and services of children or adults;

(9) Has been the subject of a sanction or corrective or remedial action taken by federal, state, county, or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;

(10) Has obtained or attempted to obtain a license, certification or contract by fraudulent means or misrepresentation;

(11) Knowingly, or with reason to know, made a false statement of material fact on his or her application for a license, certification, contract or any data attached to the application, or in any matter involving the department;

(12) Willfully prevented or interfered with or failed to cooperate with any inspection, investigation, or monitoring visit made by the department, including refusal to permit authorized department representatives to interview clients or have access to their records.

AMENDATORY SECTION (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

WAC 388-71-0546 When can the department, AAA, or ~~((managed care entity))~~ department designee reject ~~((the client's))~~ your choice of an individual provider? The department, AAA, or ~~((managed care entity))~~ department designee may reject ~~((a client's))~~ your request to have a family member or other person serve as ~~((his or her))~~ your individual provider if the case manager has a reasonable, good faith belief that the person is or will be unable to appropriately meet ~~((the client's))~~ your needs. Examples of circumstances indicating an inability to meet ~~((the client's))~~ your needs ~~((could))~~ include, ~~((without limitation))~~ but are not limited to:

(1) Evidence of alcohol or drug abuse;

(2) A reported history of domestic violence committed by the individual provider, no-contact orders entered against the individual provider, or criminal conduct committed by the individual provider (whether or not the conduct is disqualifying under ~~((RCW 43.43.830 and 43.43.842))~~ WAC 388-71-0540);

(3) A report from ~~((the client's health care provider or other))~~ any knowledgeable person that the ~~((requested))~~ individual provider lacks the ability or willingness to provide adequate care;

(4) The individual provider has other employment or responsibilities that prevent or interfere with the provision of required services;

(5) Excessive commuting distance that would make it impractical for the individual provider to provide services as they are needed and outlined in ~~((the client's))~~ your service plan.

AMENDATORY SECTION (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

WAC 388-71-0551 When can the department, AAA, or ~~((managed care entity))~~ department designee terminate or summarily suspend an individual provider's con-

tract? The department, AAA, or ~~((managed care entity))~~ department designee may take action to terminate an individual provider's home and community-based service provider contract/agreement to provide services to a COPEs, MNIW, or medicaid personal care client, or terminate a contract to an individual provider to provide services to a New Freedom waiver, WMIP, or PACE client under chapter 388-106 WAC if the provider's:

(1) Home care aide certification has been revoked; or
 (2) Inadequate performance or inability to deliver quality care is jeopardizing the client's health, safety, or well-being.

(3) The department, AAA, or ~~((managed care entity))~~ department designee may summarily suspend the contract pending a hearing based on a reasonable, good faith belief that the client's health, safety, or well-being is in imminent jeopardy. Examples of circumstances indicating jeopardy to the client ~~((could))~~ include, ~~((without limitation))~~ but are not limited to:

~~((1))~~ (a) The individual provider has committed domestic violence or abuse, neglect, abandonment, or exploitation of a ~~((minor))~~ child, as defined in RCW 26.44.020 or a vulnerable adult, as defined in RCW 74.34.020;

~~((2))~~ ~~Using or being~~ (b) The individual provider uses or is under the influence of alcohol or illegal drugs during working hours;

~~((3))~~ (c) The individual provider engages in other behavior directed toward the client or other persons involved in the client's life that places the client at risk of harm;

~~((4))~~ (d) A report from the client's health care provider that the client's health is negatively affected by inadequate care being provided by the individual provider;

~~((5))~~ (e) A complaint from the client or client's representative that the client is not receiving adequate care from the individual provider;

~~((6))~~ (f) The ~~((absence of))~~ individual provider's failure to engage in essential interventions identified in the service plan, such as medications or medical supplies; and/or

~~((7))~~ (g) The individual provider's failure to respond appropriately to emergencies.

AMENDATORY SECTION (Amending WSR 01-11-019, filed 5/4/01, effective 6/4/01)

WAC 388-71-0560 What are the client's rights if the department denies, terminates, or summarily suspends an individual provider's contract? (1) If the department denies, terminates, or summarily suspends the individual provider's contract, the client has the right to:

~~((1))~~ ~~A fair~~ (a) An administrative hearing to appeal the decision, ~~((per))~~ under chapter 388-02 WAC, and

~~((2))~~ (b) Receive services from another currently contracted individual provider or home care agency ~~((provider))~~ long-term care worker, or ~~((other options))~~ to receive services through other programs the client is eligible for ~~((, if a contract is summarily suspended)).~~

~~((3))~~ (2) The hearing rights ~~((afforded))~~ provided under this section are those of the client, not the individual provider's rights.

NEW SECTION

WAC 388-71-0561 When does an individual provider have the right to an administrative hearing? (1) An individual provider has the right to an administrative hearing when the department denies payment to the individual provider because:

(a) He or she has not been certified by the department of health as a home care aide within the required timeframe; or

(b) If exempted from certification, he or she has not completed required training within the required timeframe.

(2) An individual provider has the right to an administrative hearing when the department terminates the individual provider's contract, or takes other enforcement measures against the individual provider because:

(a) He or she has not completed required training within the required timeframe.

(b) His or her certification as a home care aide has been revoked by the department of health.

(3) In an administrative hearing challenging DSHS action to deny payment to an individual provider or to terminate the contract of an individual provider, the individual provider may not challenge the action by the department of health affecting the individual provider's certification. Action by the department of health affecting the individual provider's certification must be challenged in a department of health hearing, as provided in department of health rules.

NEW SECTION

WAC 388-71-0562 When does a medicaid contracted home care agency have the right to an administrative hearing? (1) A medicaid contracted home care agency has the right to an administrative hearing when the department terminates its contract or takes other enforcement action related to its contract because the home care agency:

(a) Knowingly employs a long-term care worker who has not completed training within the required timeframe.

(b) Knowingly employs a long-term care worker who does not meet the certification requirements or whose certification has been revoked by the department of health.

(2) In an administrative hearing challenging DSHS action to terminate the contract or challenge some other enforcement against its contract, a medicaid contracted home care agency may not challenge the action by the department of health affecting the home care aide certification of a long-term care worker employed by the home care agency. Action by the department of health affecting the long-term care worker's certification must be challenged in a department of health hearing, as provided in department of health rules.

NEW SECTION

WAC 388-71-0836 What definitions apply to the long-term care worker training requirements? "Care team" includes the client and everyone involved in his or her care. The care team can include family, friends, doctors, nurses, long-term care workers, social workers and case managers. The role of the care team is to support the well-being of the client, however, the client directs the care plan.

"Certified home care aide" means a long-term care worker who has obtained and maintains a home care aide certification through the department of health.

"Challenge test" means a challenge test taken for specialty training, without first taking the class for which the test is designed and can only be used when basic training is not required.

"Client" means an individual receiving in-home services.

"Competency" defines the integrated knowledge, skills, or behavior expected of a long-term care worker after completing training in a required topic area. Learning objectives are associated with each competency.

"Competency testing" is evaluating a trainee to determine if he or she can demonstrate the required level of skill, knowledge, and/or behavior with respect to the identified learning objectives of a particular course. The department only requires competency testing for nurse delegation core and specialized diabetes training and the specialty trainings. Training programs may integrate competency testing within their approved curriculums.

"DDD" refers to the division of developmental disabilities.

"Department" or **"DSHS"** refers to the department of social and health services.

"Direct care worker" means a paid individual who provides direct, hands-on, personal care services to persons with disabilities or the elderly requiring long-term care.

"Functionally disabled person" or **"person who is functionally disabled"** is synonymous with chronic functionally disabled and means a person who because of a recognized chronic physical or mental condition or disease, or developmental disability, including chemical dependency, is impaired to the extent of being dependent upon others for direct care, support, supervision, or monitoring to perform activities of daily living. "Activities of daily living", in this context, means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, and transfer. Instrumental activities of daily living may also be used to assess a person's functional abilities as they are related to the mental capacity to perform activities in the home and the community such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

"Guardian" means an individual as defined in chapter 11.88 RCW.

"Individual provider" means a person who has contracted with the department to provide personal care or respite care services to persons with functional disabilities under medicaid personal care, community options program entry system (COPES), chore services, or respite care program, or to provide respite care or residential services and supports to person with developmental disabilities under chapter 71A.12 RCW or to provide respite care as defined in RCW 74.13.270.

"Learning objectives" are measurable, written statements that clearly describe what a long-term care worker must minimally learn to meet each competency. Learning objectives are identified for each competency. Learning objectives provide consistent, common language and a framework for curriculum designers, the curriculum approval

process, and testing. Curriculum developers have the flexibility to determine how learning objectives are met and may include additional content deemed necessary to best meet the competency in a particular setting.

"Long-term care worker" includes all persons providing paid, hands-on, personal care services for the elderly or persons with disabilities, including individual providers of home care services, direct care employees of home care agencies, providers of home care services to persons with developmental disabilities under Title 71 RCW, all direct care workers in state-licensed boarding homes, adult family homes, respite care providers, community residential service providers, and any other direct care staff providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities, and supported living providers.

The following persons are not long-term care workers:

(1) Persons who are:

(a) Providing personal care services to individuals who are not receiving state-funded services; and

(b) The person is not employed by an agency or facility that is licensed by the state.

(2) Persons employed by:

(a) Nursing homes licensed under chapter 18.51 RCW;

(b) Facilities certified under 42 CFR Part 483;

(c) Residential habilitation centers under chapter 71A.20 RCW;

(d) Hospitals or other acute care settings;

(e) Hospice agencies licensed under chapter 70.127 RCW;

(f) Adult day care centers or adult day health centers.

(3) Persons whose services are exclusively limited to assistance with "instrumental activities of daily living," as that term is defined in WAC 388-106-0010.

"Personal care services" means physical or verbal assistance with activities of daily living, or activities of daily living and instrumental activities of daily living which is, provided because a person is a functionally disabled person as defined in this chapter.

"Training entity" means an organization, including an independent contractor, who is providing or may provide training under this section using approved curriculum. Training entities may only deliver approved curriculum.

"Training partnership" means a joint partnership or trust that includes the office of the governor and the exclusive bargaining representative of individual providers under RCW 74.39A.270 with the capacity to provide training, peer mentoring, and workforce development, or other services to individual providers.

Reviser's note: The unnecessary underscoring 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.

ORIENTATION AND SAFETY TRAINING

NEW SECTION

WAC 388-71-0841 What is orientation? (1) Orientation is a training of two hours regarding the long-term care worker's role as long-term care workers and the applicable terms of employment.

- (2) The department must approve orientation curricula and instructors.
- (3) There is no challenge test for orientation.

NEW SECTION

WAC 388-71-0846 What content must be included in orientation? Orientation must include introductory information in the following areas:

- (1) The care setting and the characteristics and special needs of the population served or to be served;
- (2) Basic job responsibilities and performance expectations;
- (3) The care plan, including what it is and how to use it;
- (4) The care team;
- (5) Process, policies, and procedures for observation, documentation and reporting;
- (6) Client rights protected by law, including the right to confidentiality and the right to participate in care decisions or to refuse care and how the long-term care worker will protect and promote these rights;
- (7) Mandatory reporter law and worker responsibilities; and
- (8) Communication methods and techniques that can be used during the first weeks working with a client or guardian, and other care team members.

One hour of completed classroom instruction or other form of training (such as video or on-line course) equals one hour of training. The training entity must establish a way for the long-term care worker to ask the instructor questions.

NEW SECTION

WAC 388-71-0850 What is safety training? (1) Safety training is a training of three hours that includes basic safety precautions, emergency procedures, and infection control.

- (2) The department must approve safety training curricula and instructors.
- (3) There is no challenge test for safety training.

NEW SECTION

WAC 388-71-0855 What content must be included in safety training? Safety training consists of introductory information in the following areas:

- (1) Safety planning and accident prevention, including but not limited to:
- (a) Proper body mechanics;
 - (b) Fall prevention;
 - (c) Fire safety;
 - (d) In-home hazards;
 - (e) Long-term care worker safety; and
 - (f) Emergency and disaster preparedness.
- (2) Standard precautions and infection control, including but not limited to:
- (a) Proper hand washing;
 - (b) When to wear gloves and how to correctly put them on and take them off;
 - (c) Basic methods to stop the spread of infection;
 - (d) Protection from exposure to blood and other body fluids;

- (e) Appropriate disposal of contaminated/hazardous articles;
- (f) Reporting exposure to contaminated articles; and
- (g) What to do when sick or injured, including whom to report this to.

(3) Basic emergency procedures, including but not limited to:

- (a) Evacuation preparedness;
- (b) When and where to call for help in an emergency;
- (c) What to do when a client is falling or falls;
- (d) Location of any advanced directives and when they are given; and
- (e) Basic fire emergency procedures.

One hour of completed classroom instruction or other form of training (such as video or on-line course) equals one hour of training. The training entity must establish a way for the long-term care worker to ask the instructor questions.

NEW SECTION

WAC 388-71-0860 Who must complete orientation and safety training and by when? Unless exempted in WAC 388-71-0901, or the long-term care worker is a parent provider as described in WAC 388-71-0890, all long-term care workers must complete orientation and safety training prior to providing care to a client.

BASIC TRAINING

NEW SECTION

WAC 388-71-0870 What is basic training? (1) Basic training is seventy hours of training that includes:

- (a) Core competencies; and
 - (b) Population specific competencies.
- (2) All basic training curriculum must be approved by the department and include qualified instructors.

(3) The DSHS developed revised fundamentals of care-giving (RFOC) learner's guide may be used to teach core basic training but it must include enhancements which must be approved by the department. With the increase in training hours, more time must be allotted for skills practice and additional training materials and/or classroom activities that help a worker to thoroughly learn the course content and skills. This must be approved per WAC 388-71-1026.

(4) One hour of completed classroom instruction or other form of training (such as a video or on-line course) equals one hour of training.

(5) The training entity must establish a way for the long-term care worker to ask the instructor questions.

(6) There is no challenge test for basic training.

NEW SECTION

WAC 388-71-0875 Who must complete basic training and by when? Unless exempt from training in WAC 388-71-0901, all long-term care workers must complete core and population specific competencies within one hundred twenty days of:

- (1) The date of hire for home care agency long-term care workers; or

(2) From the begin date of the authorization to provide department-paid in-home services for a client for individual providers.

NEW SECTION

WAC 388-71-0880 Who must take the thirty hour training instead of the seventy hour basic training and when must it be completed? The thirty hour basic training, as described in WAC 388-71-0885, must be completed within one hundred twenty days from the begin date of the authorization to provide department paid, in-home services by:

- (1) An individual provider caring only for his or her biological, step, or adoptive child or parent; and
- (2) Until January 1, 2014, an individual provider who:
 - (a) Provides care to only one person; and
 - (b) Provides no more than twenty hours of care in any calendar month.

NEW SECTION

WAC 388-71-0885 What is the thirty hour training? The thirty hour training is a subset of the seventy hour basic training that must include core and population specific basic training. Topics completed in the subset must be on topics relevant to the care needs of the client(s). There is no challenge test for the thirty hour training.

NEW SECTION

WAC 388-71-0890 What are the training requirements for parent providers who are individual providers for their adult children through DDD? A natural, step, or adoptive parent who is the individual provider for his or her adult child receiving services through the DSHS division of developmental disabilities must complete the twelve hour parent provider training, as described in WAC 388-71-0895, within one hundred twenty days from the begin date of the authorization to provide department paid, in-home services.

NEW SECTION

WAC 388-71-0895 What is the twelve hour parent provider training? (1) The twelve hour parent provider training must include the following topics:

- (a) Medicaid personal care;
 - (b) Assessments completed by the division of developmental disabilities;
 - (c) Community resources;
 - (d) State and federal benefits;
 - (f) Networking; and
 - (g) Client self-determination.
- (2) There is no challenge test for this training.

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 388-71-0901 What long-term care workers are exempt from the basic training requirement? The follow-

ing long-term care workers are exempt from the basic training requirement:

(1) A person employed as a long-term care worker on December 31, 2010, who completed prior to January 1, 2011, the basic training requirements in effect on the date of his or her hire;

(2) A person employed as a long-term care worker on December 31, 2010, who completes within one hundred twenty days of hire, the basic training requirements in effect on the date of his or her hire;

(3) A person previously employed as a long-term care worker prior to December 31, 2010, who completed prior to January 1, 2011, the basic training requirements in effect on the date of his or her hire, and was employed as a long-term care worker at some point during the calendar year 2010;

(4) Registered nurses, licensed practical nurses, nurse technicians, or advanced registered nurse practitioner under chapter 18.79 RCW;

(5) Nursing assistants-certified under chapter 18.88A RCW;

(6) Certified counselors under chapter 18.19 RCW;

(7) Speech language pathologists or audiologists under chapter 18.35 RCW;

(8) Occupational therapists under chapter 18.59 RCW;

(9) Physical therapists under chapter 18.74 RCW;

(10) A home health aide who is employed by a medicare-certified home health agency and has met the requirements of 42 CFR, Part 483.35;

(11) An individual with special education training and an endorsement granted by the superintendent of public instruction as described in RCW 28A.300.010;

(12) Parent providers as described in WAC 388-71-0890;

(13) Providers described in WAC 388-71-0880; and

(14) Until January 1, 2014, an individual provider who:

(a) Provides care to only one person; and

(b) Provides no more than twenty hours of care in any calendar month.

NEW SECTION

WAC 388-71-0906 What topics must be taught in the core competencies of basic training? Basic training must include all of the competencies under WAC 388-71-0911 for the following topics:

- (1) Communication skills;
- (2) Long-term care worker self-care;
- (3) Problem solving;
- (4) Client rights and maintaining dignity;
- (5) Abuse, abandonment, neglect, financial exploitation and mandatory reporting;
- (6) Client directed care;
- (7) Cultural sensitivity;
- (8) Body mechanics;
- (9) Fall prevention;
- (10) Skin and body care;
- (11) Long-term care worker roles and boundaries;
- (12) Supporting activities of daily living;
- (13) Food preparation and handling;
- (14) Medication assistance;

- (15) Infection control, blood-borne pathogens, HIV/AIDS; and
- (16) Grief and loss.

NEW SECTION

WAC 388-71-0911 What are the competencies and learning objectives for the core competencies of basic training? The core competencies describe the behavior and skills that a long-term care worker should exhibit when working with clients. Learning objectives are associated with each competency.

(1) Regarding communication, communicate effectively and in a respectful and appropriate manner with clients, family members, and care team members:

- (a) Recognize how verbal and nonverbal cues impact communication with the client and care team;
- (b) Engage and respect the client through verbal and nonverbal communication;
- (c) Listen attentively and determine that the client understands what has been communicated;
- (d) Recognize and acknowledge clients' communication including indicators of pain, confusion, or misunderstanding;
- (e) Utilize communication strategies to deal with difficult situations; and
- (f) Recognize common barriers to effective communication and identify how to eliminate them.

(2) Regarding long-term care worker self-care, take appropriate action to reduce stress and avoid burnout:

- (a) Identify behaviors, practices and resources to reduce stress and avoid burnout;
- (b) Recognize common barriers to self-care and ways to overcome them; and
- (c) Recognize aspects of a long-term care worker's job that can lead to stress and burnout, common signs and symptoms of stress and burnout; and the importance of taking action to practice self-care to avoid burnout.

(3) Regarding the competency of effective problem solving, use effective problem solving skills:

- (a) Explain why it is necessary to understand and utilize a problem solving method;
- (b) Implement a problem solving process/method; and
- (c) Identify obstacles to effective problem solving and ways to overcome them.

(4) Regarding the competency of client rights and dignity, take appropriate action to promote and protect a client's legal and human rights as protected by federal and Washington state laws including:

- (a) Protect a client's confidentiality, including what is considered confidential information, to whom a long-term care worker is allowed or not allowed to give confidential information, and how to respond if a noncare team member asks for confidential information;
- (b) Promote dignity, privacy, encourage, and support a client's maximum independence when providing care; and
- (c) Maintain a restraint-free environment, including physical, chemical, and environmental restraints. Use common, safe alternatives to restraint use;
- (d) Protect and promote the client's right to live free of abuse, neglect, abandonment, and financial exploitation.

(5) Regarding the competency of abuse and mandatory reporting, recognize the signs of abuse and report suspected abuse, abandonment, neglect, and financial exploitation:

(a) Describe long-term care workers' responsibilities as a mandatory reporter as defined in RCW 74.34.020 through 74.34.053; and

(b) Identify common signs and symptoms of abuse, abandonment, neglect, and financial exploitation.

(6) Regarding the competency of client directed care, take appropriate action when following a client's direction regarding his or her care:

(a) Describe a worker's role in client directed care including determining, understanding, and supporting a client's choices;

(b) Describe the importance and impact of client directed care on a client's independence, self-determination, and quality of life;

(c) Identify effective problem solving strategies that help balance a client's choice with personal safety; and

(d) Report concerns when a client refuses care or makes choices that present a possible safety concern.

(7) Regarding the competency of cultural sensitivity, provide culturally appropriate care:

(a) Describe how cultural background, lifestyle practices, and traditions can impact care and use methods to determine and ensure that these are respected and considered when providing care.

(8) Regarding the competency of body mechanics, utilize current best practices and evidence-based methods of proper body mechanics while performing tasks as outlined in the care plan.

(9) Regarding the competency on fall prevention, prevent or reduce the risk of falls:

(a) Identify fall risk factors and take action to reduce fall risks for a client; and

(b) Take proper steps to assist when a client is falling or has fallen.

(10) Regarding the competency of skin and body care, use personal care practices that promote and maintain skin integrity:

(a) Explain the importance of observing a client's skin, when to observe it and what to look for including common signs and symptoms of skin breakdown;

(b) Identify risk factors of skin breakdown;

(c) Observe skin at pressure point locations and report any concerns;

(d) Describe what a pressure ulcer is, what it looks like, and what actions to take if a client develops a pressure ulcer;

(e) Describe current best practices that protect and maintain a client's skin integrity including position changes when sitting or lying for extended periods and proper positioning and transfer techniques;

(f) Implement current best practices that promote healthy skin including hygiene, nutrition, hydration, and mobility; and

(g) Identify when to report skin changes and to whom.

(11) Regarding the competency on long-term care worker roles and boundaries, adhere to basic job standards, expectations, and requirements and maintain professional boundaries:

(a) Identify when, how, and why to obtain information from appropriate sources about a client's condition or disease for which they are receiving services. Describe how to use this information to provide appropriate, individualized care;

(b) Describe a client's baseline based on information provided in the care plan and explain why it is important to know a client's baseline;

(c) Identify changes in a client's physical, mental, and emotional state;

(d) Report changes from baseline and/or concerns to the appropriate care team member(s);

(e) Identify basic job standards and requirements (e.g. coming to work on time) and describe how maintaining these standards are critical to a client's safety and well-being;

(f) Explain the purpose of a care plan and describe how it is created, used and modified;

(g) Use a client's care plan to direct a worker's job tasks and any client directed care tasks;

(h) Identify what is required of a long-term care worker, as described in WAC 388-71-0946, prior to performing a nurse-delegated task;

(i) Describe the role of a care team and a long-term care worker's role in it;

(j) Describe professional boundaries and the importance of maintaining them; and

(k) Identify signs of unhealthy professional boundaries, barriers to keeping clear professional boundaries, and ways to avoid or eliminate them.

(12) Regarding the competency on supporting activities of daily living, perform required personal care tasks to the level of assistance needed and according to current best practices and evidence-based guidelines:

(a) Demonstrate, in the presence of a qualified instructor, all critical steps required for personal care tasks including but not limited to:

- (i) Helping an individual walk;
- (ii) Transferring an individual from bed to wheelchair;
- (iii) Turning and repositioning an individual in bed;
- (iv) Providing mouth care;
- (v) Cleaning and storing dentures;
- (vi) Shaving a face;
- (vii) Providing fingernail care;
- (viii) Providing foot care;
- (ix) Providing a bed bath;
- (x) Assisting an individual with a weak arm to dress;
- (xi) Putting knee-high elastic stockings on an individual;
- (xii) Providing passive range of motion for one shoulder;
- (xiii) Providing passive range of motion for one knee and ankle;
- (xiv) Assisting an individual to eat;
- (xv) Assisting with peri-care;
- (xvi) Assisting with the use of a bedpan;
- (xvii) Assisting with catheter care;
- (xviii) Assisting with condom catheter care; and
- (xix) Providing medication assistance.

(b) In the process of performing the personal care tasks, use proper body mechanics, listen attentively, speak clearly and respectfully while explaining what the long-term care worker is doing, incorporate client preferences, maintain pri-

vacy and dignity, support the client's level of ability, and assure their comfort and safety;

(c) Appropriately utilize assistive device(s) specified in the care plan;

(d) Describe any safety concerns related to each task and how to address the concerns;

(e) Demonstrate an understanding of bowel and bladder functioning, including factors that promote healthy bowel and bladder functioning, and the signs, symptoms, and common causes of abnormal bowel and bladder function; and

(f) Identify the importance of knowing a client's bowel and bladder functioning baseline and when to report changes.

(13) Regarding the competency on food preparation and handling, plan and prepare meals using a basic knowledge of nutrition and hydration, incorporating any diet restrictions or modifications, and prevent food borne illness by preparing and handling food in a safe manner:

(a) Describe how nutrition and hydration can impact a client's health;

(b) Plan, shop, and prepare meals for a client according to the guidelines of good nutrition and hydration, incorporating any dietary requirements and restrictions per the care plan and client preferences;

(c) Describe common signs of poor nutrition and hydration, and when to report concerns and to whom;

(d) Understand that diet modification is required for certain health conditions, including dysphagia, and describe how to identify diet modifications required for a client;

(e) Recognize when a client's food choices vary from specifications on the care plan, describe when and to whom to report concerns;

(f) Describe what causes food borne illness, the risks associated with food borne illness and examples of potentially hazardous foods;

(g) Describe appropriate food handling practices, including: avoiding cross contamination from one food to another, safe storage requirements for cooling of leftover foods, including depth, types of containers, and temperatures, the need to maintain food at proper temperatures to limit bacterial growth and what are the safe food storage and holding temperatures for both cold and hot foods, best practices for thawing and re-heating food, and using clean gloves (if possible), and clean utensils when preparing food;

(h) Describe the importance and correct procedure for cleaning and disinfecting food contact surfaces; and

(i) Describe why a long-term care worker with certain types of illnesses and/or symptoms must not prepare food.

Long-term care workers who complete DSHS approved basic training meet the training requirements for adult family homes in RCW 70.128.250.

(14) Regarding the competency of medication assistance, appropriately assist with medications:

(a) Identify what a long-term care worker is allowed and not allowed to do when assisting with medications as described in chapter 246-888 WAC;

(b) Define terms related to medication assistance including prescription drugs, over the counter medications, and as needed (PRN) medications, medication side effects, and drug interactions;

(c) Identify common symptoms of medication side effects and when and to whom to report concerns;

(d) Store medications according to safe practices and the label instructions;

(e) Describe, in the proper sequence, each of the five rights of medication assistance; and

(f) Identify what to do for medication-related concerns, including describing ways to work with a client who refuses to take medications, identifying when and to whom to report when a client refuses medication or there are other medication-related concerns, and identifying what is considered a medication error and when and to whom it must be reported.

(15) Regarding the competency of infection control and blood borne pathogens including HIV/AIDS, implement best practices to prevent and control the spread of infections:

(a) Identify commonly occurring infections, ways that infections are spread, and symptoms of infections;

(b) Describe the purpose, benefit and proper implementation of standard precautions in infection control;

(c) Implement current best practices for controlling the spread of infection, including the use of hand washing and gloves;

(d) Demonstrate proper hand washing and putting on and taking off gloves;

(e) Identify immunizations that are recommended for adults to reduce the spread of virus and bacteria;

(f) Describe laundry and housekeeping measures that help in controlling the spread of infection;

(g) Describe proper use of cleaning agents that destroy micro-organisms on surfaces;

(h) Describe what blood-borne (BB) pathogens are and how they are transmitted;

(i) Identify the major BB pathogens, diseases, and high-risk behaviors for BB diseases;

(j) Identify measures to take to prevent BB diseases;

(k) Describe what to do if exposed to BB pathogens and how to report an exposure;

(l) Describe how HIV works in the body;

(m) Explain that testing and counseling for HIV/AIDS is available;

(n) Describe the common symptoms of HIV/AIDS;

(o) Explain the legal and ethical issues related to HIV including required reporting, confidentiality and nondiscrimination; and

(p) Explain the importance of emotional issues and support for clients and long-term care workers.

Long-term care workers who complete DSHS-approved basic training meet the four hours of AIDS education as required by the department of health in WAC 246-980-040.

(16) Regarding the competency on grief and loss, support yourself and the client in the grieving process:

(a) Define grief and loss;

(b) Describe common losses a client and long-term care worker may experience;

(c) Identify common symptoms associated with grief and loss;

(d) Describe why self-care is important during the grieving process; and

(e) Identify beneficial ways and resources to work through feelings of grief and loss.

NEW SECTION

WAC 388-71-0916 What topics may be taught in the population specific competencies of basic training? Population specific training may include but is not limited to one or more of the following topics. Which topic(s) to include in population specific training is based on the needs of the population(s) served or to be served.

(1) Dementia;

(2) Mental health;

(3) Developmental disabilities;

(4) Young adults with physical disabilities; and

(5) Aging and older adults.

NEW SECTION

WAC 388-71-0921 What are the population specific competencies? There are no DSHS mandatory competencies or learning objectives for population specific training. The training entity developing the training determines the competencies and learning objectives that best meet the care needs of the population(s) served.

Competencies and learning objectives described for developmental disability specialty training in WAC 388-112-0122, dementia specialty training in WAC 388-112-0132, mental health specialty training in WAC 388-112-0142, aging and older adults in WAC 388-112-0091 and young adults with physical disabilities in WAC 388-112-0083 may be used to develop the population specific training in these topic areas. This is not a requirement.

Competencies and learning objectives used to develop the training must be submitted with the curricula when sent to DSHS for approval as described in WAC 388-71-1026.

NEW SECTION

WAC 388-71-0931 What other methods of training may count towards the seventy hour basic training requirement? On-the-job training provided after July 1, 2011 may count towards the seventy hour basic training requirement.

NEW SECTION

WAC 388-71-0932 What is on-the-job training? (1) Effective July 1, 2011, on the job training is a method of training when the long-term care worker successfully demonstrates any or all of the personal care or infection control skills included in the core basic training while working with a client versus in a practice training setting.

(2) On-the-job training is provided by a qualified instructor as described in WAC 388-71-1055, who directly observes, coaches, and reinforces skills training for up to two long-term care workers at a time. The instructor providing the on-the-job training:

(a) Does not have to be the instructor who has taught the core competency training;

(b) Cannot be someone whose primary job duty is providing direct care to clients; or

(c) Cannot be the immediate supervisor of the long-term care worker receiving the on-the-job training.

(3) The person overseeing on-the-job training must:

(a) Submit DSHS required forms and become an approved instructor for the core competency of basic training; and

(b) Verify on a DSHS approved skills checklist the long-term care worker's successful completion of the demonstrated skills.

(4) For the person receiving on-the-job training, the hours spent in on the job training may count for up to twelve hours toward the completion of basic training requirements. It is not a requirement to include on-the-job training hours in the basic training hours.

NURSE DELEGATION CORE AND SPECIALIZED DIABETES TRAINING

NEW SECTION

WAC 388-71-0936 What is nurse delegation core training? (1) Nurse delegation core training is the required course a nursing assistant, certified or registered, must successfully complete before being delegated a nursing task.

(2) Only the curriculum developed by DSHS, "Nurse Delegation for Nursing Assistants" meets the training requirement for nurse delegation core training.

(3) DSHS must approve the instructors for nurse delegation core training prior to an instructor offering a course.

NEW SECTION

WAC 388-71-0941 What is specialized diabetes nurse delegation training? (1) Specialized diabetes nurse delegation training is the required course for nursing assistants, certified or registered, who will be delegated the task of insulin injections.

(2) The specialized diabetes nurse delegation training consists of three modules which are diabetes, insulin, and injections.

(3) Only the curriculum developed by DSHS, "Nurse Delegation for Nursing Assistants: Special Focus on Diabetes" may be used for the specialized diabetes nurse delegation training.

(4) DSHS approves the instructors for the specialized diabetes nurse delegation training prior to an instructor offering a course.

NEW SECTION

WAC 388-71-0946 Who is required to complete the nurse delegation core training, and when? Before performing any delegated task, a long-term care worker must:

(1) Be a:

(a) Certified home care aide and nursing assistant registered; or

(b) Nursing assistant certified under chapter 18.88A RCW; or

(c) If exempt from the home care aide certification, become a nursing assistant registered and complete the basic training core competencies.

(2) Successfully complete "Nurse Delegation for Nursing Assistants" training.

NEW SECTION

WAC 388-71-0951 Who is required to complete the specialized diabetes nurse delegation training, and when?

Specialized diabetes nurse delegation training is required before a nursing assistant, certified or registered, who meets the qualifications in WAC 388-71-0946 may be delegated the task of insulin injections.

NEW SECTION

WAC 388-71-0953 Can nurse delegation core and specialized diabetes training occur in the same year as basic training?

Nurse delegation core and specialized diabetes training can occur in the same year as basic training if required to be able to perform delegated tasks. If this occurs, the maximum of twelve hours for this training can be applied towards the continuing education requirement for the following year. Nurse delegation core and specialized diabetes trainings do not apply towards basic training.

NEW SECTION

WAC 388-71-0956 Is competency testing required for the nurse delegation core training and specialized diabetes training?

Passing the DSHS competency test is required for successful completion of nurse delegation core training and specialized diabetes training, as provided in WAC 388-71-1106 through 388-71-1130.

ON-THE-JOB TRAINING

NEW SECTION

WAC 388-71-0970 What documentation is required for completion of each training?

Orientation, safety, basic training, including core and population specific, the thirty hour training, the twelve hour parent provider training, on-the-job training, continuing education, and nurse delegation core and specialized diabetes training, must be documented by a certificate(s) or transcript of completion of training issued by a qualified instructor or qualified training entity that includes:

(1) The name of the trainee;

(2) The name of the training;

(3) The number of hours of the training;

(4) The name and/or identification number of the training entity. The training entity's identification number for basic core training is provided by the department and is issued by the department of health's contractor for the home care aide certification test;

(5) The instructor's name. For basic core training, the instructor's name and identification number. The instructor's identification number of basic core training is provided by the department and is issued by the department of health's contractor for the home care aide certification test;

(6) The instructor's signature or an authorized signature from the training entity the qualified instructor is training on behalf of; and

(7) The completion date of the training.

The long-term care worker must retain the original certificate or transcript for proof of completion of the training. A home care agency must keep a copy of the certificate or transcript on file.

NEW SECTION

WAC 388-71-0973 What documentation is required for a long-term care worker to apply for the home care aide certification or recertification? (1) Successful completion of seventy-five hours of training must be documented on a DSHS seventy-five hour training certificate by an approved training entity who has provided or verified that a total of seventy-five hours of training has occurred.

(2) An approved training entity issuing and signing a DSHS seventy-five hour training certificate must verify that the long-term care worker has the certificates or transcript required documenting two hours of DSHS-approved orientation, three hours of DSHS-approved safety training, and seventy hours of DSHS-approved basic training, as described in this chapter. Only a DSHS or training partnership seventy-five hour training certificate can be submitted by a long-term care worker applying to the department of health for a home care aide certification.

(3) For home care aide recertification, successful completion of twelve hours of DSHS-approved continuing education training must be documented on a DSHS certificate issued by an approved training entity who has provided all twelve hours of continuing education training. If all twelve hours of continuing education were not provided by the same training entity, then an approved training entity must verify that the certified home care aide has certificates or transcripts that add up to twelve hours of DSHS-approved continuing education. Only a DSHS or training partnership twelve-hour continuing education certificate can be submitted by a certified home care aide applying to the department of health for recertification.

(4) The long-term care worker and certified home care aide must retain the original seventy-five hour training certificate and any twelve-hour continuing education training certificates as long as they are employed and up to three years after termination of employment. Training entities must keep a copy of these certificates on file for six years.

HOME CARE AIDE CERTIFICATION

NEW SECTION

WAC 388-71-0975 Who is required to obtain certification as a home care aide, and when? All long-term care workers, who do not fall within the exemptions under the department of health WAC 246-980-070, must obtain certification within one hundred and fifty days of hire or begin date of the authorization to provide department paid in-home services effective January 1, 2011.

NEW SECTION

WAC 388-71-0980 Can a home care agency employ a long-term care worker who has not completed the training and/or certification requirements? A home care

agency cannot employ an individual to work as a long-term care worker if the individual has previously worked as a long-term care worker and has not completed applicable training and/or certification requirements within the required timeframe. Such individual may be employed by a home care agency to work as a long-term care worker only after applicable training and/or certification requirements are met. The department is authorized by RCW 74.39A.085 to take enforcement action for noncompliance related to training and/or certification requirements.

CONTINUING EDUCATION

NEW SECTION

WAC 388-71-0985 What is continuing education? Continuing education is additional caregiving-related training designed to keep current a person's knowledge and skills. DSHS must approve continuing education curricula and instructors. The same continuing education course may not be repeated for credit unless it is a new or more advanced training on the same topic. Nurse delegation core and nurse delegation specialized diabetes training may be used to count towards continuing education.

NEW SECTION

WAC 388-71-0990 How many hours of continuing education are required each year? (1) Until June 30, 2011, individual providers and home care agency long-term care workers must complete ten hours of continuing education each calendar year after the year in which they complete basic training. If the ten hours of continuing education were completed between January 1, 2011 and June 30, 2011, then the continuing education requirements have been met for 2011.

(2) Effective July 1, 2011, certified home care aides must complete twelve hours of continuing education each calendar year after obtaining certification as described in department of health WAC 246-980-110 and 246-112-020(3).

(3) If exempt from certification as described in RCW 18.88B.040, all long-term care workers must complete twelve hours of continuing education per calendar year unless exempt from continuing education as described in WAC 388-71-1001.

(4) A long-term care worker or certified home care aide who did not complete the continuing education requirements by the timeframe described in WAC 388-71-0991 cannot be paid to provide care after that date and cannot be reinstated as a long-term care worker until they complete the continuing education requirements.

(5) One hour of completed classroom instruction or other form of training (such as a video or on-line course) equals one hour of continuing education. The training entity must establish a way for the long-term care worker to ask the instructor questions.

NEW SECTION

WAC 388-71-0991 When must a long-term care worker or certified home care aide complete continuing

education? (1) Effective January 1, 2011 and for the year 2011, a long-term care worker must complete the continuing education requirements described in WAC 388-71-0990 by their birthday:

(a) A long-term care worker whose birthday occurs between January 1, 2011 and June 30, 2011, must complete the continuing education requirement by June 30, 2011.

(b) A long-term care worker whose birthday occurs on or after July 1, 2011, must complete the continuing education requirement by their birthday.

(2) Effective January 1, 2012, all long-term care workers and certified home care aides must complete the continuing education requirements described in WAC 388-71-0990 by their birthday.

(3) For long term care workers who are required to be certified, if the first renewal period is less than a full year from the date of certification, no continuing education will be due for the first renewal period.

NEW SECTION

WAC 388-71-1001 What long-term care workers are exempt from the continuing education requirement? Unless voluntarily certified as a home care aide, continuing education is not required for:

(1) Individual providers caring only for his or her biological, step, or adoptive son or daughter; and

(2) Before June 30, 2014, an individual provider who:

(a) Provides care to only one person; and

(b) Provides no more than twenty hours of care in any calendar month.

NEW SECTION

WAC 388-71-1006 What kinds of training topics may be covered in continuing education? Continuing education must be on a topic relevant to the care setting, care needs of clients, or long-term care worker career development. Topics may include but are not limited to:

- (1) Client rights;
- (2) Personal care services;
- (3) Mental illness;
- (4) Dementia;
- (5) Developmental disabilities;
- (6) Depression;
- (7) Medication assistance;
- (8) Communication skills;
- (9) Positive client behavior support;
- (10) Developing or improving client-centered activities;
- (11) Dealing with wandering;
- (12) Dealing with challenging client behaviors;
- (13) Medical conditions; and
- (14) Nurse delegation core and specialized diabetes.

CURRICULUM APPROVAL

NEW SECTION

WAC 388-71-1021 What trainings must be taught with a curriculum approved by DSHS? (1) Orientation, safety, on-the-job, basic training (core and population spe-

cific training), the thirty hour basic training, the twelve hour parent provider training, and continuing education must be taught with a curriculum approved by DSHS before use.

(2) The nurse delegation core and diabetes training must use only the DSHS curriculum.

NEW SECTION

WAC 388-71-1026 What must be submitted to DSHS for curriculum approval? DSHS developed curriculum(s) do not require submission to the department for approval unless the curriculum is being modified in any manner by the training entity.

(1) For orientation and/or safety training:

(a) Effective January 1, 2011, submit an outline of what will be covered in each training offered (for example, a table of contents or a class syllabus) showing that the required introductory topics as listed in WAC 388-71-0846 for orientation and WAC 388-71-0855 for safety training are covered in the training. Department required orientation and safety training application forms must be submitted to the department at least forty-five days in advance of when the training is expected to be offered. Training cannot be offered before receiving department curriculum and instructor approval.

(2) For continuing education:

(a) Effective July 1, 2011, submit an outline of what will be covered in the training (for example, a table of contents or the class syllabus), the number of training hours, and a description of how the training is relevant to the care setting, care needs of the client, or long-term care worker career development. Department required continuing education training application forms must be submitted at least forty-five days in advance of when the training is expected to be offered. The trainings cannot be offered before receiving department curriculum and instructor approval.

(3) For basic training, the thirty hour basic training, and the twelve hour parent provider training:

(a) If the instructor or training entity wants to use the DSHS developed revised fundamentals of caregiving learner's guide with enhancements, submit the DSHS required form with all required information. The following must be submitted to DSHS for approval of the seventy hours required for basic training, for the thirty hour basic training, and the twelve hour parent provider training. Curricula must be submitted to DSHS for approval of one or both sections (core competencies and population specific competencies) of the seventy hours required for basic training, for the thirty hour basic training, and for the twelve hour parent provider training. When submitting one or both sections of the basic training curriculum for DSHS approval, it must at a minimum include:

(i) A completed DSHS curriculum checklist indicating where all of the competencies and learning objectives, described in this chapter, are located in the long-term care worker materials from the proposed curriculum for that course;

(ii) Any materials long-term care workers will receive, such as a textbook or long-term care worker manual, learning activities, audio-visual materials, handouts and books;

(iii) The table of contents or outline of the curriculum including the allotted time for each section;

(iv) Demonstration skills checklists for the personal care tasks described in WAC 388-71-0911 (12)(a) and (b), and infection control skills (hand washing and putting on and taking off gloves);

(v) The teacher's guide or manual that includes for each section of the curriculum:

(A) The goals and objectives;

(B) How that section will be taught including teaching methods and learning activities that incorporate adult learning principles;

(C) Methods instructors will use to determine whether each long-term care worker understands the material covered and can demonstrate all skills;

(D) A list of sources or references, that were used to develop the curriculum. If the primary source or reference is not a published citation, the instructor must provide detail on how the content was established as evidence based:

(E) Description of how the curriculum was designed to accommodate long-term care workers with limited English proficiency and/or learning disabilities; and

(F) Description and proof of how input was obtained from consumers and long-term care worker representatives in the development of the curriculum.

(vi) In addition, for curricula being submitted for the core competency section of the basic training as described in WAC 388-71-0911, the curriculum must include how much time long-term care workers will be given to practice skills and how instructors will evaluate and ensure each long-term care worker can proficiently complete each skill.

(vii) Entities submitting curriculum for population specific basic training must submit their own list of competencies and learning objectives used to develop the population specific basic training curriculum.

NEW SECTION

WAC 388-71-1031 What is the curriculum approval process for orientation, safety, basic training (core and population specific training), the thirty hour basic training, the twelve hour parent provider training, and continuing education? (1) Submit the required training application forms and any other materials required for specific curriculums to the department.

(2) After review of the curriculum, DSHS will send a written response to the submitter, indicating approval or disapproval of the curriculum(s).

(3) If curriculum(s) are not approved, the reason(s) for denial will be given and the submitter will be told what portion(s) of the training must be changed and resubmitted for review in order for the curriculum to be approved.

(4) The submitter can make the requested changes and resubmit the curriculum(s) for review.

(5) If after working with the department the reasons why the curriculum is not approved cannot be resolved, the submitter may seek review of the nonapproval decision from the assistant secretary of aging and disability services administration. The assistant secretary's review decision shall be the

final decision of DSHS; no other administrative review is available to the submitter.

INSTRUCTOR QUALIFICATIONS, APPROVAL, AND RESPONSIBILITIES

NEW SECTION

WAC 388-71-1045 What are a training entity's responsibilities? The training entity is responsible for:

(1) Coordinating and teaching classes;

(2) Assuring that the curriculum used is DSHS-approved and taught as designed;

(3) Selecting and monitoring qualified guest speakers, where applicable;

(4) Administering or overseeing the administration of the DSHS competency tests for nurse delegation core and specialized diabetes trainings;

(5) Maintaining training records including long-term care worker tests and attendance records for a minimum of six years;

(6) Reporting training data to DSHS in DSHS-identified timeframes; and

(7) Issuing or reissuing training certificates to long-term care workers.

NEW SECTION

WAC 388-71-1050 Must training entities and their instructors be approved by DSHS? All training entities and their instructor(s) for orientation, safety, and continuing education must meet the minimum qualifications under WAC 388-71-1060. All instructors for basic training (core and population specific training), on-the-job training, nurse delegation core training and nurse delegation specialized diabetes training must meet the minimum qualifications under WAC 388-71-1055.

(1) DSHS must approve and/or contract with a training entity and their instructor(s) to conduct orientation, safety, basic training (core and population specific training), nurse delegation core training and nurse delegation specialized diabetes training, on-the-job training, and continuing education. DSHS may contract with training entities and their instructor(s) using any applicable contracting procedures.

(2) The training partnership must ensure that its instructors meet the minimum qualifications under this chapter.

NEW SECTION

WAC 388-71-1055 What are the minimum qualifications for an instructor of basic training (core and population specific training), on-the-job training, nurse delegation core training, and nurse delegation specialized diabetes training? An instructor for basic training (core and population specific training), on-the-job training, nurse delegation core training, and nurse delegation specialized diabetes training must meet the following minimum qualifications:

(1) General qualifications:

(a) Twenty-one years of age; and

(b) Has not had a professional health care, adult family home, boarding home, or social services license or certification revoked in Washington state.

(2) Education and work experience:

(a) Upon initial approval or hire, an instructor must:

(i) Be a registered nurse with work experience within the last five years with the elderly or persons with disabilities requiring long-term care in a community setting; or

(ii) Have an associate degree or higher degree in the field of health or human services and six months of professional or caregiving experience within the last five years in an adult family home, boarding home, supported living through DDD, or home care setting; or

(iii) Have a high school diploma, or equivalent, and one year of professional or caregiving experience within the last five years in an adult family home, boarding home, supported living through DDD, or home care setting.

(3) Teaching experience:

(a) Must have one hundred hours of teaching adults in a classroom setting on topics directly related to the basic training; or

(b) Must have forty hours of teaching while being mentored by an instructor who meets these qualifications, and must attend a class on adult education that meets the requirements in WAC 388-71-1066.

(4) The instructor must be experienced in caregiving practices and capable of demonstrating competency with respect to teaching the course content or units being taught;

(5) Instructors who will administer tests must have experience or training in assessment and competency testing; and

(6) An instructor for nurse delegation core and specialized diabetes trainings must have a current Washington state RN license in good standing without practice restrictions.

NEW SECTION

WAC 388-71-1060 What are the minimum qualifications for an instructor of orientation, safety, and continuing education? An instructor of orientation, safety, and continuing education must be a registered nurse or other person with specific knowledge, training, and work experience in the provision of direct, hands-on personal care or other relevant services to the elderly or persons with disabilities requiring long-term care.

NEW SECTION

WAC 388-71-1066 What must be included in a class on adult education? A class on adult education must include content, student practice, and evaluation of student skills by the instructor in:

(1) Adult education theory and practice principles;

(2) Instructor facilitation techniques;

(3) Facilitating learning activities for adults;

(4) Administering competency testing; and

(5) Working with adults with special training needs (for example, English as a second language or learning or literacy issues).

NEW SECTION

WAC 388-71-1076 What is a guest speaker, and what are the minimum qualifications to be a guest speaker? (1)

A guest speaker is a person selected by an approved instructor to teach on a specific topic. A guest speaker:

(a) May only teach a specific subject in which he or she has expertise, background, and experience that establishes his or her expertise on that specific topic;

(b) May not teach the entire course;

(c) Must not supplant the primary teaching responsibilities of the instructor; and

(d) Must cover the DSHS competencies and learning objectives for the topic he or she is teaching.

(2) The approved instructor:

(a) Must ensure the guest speaker meets these minimum qualifications;

(b) Maintain documentation of the guest speaker's qualifications and background;

(c) Supervise and monitor the guest speaker's performance; and

(d) Is responsible for ensuring the required content is taught.

(3) DSHS does not approve guest speakers.

NEW SECTION

WAC 388-71-1081 What are the requirements for the training partnership to conduct training? (1) The training partnership must:

(a) Verify, document using the department's attestation process, keep on file, and make available to the department upon request, that all instructors meet the minimum instructor qualifications in WAC 388-71-1055 and 388-71-1060 for the course they plan to teach;

(b) Teach using a complete DSHS-developed or approved curriculum;

(c) When requested by DSHS, notify DSHS in writing of their intent to conduct training prior to providing training, when changing training plans, including:

(i) Name and schedule of training(s) the partnership will conduct;

(ii) Name of approved curriculum(s) the partnership will use; and

(iii) Name of the instructor(s) for only the core basic training.

(d) Ensure that DSHS competency tests are administered when conducting nurse delegation core or specialized diabetes training;

(e) Keep a copy of long-term care worker certificates on file for six years and give the original certificate to the trainee;

(f) Keep attendance records and testing records of long-term care workers trained and tested on file for six years; and

(g) Report training data to DSHS when requested by the department.

(2) The department may conduct a random audit at any time to review training and instructor qualifications.

NEW SECTION

WAC 388-71-1083 Must the department verify that training entities and their community instructors meet the minimum instructor qualifications? The department through its contracting process must verify that the community instructors meet the minimum qualifications as described in WACs 388-71-1055 and 388-71-1060. The department will conduct random audits of the training provided and of the instructor qualifications.

PHYSICAL RESOURCES AND STANDARD PRACTICES FOR TRAININGNEW SECTION

WAC 388-71-1091 What physical resources are required for classroom training and testing? (1) Classroom facilities used for classroom training must be accessible to trainees and provide adequate space for learning activities, comfort, lighting, lack of disturbance, and tools for effective teaching and learning, such as white boards and flip charts. Appropriate supplies and equipment must be provided for teaching and practice of caregiving skills in the class being taught.

(2) Testing sites for nurse delegation core and specialized diabetes training must provide adequate space for testing, comfort, lighting, lack of disturbance appropriate for the written or skills test being conducted. Appropriate supplies and equipment necessary for the particular test must be provided.

NEW SECTION

WAC 388-71-1096 What standard training practices must be maintained for classroom training and testing? The following training standards must be maintained for classroom training and testing:

- (1) Training must not exceed eight hours within one day;
- (2) Training provided in short time segments must include an entire unit, skill, or concept;
- (3) Training must include regular breaks; and
- (4) Long-term care workers attending classroom training must not be expected to leave the class to attend job duties, except in an emergency.

COMPETENCY TESTING FOR NURSE DELEGATION CORE AND SPECIALIZED DIABETES TRAININGNEW SECTION

WAC 388-71-1106 What components must competency testing include? Competency testing must include the following components:

- (1) Skills demonstration of ability to perform and/or implement specific caregiving approaches, and/or activities as appropriate to the training;
- (2) Written evaluation to show knowledge of the learning objectives included in the training; and

- (3) A scoring guide for the tester with clearly stated scoring criteria and minimum proficiency standards.

NEW SECTION

WAC 388-71-1111 What experience or training must individuals have to be able to perform competency testing? Individuals who perform competency testing must have documented experience or training in assessing competencies.

NEW SECTION

WAC 388-71-1120 How must competency test administration be standardized? To standardize competency test administration, testing must include the following components:

- (1) An instructor for the course who meets all minimum qualifications for the course he or she teaches must oversee all testing; and
 - (2) The tester must follow the DSHS guidelines for:
 - (a) The maximum length of time allowed for the testing;
 - (b) The amount and nature of instruction given long-term care workers before beginning a test;
 - (c) The amount of assistance to long-term care workers allowed during testing;
 - (d) The accommodation guidelines for long-term care workers with disabilities; and
 - (e) Accessibility guidelines for long-term care workers with limited English proficiency.

NEW SECTION

WAC 388-71-1125 What form of identification must long-term care workers show before taking a competency test? Long-term care workers must show photo identification before taking a competency test.

NEW SECTION

WAC 388-71-1130 How many times may a competency test be taken? For the trainings under WAC 388-71-0936 and 388-71-0941, competency testing may be taken twice. If the test is failed a second time, the person must retake the course before taking the test for that course again.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-71-05665	What definitions apply to WAC 388-71-05670 through 388-71-05909?
WAC 388-71-05670	What is orientation?
WAC 388-71-05675	What content must be included in an orientation?
WAC 388-71-05680	Is competency testing required for orientation?

WAC 388-71-05685	Is there a challenge test for orientation?		dren who do not receive services through DDD?
WAC 388-71-05690	What documentation is required for orientation?	WAC 388-71-05775	What is continuing education?
WAC 388-71-05695	Who is required to complete orientation, and when must it be completed?	WAC 388-71-05780	How many hours of continuing education are required each year?
WAC 388-71-05700	What is basic training?	WAC 388-71-05785	What kinds of training topics are required for continuing education?
WAC 388-71-05705	Is there an alternative to the basic training for some health care workers?	WAC 388-71-05790	Is competency testing required for continuing education?
WAC 388-71-05710	What core knowledge and skills must be taught in basic training?	WAC 388-71-05795	May basic or modified basic training be completed a second time and used to meet the continuing education requirement?
WAC 388-71-05715	Is competency testing required for basic training?		
WAC 388-71-05720	Is there a challenge test for basic training?	WAC 388-71-05799	What are the documentation requirements for continuing education?
WAC 388-71-05725	What documentation is required for successful completion of basic training?	WAC 388-71-05805	What is nurse delegation core training?
WAC 388-71-05730	Who is required to complete basic training, and when?	WAC 388-71-05810	What knowledge and skills must nurse delegation core training include?
WAC 388-71-05735	What is modified basic training?		
WAC 388-71-05740	What knowledge and skills must be included in modified basic training?	WAC 388-71-05815	Is competency testing required for nurse delegation core training?
WAC 388-71-05745	Is competency testing required for modified basic training?	WAC 388-71-05820	Is there a challenge test for nurse delegation core training?
WAC 388-71-05750	Is there a challenge test for modified basic training?	WAC 388-71-05825	What documentation is required for successful completion of nurse delegation core training?
WAC 388-71-05755	What documentation is required for successful completion of modified basic training?	WAC 388-71-05830	Who is required to complete nurse delegation core training, and when?
WAC 388-71-05760	Who may take modified basic training instead of the full basic training?	WAC 388-71-05832	What is safety training?
		WAC 388-71-05835	What is competency testing?
WAC 388-71-05765	What are the training requirements and exemptions for parents who are individual providers for their adult children receiving services through DDD?	WAC 388-71-05840	What components must competency testing include?
		WAC 388-71-05845	What experience or training must individuals have to be able to perform competency testing?
WAC 388-71-05770	What are the training requirements and exemptions for parents who are individual providers for their adult chil-	WAC 388-71-05850	What training must include the DSHS-developed competency test?

WAC 388-71-05855	How must competency test administration be standardized?		diabetes nurse delegation training?
WAC 388-71-05860	What form of identification must providers show a tester before taking a competency or challenge test?	WAC 388-71-0816	Is there a challenge test for specialized diabetes nurse delegation training?
WAC 388-71-05865	How many times may a competency test be taken?	WAC 388-71-0821	What documentation is required for successful completion of specialized diabetes nurse delegation training?
WAC 388-71-05870	What are an instructor's or training entity's responsibilities?	WAC 388-71-0826	Who is required to complete the specialized diabetes nurse delegation training, and when?
WAC 388-71-05875	Must instructors be approved by DSHS?		
WAC 388-71-05880	Can DSHS deny or terminate a contract with an instructor or training entity?		
WAC 388-71-05885	What is a guest speaker, and what are the minimum qualifications to be a guest speaker for basic training?		
WAC 388-71-05890	What are the minimum qualifications for an instructor for basic, modified basic or nurse delegation core and specialized diabetes training?		
WAC 388-71-05895	What additional qualifications are required for instructors of nurse delegation core training and specialized diabetes nurse delegation training?		
WAC 388-71-05899	What must be included in a class on adult education?		
WAC 388-71-05905	What physical resources are required for basic, modified basic, or nurse delegation core classroom training and testing?		
WAC 388-71-05909	What standard training practices must be maintained for basic, modified basic, or nurse delegation core classroom training and testing?		
WAC 388-71-0801	What is specialized diabetes nurse delegation training?		
WAC 388-71-0806	What knowledge and skills must specialized diabetes nurse delegation training include?		
WAC 388-71-0811	Is competency testing required for the specialized		

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0001 What is the purpose of this chapter? The ~~((residential))~~ purpose of this chapter is to describe the long-term care worker training requirements ~~((under this chapter apply to:~~
~~(1) All adult family homes licensed under chapter 70.128 RCW; and~~
~~(2) All boarding homes licensed under chapter 18.20 RCW)).~~

NEW SECTION

WAC 388-112-0002 To whom do the long-term care worker training requirements apply? (1) Unless exempt under RCW 18.88B.040, the long-term care worker training requirements under this chapter apply to:
 (a) All direct care workers in boarding homes licensed under chapter 18.20 RCW and chapter 388-78A WAC;
 (b) Boarding home administrators (or their designees) in accordance with chapter 388-78A WAC;
 (c) All direct care workers in adult family homes licensed under chapter 70.128 RCW and chapter 388-76 WAC;
 (d) Adult family home applicants, resident managers, and entity representatives in accordance with chapter 388-76 WAC;
 (e) All staff providing instruction and support services in supported living settings operating under chapter 71A.12 RCW, chapter 74.15 RCW, chapter 388-101 WAC and chapter 388-148 WAC; and
 (f) Supported living applicants and administrators in accordance with chapter 388-101 WAC.
 (2) The adult family home provider, boarding home provider, and supported living provider must ensure that any one used by them receives orientation and training from an approved instructor, appropriate for their expected duties, even if the person, including a volunteer, is not included in the definition of long-term care worker.

NEW SECTION

WAC 388-112-0003 What action(s) may the department take for provider noncompliance with the require-

ments of this chapter? A provider's failure to comply with the requirements of this chapter may be subject to an enforcement action authorized under:

- (1) WAC 388-78A-3170, for boarding home providers;
- (2) WAC 388-76-10960, for adult family home providers; or
- (3) WAC 388-101-4200, for supported living providers.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0005 What definitions apply to this chapter? "Applicant" means an individual, partnership, corporation, or other entity seeking to operate an adult family home or a supported living program.

("Caregiver" means anyone providing hands-on personal care to another person including but not limited to eating, reminding, or supervision of residents, on behalf of an adult family home or boarding home, except volunteers who are directly supervised.)

"Care team" includes the resident and everyone involved in his or her care. The care team can include family, friends, doctors, nurses, long-term care workers, social workers and case managers. The role of the care team is to support the well-being of the resident, however, the resident directs the service plan.

"Certified home care aide" means a person who has obtained and maintains a home care aide certification through the department of health.

"Challenge test" means a competency test taken for specialty training without first taking the class for which the test is designed and can only be used when basic training is not required.

"Client" means a person as defined in WAC 388-101-3000.

"Competency" ((means the minimum level of information and skill trainees are required to know and be able to demonstrate)) defines the integrated knowledge, skills, or behavior expected of a long-term care worker after completing the training in a required topic area. Learning objectives are associated with each competency.

"Competency testing" including challenge testing, is evaluating a trainee to determine if they can demonstrate the required level of skill, knowledge, and/or behavior with respect to the identified learning objectives of a particular course. The department only requires competency testing for nurse delegation core and specialized diabetes training and the specialty trainings. Training programs may integrate competency testing within their approved curriculums.

"DDD" refers to the division of developmental disabilities.

"Designee" means a person in a boarding home who supervises ((caregivers)) long-term care workers and who is designated by a boarding home administrator to take the trainings in this chapter required of the boarding home administrator. A boarding home administrator may have more than one designee.

"Direct care worker" means a paid individual who provides direct, hands-on, personal care services to persons with disabilities or the elderly requiring long-term care.

"Direct supervision" means oversight by a person who has demonstrated competency in the basic training (and specialty training if required), or who has been exempted from the basic training requirements, is on the premises, and is quickly and easily available to the ((caregiver)) long-term care worker.

"DSHS" or "department" refers to the department of social and health services.

"Entity representative" means the individual designated by an adult family home provider who is or will be responsible for the daily operations of an adult family home.

"Functionally disabled person" or "person who is functionally disabled" is synonymous with chronic functionally disabled and means a person who because of a recognized chronic physical or mental condition or disease, or developmental disability, including chemical dependency, is impaired to the extent of being dependent upon others for direct care, support, supervision, or monitoring to perform activities of daily living. "Activities of daily living", in this context, means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, and transfer. Instrumental activities of daily living may also be used to assess a person's functional abilities in the home and the community such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

"Guardian" means an individual as defined in chapter 11.88 RCW.

"Home" refers to adult family homes and boarding homes.

"Indirect supervision" means oversight by a person who has demonstrated competency in the basic training (and specialty training if required), or who has been exempted from the basic training requirements, and who is quickly and easily available to the ((caregiver)) long-term care worker, but not necessarily on-site.

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

"Learning ((outcomes)) objectives" ((means the specific information, skills and behaviors desired of the learner as a result of a specific unit of instruction, such as what they would learn by the end of a single class or an entire course. Learning outcomes are generally identified with a specific lesson plan or curriculum)) are measurable, written statements that clearly describe what a long-term care worker must minimally learn to meet each competency. Learning objectives are identified for each competency. Learning objectives provide consistent, common language and a framework for curriculum designers, the curriculum approval process, and testing. Curriculum designers have the flexibility to determine how learning objectives are met and may

include additional content deemed necessary to best meet the competency in a particular setting.

"Long-term care worker" includes all persons providing paid, hands-on personal care services for the elderly or persons with disabilities, including individual providers of home care services, direct care employees of home care agencies, providers of home care services to persons with developmental disabilities under title 71A RCW, all direct care workers in state-licensed boarding homes, adult family homes, respite care providers, community residential service providers, and any other direct care staff providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities, and supported living providers.

The following persons are not long-term care workers:

(1) Persons who are:

(a) Providing personal care services to individuals who are not receiving state-funded services; and

(b) The person is not employed by an agency or facility that is licensed by the state.

(2) Persons employed by:

(a) Nursing homes licensed under chapter 18.51 RCW;

(b) Facilities certified under 42 CFR Part 483;

(c) Residential habilitation centers under chapter 71A.20 RCW;

(d) Hospitals or other acute care settings;

(e) Hospice agencies licensed under chapter 70.127 RCW;

(f) Adult day care centers or adult day health centers.

(3) Persons whose services are exclusively limited to assistance with "instrumental activities of daily living," as that term is defined in WAC 388-106-0010.

"Personal care services" means physical or verbal assistance with activities of daily living, or activities of daily living and instrumental activities of daily living which is provided because a person is a functionally disabled person as defined in this chapter.

"Provider" means any person or entity who is licensed by the department to operate an adult family home or boarding home, or certified by the department to provide instruction and support services to meet the needs of persons receiving services under title 71A RCW.

"Resident" means a person residing and receiving long-term care services at a boarding home or adult family home. As applicable, the term resident also means the resident's legal guardian or other surrogate decision maker.

"Resident manager" means a person employed or designated by the provider to manage the adult family home who meets the requirements in chapter 388-76 WAC and this chapter.

"Routine interaction" means contact with residents that happens regularly.

"Supported living provider" means a person or entity that provides instruction and support services to meet the needs of persons receiving services under title 71A RCW and chapter 74.15 RCW. These providers include persons or entities certified under chapter 388-101 WAC, group training homes, alternative living providers, companion home providers, licensed staff residential programs, and group care facil-

ities and staffed residential homes licensed to care for children under chapter 388-148 WAC.

"Training entity" means an organization, including an independent contractor, who is providing or may provide training under this section using approved curriculum. Training entities may only deliver approved curriculum.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0010 When do the training requirements go into effect? The training requirements ((~~of~~) under this chapter ((begin September 1, 2002, or one hundred twenty days from the date of employment, whichever is later, and apply to:

(1) Adult family home providers, resident managers, and caregivers, and boarding home administrators, designees, and caregivers, who are hired or begin to provide hands-on personal care to residents subsequent to September 1, 2002; and

(2) Existing adult family home providers, resident managers, and caregivers, and boarding home administrators, designees, and caregivers, who on September 1, 2002, have not successfully completed the training requirements under RCW 74.39A.010, 74.39A.020, 70.128.120, or 70.128.130 and this chapter. Existing adult family home providers, resident managers, and caregivers, and boarding home administrators, designees, and caregivers, who have not successfully completed the training requirements under RCW 74.39A.010, 74.39A.020, 70.128.120, or 70.128.130 are subject to all applicable requirements of this chapter. However, until September 1, 2002, nothing in this chapter affects the current training requirements under RCW 74.39A.010, 74.39A.020, 70.128.120, or 70.128.130)) apply to persons described in WAC 388-112-0002, who are hired on or apply on or after January 1, 2011, unless exempt under RCW 18.88B.040.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0015 What is orientation? (1) Orientation ((provides basic introductory information appropriate to the residential care setting and population served)) is a training of two hours regarding the long-term care worker's role as long-term care workers and the applicable terms of employment.

(2) The department ((~~does not~~) must approve ((specific)) orientation ((programs, materials, or trainers for homes)) curricula and instructors.

(3) There is no challenge test ((is required)) for orientation.

NEW SECTION

WAC 388-112-0016 What content must be included in orientation? Orientation must include introductory information in the following areas:

(1) The care setting and the characteristics and special needs of the population served;

(2) Basic job responsibilities and performance expectations;

(3) The care plan, including what it is and how to use it;

- (4) The care team;
- (5) Process, policies, and procedures for observation, documentation and reporting;
- (6) Resident rights protected by law, including the right to confidentiality and the right to participate in care decisions or to refuse care and how the long-term care worker will protect and promote these rights;
- (7) Mandatory reporter law and worker responsibilities; and
- (8) Communication methods and techniques that can be used while working with a resident or guardian and other care team members.

One hour of completed classroom instruction or other form of training (such as a video or on line course) equals one hour of training. The training entity must establish a way for the long-term care worker to ask the instructor questions.

NEW SECTION

WAC 388-112-0018 What is safety training? (1) Safety training is a training of three hours that includes basic safety precautions, emergency procedures, and infection control.

- (2) The department must approve safety training curricula and instructors.
- (3) There is no challenge test for safety training.

NEW SECTION

WAC 388-112-0019 What content must be included in safety training? Safety training consists of introductory information in the following areas:

- (1) Safety planning and accident prevention, including but not limited to:
 - (a) Proper body mechanics;
 - (b) Fall prevention;
 - (c) Fire safety;
 - (d) In home hazards;
 - (e) Long term care worker safety; and
 - (f) Emergency and disaster preparedness.
- (2) Standard precautions and infection control, including but not limited to:
 - (a) Proper hand washing;
 - (b) When to wear gloves and how to correctly put them on and take them off;
 - (c) Basic methods to stop the spread of infection;
 - (d) Protection from exposure to blood and other body fluids;
 - (e) Appropriate disposal of contaminated/hazardous articles;
 - (f) Reporting exposure to contaminated articles; and
 - (g) What to do when the worker or the resident is sick or injured, including whom to report this to.
- (3) Basic emergency procedures, including but not limited to:
 - (a) Evacuation preparedness;
 - (b) When and where to call for help in an emergency;
 - (c) What to do when a resident is falling or falls;
 - (d) Location of any advanced directives and when they are given; and
 - (e) Basic fire emergency procedures.

One hour of completed classroom instruction or other form of training (such as video or on line course) equals one hour of training. The training entity must establish a way for the long-term care worker to ask the instructor questions. In adult family homes, safe food handling information must be provided to all staff, prior to handling food for residents.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0035 What documentation is required for orientation and safety training? The adult family home, boarding home, or supported living provider must maintain documentation of the completion of orientation and safety training, issued by the ~~((home))~~ instructor as described in WAC 388-112-0383, that includes:

- (1) The ~~((trainee's))~~ name of the trainee;
- (2) A list of the specific information taught;
- (3) The number of hours of the training;
- (4) The signature of the ((person overseeing)) instructor providing orientation~~((, indicating completion of the required information))~~ and safety training;
- ~~((4))~~ (5) The trainee's date of employment;
- ~~((5))~~ (6) The name and identification number of the home or service provider giving the orientation and safety training; and
- ~~((6))~~ (7) The date(s) of orientation and safety training.
- (8) The home must keep a copy as described in WAC 388-76-10198 (for adult family homes) and as described in WAC 388-78A-2450 (for boarding homes).

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0040 Who ~~((is required to))~~ must complete orientation and safety training, and by when ~~((must it be completed))~~? ~~((Adult family home))~~

~~((1))~~ All ~~((paid or volunteer staff in adult family homes who begin work September 1, 2002 or later))~~ long-term care workers must complete orientation and safety training before ~~((having routine interaction with residents))~~ providing care to residents/clients. All volunteers who routinely interact with resident/clients must complete orientation and safety training before interacting with residents/clients. Orientation and safety training must be provided by ~~((appropriate adult family home staff))~~ qualified instructors as described in WAC 388-112-0383.

~~((Boarding home~~

~~((2))~~ ~~Boarding home administrators (or their designees), caregivers, and all paid or volunteer staff who begin work September 1, 2002 or later must complete orientation before having routine interaction with residents. Orientation must be provided by appropriate staff.)~~

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0045 What is basic training? (1) Basic training is a training of seventy hours which includes ~~((the))~~;

(a) The core ((~~knowledge~~)) ~~competencies~~ and skills that ((~~caregivers~~)) ~~long-term care workers~~ need in order to provide personal care services effectively and safely;

(b) Practice and demonstration of skills;

(c) Population specific competencies.

(2) DSHS must approve basic training curricula.

(3) For instruction and support services staff, orientation, safety training, and basic training are all included in the developmental disabilities supported living providers training.

(4) Effective July 1, 2011, only up to twelve hours may be applied for on-the-job training;

(5) The DSHS developed revised fundamentals of caregiving (RFOC) learner's guide may be used to teach core basic training but it must include enhancements which must be approved by the department. With the increase in training hours, more time must be allotted for skills practice and additional training materials and/or classroom activities that help a worker to thoroughly learn the course content and skills. This must be approved per WAC 388-112-0325.

(6) One hour of completed classroom instruction or other form of training (such as a video or on-line course) equals one hour of training.

(7) The training entity must establish a way for the long-term care worker to ask the instructor questions.

(8) There is no challenge test for basic training.

NEW SECTION

WAC 388-112-0053 What topics must be taught in the core competencies of basic training? Basic training must include all of the competencies under WAC 388-112-0055 for the following topics:

- (1) Communication skills;
- (2) Long-term care worker self-care;
- (3) Problem solving;
- (4) Resident rights and maintaining dignity;
- (5) Abuse, abandonment, neglect, financial exploitation and mandatory reporting;
- (6) Resident directed care;
- (7) Cultural sensitivity;
- (8) Body mechanics;
- (9) Fall prevention;
- (10) Skin and body care;
- (11) Long-term care worker roles and boundaries;
- (12) Supporting activities of daily living;
- (13) Food preparation and handling;
- (14) Medication assistance;
- (15) Infection control, blood-borne pathogens, HIV/AIDS; and
- (16) Grief and loss.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0055 What ~~((~~knowledge and skills must be taught in~~))~~ are the core competencies and learning objectives for basic training? ~~((~~(+)~~))~~ The ~~((~~basic training knowledge and skills~~))~~ must include all of the learning outcomes and competencies published by the department for the following core knowledge and skills:

(a) Understanding and using effective interpersonal and problem solving skills with the resident, family members, and other care team members;

(b) Taking appropriate action to promote and protect resident rights, dignity, and independence;

(c) Taking appropriate action to promote and protect the health and safety of the resident and the caregiver;

(d) Correctly performing required personal care tasks while incorporating resident preferences, maintaining the resident's privacy and dignity, and creating opportunities that encourage resident independence;

(e) Adhering to basic job standards and expectations.

(2) The basic training learning outcomes and competencies ~~administration~~) core competencies describe the behavior and skills that a long-term care worker must exhibit when working with residents. Learning objectives are associated with each competency.

(1) Regarding communication, communicate effectively and in a respectful and appropriate manner with residents, family members, and care team members:

(a) Recognize how verbal and non-verbal cues impact communication with the resident and care team;

(b) Engage and respect the resident through verbal and non-verbal communication;

(c) Listen attentively and determine that the resident understands what has been communicated;

(d) Recognize and acknowledge residents' communication including indicators of pain, confusion, or misunderstanding;

(e) Utilize communication strategies to deal with difficult situations; and

(f) Recognize common barriers to effective communication and identify how to eliminate them.

(2) Regarding long-term care worker self-care, take appropriate action to reduce stress and avoid burnout:

(a) Identify behaviors, practices and resources to reduce stress and avoid burnout;

(b) Recognize common barriers to self-care and ways to overcome them; and

(c) Recognize aspects of a long-term care worker's job that can lead to stress and burnout, common signs and symptoms of stress and burnout; and the importance of taking action to practice self-care to avoid burnout.

(3) Regarding the competency of effective problem solving, use effective problem solving skills:

(a) Explain why it is necessary to understand and utilize a problem solving method;

(b) Implement a problem solving process/method; and

(c) Identify obstacles to effective problem solving and ways to overcome them.

(4) Regarding the competency of resident rights and dignity, take appropriate action to promote and protect a resident's legal and human rights as protected by federal and Washington state laws, including:

(a) Protect a resident's confidentiality including what is considered confidential information, to whom a long-term care worker is allowed or not allowed to give confidential information, and how to respond if a noncare team member asks for confidential information;

(b) Promote dignity, privacy, encourage and support a resident's maximum independence when providing care; and

(c) Maintain a restraint-free environment, including physical, chemical, and environmental restraints. Use common, safe alternatives to restraint use;

(d) Protect and promote the resident's right to live free of abuse, neglect, abandonment, and financial exploitation.

(5) Regarding the competency of abuse and mandatory reporting, recognize the signs of abuse and report suspected abuse, abandonment, neglect, and financial exploitation:

(a) Describe long-term care workers' responsibilities as a mandatory reporter as described under RCW 74.34.020 through 74.34.053; and

(b) Identify common symptoms of abuse, abandonment, neglect, and financial exploitation.

(6) Regarding the competency of resident directed care, take appropriate action when following a resident's direction regarding his or her care:

(a) Describe a worker's role in resident directed care including determining, understanding, and supporting a resident's choices;

(b) Describe the importance and impact of resident directed care on a resident's independence, self-determination, and quality of life;

(c) Identify effective problem solving strategies that help balance a resident's choice with personal safety; and

(d) Report concerns when a resident refuses care or makes choices that present a possible safety concern.

(7) Regarding the competency of cultural sensitivity, provide culturally appropriate care:

(a) Describe how cultural background, lifestyle practices, and traditions can impact care and use methods to determine and ensure that these are respected and considered when providing care.

(8) Regarding the competency of body mechanics, utilize current best practices and evidence-based methods of proper body mechanics while performing tasks as outlined in the service plan.

(9) Regarding the competency on fall prevention, prevent or reduce the risk of falls:

(a) Identify fall risk factors and take action to reduce fall risks for a resident; and

(b) Take proper steps to assist a resident who is falling or has fallen.

(10) Regarding the competency of skin and body care, use personal care practices that promote and maintain skin integrity:

(a) Explain the importance of observing a resident's skin, when to observe it and what to look for including common signs and symptoms of skin breakdown;

(b) Identify risk factors of skin breakdown;

(c) Observe skin at pressure point locations and report any concerns;

(d) Describe what a pressure ulcer is, what it looks like, and what to take if a resident develops a pressure ulcer;

(e) Describe current best practices that protect and maintain a resident's skin integrity including position changes when sitting or lying for extended periods and proper positioning and transfer techniques;

(f) Implement current best practices that promote healthy skin including hygiene, nutrition, hydration, and mobility; and

(g) Identify when to report skin changes and to whom.

(11) Regarding the competency on long-term care worker roles and boundaries, adhere to basic job standards, expectations, and requirements and maintain professional boundaries:

(a) Identify when, how, and why to obtain information from appropriate sources about a resident's condition or disease for which they are receiving services. Describe how to use this information to provide appropriate, individualized care;

(b) Describe a resident's baseline based on information provided in the service plan and explain why it is important to know a resident's baseline;

(c) Identify changes in a resident's physical, mental, and emotional state through observation;

(d) Report changes from baseline and/or concerns to the appropriate care team member(s);

(e) Identify basic job standards and requirements (e.g. coming to work on time) and describe how maintaining these standards are critical to a resident's safety and well-being;

(f) Explain the purpose of a service plan and describe how it is created, used, and modified;

(g) Use a resident's service plan to direct a worker's job tasks and any resident directed care tasks;

(h) Identify what is required of a long-term care worker, as described in WAC 388-112-0195, prior to performing a nurse-delegated task;

(i) Describe the role of a care team and a long-term care worker's role in it;

(j) Describe professional boundaries and the importance of maintaining them; and

(k) Identify signs of unhealthy professional boundaries, barriers to keeping clear professional boundaries, and ways to avoid or eliminate them.

(12) Regarding the competency on supporting activities of daily living, perform required personal care tasks to the level of assistance needed and according to current best practices and evidence-based guidelines:

(a) Demonstrate, in the presence of a qualified instructor, all critical steps required for personal care tasks including but not limited to:

(i) Helping a resident walk;

(ii) Transferring a resident from a bed to a wheelchair;

(iii) Turning and repositioning a resident in bed;

(iv) Providing mouth care;

(v) Cleaning and storing dentures;

(vi) Shaving a face;

(vii) Providing fingernail care;

(viii) Providing foot care;

(ix) Providing a bed bath;

(x) Assisting a resident with a weak arm to dress;

(xi) Putting knee-high elastic stockings on a resident;

(xii) Providing passive range of motion for one shoulder;

(xiii) Providing passive range of motion for one knee and ankle;

(xiv) Assisting a resident to eat;

(xv) Assisting with peri-care;

- (xvi) Assisting with the use of a bedpan;
- (xvii) Assisting with catheter care;
- (xviii) Assisting with condom catheter care; and
- (xix) Providing medication assistance.

(b) In the process of performing the personal care tasks, use proper body mechanics, listen attentively, speak clearly and respectfully while explaining what the long-term care worker is doing, incorporate resident preferences, maintain privacy and dignity, support the resident's level of ability, and assure their comfort and safety;

(c) Appropriately utilize assistive device(s) specified on the service plan;

(d) Describe any safety concerns related to each task and how to address the concerns;

(e) Demonstrate an understanding of bowel and bladder functioning, including factors that promote healthy bowel and bladder functioning, and the signs, symptoms, and common causes of abnormal bowel and bladder function; and

(f) Identify the importance of knowing a resident's bowel and bladder functioning baseline and when to report changes.

(13) Regarding the competency on food preparation and handling, plan and prepare meals using a basic knowledge of nutrition and hydration, incorporating any diet restrictions or modifications, and prevent food borne illness by preparing and handling food in a safe manner;

(a) Describe how nutrition and hydration can impact a resident's health;

(b) Plan, shop, and prepare meals for a resident according to the guidelines of good nutrition and hydration, incorporating any dietary requirements and restrictions per the service plan and resident preferences;

(c) Describe common signs of poor nutrition and hydration, and when to report concerns and to whom;

(d) Understand that diet modification is required for certain health conditions, including dysphagia, and describe how to identify diet modifications required for a resident;

(e) Recognize when a resident's food choices vary from specifications on the care plan, describe when and to whom to report concerns;

(f) Describe what causes food borne illness, the risks associated with food borne illness and examples of potentially hazardous foods;

(g) Describe appropriate food handling practices, including: avoiding cross contamination from one food to another, safe storage requirements for cooling of leftover foods, including depth, types of containers, and temperatures, the need to maintain food at proper temperatures to limit bacterial growth and what are the safe food storage and holding temperatures for both cold and hot foods, best practices for thawing and re-heating food, and using clean gloves (if possible) and clean utensils when preparing food;

(h) Describe the importance and correct procedure for cleaning and disinfecting food contact surfaces; and

(i) Describe why a long-term care worker with certain types of illnesses and/or symptoms must not prepare food.

Long-term care workers who complete a DSHS-approved basic training meet the training requirements for adult family homes in RCW 70.128.250.

(14) Regarding the competency of medication assistance, appropriately assist with medications:

(a) Identify what a long-term care worker is allowed and not allowed to do when assisting with medications as described in chapter 246-888 WAC;

(b) Define terms related to medication assistance including prescription drugs, over the counter medications, and as needed (PRN) medications, medication side effects, and drug interactions;

(c) Identify common symptoms of medication side effects and when and to whom to report concerns;

(d) Store medications according to safe practices and the label instructions;

(e) Describe, in the proper sequence, each of the five rights of medication assistance; and

(f) Identify what to do for medication-related concerns, including describing ways to work with a resident who refuses to take medications, identifying when and to whom to report when a resident refuses medication or there are other medication-related concerns, and identifying what is considered a medication error and when and to whom it must be reported.

(15) Regarding the competency of infection control and blood borne pathogens including HIV/AIDS, implement best practices to prevent and control the spread of infections:

(a) Identify commonly occurring infections, ways that infections are spread, and symptoms of infections;

(b) Describe the purpose, benefit and proper implementation of standard precautions in infection control;

(c) Implement current best practices for controlling the spread of infection, including the use of hand washing and gloves;

(d) Demonstrate proper hand washing and putting on and taking off gloves;

(e) Identify immunizations that are recommended for adults to reduce the spread of virus and bacteria;

(f) Describe laundry and housekeeping measures that help in controlling the spread of infection;

(g) Describe proper use of cleaning agents that destroy micro-organisms on surfaces;

(h) Describe what BB pathogens are and how they are transmitted;

(i) Identify the major BB pathogens, diseases, and high-risk behaviors for BB diseases;

(j) Identify measures to take to prevent BB diseases;

(k) Describe what to do if exposed to BB pathogens and how to report an exposure;

(l) Describe how HIV works in the body;

(m) Explain that testing and counseling for HIV/AIDS is available;

(n) Describe the common symptoms of HIV/AIDS;

(o) Explain the legal and ethical issues related to HIV including required reporting, confidentiality and nondiscrimination; and

(p) Explain the importance of emotional issues and support for residents and long-term care workers.

Long-term care workers who complete a DSHS-approved basic training meet the four hours of AIDS education as required by the department of health in WAC 246-980-040.

(16) Regarding the competency on grief and loss, support yourself and the resident in the grieving process:

- (a) Define grief and loss;
- (b) Describe common losses a resident and long-term care worker may experience;
- (c) Identify common symptoms associated with grief and loss;
- (d) Describe why self-care is important during the grieving process; and
- (e) Identify beneficial ways and resources to work through feelings of grief and loss.

NEW SECTION

WAC 388-112-0059 What training is required for instruction and support staff in supported living programs? (1) The training that is required for instruction and support staff in supported living programs is an integrated seventy-five hour curriculum designed specifically for instruction and support services staff in the supported living programs.

(2) Developmental disabilities supported living provider training must include the following topics:

- (a) Orientation and safety;
- (b) Client rights and dignity;
- (c) Activities of daily living;
- (d) Abuse, neglect, financial exploitation, and mandatory reporting;
- (e) Observation and reporting;
- (f) Instruction and support activities;
- (g) Communication skills;
- (h) Problem solving;
- (i) Cultural awareness and sensitivity;
- (j) Infection control;
- (k) Blood-borne pathogens and HIV/AIDS;
- (l) Skin care;
- (m) Fall prevention;
- (n) Health and functioning;
- (o) Medication assistance;
- (p) Food preparation and handling;
- (q) Instruction and support services staff roles and boundaries;
- (r) Long-term care worker self-care; and
- (s) Grief and loss.

(3) Regarding the topic of supporting activities of daily living, perform required personal care tasks to the level of assistance needed and according to current best practices and evidence-based guidelines:

- (a) Demonstrate, in the presence of a qualified instructor, all critical steps required for personal care tasks including but not limited to:
 - (i) Helping a client walk;
 - (ii) Transferring a client from a bed to a wheelchair;
 - (iii) Turning and repositioning a client in bed;
 - (iv) Providing mouth care;
 - (v) Cleaning and storing dentures;
 - (vi) Shaving a face;
 - (vii) Providing fingernail care;
 - (viii) Providing foot care;
 - (ix) Providing a bed bath;
 - (x) Assisting a client with a weak arm to dress;
 - (xi) Putting knee-high elastic stockings on a client;

- (xii) Providing passive range of motion for one shoulder;
- (xiii) Providing passive range of motion for one knee and ankle;
- (xiv) Assisting a client to eat;
- (xv) Assisting with peri-care;
- (xvi) Assisting with the use of a bedpan;
- (xvii) Assisting with catheter care;
- (xviii) Assisting with condom catheter care; and
- (xix) Providing medication assistance.

An approved skills checklist will be used to determine that each long-term care worker can proficiently complete each skill.

(b) In the process of performing the personal care tasks, use proper body mechanics, listen attentively, speak clearly and respectfully while explaining what the long-term care worker is doing, incorporate client preferences, maintain privacy and dignity, support the client's level of ability, and assure their comfort and safety;

(c) Appropriately utilize assistive device(s) specified on the service plan;

(d) Describe any safety concerns related to each task and how to address the concerns;

(e) Demonstrate an understanding of bowel and bladder functioning, including factors that promote healthy bowel and bladder functioning, and the signs, symptoms, and common causes of abnormal bowel and bladder function; and

(f) Identify the importance of knowing a client's bowel and bladder functioning baseline and when to report changes.

(4) Regarding the topic of food preparation and handling, assist a client to plan and prepare meals using a basic knowledge of nutrition and hydration, incorporating any diet restrictions or modifications, and prevent food borne illness by assisting a client to prepare and handle food in a safe manner.

(a) Describe how nutrition and hydration can impact a client's health;

(b) Plan, shop, and assist to prepare meals according to the guidelines of good nutrition and hydration, incorporating any dietary requirements and restrictions per the service plan and client preferences;

(c) Describe common signs of poor nutrition and hydration, and when to report concerns and to whom;

(d) Understand that diet modification is required for certain health conditions, including dysphagia, and describe how to identify diet modifications required for a client;

(e) Recognize when a client's food choices vary from specifications on the service plan, describe when and to whom to report concerns;

(f) Describe what causes food borne illness, the risks associated with food borne illness and examples of potentially hazardous foods;

(g) Describe appropriate food handling practices, including: avoiding cross contamination from one food to another, safe storage requirements for cooling of leftover foods, including depth, types of containers, and temperatures, the need to maintain food at proper temperatures to limit bacterial growth and what are the safe food storage and holding temperatures for both cold and hot foods, best practices for thawing and re heating food, and using clean gloves (if possible) and clean utensils when preparing food;

(h) Describe the importance and correct procedure for cleaning and disinfecting food contact surfaces; and

(i) Describe why a long term care worker with certain types of illnesses and/or symptoms must not prepare food.

(5) Only the curriculum developed by DSHS may be used for the developmental disabilities supported living provider training.

(6) The developmental disabilities supported living provider training may include up to twelve hours of on-the-job training.

(7) One hour of completed classroom instruction or other form of training (such as a video or on-line course) equals one hour of training.

(8) In order to become certified as a home care aide, instruction and support staff who complete this course may choose to become a certified home care aide without taking an additional core competency course.

(9) There is no challenge test for this training.

NEW SECTION

WAC 388-112-0062 What is on-the-job training? (1) Effective July 1, 2011, on-the-job training is a method of training when the long-term care worker successfully demonstrates any or all of the personal care or infection control skills included in the core basic training while working with a client versus in a practice training setting.

(2) On-the-job training is provided by a qualified instructor as defined in WAC 388-112-0380 who directly observes, coaches, and reinforces skills training for up to two long-term care workers at a time. The instructor providing the on-the-job training:

(a) Does not have to be the instructor who has taught the core competency training;

(b) Cannot be someone whose primary job duty is providing direct care to clients; or

(c) Cannot be the immediate supervisor of the long-term care worker receiving the on-the-job training.

(3) The person overseeing on-the-job training must:

(a) Submit DSHS required forms and become an approved instructor for the core competency of basic training; and

(b) Verify on a DSHS approved skills checklist the long-term care worker's successful completion of the demonstrated skills.

(4) For the person receiving on-the-job training, the hours spent in on-the-job training may count for up to twelve hours toward the completion of basic training requirements. It is not a requirement to include on-the-job training hours in the basic training hours.

NEW SECTION

WAC 388-112-0066 What is the population specific component of basic training? Population specific basic training is training on topics that are unique to the care needs of the population that the home or provider is serving. Topics can include but are not limited to:

(1) Dementia;

(2) Mental health;

(3) Developmental disabilities;

(4) Young adults with physical disabilities; and

(5) Aging and older adults.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0070 What documentation is required ~~((for successful))~~ to show completion of seventy hours of basic training that includes both core competencies and population specific competencies? (1) Basic training must be documented by a certificate(s) or transcript of ~~((successful))~~ completion of training, issued by the instructor or training entity, that includes:

(a) The name of the trainee;

(b) The name of the training;

(c) The number of hours of the training;

(d) The name and the identification number of the instructor for core competencies, and the home or training entity giving the training. The instructor's, home's, or training entity's identification number for basic core training is provided by the department and is issued by the department of health's contractor for the home care aide certification test;

~~((and))~~ (e) The instructor's ~~((name and))~~ signature; and

~~((and))~~ (f) The completion date~~((s))~~ of the training.

(2) The trainee must be given an original certificate(s) or transcript for proof of completion of the training. A home must keep a copy of the certificate on file as described in WAC 388-76-10198 (for adult family homes) and as described in WAC 388-78A-2450 (for boarding homes).

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0075 Who is required to complete basic training, and when, unless exempt as described in WAC 388-112-0076? Adult family homes

(1) Adult family home ~~((providers (including entity representatives as defined under chapter 388-76 WAC)))~~ applicants must complete basic training ~~((and demonstrate competency))~~ before ~~((operating an))~~ licensure of the adult family home.

(2) Adult family home entity representatives and resident managers must complete basic training and demonstrate competency before ~~((providing services in an))~~ assuming the duties of the position in the adult family home.

(3) ~~((Caregivers))~~ Long-term care workers in adult family homes must complete basic training within one hundred twenty days of ~~((when they begin providing hands-on personal care or within one hundred twenty days of September 1, 2002, whichever is later))~~ employment. Until ~~((competency in))~~ completion of the basic training ~~((has been demonstrated, caregivers))~~ long-term care workers may not provide hands-on, personal care without indirect supervision.

Boarding homes

(4) Boarding home administrators (or their designees), except administrators with a current nursing home administrator license, must complete basic training ~~((and demonstrate competency))~~ within one hundred twenty days of employment ~~((or within one hundred twenty days of September 1, 2002, whichever is later)).~~

(5) ~~((Caregivers))~~ Long-term care workers must complete basic training within one hundred twenty days of ~~((when they begin providing hands-on personal care or within one hundred twenty days of September 1, 2002, whichever is later))~~ employment. Until ~~((competency in))~~ completion of the basic training ~~((has been demonstrated))~~, ~~((caregivers))~~ long-term care workers may not provide hands-on personal care without direct supervision.

Supported living providers

(6) Supported living applicants, administrators, and instruction and support services staff must complete the developmental disabilities supported living provider integrated basic training within one hundred twenty days of employment. Until completion of the basic training, long-term care workers may not provide hands-on personal care without indirect supervision.

NEW SECTION

WAC 388-112-0076 What long-term care workers are exempt from the basic training requirement? The following long-term care workers are exempt from the basic training requirement:

(1) A person employed as a long-term care worker on December 31, 2010, who completed prior to January 1, 2011, the basic training requirements in effect on the date of his or her hire;

(2) A person employed as a long-term care worker on December 31, 2010, who completes within one hundred twenty days of hire, the basic training requirements in effect on the date of his or her hire;

(3) A person previously employed as a long-term care worker prior to December 31, 2010, who completed prior to January 1, 2011, the basic training requirements in effect on the date of his or her hire, and was employed as a long-term care worker at some point during the calendar year 2010;

(4) Registered nurses, licensed practical nurses, nurse technicians, or advanced registered nurse practitioner under chapter 18.79 RCW;

(5) Nursing assistants-certified under chapter 18.88A RCW;

(6) Certified counselors under chapter 18.19 RCW;

(7) Speech language pathologists or audiologists under chapter 18.35 RCW;

(8) Occupational therapists under chapter 18.59 RCW;

(9) Physical therapists under chapter 18.74 RCW;

(10) A home health aide who is employed by a medicare-certified home health agency and has met the requirements of 42 CFR, Part 483.35; and

(11) An individual with special education training and an endorsement granted by the superintendent of public instruction as described in RCW 28A.300.010.

NEW SECTION

WAC 388-112-0078 What DSHS-developed curriculum may be used in the population specific component of the basic training? Homes or providers may use the following DSHS-developed curriculum to meet all or some of the population specific component of basic training depending on the needs of the population served:

- (1) Dementia specialty training;
- (2) Mental health specialty training; and
- (3) Developmental disabilities specialty training.

NEW SECTION

WAC 388-112-0079 What are the requirements for using basic training to meet the specialty training requirements as described in WAC 388-112-0385, 388-112-0390 and 388-112-0395 When basic training is used to meet the specialty training requirements:

(1) It must include the department developed competencies and learning objectives as described in WAC 388-112-0385, 388-112-0390, or 388-112-0395. Homes or providers may enhance the specialty training component by adding additional competencies, learning objectives, content, or activities. If the department approves the enhancements and an increased number of training hours, the worker's training hours will apply to the seventy hour training requirement.

(2) Long-term care workers must take and pass a department competency test to meet the licensing requirements for adult family homes and boarding homes for all specialty training.

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 388-112-0081 What topics may the training on young adults with physical disabilities include? The training on young adults with physical disabilities may include all of the competencies and learning objectives under WAC 388-112-0083 for the following topics:

- (1) Introduction to physical disabilities;
- (2) Common physical disabilities and ability limitations;
- (3) Supporting residents living with chronic conditions;
- (4) Independent living and resident-directed care; and
- (5) Social connections and sexual needs of adults living with disabilities.

NEW SECTION

WAC 388-112-0083 What are the competencies and learning objectives for the training on young adults with physical disabilities? The competencies define the integrated knowledge, skills, or behavior expected of a long-term care worker after completing the training on young adults with physical disabilities. Learning objectives are associated with each competency.

(1) Regarding the competency on young adults with physical disabilities, work effectively with young adults with physical disabilities based upon a basic understanding of disability:

- (a) Identify basic information regarding physical disabilities, injuries, and illnesses that are more common in young adults;
- (b) Describe the impact of changing and fluctuating abilities;

(c) Identify stereotypes, biases, and misconceptions regarding the perception of young adults with physical disabilities;

(d) Describe how biases, stereotypes, and misconceptions can influence care to young adults with physical disabilities;

(e) Identify and explain the Americans with Disabilities Act and rights for adults with physical disabilities; and

(f) Describe the value of personalizing care and support to the specific resident with a disability.

(2) Regarding the competency on common physical disabilities and ability limitations, provide individualized care based upon a basic understanding of common physical disabilities and their impact on functioning:

(a) Describe common physical disabilities, including paraplegia and quadriplegia, diabetes, multiple sclerosis, and pulmonary disease.

(b) Describe the characteristics and functional limitations of residents with these specific disabilities.

(3) Regarding the competency on supporting residents living with chronic conditions, provide appropriate care by recognizing chronic secondary conditions that impact functioning:

(a) Identify how common chronic medical conditions affect physical disability;

(b) Describe how chronic medical conditions influence and impact care for a young resident with a physical disability;

(c) Describe how to support a resident with a physical disability and multiple chronic conditions; and

(d) Describe how to support the resident's dignity while providing personal care.

(4) Regarding the competency on independent living and resident-directed care, support independent living and self-determination for the resident living with a disability:

(a) Define the independent living philosophy and describe what it might look like;

(b) Describe barriers to independent living, including accessibility and attitudes;

(c) Describe ways to support independent living and self-determination with the resident living with a disability;

(d) Describe resident-directed support;

(e) Identify ways to promote resident-directed support; and

(f) Identify resources that promote independence and self-determination for a resident living with a disability.

(5) Regarding the competency of social connections and sexual needs of young adults living with a physical disability, provide optimum support to a resident living with a disability in his or her expression of social and sexual needs:

(a) Describe and explain the importance of full, appropriate, and equal participation of resident's living with a physical disability;

(b) Identify ways to support social connections and activities;

(c) Describe and explain the importance of honoring the resident as a sexual being with diverse sexual needs, desires, and orientation; and

(d) Identify ways to support expression of sexual needs in a respectful, professional, and confidential manner.

NEW SECTION

WAC 388-112-0088 What topics may the training on aging and older adults include? Training on aging and older adults may include all of the competencies and learning objectives under WAC 388-112-0091 for the following core knowledge and skills:

(1) Introduction to aging;

(2) Age-associated physical changes;

(3) Cultural impacts on aging;

(4) Ageism and supporting resident dignity;

(5) Supporting residents living with a chronic condition;

(6) Dealing with death, grief, and loss; and

(7) Supporting health and wellness.

NEW SECTION

WAC 388-112-0091 What are the competencies and learning objectives for training on aging and older adults? The competencies define the integrated knowledge, skills, or behavior expected of a long-term care worker after completing the training on aging and older adults. Learning objectives are associated with each competency.

(1) Regarding the competency on an introduction to aging, draw upon a basic understanding of the aging process and demonstrate awareness of the unique needs of older adults:

(a) Describe basic information on the aging process, including the difference between age-related changes and a disease process;

(b) List typical changes that occur with aging;

(c) Identify common stereotypes, biases, myths, and misconceptions regarding aging, ageism, and older adults;

(d) Describe how ageism, biases, myths, and misconceptions can influence care to older residents;

(e) Describe how aging affects the resident's needs and behaviors; and

(f) Describe the value of adapting caregiving to the age-related concerns of the resident.

(2) Regarding the competency on age-associated physical changes, provide individualized care by understanding physical changes that are experienced in aging:

(a) Identify common physical changes experienced in the aging process;

(b) Describe common sensory changes that occur in aging and their impact on an older adult's activities;

(c) Describe the difference between age-associated physical changes versus a disease process; and

(d) Describe how age-related physical changes can impact functioning and the ability to perform personal care.

(3) Regarding the competency on cultural impacts of aging, provide culturally compassionate care by utilizing a basic understanding of issues related to culture and aging:

(a) Describe how race/ethnicity, poverty, and class influence the aging process;

(b) Describe how race/ethnicity, poverty, and class influence an older adult's help-seeking behavior; and

(c) Describe a culturally sensitive approach to working with older adults that demonstrates shared decision-making and mutual respect.

(4) Regarding the competency on ageism and supporting resident dignity, overcome ageism and support resident dignity by understanding stereotypes and myths regarding aging:

(a) Describe the concept of "ageism" and its possible impact on working with older adults;

(b) Identify his or her perceptions about aging and how these perceptions may contribute to "ageism";

(c) Describe how "ageism" can influence resident dignity; and

(d) Describe strategies for overcoming "ageism" and supporting resident dignity.

(5) Regarding the competency on supporting residents living with chronic medical conditions, provide appropriate care by recognizing how chronic conditions impact functioning:

(a) Describe how chronic medical conditions can influence and impact care for older adults;

(b) Describe strategies for working with an older adult with multiple chronic medical conditions;

(c) Describe proactive ways to support an older adult living with chronic medical conditions; and

(d) Describe how to help support the older adult's dignity while providing care.

(6) Regarding the competency on dealing with death, grief and loss, respond appropriately to a resident experiencing loss:

(a) Describe common examples of losses encountered in the aging process;

(b) Describe common reactions to loss of significant roles;

(c) Describe strategies for dealing with loss;

(d) Describe the value of promoting social engagement for the older adult;

(e) Identify strategies and opportunities for promoting social engagement; and

(f) Identify actions and resources that can be used to help an older adult work through feelings of grief and loss.

(7) Regarding the competency on supporting optimum health and wellness, support the optimum health and wellness of older adults:

(a) Identify key factors that support resident health and wellness;

(b) Identify strategies for promoting resident optimum health while aging;

(c) Identify strategies and opportunities to support an older adult to engage in healthy life style choices; and

(d) Describe his or her role in promoting optimum health and wellness for older residents.

NEW SECTION

WAC 388-112-0092 What learning objectives may be included in the curriculum for young adults with physical disabilities and/or for aging and older adults? Homes or providers may develop a curriculum for young adults with physical disabilities and/or for aging and older adults using the learning objectives in WACs 388-112-0083 and WAC 388-112-0091 or any other relevant learning objectives for these populations and submit it for approval by the department.

NEW SECTION

WAC 388-112-0106 Who is required to obtain certification as a home care aide, and when? Unless exempt under WAC 246-980-070, the following must be certified by the department of health as a home care aide within the required timeframes:

(1) All long-term care workers, within one hundred and fifty days of hire;

(2) Adult family home applicants, before licensure;

(3) Adult family home entity representatives and resident managers, before assuming the duties of the position; and

(4) Boarding home administrators or their designee within one hundred and fifty days of hire.

NEW SECTION

WAC 388-112-0107 Can an adult family home, boarding home, or supported living provider employ an individual to work as a long-term care worker if the individual has not completed the training and/or certification requirements? An adult family home, boarding home, or supported living provider cannot employ an individual to work as a long-term care worker if the individual has previously worked as a long-term care worker and has not completed applicable training and/or certification requirements within the specific time limits. Such individual may be employed by an adult family home, boarding home or supported living provider to work as a long-term care worker only after applicable training and/or certification requirements are met. The department is authorized by RCW 70.128.160 to take enforcement action against an adult family home provider for noncompliance related to training and/or certification requirements. The department is authorized by RCW 18.20.190 to take enforcement action against a boarding home provider for noncompliance related to training and/or certification requirements. The department is authorized by WAC 388-101-4200 to take enforcement action against a supported living provider for noncompliance related to training and/or certification requirements.

NEW SECTION

WAC 388-112-0108 What documentation is required for a long-term care worker to apply for the home care aide certification or recertification? (1) Successful completion of seventy-five hours of training must be documented on a DSHS seventy-five hour training certificate by an approved training entity who has provided or verified that a total of seventy-five hours of training have occurred.

(2) An approved training entity issuing and signing a DSHS seventy-five hour training certificate must verify that the long-term care worker has the certificates or transcript required documenting two hours of DSHS-approved orientation, three hours of DSHS-approved safety training, and seventy hours of DSHS-approved basic training, as described in this chapter. Only a DSHS or training partnership seventy-five hour training certificate can be submitted by a long-term care worker applying to the department of health for a home care aide certification.

(3) For home care aide recertification, successful completion of twelve hours of DSHS-approved continuing education training must be documented on a DSHS certificate issued by an approved training entity who has provided all twelve hours of continuing education training. If all twelve hours of continuing education were not provided by the same training entity, then an approved training entity must verify that the certified home care aide has certificates or transcripts that add up to twelve hours of DSHS-approved continuing education. Only a DSHS or a training partnership twelve-hour continuing education certificate can be submitted by a certified home care aide applying to the department of health for recertification.

(4) The long-term care worker and certified home care aide must retain the original seventy-five hour training certificate and any twelve-hour continuing education training certificates as long as they are employed and up to three years after termination of employment. Training entities must keep a copy of the certificates on file for six years.

AMENDATORY SECTION (Amending WSR 06-16-072, filed 7/28/06, effective 8/28/06)

WAC 388-112-0110 What is specialty training and who is required to take specialty training? (1) Specialty or "special needs" training ~~((including caregiver specialty training))~~ provides instruction in caregiving skills that meet the special needs of people living with mental illness, dementia, or developmental disabilities. Specialty trainings are different for each population served and are not interchangeable. Specialty training may be integrated with basic training if the complete content of each training is included. DSHS must approve specialty training curricula for managers and ~~((caregivers, except for adult family home caregiver specialty training))~~ long-term care workers.

(2) Manager specialty training is required for boarding home administrators (or designees), adult family home applicants or providers ((and)), resident managers, and entity representatives who are affiliated with homes that serve residents who have one or more of the following special needs: developmental disabilities, dementia, or mental health. The managers described in subsection (2) of this section must take one or more of the following specialty trainings:

(a) Developmental disabilities specialty training, under WAC 388-112-0120 ~~((is the required training on that specialty for adult family home providers and resident managers, and for boarding home administrators (or designees))~~);

(b) Manager dementia specialty training, under WAC 388-112-0125 ~~((;))~~; and

(c) Manager mental health specialty training, under WAC 388-112-0135 ~~((are the required trainings on those specialties for adult family home providers and resident managers, and for boarding home administrators (or designees))~~).

(3) ~~((Caregiver specialty training for boarding homes))~~ All long-term care workers including those who are exempt from basic training and who work in a boarding home, adult family home, or a supported living program, serving residents/clients with the special needs described in subsection (2) of this section, must take long-term care worker specialty

training. Long-term care worker specialty training is as follows:

(a) Developmental disabilities specialty training, under WAC 388-112-0120 ~~((is the required training on that specialty for boarding home caregivers))~~.

(b) ~~((Caregiver))~~ Long-term care worker dementia specialty training, under WAC 388-112-0130 ~~((;))~~; and ~~((caregiver))~~

(c) Long-term care worker mental health specialty training, under WAC 388-112-0140 ~~((are the required trainings on those specialties for boarding home caregivers))~~.

(4) ~~((Caregiver specialty training for adult family homes: The provider or resident manager who has successfully completed the manager specialty training, or a person knowledgeable about the specialty area, trains adult family home caregivers in the specialty needs of the individual residents in the adult family home, and there is no required curriculum))~~ Specialty training may be used to meet the requirements for the basic training population specific component if completed within one hundred and twenty days of employment.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0115 What specialty training ~~((including caregiver specialty training))~~ is required if a resident has more than one special need? If ~~((an individual))~~ a resident has needs in more than one of the special needs areas, the home must determine which of the specialty trainings will most appropriately address the overall needs of the person and ensure that the specialty training that addresses the overall needs is completed as required. If additional training beyond the specialty training is needed to meet all of the resident's needs, the home must ensure that additional training is completed.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0120 What ~~((knowledge and skills))~~ topics must ~~((manager and caregiver))~~ developmental disabilities specialty trainings include? (1) ~~((Manager and caregiver developmental disabilities specialty trainings))~~ Developmental disabilities specialty training must include all of the ~~((learning outcomes and competencies published by DSHS))~~ competencies and learning objectives described under WAC 388-112-0122 for the following ~~((core knowledge and skills))~~ topics:

(a) Overview of developmental disabilities;
 (b) Values of service delivery;
 (c) Effective communication;
 (d) Introduction to interactive planning;
 (e) Understanding behavior;
 (f) Crisis prevention and intervention; and
 (g) Overview of legal issues and ~~((individual))~~ resident rights.

(2) For adult family homes, the division of developmental disabilities (DDD) will provide in-home technical assistance to the adult family home upon admission of the first resident eligible for services from DDD and, thereafter, as determined necessary by DSHS.

~~((3) The manager and caregiver developmental disabilities specialty training learning outcomes and competencies may be obtained from the DSHS division of developmental disabilities.))~~

NEW SECTION

WAC 388-112-0122 What are the competencies and learning objectives for the departmental disability specialty training? The developmental disabilities specialty competencies describe the behavior and skills a long-term care worker should exhibit when working with residents. Learning objectives are associated with each competency.

(1) Regarding the competency on an overview of developmental disabilities, draw upon a basic understanding of developmental disabilities and demonstrate awareness of the unique needs of residents with developmental disabilities:

(a) Define developmental disability and describe intellectual disability, cerebral palsy, epilepsy, and autism;

(b) Identify common myths and misconceptions about developmental disabilities;

(c) Describe the negative effects of using labels such as "retarded" or "handicapped" to represent people and positive alternatives; and

(d) Differentiate between developmental disabilities and mental illness.

(2) Regarding the competency on values of service delivery, promote and support a resident's self-determination:

(a) Identify the principle of normalization and its significance to the work of long-term care workers;

(b) Explain how understanding each resident's needs leads to better services and supports, which lead to better outcomes for the resident;

(c) Describe each of the residential services guidelines and identify how the values represented in the guidelines are important in the lives of people with developmental disabilities;

(d) Describe the principle of self-determination; and

(e) Identify positive outcomes for residents with developmental disabilities when they are connected to the community they live in.

(3) Regarding the competency on communication, provide culturally compassionate and individualized care by utilizing a basic understanding of a resident or resident's history, experience, and cultural beliefs:

(a) List the key elements of effective communication;

(b) Describe the impact communication has on the lives of residents with developmental disabilities;

(c) Explain the impact a long-term care worker's behavior can have on eliciting communication;

(d) Explain the impact of a resident's physical environment on their ability to communicate;

(e) Describe methods of communication, other than verbal, that long-term care workers might use when supporting residents with developmental disabilities; and

(f) List tips for communication with residents with developmental disabilities.

(4) Regarding the competency on interactive planning, use person-centered and interactive planning when working with residents with developmental disabilities:

(a) Identify the benefits of using a person-centered planning process rather than the traditional planning methods used to develop supports for people with developmental disabilities;

(b) Identify key elements involved in interactive planning;

(c) Identify ways to include people with developmental disabilities and their families in the planning process; and

(d) Identify the required planning document for the setting and list ways to have a positive impact on the plan.

(5) Regarding the competency on challenging behaviors, use a problem solving approach and positive support principles when dealing with challenging behaviors:

(a) Identify the essential components of the concept of positive behavioral supports;

(b) Define the "ABCs" and describe how to use that process to discover the function of behavior;

(c) Explain why it is critical to understand the function of behavior before developing a support plan;

(d) Define reinforcement and identify ways to utilize it as a tool to increase a resident's ability to be successful;

(e) Identify the problems with using punishment to manage behavior;

(f) Identify behavior management techniques that are not allowed under DSHS policies and applicable laws;

(g) Identify factors that can positively and negatively influence the behavior of residents with developmental disabilities; and

(h) List steps to be taken when crisis or danger to people is immediate.

(6) Regarding the competency on crisis prevention, support a resident experiencing a crisis and get assistance when needed:

(a) Identify behaviors in people with developmental disabilities that might constitute "normal stress";

(b) Define "crisis";

(c) Differentiate the behaviors a resident who is in crisis exhibits from mental illness;

(d) Identify the principles of crisis prevention and intervention;

(e) Identify what types of situations require outside assistance and at what point it becomes necessary; and

(f) Name several ways to provide support to a resident experiencing a crisis.

(7) Regarding the competency on legal rights, promote and protect the legal and resident rights of residents with developmental disabilities:

(a) Explain how the rights of residents with disabilities compare to those of the general population;

(b) List the rights of residents living in adult family homes and boarding homes and the laws that support those rights;

(c) Describe how long-term care workers can help residents to exercise their rights;

(d) List ways a long-term care worker must safeguard each resident's confidentiality;

(e) Describe the three types of guardianship an resident with developmental disabilities might be subject to and why;

(f) List less restrictive alternatives to guardianship;

(g) Describe the responsibilities, powers, and limitations of a guardian; and

(h) Describe the relationship between long-term care workers and guardians/families.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0125 What knowledge and skills must manager dementia specialty training include? (1) Manager dementia specialty training must include all the learning ~~((outcomes))~~ objectives and competencies published by DSHS for the following core knowledge and skills:

- (a) Introduction to the dementias;
- (b) Differentiating dementia, depression, and delirium;
- (c) Caregiving goals, values, attitudes and behaviors;
- (d) Caregiving principles and dementia problem solving;
- (e) Effects of cognitive losses on communication;
- (f) Communicating with people who have dementia;
- (g) Sexuality and dementia;
- (h) Rethinking "problem" behaviors;
- (i) Hallucinations and delusions;
- (j) Helping with activities of daily living (ADLs);
- (k) Drugs and dementia;
- (l) Working with families;
- (m) Getting help from others; and
- (n) Self-care for ~~((caregivers))~~ long-term care workers.

~~((2) The manager dementia specialty training learning outcomes and competencies may be obtained from the DSHS aging and adult services administration.))~~

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0130 What ~~((knowledge and skills))~~ topics must ~~((caregiver))~~ long-term care worker dementia specialty training include? ~~((1) Caregiver))~~ Long-term care worker dementia specialty training must include all the ~~((learning outcomes and competencies published by DSHS))~~ competencies and learning objectives under WAC 388-112-0132 for the following ~~((core knowledge and skills))~~ topics:

- ~~((a))~~ (1) Introduction to the dementias;
- ~~((b))~~ (2) Dementia, depression, and delirium;
- ~~((c))~~ (3) Resident-based caregiving;
- ~~((d))~~ (3) Dementia caregiving principles;
- ~~((e))~~ (4) Communicating with people who have dementia;
- ~~((f))~~ (5) Sexuality and dementia;
- ~~((g))~~ (6) Rethinking "problem" behaviors;
- ~~((h))~~ (7) Hallucinations and delusions;
- ~~((i))~~ (8) Helping with activities of daily living (ADLs);
- ~~((j))~~ (9) Working with family and friends.

~~((2) The learning outcomes and competencies for caregiver dementia training may be obtained from the DSHS aging and adult services administration.))~~

NEW SECTION

WAC 388-112-0132 What are the competencies and learning objectives for the long-term care worker demen-

tia specialty training? The dementia specialty competencies describe the behavior and skills a long-term care worker should exhibit when working with residents. Learning objectives are associated with each competency.

(1) Regarding the competency on an introduction to dementia, draw upon a basic understanding of dementia and demonstrate awareness of the unique needs of residents with dementia:

(a) Identify basic information on dementia, including causes and treatments;

(b) Describe how dementia affects resident needs and behaviors;

(c) List typical behaviors and symptoms a resident with dementia would most likely experience;

(d) Describe the differences that might be seen based on the type of dementia a resident has.

(2) Regarding the competency on dementia, depression, and delirium, respond appropriately to residents who have dementia, delirium, and/or depression:

(a) Identify and differentiate between dementia, depression, and delirium;

(b) Describe common symptoms of dementia, depression, and delirium and list possible causes;

(c) Compare and contrast among common symptoms of dementia, depression, and delirium; and

(d) Identify what symptom changes require immediate professional attention and how to access professional help.

(3) Regarding the competency on dementia caregiving principles, incorporate current best practices when providing dementia care:

(a) Identify current best practices in dementia caregiving;

(b) Describe current best practices in caregiving;

(c) Demonstrate the ability to support the resident's strengths using caregiving techniques to support those strengths; and

(d) Describe how to use cultural and life information to develop and enhance care provided to residents with dementia.

(4) Regarding the competency on communicating with people who have dementia, communicate in a respectful and appropriate manner with residents with dementia:

(a) Describe common dementia-caused cognitive losses and how those losses can affect communication;

(b) Identify appropriate and inappropriate nonverbal communication skills and discuss how each impacts a resident's behavior;

(c) Describe how to effectively initiate and conduct a conversation with a resident who has dementia; and

(d) Identify communication strategies to work with residents who have dementia.

(5) Regarding the competency on sexuality and dementia, protect a resident or resident's rights when dealing with issues of sexuality and appropriately manage unwanted or inappropriate sexual behavior:

(a) Identify ways in which dementia affects sexuality and sexual behaviors;

(b) Identify a resident's rights as they relate to sexuality and sexual behavior and discuss ways to support these rights; and

(c) Describe how to respond using nonjudgmental caregiving skills to residents' appropriate and inappropriate sexual behaviors.

(6) Regarding the competency on dealing with challenging behaviors, use a problem-solving approach when dealing with challenging behaviors:

(a) Describe how to use a problem-solving method to intervene in challenging behaviors or situations;

(b) Describe some possible common causes of challenging behaviors, including aggression, catastrophic reactions, wandering, and inappropriate sexual behavior and explore their causes;

(c) Describe how to implement a problem-solving process when working with a resident who has dementia; and

(d) Describe how to respond appropriately to a resident who is expressing a challenging behavior.

(7) Regarding the competency on hallucinations and delusions, respond appropriately when a resident is experiencing hallucinations or delusions:

(a) Define and differentiate between hallucinations and delusions;

(b) List different types of dementia-related hallucinations; and

(c) Describe how to appropriately and safely respond to a resident with dementia who is experiencing hallucinations and delusions.

(8) Regarding the competency on activities of daily living, make activities of daily living pleasant and meaningful:

(a) Identify and describe ways in which to support making activities of daily living pleasant for residents with dementia; and

(b) Describe strategies that support meaning and utilize an individualized approach when assisting a resident with dementia with activities of daily living.

(9) Regarding the competency on working with family and friends, respond respectfully, appropriately, and with compassion when interacting with families and friends of residents with dementia:

(a) Identify common concerns friends and family have when a loved one has dementia;

(b) Describe ways to be supportive and compassionate in interactions with family and friends of the resident with dementia;

(c) Identify how to find local resources for family support needs; and

(d) Describe a method to gather cultural and life history information from a resident and/or representative(s).

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0135 What knowledge and skills must manager mental health specialty training include? (1) Manager mental health specialty training must include all the learning ~~((outcomes))~~ objectives and competencies published by DSHS for the following core knowledge and skills:

(a) Introduction to mental illness;

(b) Culturally compassionate care;

(c) Respectful communications;

(d) Understanding mental illness - major mental ~~((disorders))~~ illnesses;

(e) Understanding mental illness - baseline, decompensation, and relapse planning; responses to hallucinations and delusions;

(f) Understanding and interventions for behaviors perceived as problems;

(g) Aggression;

(h) Suicide;

(i) Medications;

(j) Getting help from others; and

(k) Self-care for ~~((caregivers))~~ long-term care workers.

~~((2) The manager mental health specialty training learning outcomes and competencies may be obtained from the DSHS aging and adult services administration.))~~

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0140 What ~~((knowledge and skills))~~ topics must ((caregiver)) the long-term care worker mental health specialty training include? (1) ~~((Caregiver))~~ The long-term care worker mental health specialty training must include all the ~~((learning outcomes and competencies published by DSHS))~~ competencies under WAC 388-112-0142 for the following ~~((core knowledge and skills))~~ topics:

(a) Understanding major mental ~~((disorders))~~ illnesses;

(b) ~~((Individual))~~ Resident background, experiences and beliefs;

(c) ~~((Responding to))~~ Respectful communication;

(d) Creative approaches to challenging behaviors;

(e) Decompensation((:)) and relapse((:)) planning;

(f) Responding to hallucinations and delusions;

~~((d) Interventions for behaviors perceived as problems;~~

~~((e))~~ (g) Crisis intervention and dealing with aggression;

and

~~((f))~~ (h) Suicide prevention.

~~((2) The learning outcomes and competencies for caregiver mental health training may be obtained from the DSHS aging and adult services administration.))~~

NEW SECTION

WAC 388-112-0142 What are the competencies and learning objectives for the long-term care worker mental health specialty training? The mental health specialty competencies describe the behavior and skills a long-term care worker should exhibit when working with residents. Learning objectives are associated with each competency.

(1) Regarding the competency on understanding major mental illnesses, draw upon a basic understanding of mental illness and demonstrate awareness of the unique needs of residents with mental illness:

(a) Define and describe main symptoms of depression, bipolar schizophrenia, and anxiety disorder, and list treatment options for each;

(b) Describe causes of mental illness;

(c) Describe the progression of mental illness;

(d) Identify common myths and misinformation about mental illness; and

(e) Define stigma and identify how stigma can impact caregiving.

(2) Regarding the competency on resident background, experiences and beliefs, provide culturally compassionate and individualized care by utilizing a basic understanding of the resident's history, experience, and cultural beliefs:

(a) Demonstrate a method for gathering cultural, lifestyle, and personal value information from a resident;

(b) Identify why obtaining cultural information from a resident is important;

(c) Describe the importance of being sensitive to cultural differences when providing care;

(d) Differentiate how cultural beliefs and symptoms may be misinterpreted as mental illness; and

(e) Identify how the long-term care worker's culture might affect caregiving.

(3) Regarding the competency on communication and mental illness, communicate respectfully and appropriately with residents with a mental illness:

(a) Identify what is considered respectful and disrespectful communication when interacting with a resident with a mental illness;

(b) Identify what is judgmental communication toward a resident with a mental illness and ways to ensure communication is nonjudgmental;

(c) Identify examples of verbal and nonverbal communication and describe how each impacts communication; and

(d) Describe how to effectively initiate and conduct a respectful conversation with a resident who has a mental illness.

(4) Regarding the competency on creative approaches to challenging behaviors, use a problem-solving approach when dealing with challenging behaviors:

(a) Define and differentiate between inappropriate learned behaviors and symptoms of a mental illness;

(b) Identify possible common causes of challenging behaviors in a resident with a mental illness;

(c) Differentiate how challenging behaviors may be misinterpreted as mental illness; and

(d) Describe intervention strategies that can be used to reduce or prevent challenging behaviors.

(5) Regarding the competency on responding to de-compensation and relapse, respond appropriately when a resident is decompensating to help prevent a relapse:

(a) Define the terms baseline, de-compensation, and relapse;

(b) Identify common causes and symptoms of de-compensation and relapse;

(c) Describe the term "relapse plan" and review an example of a relapse plan; and

(d) Identify how a long-term care worker can support and use the relapse plan.

(6) Regarding the competency on responding to hallucinations and delusions, respond appropriately to a resident experiencing hallucinations or delusions:

(a) Define the terms hallucination and delusion;

(b) Identify common triggers (including stress) of delusions and hallucinations;

(c) Identify and describe appropriate intervention strategies for a resident experiencing a hallucination or delusion; and

(d) Describe how to accurately document a resident's behavioral symptoms, interventions, and outcomes.

(7) Regarding the competency on crisis intervention and dealing with aggression, intervene early when dealing with aggressive behavior to increase emotional stability and ensure safety:

(a) Define the term aggression;

(b) Identify the difference between aggressive behaviors and aggressive feelings;

(c) List de-escalation "do's" and "don'ts" as they relate to working with a resident expressing aggressive behavior;

(d) Describe appropriate de-escalation techniques when working with a resident expressing aggressive behavior; and

(e) Differentiate between nonimmediate and immediate danger and at what point additional assistance may be needed.

(8) Regarding the competency on suicide prevention, respond appropriately to a resident at risk of suicide:

(a) Identify and list signs a resident is possibly suicidal;

(b) Describe how to respond appropriately to a resident experiencing suicidal thoughts, including:

(i) How, where, and when to refer a resident who is experiencing suicidal thoughts and/ or planning; and

(ii) Methods to keep a suicidal resident safe and ensure the safety for others.

(c) Describe strategies to help cope with a resident's suicide.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0145 ~~((Is))~~ Who is required to complete competency testing ~~((required))~~ for specialty training~~((, including caregiver specialty training))~~? Passing the DSHS competency test, as provided under WAC 388-112-0295 through 388-112-0315 is required for successful completion of specialty training for:

(1) All adult family home applicants or providers ~~((and)),~~ resident managers, entity representatives, and ~~((for))~~ long-term care workers; and

(2) All boarding home administrators (or designees) and ~~((caregivers, as provided under WAC 388-112-0290 through 388-112-0315. Competency testing is not required for adult family home caregivers))~~ long-term care workers.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0150 Is there a challenge test for specialty training~~((, including caregiver specialty training))~~? There is a challenge test for ~~((all))~~ each of the specialty trainings~~((, including caregiver specialty trainings, except the adult family home caregiver training))~~. Individuals may take the DSHS challenge test instead of required specialty training. A person who does not pass a challenge test on the first attempt must attend the class.

NEW SECTION

WAC 388-112-0152 Is competency testing required for population specific trainings on young adults with physical disabilities, aging and older adults, and the supported living provider training? No, there is no competency testing required for the population specific trainings on young adults with physical disabilities, aging and older adults, and the supported living provider training.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0155 What documentation is required for successful completion of specialty training(~~(-including caregiver specialty training)~~)? Specialty training(~~(-including caregiver specialty training)~~) as applicable, must be documented by a certificate or transcript of successful completion of training, issued by the instructor or training entity(~~(s)~~) that includes:

- (1) The (~~(trainee's)~~) name of the trainee;
- (2) The name of the training;
- (3) The number of hours of the training;
- (4) The name and identification number of the home or training entity giving the training;
- (~~((4))~~) (5) The instructor's name and signature; and
- (~~((5))~~) (6) The date(s) of training.
- (~~((6))~~) The trainee must be given an original certificate. The home must keep a copy of the certificate on file as described in WAC 388-76-10198 (for adult family homes) and as described in WAC 388-78A-2450 (for boarding homes).

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0160 Who is required to complete manager specialty training, and when? Adult family homes

(1) Adult family home applicants, providers (~~((including))~~) entity representatives (~~(as defined under chapter 388-76 WAC))~~) and resident managers must complete manager specialty training and demonstrate competency before (~~((admitting and serving residents))~~) the home is licensed or before a new resident manager is hired in order to admit or serve residents who have special needs related to mental illness, dementia, or a developmental disability.

(2) If a resident develops special needs while living in a home without a specialty designation, the provider, entity representative, and resident manager have one hundred twenty days to complete manager specialty training and demonstrate competency.

Boarding homes

(3) If a boarding home serves one or more residents with special needs, the boarding home administrator (or designee) must complete manager specialty training and demonstrate competency within one hundred twenty days of employment (~~((or within one hundred twenty days of September 1, 2002, whichever is later))~~). A boarding home administrator with a current nursing home administrator license is exempt from this requirement, unless the administrator will train (~~(their~~

facility caregivers)) the facility's long-term care workers in a (~~(caregiver))~~) specialty.

(4) If a resident develops special needs while living in a boarding home, the boarding home administrator (or designee) has one hundred twenty days to complete manager specialty training and demonstrate competency. A boarding home administrator with a current nursing home administrator license is exempt from this requirement, unless the administrator will train (~~(their facility caregivers))~~) the facility's long-term care workers in a (~~(caregiver))~~) specialty.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0165 Who is required to complete (~~(caregiver))~~ long-term care worker specialty training, and when? (~~(Adult family homes))~~

(~~((If an adult family home serves one or more residents with special needs, all caregivers must receive training regarding the specialty needs of individual residents in the home. The provider or resident manager knowledgeable about the specialty area may provide this training.))~~)

(~~(Boarding homes))~~)

If a boarding home or adult family home serves one or more residents with special needs, (~~(caregivers))~~) long-term care workers in those settings must complete (~~(caregiver))~~) specialty training and demonstrate competency.

(1) If the (~~(caregiver))~~) specialty training is integrated with basic training, (~~(caregivers))~~) long-term care workers must complete the (~~(caregiver))~~) specialty training within one hundred twenty days of (~~((when they begin providing hands-on personal care to a resident having special needs or within one hundred twenty days of September 1, 2002, whichever is later))~~) hire.

(2) (~~((If the caregiver specialty training is not integrated with basic training, caregivers))~~) Long-term care workers who are exempt from basic training must complete the relevant (~~(caregiver))~~) specialty training within ninety days of (~~((completing basic training))~~) hire.

(3) Until competency in the (~~(caregiver))~~) specialty training has been demonstrated, (~~(caregivers))~~) long-term care workers may not provide hands-on personal care to a resident with special needs without direct supervision in a boarding home or indirect supervision in an adult family home.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0195 Who is required to complete nurse delegation core training and nurse delegation specialized diabetes training, and when? (~~(Adult family homes))~~

(1) Before performing any delegated nursing task, long-term care workers in adult family (~~((home-staff))~~) homes, boarding homes, and supported living programs must:

(a) Successfully complete DSHS-designated nurse delegation core training, "Nurse Delegation for Nursing Assistants";

(b) Be a:

(i) Certified home care aide and a nursing assistant registered; or

(ii) Nursing assistant certified under chapter 18.88A RCW; ~~((and))~~ or

(iii) If exempt from the home care aide certification, become a nursing assistant registered and complete the core competencies of basic training.

~~((e) If a nursing assistant registered, successfully complete basic training.~~

Boarding homes

(2) Before performing ~~((any delegated nursing task, boarding home staff))~~ the task of insulin injections, long-term care workers in adult family homes, boarding homes, and supported living programs must:

(a) ~~((Successfully complete DSHS-designated nurse delegation core training))~~ Meet the requirements in subsections (1)(a) and (b) of this section; and

(b) ~~((Be a nursing assistant registered or certified under chapter 18.88A RCW; and~~

~~(e) If a nursing assistant registered, successfully complete basic training))~~ Successfully complete DSHS-designated specialized diabetes nurse delegation training.

NEW SECTION

WAC 388-112-0197 Can nurse delegation core and specialized diabetes training occur in the same year as basic training? Nurse delegation core and specialized diabetes training can occur in the same year as basic training if required to be able to perform delegated tasks. If this occurs, the maximum of twelve hours for this training can be applied towards the continuing education requirement for the following year. Nurse delegation core and specialized diabetes trainings do not apply towards the population specific training.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0200 What is continuing education? Continuing education is additional caregiving-related training designed to increase and keep current a person's knowledge and skills. DSHS ~~((does not preapprove))~~ must approve continuing education ((programs or instructors)) curricula and instructors. The same continuing education course may not be repeated for credit unless it is a new or more advanced training on the same topic. Nurse delegation core and nurse delegation specialized diabetes training may be used to count towards continuing education.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0205 Who is required to complete continuing education training, and how many hours of continuing education are required each year? Adult family homes

(1) ~~((Individuals subject to a continuing education requirement))~~ Until June 30, 2011, adult family home providers, entity representatives, resident managers, and long-term care workers must complete ~~((at least))~~ ten hours of continuing education each calendar year ((January 1 through December 31)) after the year in which they ~~((successfully))~~

complete basic ((or modified basic)) training. If the ten hours of continuing education were completed between January 1, 2011 and June 30, 2011, then the continuing education requirements have been met for 2011.

(2) Effective July 1, 2011, certified home care aides must complete twelve hours of continuing education each calendar year after obtaining certification as described in department of health WAC 246-980-110.

(3) If exempt from certification as described in RCW 18.88B.040, all long-term care workers must complete twelve hours of continuing education per calendar year. Continuing education must include one-half hour per year on safe food handling in adult family homes.

Boarding homes

(4) Until June 30, 2011, boarding home administrators (or their designees) and long-term care workers must complete ten hours of continuing education each calendar year after the year in which they complete basic training. If the ten hours of continuing education were completed between January 1, 2011 and June 30, 2011, then the continuing education requirements have been met for 2011.

(5) Effective July 1, 2011, certified home care aides must complete twelve hours of continuing education each calendar year after obtaining certification as described in department of health WAC 246-980-110 and 246-12-020(3).

(6) If exempt from certification as described in RCW 18.88.040, all long-term care workers must complete twelve hours of continuing education per calendar year. A boarding home administrator with a current nursing home administrator license is exempt from this requirement.

Supported living providers

(7) Effective July 1, 2011, all instruction and support services staff must complete twelve hours of continuing education each calendar year.

(8) A long-term care worker or certified home care aide who did not complete the continuing education requirements by the timeframe described in WAC 388-112-0207 cannot be paid to provide care after that date and cannot be reinstated as a long-term care worker until they complete the continuing education requirements.

(9) One hour of completed classroom instruction or other form of training (such as a video or on-line course) equals one hour of continuing education. The training entity must establish a way for the long-term care worker to ask the instructor questions.

NEW SECTION

WAC 388-112-0207 When must a long-term care worker or certified home care aide complete continuing education? (1) Effective January 1, 2011 and for the year 2011, a long-term care worker must complete the continuing education requirements described in WAC 388-112-0205 by their birthday:

(a) A long-term care worker whose birthday occurs between January 1, 2011 and June 30, 2011, must complete the continuing education requirement by June 30, 2011.

(b) A long-term care worker whose birthday occurs on or after July 1, 2011, must complete the continuing education requirement by their birthday.

(2) Effective January 1, 2012, all long-term care workers and certified home care aides must complete the continuing education requirements described in WAC 388-112-0205 by their birthday.

(3) For long term care workers who are required to be certified, if the first renewal period is less than a full year from the date of certification, no continuing education will be due for the first renewal period.

AMENDATORY SECTION (Amending WSR 06-01-046, filed 12/15/05, effective 1/15/06)

WAC 388-112-0210 What kinds of training topics ~~(are required for)~~ may be covered in continuing education? Continuing education must be on a topic relevant to the care setting ~~(and)~~, care needs of residents, ~~(including)~~ or long-term care career development. Topics may include but are not limited to:

- (1) Resident rights;
- (2) Personal care ~~((such as transfers or skin care))~~ services;
- (3) Mental illness;
- (4) Dementia;
- (5) Developmental disabilities;
- (6) Depression;
- (7) Medication assistance;
- (8) Communication skills;
- (9) Positive resident behavior support;
- (10) Developing or improving resident centered activities;
- (11) Dealing with wandering or aggressive resident behaviors;
- (12) Medical conditions; ~~(and)~~
- (13) In adult family homes, safe food handling; and
- (14) Nurse delegation core and specialized diabetes.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0220 May basic ~~(or modified basic)~~ training be completed a second time and used to meet the continuing education requirement? Retaking basic ~~(or modified basic)~~ training may not be used to meet the continuing education requirement.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0225 May specialty training be used to meet continuing education requirements? Manager specialty training and ~~(caregiver)~~ long-term care worker specialty training, except any specialty training completed through a challenge test, may be used to meet continuing education requirements.

~~((1) If one or more specialty trainings are completed in the same year as basic or modified basic training, the specialty training hours may be applied toward the continuing education requirement for up to two calendar years following the year of completion of the basic and specialty trainings.~~

~~(2)) If ~~(one or more)~~ a different specialty training~~(s are)~~ is completed in a different year than the year when basic~~

~~((or modified basic))~~ training was taken, the specialty training hours may be applied toward the continuing education requirement for the calendar year in which ~~((the))~~ this other specialty training is taken ~~((and the following calendar year))~~.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0230 May nurse delegation core training or nurse delegation specialized diabetes training be used to meet continuing education requirements? Nurse delegation training under WAC 388-112-0175 and 388-112-01961 may be applied toward continuing education requirements for the calendar year in which it is completed.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0235 May residential care administrator training be used to meet continuing education requirements? Residential care administrator training under WAC 388-112-0275 may be used to meet ~~((ten hours of))~~ the continuing education requirements described in WAC 388-112-0205.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0240 What are the documentation requirements for continuing education? (1) The adult family home ~~((or))~~, boarding home, or supported living provider must maintain ~~((documentation))~~ DSHS certificates or transcripts of continuing education including:

- (a) The ~~((trainee's))~~ name of the trainee;
- (b) The title or content of the training;
- (c) The number of hours of the training;

(d) The instructor's name, name of the home or training entity giving the training, or the name of the video, on-line class, professional journal, or equivalent instruction materials completed; and

- ~~((d) The number of hours of training; and)~~
- (e) The date(s) of training.

(2) The trainee must be given an original DSHS certificate or other documentation of continuing education. The adult family home or boarding home must keep a copy of the certificate on file as described in WAC 388-76-10198 (for adult family homes) and as described in WAC 388-78A-2450 (for boarding homes). The supported living provider must keep a copy of the certificate on file and make it available for department inspections or reviews.

AMENDATORY SECTION (Amending WSR 06-01-046, filed 12/15/05, effective 1/15/06)

WAC 388-112-0255 What is first-aid training? First-aid training is training that meets the guidelines established by the Occupational Safety and Health Administration (OSHA) and ~~((listed))~~ described at www.osha.gov. Under OSHA guidelines, training must include hands-on skills development through the use of mannequins or trainee partners. Topics include:

- (1) General program elements, including:
 - (a) Responding to a health emergency;
 - (b) Surveying the scene;
 - (c) Basic cardiopulmonary resuscitation (CPR);
 - (d) Basic first aid intervention;
 - (e) Standard precautions;
 - (f) First aid supplies; and
 - (g) Trainee assessments.
- (2) Type of injury training, including:
 - (a) Shock;
 - (b) Bleeding;
 - (c) Poisoning;
 - (d) Burns;
 - (e) Temperature extremes;
 - (f) Musculoskeletal injuries;
 - (g) Bites and stings;
 - (h) Confined spaces; and
 - (i) Medical emergencies; including heart attack, stroke, asthma attack, diabetes, seizures, and pregnancy.
- (3) Site of injury training, including:
 - (a) Head and neck;
 - (b) Eye;
 - (c) Nose;
 - (d) Mouth and teeth;
 - (e) Chest;
 - (f) Abdomen; and
 - (g) Hand, finger and foot.
- (4) Successful completion of first aid training, following the OSHA guidelines, also serves as proof of the CPR training.

AMENDATORY SECTION (Amending WSR 06-01-046, filed 12/15/05, effective 1/15/06)

WAC 388-112-0260 What are the CPR and first-aid training requirements? Adult family homes

(1) Adult family home applicants, providers, entity representatives, and resident managers must possess a valid CPR and first-aid card or certificate prior to ~~((providing care for residents))~~ obtaining a license, and must maintain valid cards or certificates.

(2) Licensed nurses working in adult family homes must possess a valid CPR card or certificate within thirty days of employment and must maintain a valid card or certificate. If the licensed nurse is an adult family home provider or resident manager, the valid CPR card or certificate must be obtained prior to providing care for residents.

(3) Adult family home ~~((caregivers))~~ long-term care workers must obtain and maintain a valid CPR and first-aid card or certificate:

(a) Within thirty days of beginning to provide care for residents, if the provision of care for residents is directly supervised by a fully qualified ~~((caregiver))~~ long-term care worker who has a valid first-aid and CPR card or certificate; or

(b) Before providing care for residents, if the provision of care for residents is not directly supervised by a fully qualified ~~((caregiver))~~ long-term care worker who has a valid first-aid and CPR card or certificate.

Boarding homes

(4) Boarding home administrators who provide direct care, and ~~((caregivers))~~ long-term care workers must possess a valid CPR and first-aid card or certificate within thirty days of employment, and must maintain valid cards or certificates. Licensed nurses working in boarding homes must possess a valid CPR card or certificate within thirty days of employment, and must maintain a valid card or certificate.

Supported living

(5) Applicants must obtain a valid CPR and first-aid card before certification and contract issuance and maintain valid cards or certificates.

(6) Instruction and support services staff must obtain and maintain a valid CPR and first-aid card or certificate:

(a) Within thirty days of beginning to provide care for clients, as long as the provision of care for clients is directly supervised by a fully qualified instruction and support services staff who has a valid CPR and first-aid card or certificate; or

(b) Before providing care to clients, if the provision of care is not directly supervised by a fully qualified instruction and support services staff who has a valid CPR and first-aid card or certificate.

AMENDATORY SECTION (Amending WSR 07-01-045, filed 12/14/06, effective 1/14/07)

WAC 388-112-0270 Who must take the forty-eight hour adult family home residential care administrator training and when? ~~((Providers licensed prior to December 31, 2006: Before operating more than one adult family home, the provider (including an entity representative as defined under chapter 388-76 WAC) must successfully complete the department approved forty-eight hour residential care administrator training.~~

~~Prospective providers applying for a license after January 1, 2007: Before a license for an adult family home is granted, the prospective provider))~~ All applicants submitting an application for an adult family home license must successfully complete the department approved forty-eight hour residential care administrator training for adult family homes before a license for an adult family home will be issued.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0295 What components must competency testing include? Competency testing must include the following components:

(1) Skills demonstration of ability to perform and/or implement specific caregiving approaches, and/or activities as appropriate for the training;

(2) Written evaluation to show level of comprehension and knowledge of the learning ~~((outcomes))~~ objectives for the training; and

(3) A scoring guide for the tester with clearly stated criteria and minimum proficiency standards.

(4) Instructors who conduct competency testing must have experience or training in assessing competencies.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0300 What training must include the DSHS-developed competency test? (~~Basic, modified basic, manager specialty, caregiver specialty, and nurse delegation core training must include the DSHS-developed competency test~~) The following trainings must include the DSHS-developed competency test:

- (1) Manager dementia specialty training;
- (2) Manager mental health specialty training;
- (3) Long-term care worker dementia specialty training;
- (4) Long-term care worker mental health specialty training;
- (5) Developmental disabilities specialty training;
- (6) Nurse delegation core training; and
- (7) Nurse delegation specialized diabetes training.

AMENDATORY SECTION (Amending WSR 06-01-046, filed 12/15/05, effective 1/15/06)

WAC 388-112-0315 How many times may a competency test be taken? (1) A competency test that is part of a course may be taken twice. If the test is failed a second time, the person must retake the course before any additional tests are administered. (~~Licensed adult family providers and employees who fail the food handling section of the basic training competency test a second time, must obtain a valid food worker permit.~~)

(2) If a challenge test is available for a course, it may be taken only once. If the test is failed, the person must take the classroom course.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0320 What trainings must be taught with a curriculum approved by DSHS? (1) The following trainings must be taught (~~(using the DSHS)) with a curriculum ((or other curriculum)) approved by DSHS before use:~~

- (a) Basic training (core and population specific training);
- (b) ((Modified basic)) Orientation, safety, on-the-job, and continuing education;
- (c) Manager mental health, dementia, and developmental disabilities specialty training;
- (d) ((Caregiver)) Long-term care worker mental health, dementia, and developmental disabilities specialty training ((in boarding homes)); and
- (e) Any training that integrates basic training with a ((manager or caregiver)) specialty training.

(2) The residential care administrator training must use a curriculum approved by DSHS.

(3) The developmental disabilities supported living provider training, nurse delegation core and diabetes training must use only the DSHS curriculum.

(4) (~~A curriculum other than the DSHS curriculum must be approved before it is used. An attestation that the curriculum meets all requirements under this chapter will be sufficient for initial approval. Final~~) Approval will be based on curriculum review, as described under WAC 388-112-0330.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0325 What ~~((are the minimum components that an alternative curriculum must include in order to be approved)) must be submitted to DSHS for curriculum approval?~~ ((In order to be approved, an alternative curriculum must at a minimum include:

- ~~(1) All the DSHS-published learning outcomes and competencies for the course;~~
- ~~(2) Printed student materials that support the curriculum, a teacher's guide or manual, and learning resource materials such as learning activities, audio-visual materials, handouts, and books;~~
- ~~(3) The recommended sequence and delivery of the material;~~
- ~~(4) The teaching methods or approaches that will be used for different sections of the course, including for each lesson:~~
 - ~~(a) The expected learning outcomes;~~
 - ~~(b) Learning activities that incorporate adult learning principles and address the learning readiness of the student population;~~
 - ~~(c) Practice of skills to increase competency;~~
 - ~~(d) Feedback to the student on knowledge and skills;~~
 - ~~(e) An emphasis on facilitation by the teacher; and~~
 - ~~(f) An integration of knowledge and skills from previous lessons to build skills.~~
- ~~(5) A list of the sources or references, if any, used to develop the curriculum;~~
- ~~(6) Methods of teaching and student evaluation for students with limited English proficiency and/or learning disabilities; and~~
- ~~(7) A plan for updating material. Substantial changes to a previously approved curriculum must be approved before they are used)) DSHS developed curriculum(s) do not require submission to the department for approval unless the curriculum is being modified in any manner by the training entity.~~

(1) For orientation and/or safety training:

Effective January 1, 2011, submit an outline of what will be covered in each training offered (for example, a table of contents or a class syllabus) showing that the required introductory topics as listed in WAC 388-112-0016 for orientation and WAC 388-112-0855 for safety training are covered in the training. Department required orientation and safety training application forms must be submitted to the department at least forty-five days in advance of when the training is expected to be offered. Training cannot be offered before receiving department curriculum and instructor approval.

(2) For continuing education:

Effective July 1, 2011, submit an outline of what will be covered in the training (for example, a table of contents or the class syllabus), the number of training hours, and a description of how the training is relevant to the care setting, care needs of residents, or long-term care worker career development. Department required continuing education training application forms must be submitted at least forty five days in advance of when the training is expected to be offered. The trainings cannot be offered before receiving department curriculum and instructor approval.

(3) For basic training:

(a) If the instructor or training entity wants to use the DSHS developed revised fundamentals of caregiving learner's guide with enhancements, submit the DSHS required form with all required information. Otherwise, the following must be submitted to DSHS for approval of one or both sections (core competencies and population specific competencies) of the seventy hours required for basic training. When submitting one or both sections of basic training curriculum for DSHS approval, it must at a minimum include:

(i) A completed DSHS curriculum checklist indicating where all of the competencies and learning objectives, described in this chapter, are located in the long-term care worker materials from the proposed curriculum for that course;

(ii) Any materials long-term care workers will receive, such as a textbook or long-term care worker manual, learning activities, audio-visual materials, handouts, and books;

(iii) The table of contents or outline of the curriculum, including the allotted time for each section;

(iv) Demonstration skills checklists for the personal care tasks described in WAC 388-112-0055(12)(a) and (b), and infection control skills (hand washing and putting on and taking off gloves);

(v) The teachers guide or manual that includes for each section of the curriculum:

(A) The goals and objectives;

(B) How that section will be taught, including teaching methods and learning activities that incorporate adult learning principles;

(C) Methods instructors will use to determine whether each long-term care worker understands the materials covered and can demonstrate all skills;

(D) A list of the sources or references that were used to develop the curriculum. If the primary source or reference is not a published citation, the instructor must provide detail on how the content was established as evidence based;

(E) Description of how the curriculum was designed to accommodate long-term care workers with limited English proficiency and/or learning disabilities; and

(F) Description and proof of how input was obtained from consumer and long-term care worker representatives in the development of the curriculum.

(b) In addition, for curricula being submitted for the core competency section of basic training as described in WAC 388-112-0055, the curriculum must include how much time students will be given to practice skills and how instructors will evaluate and ensure each long-term care worker can proficiently complete each skill.

(c) Entities submitting curriculum for population specific basic training must submit their own list of competencies and learning objectives used to develop the population specific basic training curriculum.

(4) For specialty training:

For specialty training that is not the DSHS developed curriculum or other department approved curriculum, submit the required specialty training application form and any additional learning objectives added to the competency and learn-

ing objectives checklist, the enhancements that have been added, and additional student materials or handouts.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0330 What is the curriculum approval process for orientation, safety, basic training (core and population specific training), and continuing education? ~~((1) An alternative curriculum must be submitted to DSHS for approval with:~~

~~(a) Identification of where each DSHS published required learning outcome and competency is located in the alternate curriculum;~~

~~(b) All materials identified in WAC 388-112-0325; and~~

~~(c) A letter from the boarding home administrator or adult family home provider attesting that the training curriculum addresses all of the training competencies identified by DSHS;~~

~~(2) DSHS may approve a curriculum based upon the attestation in (1)(c) above, until it has been reviewed by DSHS;~~

~~(3) If, upon review by DSHS, the curriculum is not approved, the alternative curriculum may not be used until all required revisions have been submitted and approved by DSHS.~~

~~(4)) In order to obtain the department's approval of the curriculum for orientation, safety, basic training (core and population specific training), and continuing education:~~

~~(1) Submit the required training application forms and any other materials required for specific curriculums to the department.~~

~~(2) After review of the ((alternative)) curriculum, DSHS will send a written response to the submitter, indicating approval or disapproval of the curriculum(s) ((and if disapproved, the reasons for denial;)).~~

~~((5)) (3) If curriculum(s) are not approved, the reason(s) for denial will be given and the submitter will be told what portion(s) of the training must be changed and resubmitted for review in order for the curriculum to be approved.~~

~~(4) The submitter can make the requested changes and resubmit the curriculum(s) for review.~~

~~(5) If after working with the department the ((alternative curriculum is not approved, a revised curriculum may be resubmitted to DSHS for another review)) reasons why the curriculum is not approved cannot be resolved, the submitter may seek a review of the nonapproval decision from the assistant secretary of aging and disability services administration (ADSA). The assistant secretary's review decision shall be the final decision of DSHS. No other administrative review is available to the submitter.~~

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0335 What are the requirements for a boarding home or adult family home that wishes to conduct orientation, safety, basic, ((modified basic, manager specialty, or caregiver)) on-the-job training, continuing education, or long-term care worker specialty training?

(1) A boarding home provider or adult family home provider

wishing to conduct orientation, safety, basic, ((modified basic, manager specialty)) on-the-job training, continuing education, or ((caregiver)) long-term care worker specialty training ((for boarding home caregivers)) may do so if the ((home)) provider:

(a) Verifies ~~((and))~~, documents using the department's attestation process, keeps on file, and makes available to the department upon request that all instructors meet ~~((each of))~~ the minimum instructor qualifications in WAC 388-112-0370 through 388-112-0395 for the course they plan to teach;

(b) Teaches using a complete DSHS-developed or approved ~~((alternative))~~ curriculum.

(c) Notifies DSHS in writing of the ~~((home's))~~ provider's intent to conduct staff training prior to providing the ~~((home's))~~ provider's first training, and when changing training plans, including:

(i) ~~((Home))~~ The provider's name;

(ii) Name of training(s) the ~~((home))~~ provider will conduct;

(iii) Name of approved curriculum(s) the ~~((home))~~ provider will use;

(iv) Name of lead instructor and instructor's past employment in boarding homes ~~((and))~~ or adult family homes; and

(v) Whether the ~~((home))~~ provider will train only the ~~((home's))~~ provider's staff, or will also train staff from other ~~((homes))~~ providers. If training staff outside the home or corporation, the instructor must become a DSHS-contracted community instructor;

(d) Ensures that DSHS competency tests are administered as required under this chapter;

(e) Provides a certificate or transcript of completion of training to all staff that successfully complete the entire course~~(, including:~~

~~(i) The trainee's name;~~

~~(ii) The name of the training;~~

~~(iii) The name of the home giving the training;~~

~~(iv) The instructor's name and signature; and~~

~~(v) The date(s) of training);~~

(f) Keeps a copy of ~~((student))~~ long-term care worker certificates on file for six years, and gives the original certificate to the trainee;

(g) Keeps attendance records and testing records of ~~((students))~~ long-term care workers trained and tested on file for six years; and

(h) Reports training data to DSHS ~~((in DSHS-identified time frames))~~ when requested by the department.

(2) ~~((An adult family home wishing to conduct caregiver specialty training that is taught by the provider, resident manager, or person knowledgeable about the specialty area, as required under WAC 388-112-0110 subsection (3), must document the specialty training as provided under WAC 388-112-0155))~~ The department may conduct a random audit at any time to review training and instructor qualifications.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0340 ((Do homes need)) Is department approval required to provide continuing education

~~((for their staff))~~? Homes, supported living providers, or entities may provide continuing education for their staff with~~((out))~~ prior approval of the training curricula ((or)) and instructors by the department.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0345 When can DSHS prohibit a home or supported living provider from conducting its own training? DSHS may prohibit a home or supported living provider from providing its own basic, ~~((modified basic;))~~ population specific, specialty, or ((caregiver specialty)) supported living provider training when:

(1) DSHS determines that the training fails to meet the standards under this chapter;

(2) The home or supported living provider fails to notify DSHS of changes in the curriculum content prior to teaching the curriculum;

(3) The home or supported living provider provides false or misleading information to long-term care workers or the public concerning the courses offered or conducted;

(4) The home's or supported living provider's instructor does not meet the applicable qualifications under WAC ((388-112-0375)) 388-112-0370 through 388-112-0395; or

~~((3))~~ (5) The home's or supported living provider's instructor has been a licensee, boarding home administrator, or adult family home resident manager, as applicable, of any home subject to temporary management or subject to a revocation or summary suspension of the home's license, a stop placement of admissions order, a condition on the license related to resident care, or a civil fine of five thousand dollars or more, while the instructor was the licensee, administrator, or resident manager; or

~~((4))~~ (6) The home has been operated under temporary management or has been subject to a revocation or suspension of the home license, a stop placement of admissions order, a condition on the license related to resident care, or a civil fine of five thousand dollars or more, within the previous ((twelve)) eighteen months.

~~((5))~~ (7) Nothing in this section shall be construed to limit DSHS' authority under chapters 388-76 ((or)) 388-78A, or 388-101 WAC to require the immediate enforcement, pending any appeal, of a condition on the home license prohibiting the home or supported living provider from conducting its own training programs.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0350 What trainings must be taught by an instructor who meets the applicable minimum qualifications under this chapter? (1) The following trainings must be taught by an instructor who meets the applicable minimum qualifications as described in WAC 388-112-0380, 388-112-0383 and 388-112-0385 through 388-112-0395 for that training: Orientation, safety training, basic training((;)), modified basic training((;)), young adults with physical disabilities, aging and older adults, manager and long-term care worker mental health, dementia, ((and)) developmental disability specialty training((; and caregiver specialty training

that is not taught by the boarding home administrator (or designee) or adult family home provider or resident manager), on-the-job training, and continuing education.

(2) Nurse delegation core and specialized diabetes training (~~(and residential care administrator training)~~) must be taught by ~~((an instructor))~~ a current Washington state RN who is approved by DSHS. The RN's license must be in good standing without practice restrictions.

NEW SECTION

WAC 388-112-0352 What trainings may be taught by an instructor that does not meet the minimum qualifications under this chapter? The following trainings may be taught by an instructor that does not meet the minimum qualifications under this chapter:

- (1) CPR; and
- (2) First aid training.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0355 What are ~~((an instructor's or))~~ a training entity's responsibilities? The ~~((instructor or))~~ training entity is responsible for:

- (1) Coordinating and teaching classes,
- (2) Assuring that the curriculum used is taught as designed,
- (3) Selecting qualified guest speakers where applicable,
- (4) Administering or overseeing the administration of DSHS competency and challenge tests,
- (5) Maintaining training records including ~~((student))~~ long-term care worker tests and attendance records for a minimum of six years,
- (6) Reporting training data to DSHS in DSHS-identified time frames, and
- (7) Issuing or reissuing training certificates to ~~((students))~~ long-term care workers.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0360 Must training entities and their instructors be approved by DSHS? (1) DSHS-contracted ~~((instructors))~~ training entities:

(a) DSHS must approve ~~((any))~~ and/or contract with a training entity and their instructor(s) ~~((under contract with DSHS))~~ to conduct orientation, safety, basic, modified basic, population specific, residential care administrator, manager and long-term care worker specialty, ~~((or))~~ nurse delegation core and specialized diabetes training ~~((classes using the training curricula developed by DSHS)),~~ on-the-job training, and continuing education.

(b) DSHS may select ~~((contracted instructors through a purchased services contract procurement pursuant to chapter 236-48 WAC or through other))~~ training entities using any applicable contracting procedures. Contractors must meet the minimum qualifications for instructors under this chapter and any additional qualifications established through ~~((a request for qualifications and quotations (RFQQ) or other applicable))~~ the contracting procedure.

(2) Homes or supported living providers conducting their own training

~~((Homes conducting their own training))~~ programs using the training curricula developed by DSHS or ~~((alternative))~~ another curricula approved by DSHS must ensure, through an attestation process, that their instructors meet the minimum qualifications for instructors under this chapter.

(3) ~~((Other instructors))~~

DSHS must approve all other training entities and their instructor(s) not described in subsection (1) and (2) of this section.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0365 Can DSHS deny or terminate a contract with an instructor or training entity? (1) DSHS may ~~((determine not to accept a bid or other offer by))~~ deny a person or organization seeking a contract with DSHS to conduct orientation, safety, basic, modified basic, population specific, residential care administrator, specialty, or nurse delegation core or specialized diabetes training ~~((classes using the training curricula developed by DSHS. The protest procedures under chapter 236-48 WAC, as applicable, are a bidder's exclusive administrative remedy)).~~ No administrative remedies are available to dispute DSHS' decision not to ~~((accept an offer that is not governed by chapter 236-48 WAC))~~ contract, except as may be provided through the contracting process.

(2) DSHS may terminate ~~((any))~~ an existing training contract in accordance with the terms of the contract. The contractor's administrative remedies shall be limited to those specified in the contract.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0370 What is a guest speaker, and what are the minimum qualifications to be a guest speaker for basic and developmental disabilities specialty training? (1) A guest speaker(s for basic and developmental disabilities specialty training) is a person selected by an approved instructor to teach a specific topic. A guest speaker:

~~((a))~~ May only teach a specific subject in which they have expertise, ~~((under the supervision of the instructor. A guest speaker must have as minimum qualifications, an appropriate))~~ and background and experience that demonstrates that the guest speaker has expertise on the topic he or she will teach.

~~((b))~~ May not teach the entire course;

~~((c))~~ Must not supplant the primary teaching responsibilities of the primary instructor; and

~~((d))~~ Must cover the DSHS competencies and learning objectives for the topic he or she is teaching.

(2) The approved instructor:

~~((a))~~ Must select guest speakers that meet the minimum qualifications ~~((, and));~~

~~((b))~~ Maintain documentation of ~~((this))~~ the guest speaker's background and qualifications;

~~((c))~~ Supervise and monitor the guest speaker's performance; and

(d) Is responsible for insuring the required content is taught.

(3) DSHS does not approve guest speakers.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0380 What are the minimum qualifications for ~~((an instructor for basic or modified basic))~~ an instructor for basic, population specific, on-the-job training, residential care administrator, and nurse delegation core and specialized diabetes training? An instructor for basic ~~((or modified basic)),~~ population specific, on-the-job training, residential care administrator, nurse delegation core and nurse delegation specialized diabetes training must meet the following minimum qualifications ~~((in addition to the general instructor qualifications in WAC 388-112-0375))~~:

(1) Twenty-one years of age; and

(2) Has not had a professional health care, adult family home, boarding home, or social services license or certification revoked in Washington state.

(3) Education and work experience:

(a) Upon initial approval or hire, must ~~((have))~~:

(i) Be a registered nurse with work experience within the last five years with the elderly or persons with disabilities requiring long-term care in a community setting; or

(ii) Have an associate degree or higher degree in the field of health or human services and six months professional or caregiving experience within the last five years in an adult family home, boarding home, supported living through DDD, or home care setting; or

(iii) Have a high school diploma, or equivalent, and one year of professional or caregiving experience within the last five years in an adult family home, boarding home, supported living through DDD ~~((per chapter 388-820 WAC)),~~ or home care setting~~((or~~

~~((ii) An associate degree in a health field and six months professional or caregiving experience within the last five years in an adult family home, boarding home, supported living through DDD per chapter 388-820 WAC, or home care setting)).~~

~~((2))~~ (4) Teaching experience:

(a) Must have one hundred hours of experience teaching adults in a classroom setting on topics directly related to the basic training; or

(b) Must have forty hours of teaching while being mentored by an instructor who meets these qualifications, and must attend a class ~~((in))~~ on adult education that meets the requirements of WAC 388-112-0400.

~~((3))~~ (5) The instructor must be experienced in caregiving practices and capable of demonstrating competency with respect to teaching the course content or units being taught;

~~((4))~~ (6) Instructors who will administer tests must have experience or training in assessment and competency testing; and

~~((5) If required under WAC 388-112-0075 or 388-112-0105, instructors must successfully complete basic or modified basic training prior to beginning to train others.)~~

(7) In addition, an instructor for nurse delegation core and diabetes training must have a current Washington state RN license in good standing without practice restrictions.

NEW SECTION

WAC 388-112-0383 What are the minimum qualifications for an instructor for orientation, safety, and continuing education? An instructor for orientation, safety, and continuing education must be a registered nurse or other person with specific knowledge, training, and work experience in the provision of direct, hands-on personal care or other relevant services to the elderly or persons with disabilities requiring long-term care.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0385 What are the minimum qualifications for instructors for manager and ~~((caregiver))~~ long-term care worker mental health specialty training?

(1) ~~((Instructors for manager mental health specialty training))~~ The minimum qualifications for instructors for manager mental health specialty, in addition to the general qualifications in WAC ~~((388-112-0375))~~ 388-112-0380(1) and (2) include:

(a) The instructor must be experienced in mental health caregiving practices and capable of demonstrating competency in the entire course content;

(b) Education:

(i) Bachelor's degree, registered nurse, or mental health specialist, with at least one year of education in seminars, conferences, continuing education, or in college classes, in subjects directly related to mental health, such as, but not limited to, psychology. (One year of education equals twenty-four semester hours, thirty-six quarter hours, or at least one hundred ninety-two hours of seminars, conferences, and continuing education.)

(ii) If required under WAC 388-112-0160, successful completion of the mental health specialty training, prior to beginning to train others.

(c) Work experience - Two years full-time equivalent direct work experience with people who have a mental illness; and

(d) Teaching experience:

(i) Two hundred hours experience teaching mental health or closely related subjects; and

(ii) Successful completion of an adult education class ~~((or train the trainer as follows))~~:

(A) For instructors teaching alternate curricula, a class in adult education that meets the requirements of WAC 388-112-0400~~((, or a train the trainer class for the curriculum they are teaching))~~.

(B) For instructors teaching ~~((DSHS-developed))~~ mental health specialty training, successful completion of the DSHS~~((-developed train the trainer))~~ instructor qualification/demonstration process.

(e) Instructors who will administer tests must have experience or training in assessment and competency testing.

(2) Instructors for ~~((caregiver))~~ long-term care worker mental health specialty training:

(a) ~~((Caregiver))~~ Long-term care worker mental health specialty may be taught by a boarding home administrator (or designee), adult family home provider, or corporate trainer, who has successfully completed the manager mental health specialty training. A qualified instructor under this subsection may teach ~~((caregiver))~~ specialty to ~~((caregivers))~~ long-term care workers employed at other home(s) licensed by the same licensee.

(b) ~~((Caregiver))~~ Long-term care worker mental health specialty taught by a person who does not meet the requirements in subsection (2)(a) must meet the same requirements as the instructors for manager mental health specialty in subsection (1).

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0390 What are the minimum qualifications for instructors for manager and ~~((caregiver))~~ long-term care worker dementia specialty? (1) The minimum qualifications for instructors for manager dementia specialty, in addition to the general qualifications under WAC ~~((388-112-0375,))~~ 388-112-0380(1) and (2) include:

(a) The instructor must be experienced in dementia caregiving practices and capable of demonstrating competency in the entire course content;

(b) Education;

(i) Bachelor's degree, registered nurse, or mental health specialist, with at least one year of education in seminars, conferences, continuing education or college classes, in dementia or subjects directly related to dementia, such as, but not limited to, psychology. (One year of education equals twenty-four semester hours, thirty-six quarter hours, or at least one hundred ninety-two hours of seminars, conferences, or continuing education.)

(ii) If required under WAC 388-112-0160, successful completion of the dementia specialty training, prior to beginning to train others.

(c) Work experience - Two years full-time equivalent direct work experience with people who have dementia; and

(d) Teaching experience;

(i) Two hundred hours experience teaching dementia or closely related subjects; and

(ii) Successful completion of an adult education class ~~((or train the trainer))~~ as follows:

(A) For instructors teaching alternate curricula, a class in adult education that meets the requirements of WAC 388-112-0400~~((, or a train the trainer class for the curriculum they are teaching:))~~.

(B) For instructors teaching DSHS-developed dementia specialty training, successful completion of the DSHS~~((-developed train the trainer))~~ instructor qualification/demonstration process.

~~((d))~~ (e) Instructors who will administer tests must have experience or training in assessment and competency testing.

(2) Instructors for ~~((caregiver))~~ long-term care worker dementia specialty training:

(a) ~~((Caregiver))~~ Long-term care worker dementia specialty may be taught by a boarding home administrator (or

designee), adult family home provider, or corporate trainer, who has successfully completed the manager dementia specialty training. A qualified instructor under this subsection may teach ~~((caregiver))~~ specialty to ~~((caregivers))~~ long-term care workers employed at other home(s) licensed by the same licensee.

(b) ~~((Caregiver))~~ Long-term care worker dementia specialty taught by a person who does not meet the requirements in subsection (2)(a) must meet the same requirements as the instructors for manager dementia specialty in subsection (1).

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0395 What are the minimum qualifications for instructors for ~~((manager and caregiver))~~ long-term care worker developmental disabilities specialty? (1) The minimum qualifications for instructors for ~~((manager))~~ developmental disabilities specialty, in addition to the general qualifications under WAC ~~((388-112-0375))~~ 388-112-0380(1) and (2), include:

(a) The instructor must be experienced in developmental disabilities caregiving practices and capable of demonstrating competency in the entire course content, including the administration of competency testing:

~~((b))~~ (b) Education and work experience:

(i) Bachelor's degree with at least two years of full-time work experience in the field of disabilities; or

(ii) High school diploma or equivalent, with four years full time work experience in the field of developmental disabilities, including two years full time direct work experience with people who have a developmental disability.

~~((b))~~ (c) Successful completion of the eighteen hour developmental disabilities specialty training under WAC 388-112-0120; and

~~((c))~~ (d) Teaching experience:

(i) Two hundred hours of teaching experience; and

(ii) Successful completion of an adult education ~~((or train the trainer as follows:~~

~~((A))~~ for instructors teaching alternative curricula, a class in adult education that meets the requirements of WAC 388-112-0400~~((, or a train the trainer class for the curriculum they are teaching;~~

~~((B))~~ For instructors teaching DSHS-developed developmental disabilities specialty training, successful completion of the DSHS-developed train the trainer)).

(d) Instructors who will administer tests must have experience in assessment and competency testing.

(2) Instructors for ~~((caregiver))~~ developmental disabilities specialty training:

(a) ~~((Caregiver))~~ Developmental disabilities specialty may be taught by a boarding home administrator (or designee), adult family home provider, or corporate trainer, who has successfully completed the ~~((manager developmental disabilities specialty training))~~ mental health or manager dementia specialty course, the eighteen hour developmental disabilities specialty training, and has successfully completed the instructor qualification/demonstration process. A qualified instructor under this subsection may teach ~~((caregiver))~~ developmental disabilities specialty to ~~((caregivers))~~ long-

term care workers employed at other home(s) licensed by the same licensee.

(b) (~~Caregiver~~) Developmental disabilities specialty taught by a person who does not meet the requirements in subsection (2)(a) must meet the same requirements as the instructors for (~~manager~~) developmental disabilities specialty in subsection (1).

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

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0405 What physical resources are required for (~~basic, modified basic, specialty, or nurse delegation core~~) classroom training and testing? (1) Classroom (~~space used for basic, modified basic, specialty, or nurse delegation core classroom training~~) facilities must be accessible to trainees and provide adequate space for learning activities, comfort, lighting, lack of disturbance, and tools for effective teaching and learning such as white boards and flip charts. Appropriate supplies and equipment must be provided for teaching and practice of caregiving skills in the class being taught.

(2) Testing sites must provide adequate space for testing, comfort, lighting, and lack of disturbance appropriate for the written or skills test being conducted. Appropriate supplies and equipment necessary for the particular test must be provided.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0410 What standard training practices must be maintained for (~~basic, modified basic, specialty, or nurse delegation core~~) classroom training and testing? The following training standards must be maintained for (~~basic, modified basic, specialty or nurse delegation core~~) classroom training and testing:

- (1) Training (~~, including all breaks,~~) must not exceed eight hours within one day;
- (2) Training provided in short time segments must include an entire unit, skill or concept;
- (3) Training must include regular breaks; and
- (4) (~~Students~~) Long-term care workers attending a classroom training must not be expected to leave the class to attend to job duties, except in an emergency.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-112-0025 Is competency testing required for orientation?

WAC 388-112-0030 Is there a challenge test for orientation?

- WAC 388-112-0050 Is there an alternative to the basic training for some health care workers?
- WAC 388-112-0060 Is competency testing required for basic training?
- WAC 388-112-0065 Is there a challenge test for basic training?
- WAC 388-112-0080 What is modified basic training?
- WAC 388-112-0085 What knowledge and skills must be included in modified basic training?
- WAC 388-112-0090 Is competency testing required for modified basic training?
- WAC 388-112-0095 Is there a challenge test for modified basic training?
- WAC 388-112-0100 What documentation is required for successful completion of modified basic training?
- WAC 388-112-0105 Who may take modified basic training instead of the full basic training?
- WAC 388-112-0245 Who is required to complete continuing education training, and when?
- WAC 388-112-02610 What is HIV/AIDS training?
- WAC 388-112-02615 Is competency testing required for HIV/AIDS training?
- WAC 388-112-02620 Is there a challenge test for HIV/AIDS training?
- WAC 388-112-02625 What documentation is required for completion of HIV/AIDS training?
- WAC 388-112-02630 Who is required to complete HIV/AIDS training, and when?
- WAC 388-112-0375 What are the minimum general qualifications for an instructor teaching a DSHS curriculum or DSHS-approved alternate curriculum as defined under chapter 388-112 WAC?

AMENDATORY SECTION (Amending WSR 07-16-101, filed 7/31/07, effective 9/1/07)

WAC 388-829A-050 Who is eligible to contract with DDD to provide alternative living services? Before DDD

may issue an alternative living contract, the prospective provider must:

- (1) Be twenty-one years of age or older;
 - (2) Have a high school diploma or GED;
 - (3) Clear a background check conducted by DSHS, as required by RCW 43.20A.710;
 - (4) Have an FBI fingerprint-based background check as required by RCW 43.20A.710, if the person has not lived in the state continuously for the previous three years;
 - (5) Have a business ID number, as an independent contractor; and
 - (6) Meet the minimum skills and abilities described in WAC 388-829A-110.
- (7) Alternative living providers contracted after January 1, 2012 must be screened through a fingerprint-based FBI check as described in WAC 388-06-0110 through 388-06-0150.

NEW SECTION

WAC 388-829A-161 What are the training requirements for alternative living providers contracted before January 1, 2011? Alternative living providers contracted before January 1, 2011 must meet the training requirements as described under WAC 388-829A-140 through 388-829A-160.

NEW SECTION

WAC 388-829A-162 What are the training requirements for alternative living providers contracted on or after January 1, 2011? Alternative living providers contracted on or after January 1, 2011 must meet the training requirements as described under chapter 388-112 WAC.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-040 Who is eligible to contract with DDD to provide companion home residential services? To be eligible to contract with DDD to provide companion home residential services, a person must:

- (1) Be twenty-one years of age or older;
 - (2) Have a high school diploma or GED;
 - (3) Clear a background check conducted by DSHS as required by RCW 43.20A.710;
 - (4) Have an FBI fingerprint-based background check as required by RCW 43.20A.710, if the person has not lived in the state continuously for the previous three years;
 - (5) Have a business ID number, as an independent contractor; and
 - (6) Meet the minimum skills and abilities described in WAC 388-829C-080.
- (7) Companion home providers contracted after January 1, 2012 must be screened through a fingerprint-based FBI background check as described in WAC 388-06-0110 through 388-06-0150.

NEW SECTION

WAC 388-829C-131 What are the training requirements for companion home providers contracted before January 1, 2011? Companion home providers must ensure that staff hired before January 1, 2011 meet the training requirements as described under chapter 388-829C WAC.

NEW SECTION

WAC 388-829C-132 What are the training requirements for companion home providers contracted on or after January 1, 2011? Companion home providers must ensure that staff hired on or after January 1, 2011 meet training requirements as described under chapter 388-112 WAC.

WSR 11-10-031

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Medicaid Purchasing Administration)

[Filed April 27, 2011, 9:40 a.m., effective April 28, 2011]

Effective Date of Rule: April 28, 2011.

Purpose: 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 nonemergency dental and dental-related services for clients twenty-one years of age and older. Clients who are classified as developmentally disabled under RCW 71A.10-020 who are twenty-one years of age and older will continue to receive dental-related services under chapter 388-535 WAC. In addition, the rules meet targeted budget expenditure levels under sections 201 and 209 of the operating budget for fiscal years 2010 and 2011.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-535-1247, 388-535-1255, 388-535-1257, 388-535-1259, 388-535-1261, 388-535-1263, 388-535-1266, 388-535-1267, 388-535-1269, 388-535-1271 and 388-535-1280; and amending WAC 388-535-1060, 388-535-1065, 388-535-1079, 388-535-1080, 388-535-1082, 388-535-1084, 388-535-1086, 388-535-1088, 388-535-1090, 388-535-1092, 388-535-1094, 388-535-1096, 388-535-1098, 388-535-1099, 388-535-1100, 388-535-1220, 388-535-1350, 388-535-1400, 388-535-1450, and 388-535-1500.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: Section 209(1), chapter 37, Laws of 2010 (ESSB 6444); sections 201 and 209, chapter 564, Laws of 2009 (ESHB 1244).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; and that in order to implement the requirements or

reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: Governor Gregoire issued Executive Order 10-04 on September 13, 2010, under the authority of RCW 43.88.110(7). In the executive order, the governor required DSHS and all other state agencies to reduce their expenditures in state fiscal year 2011 by approximately 6.3 percent. As a consequence of the executive order, funding will no longer be available as of January 1, 2011, for the benefits that are being eliminated as part of these regulatory amendments. Delaying the adoption of these cuts to optional services could jeopardize the state's ability to maintain the mandatory medicaid programs for the majority of DSHS clients. The rule continues the emergency rule filed under WSR 11-02-10 [11-02-030] on December 19 [29], 2010, to comply with Executive Order 10-04, and also continues the emergency rule filed under WSR 10-22-053 on October 28, 2010, that complies with sections 201 and 209 of the operating budget for fiscal years 2010 and 2011 with respect to dental services. CR-101s were filed under WSR 09-14-093 on June 30, 2009, and WSR 10-20-160 on October 6, 2010. MPA is currently preparing drafts for the permanent rule to share with providers for their input. Following this, MPA plans to formally adopt the permanent rule.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 20, Repealed 11.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 20, Repealed 11.

Date Adopted: April 19, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 03-19-077, filed 9/12/03, effective 10/13/03)

WAC 388-535-1060 Clients who are eligible for dental-related services. The following clients ~~((who receive services under the medical assistance programs listed in this section))~~ are eligible for ~~((covered))~~ the dental-related services ~~((, subject to the restrictions and specific limitations described in this chapter and other applicable WAC))~~ described in chapter 388-535 WAC, subject to limitations, restrictions, and client-age requirements identified for a specific service:

(1) ~~((Children eligible for the))~~ A client twenty years of age or younger who is eligible under one of the following medical assistance programs:

- (a) Categorically needy program (CN or CNP);
- (b) Categorically needy program - children's health insurance program (CNP-CHIP); ~~((and))~~
- (c) ~~((Limited casualty program--))~~ Medically needy program ~~((LCP-MNP))~~ (MNP); or
- (d) Disability lifeline (formerly general assistance-unemployable (GAU) or alcohol and drug abuse treatment and support act (ADATSA)).

~~((2))~~ Adults eligible for the:

- (a) Categorically needy program (CN or CNP); and
- (b) Limited casualty program - medically needy program ~~((LCP-MNP)).~~

~~((3))~~ Clients eligible for medical care services under the following state-funded only programs are eligible only for the limited dental-related services described in WAC 388-535-1065:

- (a) General assistance - Unemployable (GA-U); and
- (b) General assistance - Alcohol and Drug Abuse Treatment and Support Act (ADATSA) (GA-W).

~~((4))~~ (2) A client of the division of developmental disabilities.

(3) A client((s)) ((who are)) twenty years of age or younger enrolled in a department-contracted managed care ((plan are eligible for medical assistance administration (MAA) covered dental services that are not covered by their plan;)) organization (MCO). MCO clients are eligible under fee-for-service((-)) for covered dental-related services not covered by their MCO plan, subject to the provisions of chapter 388-535 WAC and other applicable ((WAC)) department rules.

(4) See WAC 388-438-0120 for rules for clients eligible under an alien emergency medical program.

AMENDATORY SECTION (Amending WSR 07-17-107, filed 8/17/07, effective 9/17/07)

WAC 388-535-1065 Coverage limits for dental-related services provided under the ((GA-U)) disability lifeline and ADATSA programs. (1) ~~((Clients who receive medical care services under the following programs may receive the dental-related services described in this section:~~

- (a) General assistance unemployable (GA-U); and
- (b) Alcohol and drug abuse treatment and support act (ADATSA).

~~((2))~~ The department covers the following dental-related services only for a client ((eligible under the GA-U)) who is twenty years of age or younger and eligible under the disability lifeline or ADATSA program:

- (a) Services provided only as part of dental treatment for:
 - (i) Limited oral evaluation;
 - (ii) Periapical or bite-wing radiographs that are medically necessary to diagnose only the client's chief complaint;
 - (iii) Panographs that are medically necessary to diagnose only the client's chief complaint;
 - (iv) Palliative treatment to relieve dental pain;
 - ~~((iv))~~ (v) Pulpal debridement to relieve dental pain; or

~~((v))~~ (vi) Endodontic (root canal only) treatment for maxillary and mandibular anterior teeth (cuspids and incisors) when prior authorized(~~(v)~~).

(b) Tooth extraction when at least one of the following apply:

(i) The tooth has a radiograph apical lesion;

(ii) The tooth is endodontically involved, infected, or abscessed;

(iii) The tooth is not restorable; or

(iv) The tooth is not periodontally stable.

~~((3))~~ (2) Tooth extractions require prior authorization when:

(i) The extraction of a tooth or teeth results in the client becoming edentulous in the maxillary arch or mandibular arch; and

(ii) A full mouth extraction is necessary because of radiation therapy for cancer of the head and neck.

~~((4))~~ (3) Each dental-related procedure described under this section is subject to the coverage limitations listed in chapter 388-535 WAC.

~~((5))~~ (4) The department does not cover any dental-related services not listed in this section for ~~((clients eligible under the GA-U or ADATSA program))~~ a disability lifeline client or an ADATSA client who is twenty-one years of age or older, including any type of removable prosthesis (denture).

AMENDATORY SECTION (Amending WSR 07-06-042, filed 3/1/07, effective 4/1/07)

WAC 388-535-1079 Dental-related services for clients ~~((through age))~~ twenty years of age and younger, and for clients of the division of developmental disabilities—

General. (1) Subject to coverage limitations and client-age requirements identified for a specific service, the department pays for dental-related services and procedures provided to clients ~~((through age))~~ twenty years of age and younger, and to clients of the division of developmental disabilities, when the services and procedures:

(a) Are within the scope of an eligible client's medical care program;

(b) Are medically necessary;

(c) Meet the department's prior authorization requirements, if any;

(d) Are documented in the client's record in accordance with chapter 388-502 WAC;

(e) Are within accepted dental or medical practice standards;

(f) Are consistent with a diagnosis of dental disease or condition;

(g) Are reasonable in amount and duration of care, treatment, or service; and

(h) Are listed as covered in the department's published rules, billing instructions and fee schedules.

(2) The department covers nonemergent dental-related services performed in a hospital or an ambulatory surgical center for:

(a) Clients eight years of age and younger;

(b) Clients from nine to twenty years of age only on a case-by-case basis and when the services are prior authorized; and

(c) Clients of the division of developmental disabilities according to WAC 388-535-1099.

(3) To be eligible for payment, dental-related services performed in a hospital or an ambulatory surgery center must be listed in the department's current published outpatient fee schedule or ambulatory surgical center fee schedule. The claim must be billed with the correct procedure code for the site of service.

(4) Under the early periodic screening and diagnostic treatment (EPSDT) program, clients ~~((ages))~~ twenty years of age and younger may be eligible for dental-related services listed as noncovered.

~~((3) Clients who are eligible for services through the division of developmental disabilities may receive dental-related services according to WAC 388-535-1099.~~

~~((4))~~ (5) The department evaluates a request for dental-related services:

(a) That are in excess of the dental program's limitations or restrictions, according to WAC 388-501-0169; and

(b) That are listed as noncovered according to WAC 388-501-0160.

AMENDATORY SECTION (Amending WSR 07-06-042, filed 3/1/07, effective 4/1/07)

WAC 388-535-1080 Covered dental-related services for clients ~~((through age))~~ twenty years of age and younger, and for clients of the division of developmental disabilities—Diagnostic. ~~((The department covers medically necessary dental-related diagnostic services, subject to the coverage limitations listed, for clients through age twenty as follows:))~~ Subject to coverage limitations and client-age requirements identified for a specific service, the department covers the dental-related diagnostic services listed in this section that are provided to clients twenty years of age and younger, and to clients of the division of developmental disabilities. All coverage limitations and age requirements apply to clients of the division of developmental disabilities, unless otherwise stated.

(1) **Clinical oral evaluations.** The department covers:

(a) Oral health evaluations and assessments.

(b) Periodic oral evaluations as defined in WAC 388-535-1050, once every six months. Six months must elapse between the comprehensive oral evaluation and the first periodic oral evaluation.

(c) Limited oral evaluations as defined in WAC 388-535-1050, only when the provider performing the limited oral evaluation is not providing routine scheduled dental services for the client. The limited oral evaluation:

(i) Must be to evaluate the client for a:

(A) Specific dental problem or oral health complaint;

(B) Dental emergency; or

(C) Referral for other treatment.

(ii) When performed by a dentist, is limited to the initial examination appointment. The department does not cover any additional limited examination by a dentist for the

same client until three months after a removable prosthesis has been seated.

(d) Comprehensive oral evaluations as defined in WAC 388-535-1050, once per client, per provider or clinic, as an initial examination. The department covers an additional comprehensive oral evaluation if the client has not been treated by the same provider or clinic within the past five years.

(e) Limited visual oral assessments as defined in WAC 388-535-1050, up to two per client, per year, per provider only when the assessment is:

(i) Not performed in conjunction with other clinical oral evaluation services;

(ii) Performed to determine the need for sealants or fluoride treatment and/or when triage services are provided in settings other than dental offices or clinics; and

(iii) Provided by a licensed dentist or licensed dental hygienist.

(2) **Radiographs (X rays).** The department:

(a) Covers radiographs that are of diagnostic quality, dated, and labeled with the client's name. The department requires:

(i) Original radiographs to be retained by the provider as part of the client's dental record(=); and

(ii) Duplicate radiographs to be submitted;

(A) With requests for prior authorization ((requests, or)); and

(B) When the department requests copies of dental records ((are requested)).

(b) Uses the prevailing standard of care to determine the need for dental radiographs.

(c) Covers an intraoral complete series (includes four bitewings), once in a three-year period only if the department has not paid for a panoramic radiograph for the same client in the same three-year period.

(d) Covers periapical radiographs that are not included in a complete series. Documentation supporting the medical necessity for these must be included in the client's record.

(e) Covers an occlusal intraoral radiograph once in a two-year period. The department does not cover occlusal intraoral radiographs for clients of the division of developmental disabilities who are twenty-one years of age and older. Documentation supporting the medical necessity for these must be included in the client's record.

(f) Covers a maximum of four bitewing radiographs once every twelve months ((for clients through age eleven)).

(g) ((Covers a maximum of four bitewing radiographs once every twelve months for clients ages twelve through twenty-

(h)) Covers panoramic radiographs in conjunction with four bitewings, once in a three-year period, only if the department has not paid for an intraoral complete series for the same client in the same three-year period.

((h)) (h) May cover panoramic radiographs for preoperative or postoperative surgery cases more than once in a three-year period, only on a case-by-case basis and when prior authorized.

((i)) (i) Covers cephalometric film(=

(i)), only on a case-by-case basis and when prior authorized. The department does not cover cephalometric film for

clients of the division of developmental disabilities who are twenty-one years of age and older. For ((orthodontics)) orthodontic services, ((as described in)) see chapter 388-535A WAC((= or

(ii) Only on a case-by-case basis and when prior authorized)).

((k)) (j) Covers radiographs not listed as covered in this subsection, only on a case-by-case basis and when prior authorized.

((k)) (k) Covers oral and facial photographic images, only on a case-by-case basis and when requested by the department.

(3) **Tests and examinations.** The department ((covers

(a) Covers one pulp vitality test per visit (not per tooth):

(i) For diagnosis only during limited oral evaluations; and

(ii) When radiographs and/or documented symptoms justify the medical necessity for the pulp vitality test.

(b) Covers diagnostic casts other than those included in an orthodontic case study, on a case-by-case basis, and when requested by the department.

(c) Does not cover the tests and examinations in (a) and (b) of this subsection for clients of the division of developmental disabilities who are twenty-one years of age and older.

AMENDATORY SECTION (Amending WSR 07-06-042, filed 3/1/07, effective 4/1/07)

WAC 388-535-1082 Covered dental-related services for clients ((through age)) twenty years of age and younger, and clients of the division of developmental disabilities—Preventive services. Subject to coverage limitations and client-age requirements identified for a specific service, the department covers ((medically necessary)) the dental-related preventive services((= subject to the coverage limitations listed, for)) listed in this section that are provided to clients ((through age)) twenty ((as follows:)) years of age and younger, and to clients of the division of developmental disabilities. All coverage limitations and age requirements apply to clients of the division of developmental disabilities, unless otherwise stated.

(1) **Dental prophylaxis.** The department covers prophylaxis as follows. Prophylaxis:

(a) ((Which)) Includes scaling and polishing procedures to remove coronal plaque, calculus, and stains when performed on primary, transitional, or permanent dentition(= once every six months for clients through age twenty)).

(b) Is limited to once every:

(i) Six months for clients eighteen years of age and younger; and

(ii) Twelve months for clients from nineteen to twenty years of age.

(c) Is covered only when the service is performed:

(i) Six months after periodontal scaling and root planing, or periodontal maintenance services, for clients ((ages)) from thirteen ((through twenty-

(e)) to eighteen years of age; and

(ii) Twelve months after periodontal scaling and root planing, periodontal maintenance services, for clients from nineteen to twenty years of age.

(d) Is covered only when not performed on the same date of service as periodontal scaling and root planing, periodontal maintenance, gingivectomy or gingivoplasty.

~~((e))~~ (e) Is covered for clients of the division of developmental disabilities according to (a), (c) and (d) of this subsection and WAC 388-535-1099.

(2) **Topical fluoride treatment.** The department covers:

(a) Fluoride (~~(varnish,))~~ rinse, foam or gel for clients ~~((ages))~~ six years of age and younger, up to three times within a twelve-month period.

(b) Fluoride (~~(varnish,))~~ rinse, foam or gel for clients ~~((ages))~~ from seven (through) to eighteen years of age, up to two times within a twelve-month period.

(c) Fluoride (~~(varnish,))~~ rinse, foam or gel, up to three times within a twelve-month period during orthodontic treatment.

(d) Fluoride rinse, foam or gel for clients ~~((ages))~~ from nineteen (through) to twenty years of age, once within a twelve-month period.

(e) Additional topical fluoride applications only on a case-by-case basis and when prior authorized.

(f) Topical fluoride treatment for clients of the division of developmental disabilities according to WAC 388-535-1099.

(3) **Oral hygiene instruction.** The department covers:

(a) Oral hygiene instruction only for clients ~~((through age))~~ eight years of age and younger.

(b) Oral hygiene instruction up to two times within a twelve-month period.

(c) Individualized oral hygiene instruction for home care to include tooth brushing technique, flossing, and use of oral hygiene aides.

(d) Oral hygiene instruction only when not performed on the same date of service as prophylaxis.

(e) Oral hygiene instruction only when provided by a licensed dentist or a licensed dental hygienist and the instruction is provided in a setting other than a dental office or clinic.

(f) Oral hygiene instruction only for clients of the division of developmental disabilities who are seven years of age and younger.

(4) **Sealants.** The department covers:

(a) Sealants only when used on a mechanically and/or chemically prepared enamel surface.

(b) Sealants once per tooth:

(i) In a three-year period for clients ((through age)) eighteen years of age and younger; and

(ii) In a two-year period for clients any age of the division of developmental disabilities according to WAC 388-535-1099.

(c) Sealants only when used on the occlusal surfaces of:

(i) Permanent teeth two, three, fourteen, fifteen, eighteen, nineteen, thirty, and thirty-one; and

(ii) Primary teeth A, B, I, J, K, L, S, and T.

(d) Sealants on noncarious teeth or teeth with incipient caries.

(e) Sealants only when placed on a tooth with no preexisting occlusal restoration, or any occlusal restoration placed on the same day.

(f) Additional sealants on a case-by-case basis and when prior authorized.

(5) **Space maintenance.** The department ~~((covers))~~:

(a) Covers fixed unilateral or fixed bilateral space maintainers for clients ((through age)) eighteen((-

~~(b))~~ years of age and younger, subject to the following:

(i) Only one space maintainer is covered per quadrant.

~~((e))~~ (ii) Space maintainers are covered only for missing primary molars A, B, I, J, K, L, S, and T.

~~((d))~~ (iii) Replacement space maintainers are covered only on a case-by-case basis and when prior authorized.

(b) Covers removal of fixed space maintainers for clients eighteen years of age and younger.

(c) Does not cover space maintainers or removal of space maintainers for clients nineteen years of age and older, including clients of the division of developmental disabilities who are nineteen years of age and older.

AMENDATORY SECTION (Amending WSR 07-06-042, filed 3/1/07, effective 4/1/07)

WAC 388-535-1084 Covered dental-related services for clients ~~((through age))~~ twenty years of age and younger, and for clients of the division of developmental disabilities—Restorative services. Subject to coverage limitations and client-age requirements identified for a specific service, the department covers ((medically necessary)) the dental-related restorative services((-subject to the coverage limitations listed, for)) listed in this section that are provided to clients ((through age)) twenty ((as follows:)) years of age and younger, and to clients of the division of developmental disabilities. All coverage limitations and age requirements apply to clients of the division of developmental disabilities, unless otherwise stated.

~~(1) ((Restorative/operative procedures. The department covers restorative/operative procedures performed in a hospital or an ambulatory surgical center for:~~

~~(a) Clients ages eight and younger;~~

~~(b) Clients ages nine through twenty only on a case-by-case basis and when prior authorized; and~~

~~(c) Clients of the division of developmental disabilities according to WAC 388-535-1099.~~

~~(2))~~ **Amalgam restorations for primary and permanent teeth.** The department considers:

(a) Tooth preparation, all adhesives (including amalgam bonding agents), liners, bases, and polishing as part of the amalgam restoration.

(b) The occlusal adjustment of either the restored tooth or the opposing tooth or teeth as part of the amalgam restoration.

(c) Buccal or lingual surface amalgam restorations, regardless of size or extension, as a one surface restoration. The department covers one buccal and one lingual surface per tooth.

(d) Multiple amalgam restorations of fissures and grooves of the occlusal surface of the same tooth as a one surface restoration.

(e) Amalgam restorations placed within six months of a crown preparation by the same provider or clinic to be included in the payment for the crown.

~~((3))~~ **(2) Amalgam restorations for primary posterior teeth only.** The department covers amalgam restorations for a maximum of two surfaces for a primary first molar and maximum of three surfaces for a primary second molar. (See subsection (9)(c) of this section for restorations for a primary posterior tooth requiring additional surfaces.) The department does not pay for additional amalgam restorations.

~~((4))~~ **(3) Amalgam restorations for permanent posterior teeth only.** The department:

(a) Covers two occlusal amalgam restorations for teeth one, two, three, fourteen, fifteen, and sixteen, if the restorations are anatomically separated by sound tooth structure.

(b) Covers amalgam restorations for a maximum of five surfaces per tooth for a permanent posterior tooth, once per client, per provider or clinic, in a two-year period.

(c) Covers amalgam restorations for a maximum of six surfaces per tooth for teeth one, two, three, fourteen, fifteen, and sixteen, once per client, per provider or clinic, in a two-year period (see (a) of this subsection).

(d) Does not pay for replacement of amalgam restoration on permanent posterior teeth within a two-year period unless the restoration has an additional adjoining carious surface. The department pays for the replacement restoration as one multi-surface restoration. The client's record must include radiographs and documentation supporting the medical necessity for the replacement restoration.

~~((5))~~ **(4) Resin-based composite restorations for primary and permanent teeth.** The department:

(a) Considers tooth preparation, acid etching, all adhesives (including resin bonding agents), liners and bases, polishing, and curing as part of the resin-based composite restoration.

(b) Considers the occlusal adjustment of either the restored tooth or the opposing tooth or teeth as part of the resin-based composite restoration.

(c) Considers buccal or lingual surface resin-based composite restorations, regardless of size or extension, as a one surface restoration. The department covers only one buccal and one lingual surface per tooth.

(d) Considers resin-based composite restorations of teeth where the decay does not penetrate the dentoenamel junction (DEJ) to be sealants (see WAC 388-535-1082(4) for sealants coverage).

(e) Considers multiple preventive restorative resin, flowable composite resin, or resin-based composites for the occlusal, buccal, lingual, mesial, and distal fissures and grooves on the same tooth as a one surface restoration.

(f) Does not cover preventive restorative resin or flowable composite resin on the interproximal surfaces (mesial and/or distal) when performed on posterior teeth or the incisal surface of anterior teeth.

(g) Considers resin-based composite restorations placed within six months of a crown preparation by the same provider or clinic to be included in the payment for the crown.

~~((6))~~ **(5) Resin-based composite restorations for primary teeth only.** The department covers:

(a) Resin-based composite restorations for a maximum of three surfaces for a primary anterior tooth (see subsection ~~((9)(b))~~ **(8)(b)** of this section for restorations for a primary anterior tooth requiring a four or more surface restoration). The department does not pay for additional composite or amalgam restorations on the same tooth after three surfaces.

(b) Resin-based composite restorations for a maximum of two surfaces for a primary first molar and a maximum of three surfaces for a primary second molar. (See subsection (9)(c) of this subsection for restorations for a primary posterior tooth requiring additional surfaces.) The department does not pay for additional composite restorations on the same tooth.

(c) Glass ~~((ionomer))~~ ionomer restorations only for primary teeth, and only for clients ~~((ages))~~ five years of age and younger. The department does not cover glass ionomer restorations for clients of the division of developmental disabilities who are five years of age and older. The department pays for these restorations as a one surface resin-based composite restoration.

~~((7))~~ **(6) Resin-based composite restorations for permanent teeth only.** The department covers:

(a) Two occlusal resin-based composite restorations for teeth one, two, fourteen, fifteen, and sixteen if the restorations are anatomically separated by sound tooth structure.

(b) Resin-based composite restorations for a maximum of five surfaces per tooth for a permanent posterior tooth, once per client, per provider or clinic, in a two-year period.

(c) Resin-based composite restorations for a maximum of six surfaces per tooth for permanent posterior teeth one, two, three, fourteen, fifteen, and sixteen, once per client, per provider or clinic, in a two-year period (see (a) of this subsection).

(d) Resin-based composite restorations for a maximum of six surfaces per tooth for a permanent anterior tooth, once per client, per provider or clinic, in a two-year period.

(e) Replacement of resin-based composite restoration on permanent teeth within a two-year period only if the restoration has an additional adjoining carious surface. The department pays the replacement restoration as a one multi-surface restoration. The client's record must include radiographs and documentation supporting the medical necessity for the replacement restoration.

~~((8))~~ **(7) Crowns.** The department:

(a) Covers the following crowns once every five years, per tooth, for permanent anterior teeth for clients ~~((ages))~~ from twelve ~~((through))~~ to twenty years of age when the crowns meet prior authorization criteria in WAC 388-535-1220 and the provider follows the prior authorization requirements in (d) of this subsection:

(i) Porcelain/ceramic crowns to include all porcelains, glasses, glass-ceramic, and porcelain fused to metal crowns; and

(ii) Resin crowns and resin metal crowns to include any resin-based composite, fiber, or ceramic reinforced polymer compound.

(b) ~~((Covers full coverage metal crowns once every five years, per tooth, for permanent posterior teeth to include high noble, titanium, titanium alloys, noble, and predominantly base metal crowns for clients ages eighteen through twenty~~

when they meet prior authorization criteria and the provider follows the prior authorization requirements in (d) and (e) of this subsection.

(e)) Considers the following to be included in the payment for a crown:

(i) Tooth and soft tissue preparation;
 (ii) Amalgam and resin-based composite restoration, or any other restorative material placed within six months of the crown preparation. Exception: The department covers a one surface restoration on an endodontically treated tooth, or a core buildup or cast post and core;

(iii) Temporaries, including but not limited to, temporary restoration, temporary crown, provisional crown, temporary prefabricated stainless steel crown, ion crown, or acrylic crown;

(iv) Packing cord placement and removal;

(v) Diagnostic or final impressions;

(vi) Crown seating (placement), including cementing and insulating bases;

(vii) Oclusal adjustment of crown or opposing tooth or teeth; and

(viii) Local anesthesia.

((~~(c)~~)) (c) Requires the provider to submit the following with each prior authorization request:

(i) Radiographs to assess all remaining teeth;

(ii) Documentation and identification of all missing teeth;

(iii) Caries diagnosis and treatment plan for all remaining teeth, including a caries control plan for clients with rampant caries;

(iv) Pre- and post-endodontic treatment radiographs for requests on endodontically treated teeth; and

(v) Documentation supporting a five-year prognosis that the client will retain the tooth or crown if the tooth is crowned.

((~~(d)~~)) (d) Requires a provider to bill for a crown only after delivery and seating of the crown, not at the impression date.

((~~(9)~~)) (8) **Other restorative services.** The department covers the following restorative services:

(a) All recementations of permanent indirect crowns only for clients from twelve to twenty years of age.

(b) Prefabricated stainless steel crowns with resin window, resin-based composite crowns, prefabricated esthetic coated stainless steel crowns, and fabricated resin crowns for primary anterior teeth once every three years;

(i) Only for clients from twelve to twenty years of age; and

(ii) Without prior authorization if the tooth requires a four or more surface restoration.

(c) Prefabricated stainless steel crowns for primary posterior teeth once every three years without prior authorization if:

(i) Decay involves three or more surfaces for a primary first molar;

(ii) Decay involves four or more surfaces for a primary second molar; or

(iii) The tooth had a pulpotomy.

(d) Prefabricated stainless steel crowns for permanent posterior teeth once every three years when prior authorized.

(e) Prefabricated stainless steel crowns for clients of the division of developmental disabilities without prior authorization according to WAC 388-535-1099.

(f) Core buildup, including pins, only on permanent teeth, only for clients twenty years of age and younger, and only when prior authorized at the same time as the crown prior authorization.

(g) Cast post and core or prefabricated post and core, only on permanent teeth, only for clients twenty years of age and younger, and only when prior authorized at the same time as the crown prior authorization.

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

AMENDATORY SECTION (Amending WSR 07-06-042, filed 3/1/07, effective 4/1/07)

WAC 388-535-1086 Covered dental-related services for clients ((~~through age~~)) twenty years of age and younger, and for clients of the division of developmental disabilities—Endodontic services. Subject to coverage limitations and client-age requirements identified for a specific service, the department covers ((~~medically necessary~~)) the dental-related endodontic services((~~subject to the coverage limitations listed, for~~)) listed in this section that are provided to clients ((~~through age~~)) twenty ((~~as follows~~)) years of age and younger, and to clients of the division of developmental disabilities. All coverage limitations and age requirements apply to clients of the division of developmental disabilities, unless otherwise stated.

(1) **Pulp capping.** The department considers pulp capping to be included in the payment for the restoration.

(2) **Pulpotomy.** The department covers:

(a) Therapeutic pulpotomy on primary posterior teeth only((~~and~~)) for clients twenty years of age and younger. The department does not cover therapeutic pulpotomy on primary posterior teeth for clients of the division of developmental disabilities who are twenty-one years of age and older.

(b) Pulpal debridement on permanent teeth only, excluding tooth one, sixteen, seventeen, and thirty-two. The department does not pay for pulpal debridement when performed with palliative treatment of dental pain or when performed on the same day as endodontic treatment.

(3) **Endodontic treatment.** The department:

(a) Covers endodontic treatment with resorbable material for primary maxillary incisor teeth D, E, F, and G, if the entire root is present at treatment.

(b) Covers endodontic treatment for permanent anterior, bicuspid, and molar teeth, excluding teeth one, sixteen, seventeen, and thirty-two for clients twenty years of age and younger. The department does not cover endodontic treatment for these teeth for clients of the division of developmental disabilities who are twenty-one years of age and older, except as stated in (c) of this subsection.

(c) Covers endodontic treatment only for permanent anterior teeth for clients of the division of developmental disabilities who are twenty-one years of age and older.

(d) Considers the following included in endodontic treatment:

- (i) Pulpectomy when part of root canal therapy;
- (ii) All procedures necessary to complete treatment; and
- (iii) All intra-operative and final evaluation radiographs for the endodontic procedure.

~~((e))~~ (e) Pays separately for the following services that are related to the endodontic treatment:

- (i) Initial diagnostic evaluation;
- (ii) Initial diagnostic radiographs; and
- (iii) Post treatment evaluation radiographs if taken at least three months after treatment.

~~((e))~~ (f) Requires prior authorization for endodontic retreatment and considers endodontic retreatment to include:

- (i) The removal of post(s), pin(s), old root canal filling material, and all procedures necessary to prepare the canals;
- (ii) Placement of new filling material; and
- (iii) Retreatment for permanent anterior, bicuspid, and molar teeth, excluding teeth one, sixteen, seventeen, and thirty-two.

~~((f))~~ (g) Pays separately for the following services that are related to the endodontic retreatment:

- (i) Initial diagnostic evaluation;
- (ii) Initial diagnostic radiographs; and
- (iii) Post treatment evaluation radiographs if taken at least three months after treatment.

~~((g))~~ (h) Does not pay for endodontic retreatment when provided by the original treating provider or clinic unless prior authorized by the department.

~~((h))~~ (i) Covers apexification for apical closures for anterior permanent teeth only on a case-by-case basis and when prior authorized. Apexification is limited to the initial visit and three interim treatment visits for clients twenty years of age and younger. The department does not cover apexification film for clients of the division of developmental disabilities who are twenty-one years of age and older.

~~((i))~~ (j) Covers apicoectomy and a retrograde fill for anterior teeth only for clients twenty years of age and younger. The department does not cover apicoectomy or a retrograde fill for clients of the division of developmental disabilities who are twenty-one years of age and older.

AMENDATORY SECTION (Amending WSR 07-06-042, filed 3/1/07, effective 4/1/07)

WAC 388-535-1088 Covered dental-related services for clients ~~((through age))~~ twenty years of age and younger, and for clients of the division of developmental disabilities—Periodontic services. Subject to coverage limitations and client-age requirements identified for a specific service, the department covers ~~((medically necessary))~~ the dental-related periodontic services ~~(, subject to the coverage limitations listed, for)~~ listed in this section that are provided to clients ~~((through age))~~ twenty ~~((as follows:))~~ years of age and younger, and to clients of the division of developmental disabilities. All coverage limitations and age requirements apply to clients of the division of developmental disabilities, unless otherwise stated.

(1) **Surgical periodontal services.** The department covers the following surgical periodontal services, including all postoperative care:

(a) Gingivectomy/gingivoplasty only on a case-by-case basis and when prior authorized; and

(b) Gingivectomy/gingivoplasty for clients of the division of developmental disabilities according to WAC 388-535-1099.

(2) **Nonsurgical periodontal services.** The department:

(a) Covers periodontal scaling and root planing for clients from thirteen to eighteen years of age, once per quadrant, per client in a two-year period on a case-by-case basis, when prior authorized ~~((for clients ages thirteen through eighteen)),~~ and only when:

(i) The client has radiographic evidence of periodontal disease;

(ii) The client's record includes supporting documentation for the medical necessity, including complete periodontal charting and a definitive diagnosis of periodontal disease;

(iii) The client's clinical condition meets current published periodontal guidelines; and

(iv) Performed at least two years from the date of completion of periodontal scaling and root planing or surgical periodontal treatment.

(b) Covers periodontal scaling and root planing once per quadrant, per client, in a two-year period for clients ~~((ages))~~ from nineteen ~~((through))~~ to twenty years of age. Criteria in (a)(i) through (iv) of this subsection must be met.

(c) Considers ultrasonic scaling, gross scaling, or gross debridement to be included in the procedure and not a substitution for periodontal scaling and root planing.

(d) Covers periodontal scaling and root planing only when the services are not performed on the same date of service as prophylaxis, periodontal maintenance, gingivectomy, or gingivoplasty.

(e) Covers periodontal scaling and root planing for clients of the division of developmental disabilities according to WAC 388-535-1099.

(3) **Other periodontal services.** The department:

(a) Covers periodontal maintenance for clients from thirteen to eighteen years of age, once per client in a twelve-month period on a case-by-case basis, when prior authorized, ~~((for clients ages thirteen through eighteen,))~~ and only when:

(i) The client has radiographic evidence of periodontal disease;

(ii) The client's record includes supporting documentation for the medical necessity, including complete periodontal charting and a definitive diagnosis of periodontal disease;

(iii) The client's clinical condition meets current published periodontal guidelines; and

(iv) Performed at least twelve months from the date of completion of periodontal scaling and root planing, or surgical periodontal treatment.

(b) Covers periodontal maintenance once per client in a twelve month period for clients ages nineteen through twenty. Criteria in (a)(i) through (iv) of this subsection must be met.

(c) Covers periodontal maintenance only if performed on a different date of service as prophylaxis, periodontal scaling and root planing, gingivectomy, or gingivoplasty.

(d) Covers periodontal maintenance for clients of the division of developmental disabilities according to WAC 388-535-1099.

AMENDATORY SECTION (Amending WSR 07-06-042, filed 3/1/07, effective 4/1/07)

WAC 388-535-1090 Covered dental-related services for clients ~~((through age))~~ twenty years of age and younger, and for clients of the division of developmental disabilities—Prosthodontics (removable). Subject to the coverage limitations and client-age requirements identified for a specific service, the department covers ~~((medically necessary))~~ the prosthodontics (removable) services~~((subject to the coverage limitations listed, for))~~ listed in this section that are provided to clients ~~((through age))~~ twenty ~~((as follows:))~~ years of age and younger, and to clients of the division of developmental disabilities. All coverage limitations and age requirements apply to clients of the division of developmental disabilities, unless otherwise stated.

(1) **Prosthodontics.** The department:

(a) Requires prior authorization for all removable prosthodontic and prosthodontic-related procedures, except as stated in (c)(ii)(B) of this subsection. Prior authorization requests must meet the criteria in WAC 388-535-1220. In addition, the department requires the dental provider to submit:

(i) Appropriate and diagnostic radiographs of all remaining teeth.

(ii) A dental record which identifies:

(A) All missing teeth for both arches;

(B) Teeth that are to be extracted; and

(C) Dental and periodontal services completed on all remaining teeth.

(iii) A prescription written by a dentist when a denturist's prior authorization request is for an immediate denture or a cast metal partial denture.

(b) Covers complete dentures, as follows:

(i) A complete denture, including an ~~((immediate denture or))~~ overdenture, is covered when prior authorized.

(ii) An immediate denture for clients twenty years of age and younger when prior authorized.

(iii) Three-month post-delivery care (e.g., adjustments, soft relines, and repairs) from the seat (placement) date of the complete denture, is considered part of the complete denture procedure and is not paid separately.

~~((iii))~~ (iv) Replacement of an immediate denture with a complete denture is covered if the complete denture is prior authorized at least six months after the seat date of the immediate denture.

~~((iv))~~ (v) Replacement of a complete denture or overdenture is covered only if prior authorized at least five years after the seat date of the complete denture or overdenture being replaced. The replacement denture must be prior authorized.

(vi) Complete dentures for clients of the division of developmental disabilities who are twenty-one years of age and older are limited to:

(A) One initial maxillary complete denture and one initial mandibular complete denture per client, per the client's lifetime; and

(B) One replacement maxillary complete denture and one replacement mandibular complete denture per client, per the client's lifetime.

(c) Covers partial dentures, as follows:

(i) A partial denture, including a resin ~~((or flexible base))~~ partial denture, is covered for anterior and posterior teeth when the partial denture meets the following department coverage criteria.

(A) The remaining teeth in the arch must have a reasonable periodontal diagnosis and prognosis;

(B) The client has established caries control;

(C) One or more anterior teeth are missing or four or more posterior teeth are missing;

(D) There is a minimum of four stable teeth remaining per arch; and

(E) There is a three-year prognosis for retention of the remaining teeth.

(ii) Prior authorization of partial dentures:

(A) Is required for clients ~~((ages))~~ nine years of age and younger ~~((and))~~.

(B) Is not required for clients ~~((ages))~~ from ten ~~((through))~~ to twenty years of age. Documentation supporting the medical necessity for the service must be included in the client's file.

(C) Is required for clients of the division of developmental disabilities who are twenty-one years of age and older.

(iii) Three-month post-delivery care (e.g., adjustments, soft relines, and repairs) from the seat date of the partial denture, is considered part of the partial denture procedure and is not paid separately.

(iv) Replacement of a resin or flexible base denture is covered only if prior authorized at least three years after the seat date of the resin or flexible base partial denture being replaced. The replacement denture must be prior authorized and meet department coverage criteria in (c)(i) of this subsection.

(d) Covers cast-metal framework partial dentures, as follows:

(i) Cast-metal framework with resin-based partial dentures, including any conventional clasps, rests, and teeth, are covered for clients ~~((ages))~~ from eighteen ~~((through))~~ to twenty years of age:

(A) Only once in a five-year period~~((;))~~;

(B) On a case-by-case basis~~((;))~~;

(C) When prior authorized; and

(D) When department coverage criteria listed in subsection (d)(v) of this subsection are met.

(ii) Cast-metal framework partial dentures for clients ages seventeen and younger are not covered.

(iii) Cast-metal framework partial dentures are not covered for clients of the division of developmental disabilities who are twenty-one years of age and older.

(iv) Three-month post-delivery care (e.g., adjustments, soft relines, and repairs) from the seat date of the cast metal partial denture is considered part of the partial denture procedure and is not paid separately.

~~((iv))~~ (v) Replacement of a cast metal framework partial denture is covered on a case-by-case basis and only if placed at least five years after the seat date of the partial denture being replaced. The replacement denture must be prior authorized and meet department coverage criteria listed in (d)(v) of this subsection.

~~((v))~~ (vi) Department authorization and payment for cast metal framework partial dentures is based on the following criteria:

- (A) The remaining teeth in the arch must have a stable periodontal diagnosis and prognosis;
- (B) The client has established caries control;
- (C) All restorative and periodontal procedures must be completed before the request for prior authorization is submitted;
- (D) There are fewer than eight posterior teeth in occlusion;
- (E) There is a minimum of four stable teeth remaining per arch; and
- (F) There is a five-year prognosis for the retention of the remaining teeth.

~~((vi))~~ (vii) The department may consider resin partial dentures as an alternative if the department determines the criteria for cast metal framework partial dentures listed in (d)(v) of this subsection are not met.

(e) Requires a provider to bill for removable prosthetic procedures only after the seating of the prosthesis, not at the impression date. Refer to subsection (2)(e) and (f) for what the department may pay if the removable prosthesis is not delivered and inserted.

(f) Requires a provider to submit the following with a prior authorization request for removable prosthetics for a client residing in an alternate living facility (ALF) as defined in WAC 388-513-1301 or in a nursing facility:

- (i) The client's medical diagnosis or prognosis;
- (ii) The attending physician's request for prosthetic services;
- (iii) The attending dentist's or denturist's statement documenting medical necessity;
- (iv) A written and signed consent for treatment from the client's legal guardian when a guardian has been appointed; and
- (v) A completed copy of the denture/partial appliance request for skilled nursing facility client form (DSHS 13-788) available from the department's published billing instructions.
- (g) Limits removable partial dentures to resin-based partial dentures for all clients residing in one of the facilities listed in (f) of this subsection. The department may consider cast metal partial dentures if the criteria in subsection (1)(d) are met.
- (h) Requires a provider to deliver services and procedures that are of acceptable quality to the department. The department may recoup payment for services that are determined to be below the standard of care or of an unacceptable product quality.

(2) **Other services for removable prosthodontics.** The department covers:

- (a) Adjustments to complete and partial dentures three months after the date of delivery.
- (b) Repairs to complete and partial dentures, once in a twelve month period. The cost of repairs cannot exceed the cost of replacement. The department covers additional repairs on a case-by-case basis and when prior authorized.
- (c) A laboratory reline or rebase to a complete or cast-metal partial denture, once in a three-year period when per-

formed at least six months after the seating date. An additional reline or rebase may be covered for complete or cast-metal partial dentures on a case-by-case basis when prior authorized.

(d) Up to two tissue conditionings for clients twenty years of age and younger, and only when performed within three months after the seating date.

(e) Laboratory fees, subject to the following:

- (i) The department does not pay separately for laboratory or professional fees for complete and partial dentures; and
- (ii) The department may pay part of billed laboratory fees when the provider obtains prior authorization, and the client:

- (A) Is not eligible at the time of delivery of the prosthesis;
- (B) Moves from the state;
- (C) Cannot be located;
- (D) Does not participate in completing the complete, immediate, or partial dentures; or
- (E) Dies.

(f) A provider must submit copies of laboratory prescriptions and receipts or invoices for each claim when billing for laboratory fees.

AMENDATORY SECTION (Amending WSR 07-06-042, filed 3/1/07, effective 4/1/07)

WAC 388-535-1092 Covered dental-related services for clients ~~((through age))~~ twenty years of age and younger—Maxillofacial prosthetic services. The department covers ~~((medically necessary))~~ maxillofacial prosthetic services ~~((, subject to the coverage limitations listed, for))~~ that are provided to clients ~~((through age))~~ twenty ~~((as follows:))~~ years of age and younger, subject to the criteria listed. These services are not covered for clients of the division of developmental disabilities who are twenty-one years of age and older.

(1) Maxillofacial prosthetics are covered only on a case-by-case basis and when prior authorized; and

(2) The department must pre-approve a provider qualified to furnish maxillofacial prosthetics.

AMENDATORY SECTION (Amending WSR 07-06-042, filed 3/1/07, effective 4/1/07)

WAC 388-535-1094 Covered dental-related services for clients ~~((through age))~~ twenty years of age and younger, and for clients of the division of developmental disabilities—Oral and maxillofacial surgery services. Subject to coverage limitations and client-age requirements identified for a specific service, the department covers ~~((medically necessary))~~ the oral and maxillofacial surgery services ~~((, subject to the coverage limitations listed, for))~~ listed in this section that are provided to clients ~~((through age))~~ twenty ~~((as follows:))~~ years of age and younger, and to clients of the division of developmental disabilities who are twenty-one years of age and older. All coverage limitations and age requirements apply to clients of the division of developmental disabilities, unless otherwise stated.

(1) **Oral and maxillofacial surgery services.** The department:

(a) Requires enrolled providers who do not meet the conditions in WAC 388-535-1070(3) to bill claims for services that are listed in this subsection using only the current dental terminology (CDT) codes.

(b) Requires enrolled providers (oral and maxillofacial surgeons) who meet the conditions in WAC 388-535-1070(3) to bill claims using current procedural terminology (CPT) codes unless the procedure is specifically listed in the department's current published billing instructions as a CDT covered code (e.g., extractions).

(c) Covers nonemergency oral surgery performed in a hospital or ambulatory surgery center only for:

(i) Clients ~~((ages))~~ eight years of age and younger;

(ii) Clients ~~((ages))~~ from nine ((through)) to twenty years of age only on a case-by-case basis and when prior authorized; and

(iii) Clients any age of the division of developmental disabilities ~~((according to WAC 388-535-1099)).~~

(d) Requires the client's dental record to include supporting documentation for each type of extraction or any other surgical procedure billed to the department. The documentation must include:

(i) Appropriate consent form signed by the client or the client's legal representative;

(ii) Appropriate radiographs;

(iii) Medical justification with diagnosis;

(iv) Client's blood pressure, when appropriate;

(v) A surgical narrative;

(vi) A copy of the post-operative instructions; and

(vii) A copy of all pre- and post-operative prescriptions.

(e) Covers routine and surgical extractions.

(f) Requires authorization for complicated surgical extractions.

(g) Covers tooth reimplantation/stabilization of accidentally evulsed or displaced teeth for clients twenty years of age and younger.

(h) Covers surgical extraction of unerupted teeth for clients twenty years of age and younger.

(i) Covers debridement of a granuloma or cyst that is five millimeters or greater in diameter. The department includes debridement of a granuloma or cyst that is less than five millimeters as part of the global fee for the extraction.

~~((g))~~ (j) Covers ~~((biopsy, as follows))~~ the following without prior authorization:

(i) Biopsy of soft oral tissue ~~((ø))~~;

~~and~~ (ii) Brush biopsy ~~((do not require prior authorization; and))~~ for clients twenty years of age and younger.

~~((i))~~ (k) Requires providers to keep all biopsy reports or findings ~~((must be kept))~~ in the client's dental record.

~~((h))~~ (l) Covers alveoplasty for clients twenty years of age and younger only on a case-by-case basis and when prior authorized. The department covers alveoplasty only when not performed in conjunction with extractions.

~~((j))~~ (m) Covers surgical excision of soft tissue lesions only on a case-by-case basis and when prior authorized.

~~((j))~~ (n) Covers only the following excisions of bone tissue in conjunction with placement of immediate, complete,

or partial dentures for clients twenty years of age and younger when prior authorized:

(i) Removal of lateral exostosis;

(ii) Removal of torus palatinus or torus mandibularis; and

(iii) Surgical reduction of soft tissue ~~((ø))~~ osseous tuberosity.

(2) **Surgical incisions.** The department covers the following surgical incision-related services:

(a) Uncomplicated intraoral and extraoral soft tissue incision and drainage of abscess. The department does not cover this service when combined with an extraction or root canal treatment. Documentation supporting medical necessity must be in the client's record.

(b) Removal of foreign body from mucosa, skin, or subcutaneous alveolar tissue for clients twenty years of age and younger when prior authorized. Documentation supporting the medical necessity for the service must be in the client's record.

(c) Frenuloplasty/frenulectomy for clients ~~((through age))~~ six years of age and younger without prior authorization.

~~((d))~~ ~~((The department covers))~~ Frenuloplasty/frenulectomy for clients ~~((ages))~~ from seven ((through)) to twelve years of age only on a case-by-case and when prior authorized. Documentation supporting the medical necessity for the service must be in the client's record.

(3) **Occlusal orthotic devices.** (Refer to WAC 388-535-1098 (5)(c) for occlusal guard coverage and limitations on coverage.) The department covers:

(a) Occlusal orthotic devices for clients ~~((ages))~~ from twelve ((through)) to twenty years of age only on a case-by-case basis and when prior authorized.

(b) An occlusal orthotic device only as a laboratory processed full arch appliance.

AMENDATORY SECTION (Amending WSR 07-06-042, filed 3/1/07, effective 4/1/07)

WAC 388-535-1096 Covered dental-related services for clients ~~((through age))~~ twenty years of age and younger—Orthodontic services. (1) The department covers orthodontic services, subject to the coverage limitations listed, for clients ~~((through age))~~ twenty years of age and younger, according to chapter 388-535A WAC.

(2) The department does not cover orthodontic services for clients of the division of developmental disabilities who are twenty-one years of age and older.

AMENDATORY SECTION (Amending WSR 07-06-042, filed 3/1/07, effective 4/1/07)

WAC 388-535-1098 Covered dental-related services for clients ~~((through age))~~ twenty years of age and younger, and for clients of the division of developmental disabilities—Adjunctive general services. Subject to coverage limitations and client-age requirements identified for a specific service, the department covers ~~((medically necessary))~~ the dental-related adjunctive general services ~~((subject to the coverage limitations listed, for))~~ listed in this section that are provided to clients ~~((through age))~~ twenty ~~((as fol-~~

~~lowers:)) years of age and younger, and to clients any age of the division of developmental disabilities.~~

(1) **Adjunctive general services.** The department:

(a) Covers palliative (emergency) treatment, not to include pupal debridement (see WAC 388-535-1086 (2)(b)), for treatment of dental pain, for clients twenty years of age and younger, limited to once per day, per client, as follows:

(i) The treatment must occur during limited evaluation appointments;

(ii) A comprehensive description of the diagnosis and services provided must be documented in the client's record; and

(iii) Appropriate radiographs must be in the client's record supporting the medical necessity of the treatment.

(b) Covers local anesthesia and regional blocks as part of the global fee for any procedure being provided to clients.

(c) Covers office-based oral or parenteral conscious sedation, deep sedation, or general anesthesia, as follows:

(i) The provider's current anesthesia permit must be on file with the department.

~~(ii) ((For clients of the division of developmental disabilities, the services must be performed according to WAC 388-535-1099.~~

~~(iii)) For clients ((ages)) eight years of age and younger, and for clients of the division of developmental disabilities, documentation supporting the medical necessity of the anesthesia service must be in the client's record.~~

~~((iv)) (iii) For clients ((ages)) from nine ((~~through~~)) to twenty years of age, deep sedation or general anesthesia services are covered on a case-by-case basis and when prior authorized, except for oral surgery services. Oral surgery services listed in WAC 388-535-1094 do not require prior authorization.~~

~~((v)) (iv) Prior authorization is not required for oral or parenteral conscious sedation for any dental service for clients twenty years of age and younger, and for clients of the division of developmental disabilities. Documentation supporting the medical necessity of the service must be in the client's record.~~

~~((vi)) (v) For clients ((ages)) from nine ((~~through~~)) to eighteen years of age who have a diagnosis of oral facial cleft, the department does not require prior authorization for deep sedation or general anesthesia services when the dental procedure is directly related to the oral facial cleft treatment.~~

~~((vii) For clients through age twenty, the) (vi) A provider must bill anesthesia services using the CDT codes listed in the department's current published billing instructions.~~

(d) Covers inhalation of nitrous oxide ~~((for clients through age twenty))~~, once per day.

(e) Requires providers of oral or parenteral conscious sedation, deep sedation, or general anesthesia to meet:

(i) The prevailing standard of care;

(ii) The provider's professional organizational guidelines;

(iii) The requirements in chapter 246-817 WAC; and

(iv) Relevant department of health (DOH) medical, dental, or nursing anesthesia regulations.

(f) Pays for anesthesia services according to WAC 388-535-1350.

(g) Covers professional consultation/diagnostic services as follows:

(i) A dentist or a physician other than the practitioner providing treatment must provide the services; and

(ii) A client must be referred by the department for the services to be covered.

~~(2) ((Nonemergency dental services. The department covers nonemergency dental services performed in a hospital or ambulatory surgical center only for:~~

~~(a) Clients ages eight and younger.~~

~~(b) Clients ages nine through twenty only on a case-by-case basis and when prior authorized.~~

~~(c) Clients of the division of developmental disabilities according to WAC 388-535-1099.~~

~~(3)) Professional visits.~~ The department covers:

(a) Up to two house/extended care facility calls (visits) per facility, per provider. The department limits payment to two facilities per day, per provider.

(b) One hospital call (visit), including emergency care, per day, per provider, per client, and not in combination with a surgical code unless the decision for surgery is a result of the visit.

(c) Emergency office visits after regularly scheduled hours. The department limits payment to one emergency visit per day, per provider.

~~((4)) (3) Drugs and/or medicaments (pharmaceuticals).~~ The department covers drugs and/or medicaments only when used with parenteral conscious sedation, deep sedation, or general anesthesia. The department's dental program does not pay for oral sedation medications.

~~((5)) (4) Miscellaneous services.~~ The department covers:

(a) Behavior management when the assistance of one additional dental staff other than the dentist is required, for:

(i) Clients ((ages)) eight years of age and younger;

(ii) Clients ((ages)) from nine ((~~through~~)) to twenty years of age, only on a case-by-case basis and when prior authorized;

(iii) Clients any age of the division of developmental disabilities ~~((according to WAC 388-535-1099))~~; and

(iv) Clients who reside in an alternate living facility (ALF) as defined in WAC 388-513-1301 or in a nursing facility.

(b) Treatment of post-surgical complications (e.g., dry socket). Documentation supporting the medical necessity of the service must be in the client's record.

(c) Occlusal guards when medically necessary and prior authorized. (Refer to WAC 388-535-1094(3) for occlusal orthotic device coverage and coverage limitations.) The department covers:

(i) An occlusal guard only for clients ((ages)) from twelve ((~~through~~)) to twenty years of age when the client has permanent dentition; and

(ii) An occlusal guard only as a laboratory processed full arch appliance.

AMENDATORY SECTION (Amending WSR 07-06-042, filed 3/1/07, effective 4/1/07)

WAC 388-535-1099 Covered dental-related services for clients of the division of developmental disabilities. Subject to coverage limitations and client-age requirements identified for a specific service, the department pays for the dental-related services listed under the categories of services ((listed)) in this section ((for)) that are provided to clients of the division of developmental disabilities(, subject to the coverage limitations listed)). Except for WAC 388-535-1065, chapter 388-535 WAC also applies to clients of the division of developmental disabilities, regardless of age, unless otherwise stated in this section.

(1) Preventive services.

(a) Dental prophylaxis. The department covers dental prophylaxis or periodontal maintenance up to three times in a twelve-month period (see subsection (3) of this section for limitations on periodontal scaling and root planing).

(b) Topical fluoride treatment. The department covers topical fluoride varnish, rinse, foam or gel, up to three times within a twelve-month period.

(c) Sealants. The department covers sealants:

(i) Only when used on the occlusal surfaces of:

(A) Primary teeth A, B, I, J, K, L, S, and T; or

(B) Permanent teeth two, three, four, five, twelve, thirteen, fourteen, fifteen, eighteen, nineteen, twenty, twenty-one, twenty-eight, twenty-nine, thirty, and thirty-one.

(ii) Once per tooth in a two-year period.

(2) **Crowns.** The department covers stainless steel crowns every two years for the same tooth and only for primary molars and permanent premolars and molars, as follows:

(a) For clients ages twenty and younger, the department does not require prior authorization for stainless steel crowns. Documentation supporting the medical necessity of the service must be in the client's record.

(b) For clients ages twenty-one and older, the department requires prior authorization for stainless steel crowns.

(3) Periodontic services.

(a) **Surgical periodontal services.** The department covers:

(i) Gingivectomy/gingivoplasty once every three years. Documentation supporting the medical necessity of the service must be in the client's record (e.g., drug induced gingival hyperplasia).

(ii) Gingivectomy/gingivoplasty with periodontal scaling and root planing or periodontal maintenance when the services are performed:

(A) In a hospital or ambulatory surgical center; or

(B) For clients under conscious sedation, deep sedation, or general anesthesia.

(b) **Nonsurgical periodontal services.** The department covers:

(i) Periodontal scaling and root planing, up to two times per quadrant in a twelve-month period.

(ii) Periodontal scaling (four quadrants) substitutes for an eligible periodontal maintenance or oral prophylaxis, twice in a twelve-month period.

(4) Adjunctive general services.

~~((a) Adjunctive general services.))~~ The department covers:

~~((+))~~ (a) Oral parenteral conscious sedation, deep sedation, or general anesthesia for any dental services performed in a dental office or clinic. Documentation supporting the medical necessity must be in the client's record.

~~((+))~~ (b) Sedations services according to WAC 388-535-1098 (1)(c) and (e).

(b) **Nonemergency dental services.** The department covers nonemergency dental services performed in a hospital or an ambulatory surgical center for services listed as covered in WAC 388-535-1082, 388-535-1084, 388-535-1086, 388-535-1088, and 388-535-1094. Documentation supporting the medical necessity of the service must be included in the client's record.

(5) Miscellaneous services—Behavior management.

The department covers behavior management provided in dental offices or dental clinics ~~((for clients of any age)).~~ Documentation supporting the medical necessity of the service must be included in the client's record.

(6) Billing requirements for clients of the division of developmental disabilities who are twenty-one years of age and older. To be paid, each claim billed for clients twenty-one years of age and older:

(a) Requires an expedited authorization number to indicate that the client is a client of the division of developmental disabilities; and

(b) Must meet prior authorization requirements for the service(s), if required.

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

AMENDATORY SECTION (Amending WSR 07-06-042, filed 3/1/07, effective 4/1/07)

WAC 388-535-1100 Dental-related services not covered ~~((for clients through age twenty)).~~ (1) The department does not cover the following ~~((for clients through age twenty)):~~

(a) The dental-related services described in subsection (2) of this section unless the services are covered under the early periodic screening, diagnosis and treatment (EPSDT) program. See WAC 388-534-0100 for information about the EPSDT program.

(b) Any service specifically excluded by statute.

(c) More costly services when less costly, equally effective services as determined by the department are available.

(d) Services, procedures, treatment, devices, drugs, or application of associated services:

(i) Which the department or the Centers for Medicare and Medicaid Services (CMS) considers investigative or experimental on the date the services were provided.

(ii) That are not listed as covered in one or both of the following:

(A) Washington Administrative Code (WAC).

(B) The department's current published documents.

(2) The department does not cover dental-related services listed under the following categories of service ~~((for eli-~~

ents through age twenty)) (see subsection (1)(a) of this section for services provided under the EPSDT program):

(a) **Diagnostic services.** The department does not cover:

- (i) Extraoral radiographs.
- (ii) Comprehensive periodontal evaluations.

(b) **Preventive services.** The department does not cover:

- (i) Nutritional counseling for control of dental disease.
- (ii) Tobacco counseling for the control and prevention of oral disease.
- (iii) Removable space maintainers of any type.
- (iv) Sealants placed on a tooth with the same-day occlusal restoration, preexisting occlusal restoration, or a tooth with occlusal decay.
- (v) Space maintainers for clients ~~((ages))~~ nineteen ((through twenty)) years of age and older.

(c) **Restorative services.** The department does not cover:

(i) Restorations for wear on any surface of any tooth without evidence of decay through the dentoenamel junction (DEJ) or on the root surface;

(ii) Gold foil restorations.

~~((ii))~~ (iii) Metallic, resin-based composite, or porcelain/ceramic inlay/onlay restorations.

~~((iii))~~ (iv) Preventive restorations.

(v) Crowns for cosmetic purposes (e.g., peg laterals and tetracycline staining).

~~((iv))~~ (vi) Permanent crowns for ~~((third molars one, sixteen, seventeen, and thirty-two))~~ bicuspid or molar teeth.

~~((v))~~ (vii) Temporary or provisional crowns (including ion crowns).

~~((vi))~~ (viii) Labial veneer resin or porcelain laminate restorations.

~~((vii))~~ (ix) Sedative fillings.

(x) Any type of coping.

~~((viii))~~ (xi) Crown repairs.

~~((ix))~~ (xii) Polishing or recontouring restorations or overhang removal for any type of restoration.

(d) **Endodontic services.** The department does not cover:

(i) Indirect or direct pulp caps.

(ii) Any endodontic therapy on primary teeth, except as described in WAC 388-535-1086 (3)(a).

~~((ii))~~ (iii) Apexification/recalcification for root resorption of permanent anterior teeth.

~~((iii))~~ (iv) Any apexification/recalcification procedures for bicuspid or molar teeth.

~~((iv))~~ (v) Any apicoectomy/periradicular services for bicuspid or molar teeth.

~~((v))~~ (vi) Any surgical endodontic procedures including, but not limited to, retrograde fillings (except for anterior teeth), root amputation, reimplantation, and hemisections.

(e) **Periodontic services.** The department does not cover:

(i) Surgical periodontal services including, but not limited to:

- (A) Gingival flap procedures.
- (B) Clinical crown lengthening.
- (C) Osseous surgery.
- (D) Bone or soft tissue grafts.

(E) Biological material to aid in soft and osseous tissue regeneration.

(F) Guided tissue regeneration.

(G) Pedicle, free soft tissue, apical positioning, subepithelial connective tissue, soft tissue allograft, combined connective tissue and double pedicle, or any other soft tissue or osseous grafts.

(H) Distal or proximal wedge procedures.

(ii) Nonsurgical periodontal services including, but not limited to:

(A) Intracoronal or extracoronal provisional splinting.

(B) Full mouth or quadrant debridement.

(C) Localized delivery of chemotherapeutic agents.

(D) Any other type of nonsurgical periodontal service.

(f) **Removable prosthodontics.** The department does not cover:

(i) Removable unilateral partial dentures.

(ii) Any interim complete or partial dentures.

(iii) Flexible base partial dentures.

(iv) Any type of permanent soft reline (e.g., molloplast).

(v) Precision attachments.

~~((iv))~~ (vi) Replacement of replaceable parts for semi-precision or precision attachments.

(g) **Implant services.** The department does not cover:

(i) Any type of implant procedures, including, but not limited to, any tooth implant abutment (e.g., periosteal implant, eposteal implant, and transosteal implant), abutments or implant supported crown, abutment supported retainer, and implant supported retainer.

(ii) Any maintenance or repairs to procedures listed in (g)(i) of this subsection.

(iii) The removal of any implant as described in (g)(i) of this subsection.

(h) **Fixed prosthodontics.** The department does not cover:

(i) Any type of fixed partial denture pontic or fixed partial denture retainer.

(ii) Any type of precision attachment, stress breaker, connector bar, coping, cast post, or any other type of fixed attachment or prosthesis.

(i) **Oral and maxillofacial surgery.** The department does not cover:

(i) Any oral surgery service not listed in WAC 388-535-1094.

(ii) Any oral surgery service that is not listed in the department's list of covered current procedural terminology (CPT) codes published in the department's current rules or billing instructions.

(j) **Adjunctive general services.** The department does not cover:

(i) Anesthesia, including, but not limited to:

(A) Local anesthesia as a separate procedure.

(B) Regional block anesthesia as a separate procedure.

(C) Trigeminal division block anesthesia as a separate procedure.

(D) Medication for oral sedation, or therapeutic intramuscular (IM) drug injections, including antibiotic and injection of sedative.

(E) Application of any type of desensitizing medicament or resin.

- (ii) Other general services including, but not limited to:
 - (A) Fabrication of an athletic mouthguard.
 - (B) Occlusion analysis.
 - (C) Occlusal adjustment, tooth or restoration adjustment or smoothing, or odontoplasties.
 - (D) Enamel microabrasion.
 - (E) Dental supplies such as toothbrushes, toothpaste, floss, and other take home items.
 - (F) Dentist's or dental hygienist's time writing or calling in prescriptions.
 - (G) Dentist's or dental hygienist's time consulting with clients on the phone.
 - (H) Educational supplies.
 - (I) Nonmedical equipment or supplies.
 - (J) Personal comfort items or services.
 - (K) Provider mileage or travel costs.
 - (L) Fees for no-show, cancelled, or late arrival appointments.
 - (M) Service charges of any type, including fees to create or copy charts.
 - (N) Office supplies used in conjunction with an office visit.
 - (O) Teeth whitening services or bleaching, or materials used in whitening or bleaching.

AMENDATORY SECTION (Amending WSR 07-06-042, filed 3/1/07, effective 4/1/07)

WAC 388-535-1220 Obtaining prior authorization for dental-related services ((for clients through age twenty)). (1) The department uses the determination process for payment described in WAC 388-501-0165 for covered dental-related services ((for clients through age twenty)) that require prior authorization.

(2) The department requires a dental provider who is requesting prior authorization to submit sufficient objective clinical information to establish medical necessity. The request must be submitted in writing on ((an American Dental Association (ADA) claim form, which may be obtained by writing to the American Dental Association, 211 East Chicago Avenue, Chicago, Illinois 60611)) DSHS form 13-835, available on the department's website.

(3) The department may request additional information as follows:

- (a) Additional radiographs (X rays) (refer to WAC 388-535-1080(2))((-));
- (b) Study models;
- (c) Photographs; and
- (d) Any other information as determined by the department.

(4) The department may require second opinions and/or consultations before authorizing any procedure.

(5) When the department authorizes a dental-related service for a client, that authorization indicates only that the specific service is medically necessary; it is not a guarantee of payment. The authorization is valid for six months and only if the client is eligible for covered services on the date of service.

(6) The department denies a request for a dental-related service when the requested service:

- (a) Is covered by another department program;
- (b) Is covered by an agency or other entity outside the department; or
- (c) Fails to meet the program criteria, limitations, or restrictions in chapter 388-535 WAC.

AMENDATORY SECTION (Amending WSR 03-19-080, filed 9/12/03, effective 10/13/03)

WAC 388-535-1350 Payment methodology for dental-related services. The ((medical assistance administration (MAA))) department uses the description of dental services described in the American Dental Association's Current Dental Terminology, and the American Medical Association's Physician's Current Procedural Terminology (CPT).

(1) For covered dental-related services provided to eligible clients, ((MAA)) the department pays dentists and other eligible providers on a fee-for-service or contractual basis, subject to the exceptions and restrictions listed under WAC 388-535-1100 and 388-535-1400.

(2) ((MAA)) The department sets maximum allowable fees for dental services ((provided to children)) as follows:

(a) ((MAA's)) The department's historical reimbursement rates for various procedures are compared to usual and customary charges.

(b) ((MAA)) The department consults with representatives of the provider community to identify program areas and concerns that need to be addressed.

(c) ((MAA)) The department consults with dental experts and public health professionals to identify and prioritize dental services and procedures for their effectiveness in improving or promoting ((children's)) dental health.

(d) Legislatively authorized vendor rate increases and/or earmarked appropriations for ((children's)) dental services are allocated to specific procedures based on the priorities identified in (c) of this subsection and considerations of access to services.

(e) Larger percentage increases may be given to those procedures which have been identified as most effective in improving or promoting ((children's)) dental health.

(f) Budget-neutral rate adjustments are made as appropriate based on the department's evaluation of utilization trends, effectiveness of interventions, and access issues.

(3) ((MAA)) The department reimburses dental general anesthesia services for eligible clients on the basis of base anesthesia units plus time. Payment for dental general anesthesia is calculated as follows:

(a) Dental procedures are assigned an anesthesia base unit of five;

(b) Fifteen minutes constitute one unit of time. When a dental procedure requiring dental general anesthesia results in multiple time units and a remainder (less than fifteen minutes), the remainder or fraction is considered as one time unit;

(c) Time units are added to the anesthesia base unit of five and multiplied by the anesthesia conversion factor;

(d) The formula for determining payment for dental general anesthesia is: (5.0 base anesthesia units + time units) x conversion factor = payment.

(4) When billing for anesthesia, the provider must show the actual beginning and ending times on the claim. Anesthe-

sia time begins when the provider starts to physically prepare the client for the induction of anesthesia in the operating room area (or its equivalent), and ends when the provider is no longer in constant attendance (i.e., when the client can be safely placed under postoperative supervision).

(5) ~~((MAA))~~ The department pays eligible providers listed in WAC 388-535-1070 for conscious sedation with parenteral and multiple oral agents, or for general anesthesia when the provider meets the criteria in this chapter and other applicable WAC.

(6) Dental hygienists who have a contract with ~~((MAA))~~ the department are paid at the same rate as dentists who have a contract with ~~((MAA))~~ the department, for services allowed under The Dental Hygienist Practice Act.

(7) Licensed denturists who have a contract with ~~((MAA))~~ the department are paid at the same rate as dentists who have a contract with ~~((MAA))~~ the department, for providing dentures and partials.

(8) ~~((MAA))~~ The department makes fee schedule changes whenever the legislature authorizes vendor rate increases or decreases.

(9) ~~((MAA))~~ The department may adjust maximum allowable fees to reflect changes in services or procedure code descriptions.

(10) ~~((MAA))~~ The department does not pay separately for chart or record setup, or for completion of reports, forms, or charting. The fees for these services are included in ~~((MAA's))~~ the department's reimbursement for comprehensive oral evaluations or limited oral evaluations.

AMENDATORY SECTION (Amending WSR 03-19-080, filed 9/12/03, effective 10/13/03)

WAC 388-535-1400 Payment for dental-related services. (1) The ~~((medical assistance administration (MAA)))~~ department considers that a provider who furnishes covered dental services to an eligible client has accepted ~~((MAA's))~~ the department's rules and fees.

(2) Participating providers must bill ~~((MAA))~~ the department their usual and customary fees.

(3) Payment for dental services is based on ~~((MAA's))~~ the department's schedule of maximum allowances. Fees listed in the ~~((MAA))~~ department's fee schedule are the maximum allowable fees.

(4) ~~((MAA))~~ The department pays the provider the lesser of the billed charge (usual and customary fee) or ~~((MAA's))~~ the department's maximum allowable fee.

(5) ~~((MAA))~~ The department pays "by report" on a case-by-case basis, for a covered service that does not have a set fee.

(6) Participating providers must bill a client according to WAC 388-502-0160, unless otherwise specified in this chapter.

(7) If the client's eligibility for dental services ends before the conclusion of the dental treatment, payment for any remaining treatment is the client's responsibility. The exception to this is dentures and partial dentures as described in WAC 388-535-1240 and 388-535-1290.

AMENDATORY SECTION (Amending WSR 03-19-080, filed 9/12/03, effective 10/13/03)

WAC 388-535-1450 Payment for denture laboratory services. This section applies to payment for denture laboratory services. The ~~((medical assistance administration (MAA)))~~ department does not directly reimburse denture laboratories. ~~((MAA's))~~ The department's reimbursement for complete dentures, ~~((immediate dentures,))~~ partial dentures, and overdentures includes laboratory fees. The provider is responsible to pay a denture laboratory for services furnished at the request of the provider.

AMENDATORY SECTION (Amending WSR 02-13-074, filed 6/14/02, effective 7/15/02)

WAC 388-535-1500 Payment for dental-related hospital services. The ~~((medical assistance administration (MAA)))~~ department pays for medically necessary dental-related ~~((hospital))~~ services provided in an inpatient ((and) or outpatient ((services in accord with)) hospital setting according to WAC 388-550-1100.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-535-1247	Dental-related services for clients age twenty-one and older—General.
WAC 388-535-1255	Covered dental-related services—Adults.
WAC 388-535-1257	Covered dental-related services for clients age twenty-one and older—Preventive services.
WAC 388-535-1259	Covered dental-related services for clients age twenty-one and older—Restorative services.
WAC 388-535-1261	Covered dental-related services for clients age twenty-one and older—Endodontic services.
WAC 388-535-1263	Covered dental-related services for clients age twenty-one and older—Periodontic services.
WAC 388-535-1266	Covered dental-related services for clients age twenty-one and older—Prosthodontics (removable).
WAC 388-535-1267	Covered dental-related services for clients age twenty-one and older—Oral and maxillofacial surgery services.

WAC 388-535-1269	Covered dental-related services for clients age twenty-one and older—Adjunctive general services.
WAC 388-535-1271	Dental-related services not covered for clients age twenty-one and older.
WAC 388-535-1280	Obtaining prior authorization for dental-related services for clients age twenty-one and older.

WSR 11-12-001
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-87—Filed May 18, 2011, 2:16 p.m., effective May 18, 2011, 2:16 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The department is in the process of adopting permanent rules that are necessary to implement the recreational fishing seasons, limits and other regulations. These emergency rules are interim until the permanent rules take effect.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

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

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

Date Adopted: May 18, 2011.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900H Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

1. **Cowlitz River from Mill Creek to Barrier Dam (Cowlitz/Lewis Co.):** Effective immediately until further notice, when the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

2. **Delemeter Creek (Cowlitz Co.):** Effective immediately until further notice, closed 400' below to 200' above weirs when temporarily installed.

3. **Kalama River from boundary markers at mouth to railroad bridge below I-5 (Cowlitz Co.):** Effective immediately until further notice, night closure and anti snagging rules are rescinded.

4. **Olequa Creek (Cowlitz Co.):** Effective immediately until further notice, closed 400' below to 200' above weirs when temporarily installed.

5. **Salmon Creek (Lewis Co.):** Effective immediately until further notice, closed 400' below to 200' above weirs when temporarily installed.

6. **Washougal River from mouth to Salmon Falls Bridge (Clark Co.):** Effective immediately until further notice, closed 400' below to 200' above weirs when temporarily installed.

7. **White Salmon River from mouth to Hwy. 14 Bridge (Klickitat/Skamania Co.):** Effective immediately until further notice, the daily limit follows the most liberal regulations of the adjacent mainstem Columbia or White Salmon rivers when both areas are open concurrently for salmon.

8. **Wind River from mouth to Hwy. 14 Bridge (Skamania Co.):** Effective immediately until further notice, the daily limit follows the most liberal regulations of the adjacent mainstem Columbia or Wind rivers when both areas are open concurrently for salmon.

WSR 11-12-004
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-105—Filed May 18, 2011, 4:16 p.m., effective May 18, 2011, 5:00 p.m.]

Effective Date of Rule: May 18, 2011, 5:00 p.m.

Purpose: The purpose of this rule making is to allow nontreaty commercial fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000W; and amending WAC 220-33-010.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Sets the second late season mainstem commercial spring chinook fishing period, and modifies the fishing days in Deep River. The upriver spring chinook run size has been updated and is projected to be greater than the preseason forecast, which provides additional upriver spring chinook for the commercial fishery. Impacts to ESA-listed salmon are expected to be within ESA limits. The fishery is consistent with the *U.S. v Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of February 8 and May 17, 2011. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wild-

life convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

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

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

Date Adopted: May 18, 2011.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-33-01000X Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

1. Mainstem Columbia River

a) Area: SMCRA 1A, 1B, 1C, and 1D upstream to Kelley Point.

b) Dates: 5:00 p.m. May 18 to 5:00 a.m. May 19, 2011.

c) Allowable Sales: Adipose fin-clipped salmon, sockeye, white sturgeon (43-54 inch fork length), and shad. A maximum of five white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. Limit applies to mainstem only.

d) Sanctuaries: Grays River, Elochoman-B, Abernathy Creek, Cowlitz River, Kalama-B, Lewis-B.

e) Gear: Drift gill nets only; 8-inch minimum mesh. Net length not to exceed 150 fathoms. In the Columbia River downstream of Bonneville Dam and in the Select Areas (described in WAC 220-22-010(9)), it shall be permissible to have onboard a commercial fishing vessel more than one licensed net in excess of the lawful size or length prescribed for a single net, as long as the net or nets are of legal size for the fishery, or the net has a minimum mesh size of 9 inches, and the length of any one net does not exceed 1,500 feet in length. Nets not lawful for use at that time and area may be onboard the boat if properly stored. A properly "stored" net is defined as a net on a drum that is fully covered by tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

f) Miscellaneous Regulations:

Soak times: Defined as the time elapsed from when the first of the gill net web is deployed into the water until the gill net web is fully retrieved from the water; must not exceed 45 minutes.

Red corks: Are required at 25 fathom intervals, and red corks must be in contrast to the corks used in the remainder of the net.

Lighted Buoys: Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required

Recovery Box: Each boat will be required to have on board two operable recovery boxes or one box with two chambers. Each box and chamber and associated pump shall be operating during any time that the net is being retrieved or picked. Each chamber of the recovery box(es) must include an operating water pumping system capable of delivering a minimum flow of 16 gallons per minute, not to exceed 20 gallons per minute of freshwater per chamber.

Each chamber of the recovery box must meet the following dimensions as measured from within the box: the inside length measurement must be at or within 39 1/2 inches to 48 inches; the inside width measurements must be at or within 8 to 10 inches; and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or end wall of the chamber and 1 3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole that is at least 1 1/2 inches in diameter located on either the same or opposite end as the inlet. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to WDFW and ODFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

All non-legal sturgeon, non-retainable salmon, and steelhead must be released immediately to the river with care and with the least possible injury to the fish, or placed into an operating recovery box.

Any fish that is bleeding or lethargic must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

Observer program: As a condition of fishing, owners or operators of commercial fishing vessels must cooperate with department observers or observers collecting data for the department, when notified by the observer of his or her intent to board the commercial vessel for observation and sampling during an open fishery.

Live Capture workshop: Only licensed Columbia River commercial fishers that have completed the required state-sponsored workshop concerning live capture commercial fishing techniques may participate in this fishery. At least one fisher on each boat must have live capture certification.

24-hour quick reporting is required for Washington wholesale dealers, per WAC 220-69-240.

2. Deep River Select Area

a) Area: From the markers at USCG navigation marker #16, upstream to the Highway 4 Bridge.

b) Dates: Open hours are: 7:00 p.m. Mondays to 7:00 a.m. Tuesdays, and 7:00 p.m. Thursdays to 7:00 a.m. Fridays, immediately through June 10, 2011.

c) Gear: Gillnets. 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. Nets cannot be tied off to stationary structures. Nets may not fully cross navigation channel. It is unlawful to operate in any river, stream or channel any gillnet longer than three-fourths the width of the stream (WAC 220-20-015(1)). It shall be unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department (WAC 220-20-010(17)).

Nets (or parts of nets) not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

d) Allowable sale: salmon, shad, and white sturgeon. A maximum of two white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) Miscellaneous: Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until department staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by agency staff. A sampling station will be established approximately 2 miles downstream of the Highway 4 Bridge near Stephan's dock.

f) 24-hour quick reporting in effect for Washington buyers.

3. Tongue Point/South Channel

a) Area: Tongue Point fishing area includes all waters bounded by a line extended from the upstream (southern most) pier (#1) at the Tongue Point Job Corps facility, through navigation marker #6 to Mott Island (new spring lower deadline); a line from a marker at the southeast end of Mott Island, northeasterly to a marker on the northwest tip of Lois Island; and a line from a marker on the southwest end of Lois Island, westerly to a marker on the Oregon shore.

The South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7 to a marker on the southwest end of Lois Island, upstream to an upper boundary line from a marker on Settler Point, northwesterly to the flashing red USCG marker

#10, and northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel.

b) Dates: Open hours are 7:00 p.m. Mondays to 7:00 a.m. Tuesdays, and 7:00 p.m. Thursdays to 7:00 a.m. Fridays, immediately through June 10, 2011.

c) Gear: Gillnets. In the Tongue Point fishing area, gear restricted to 9 3/4-inch maximum mesh size, maximum net length of 250 fathoms, and weight not to exceed two pounds on any one fathom. In the South Channel fishing area, gear restricted to 9 3/4-inch maximum mesh size, maximum net length of 100 fathoms, no weight restriction on leadline, and use of additional weights or anchors attached directly to the leadline is allowed. Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

d) Allowable sale: salmon, shad, and white sturgeon. A maximum of two white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) Miscellaneous: Immediately through the remainder of the season, fishers in the Tongue Point/South Channel fishery are no longer required to have their catches sampled at the sampling station near Tongue Point. Fishers are instead required to call 503-428-0518 and leave a message including name, amount of catch, and location and time the fish will be sold.

f) 24-hour quick reporting in effect for Washington buyers.

4. Blind Slough/Knappa Slough Select Area

a) Area: Only the Blind Slough area is open during winter season, and both Blind Slough and Knappa Slough areas are open during spring season. From immediately through June 10, 2011, the lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon Shore (Fall season boundary).

b) Dates: Open hours are 7:00 p.m. Mondays to 7:00 a.m. Tuesdays, and 7:00 p.m. Thursdays to 7:00 a.m. Fridays, immediately through June 10, 2011.

c) Gear: Gillnets. Spring Season: 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length, with no weight restriction on leadline.

Use of additional weights or anchors attached directly to the leadline is allowed. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d) Allowable sales: salmon, shad, and white sturgeon. A maximum of two white sturgeon, may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) 24-hour quick reporting in effect for Washington buyers. Permanent transportation rules in effect.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 5:00 p.m. May 18, 2011:

WAC 220-33-01000W Columbia River seasons below Bonneville. (11-96)

WSR 11-12-007 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 11-106—Filed May 19, 2011, 2:27 p.m., effective May 19, 2011, 2:27 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25500B; and amending WAC 220-56-255.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule is necessary to conform state rules to federal regulations approved by the Pacific Fishery Management Council and adopted by the National Marine Fishery Service. The change provides fishing opportunity to recreational fishermen while continuing to provide protection to yelloweye and canary rockfish. There is insufficient time to adopt permanent rule.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

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

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

Date Adopted: May 19, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-56-25500C Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-56-250 and WAC 220-56-255, effective immediately until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(1) **Catch Record Card Area 1** - Open until further notice, Thursdays through Saturdays only. It is unlawful during any vessel trip to bring into port or land bottomfish except sablefish or Pacific Cod when halibut are on board.

(2) **Catch Record Card Area 2** - Open until further notice, Sundays and Tuesdays only, except closed Tuesday, May 24, 2011; see (i) and (ii) below for additional details.

(i) **Catch Record Card Area 2 (Northern Nearshore fishery)** Those waters from 47°31.70'N. latitude south to 46°58.00'N latitude and east of a line approximating the 30 fathom depth contour as defined by the following coordinates, open seven days per week until further notice:

47° 31.70 N. lat, 124° 37.03 W. long

47° 25.67 N. lat, 124° 34.79 W. long

47° 12.82 N. lat, 124° 29.12 W. long

47° 58.00 N. lat, 124° 24.24 W. long

(ii) Lingcod may be taken, retained and possessed seaward of the 30 fathom line on any day open to the primary halibut fishery as described in (2) above.

(3) **Catch Record Card Areas 3 and 4** - Open through May 21, 2011, Thursdays and Saturdays only. The following area southwest of Cape Flattery is closed to fishing for halibut at all times:

Beginning at 48°18' N., 125°18' W.; thence to

48°18'N., 124°59'W.; thence to

48°11'N., 124°59'W.; thence to

48°11'N., 125°11'W.; thence to

48°04'N., 125°11'W.; thence to

48°04'N., 124°59'W.; thence to

48°N., 124°59'W.; thence to

48°N., 125°18'W.; thence to point of origin.

(i) Effective May 21 through May 31, 2011, it is permissible to fish for or possess bottomfish seaward of a line approximating the 20-fathom depth contour as defined by the following coordinates:

48°23.9'N. lat., 124°44.2'W. long.

48°23.6'N. lat., 124°44.9'W. long.

48°18.6'N. lat., 124°43.6'W. long.

48°18.6'N. lat., 124°48.2'W. long.

48°10.0'N. lat., 124°48.8'W. long.

48°02.4'N. lat., 124°49.3'W. long.

47°37.6'N. lat., 124°34.3'W. long.

47°31.7'N. lat., 124°32.4'W. long.

(4) **Catch Record Card Area 5** - Open May 26 through June 18, 2011, Thursdays through Saturdays only. However, May 26 through May 29, 2011, open Thursday, Friday, Saturday and Sunday.

(5) **Catch Record Card Areas 6, 7, 8, 9 and 10** - Open through May 29, 2011, Thursdays through Saturdays only. However, May 26 through May 29, 2011, open Thursday, Friday, Saturday and Sunday.

(6) Daily limit one halibut, no minimum size limit. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

(7) All other permanent rules remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-25500B Halibut—Seasons—Daily and possession limits. (11-61)

WSR 11-12-010**EMERGENCY RULES****DEPARTMENT OF****FISH AND WILDLIFE**

[Order 11-104—Filed May 20, 2011, 10:00 a.m., effective May 25, 2011, 12:01 a.m.]

Effective Date of Rule: May 25, 2011, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-32500W; and amending WAC 220-56-325.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This regulation is needed to ensure an orderly fishery, manage within court-ordered sharing requirements, and to ensure conservation. Harvestable amounts of spot shrimp are available for one additional day of fishing in several marine areas. In addition, harvestable amounts of nonspot shrimp are available in several marine areas, and the depth restrictions and area closures that are in effect will protect spot shrimp. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 20, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-56-32500X Shrimp—Areas and seasons.

Notwithstanding the provisions of WAC 220-56-325:

1) Effective immediately until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Area 7, except as provided for in this section:

a. Open May 25 and May 28, 2011.

b. Effective 12:01 a.m. June 1, 2011, until further notice, Marine Area 7 is open as follows:

i. Open north of a line from Biz Point on Fidalgo Island to Cape Saint Mary on Lopez Island, then north of a line from Davis Point on Lopez Island to Cattle Point on San Juan Island, then north of a line due west from Lime Kiln Point light to the international boundary.

ii. Open to the harvest of all shrimp species except spot shrimp. It is unlawful to possess spot shrimp, and all spot shrimp must immediately be returned to the water unharmed.

iii. It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep.

2) Marine Areas 8-1, 8-2 and 11:

a. Open May 25, 2011 from 7:00 a.m. through 3:00 p.m.

b. Effective 12:01 a.m. June 1, 2011, until further notice, all waters equal to or less than 150 feet in depth in Marine Areas 8-1, 8-2 and 11 are open to the harvest of all shrimp species except spot shrimp. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

3) Effective 12:01 a.m. June 1, 2011, until further notice, all waters equal to or less than 150 feet in depth in Marine Area 9 are open to the harvest of all shrimp species except spot shrimp. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

4) Marine Area 10 - Open May 25, 2011, west of a line from West Point to Alki Point from 7:00 a.m. through 3:00 p.m.

5) Marine Area 12 - Open May 25 and June 8, 2011, from 9:00 a.m. through 1:00 p.m.

6) Discovery Bay Shrimp District - Open May 25, 2011, from 7:00 a.m. through 3:00 p.m.

7) Effective 12:01 a.m. June 1, 2011, until further notice, all waters of Marine Area 4 east of the Bonilla-Tatoosh line, and Marine Areas 5 and 6, are open to the harvest of all shrimp species,

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. May 25, 2011:

WAC 220-56-32500W Shrimp—Areas and seasons. (11-50)

WSR 11-12-011 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 11-108—Filed May 20, 2011, 10:49 a.m., effective May 20, 2011, 10:49 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25500C; and amending WAC 220-56-255.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule is necessary to conform state rules to federal regulations approved by the Pacific Fishery Management Council and adopted by the National Marine Fishery Service. The change provides fishing opportunity to recreational fishermen while continuing to provide protection to yelloweye and canary rockfish. There is insufficient time to adopt permanent rule.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

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

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

Date Adopted: May 20, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-56-25500D Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-56-250 and WAC 220-56-255, effective immediately until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(1) **Catch Record Card Area 1** - Open until further notice, Thursdays through Saturdays only. It is unlawful dur-

ing any vessel trip to bring into port or land bottomfish except sablefish or Pacific Cod when halibut are on board.

(2) **Catch Record Card Area 2** - Open until further notice, Sundays and Tuesdays only, except closed Tuesday, May 24, 2011; see (i) and (ii) below for additional details.

(i) **Catch Record Card Area 2 (Northern Nearshore fishery)** Those waters from 47°31.70'N. latitude south to 46°58.00'N latitude and east of a line approximating the 30 fathom depth contour as defined by the following coordinates, open seven days per week until further notice:

47 ° 31.70 N. lat, 124 ° 37.03 W. long
 47 ° 25.67 N. lat, 124 ° 34.79 W. long
 47 ° 12.82 N. lat, 124 ° 29.12 W. long
 46 ° 58.00 N. lat, 124 ° 24.24 W. long

(ii) Lingcod may be taken, retained and possessed seaward of the 30 fathom line on any day open to the primary halibut fishery as described in (2) above.

(3) **Catch Record Card Areas 3 and 4** - Open through May 21, 2011, Thursdays and Saturdays only. The following area southwest of Cape Flattery is closed to fishing for halibut at all times:

Beginning at 48°18' N., 125°18' W.; thence to 48°18'N., 124°59'W.; thence to 48°11'N., 124°59'W.; thence to 48°11'N., 125°11'W.; thence to 48°04'N., 125°11'W.; thence to 48°04'N., 124°59'W.; thence to 48°N., 124°59'W.; thence to 48°N., 125°18'W.; thence to point of origin.

(i) Effective May 21 through May 31, 2011, it is permissible to fish for or possess bottomfish seaward of a line approximating the 20-fathom depth contour as defined by the following coordinates:

48°23.9'N. lat., 124°44.2'W. long.
 48°23.6'N. lat., 124°44.9'W. long.
 48°18.6'N. lat., 124°43.6'W. long.
 48°18.6'N. lat., 124°48.2'W. long.
 48°10.0'N. lat., 124°48.8'W. long.
 48°02.4'N. lat., 124°49.3'W. long.
 47°37.6'N. lat., 124°34.3'W. long.
 47°31.7'N. lat., 124°32.4'W. long.

(4) **Catch Record Card Area 5** - Open May 26 through June 18, 2011, Thursdays through Saturdays only. However, May 26 through May 29, 2011, open Thursday, Friday, Saturday and Sunday.

(5) **Catch Record Card Areas 6, 7, 8, 9 and 10** - Open through May 29, 2011, Thursdays through Saturdays only. However, May 26 through May 29, 2011, open Thursday, Friday, Saturday and Sunday.

(6) Daily limit one halibut, no minimum size limit. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

(7) All other permanent rules remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-25500C Halibut—Seasons—Daily and possession limits. (11-106)

WSR 11-12-013 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 11-107—Filed May 20, 2011, 2:36 p.m., effective May 20, 2011, 2:36 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900W and 232-28-61900Y; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Drano Lake: When the hatchery ladder was opened for a single day between May 12 and 13, a total of one thousand six hundred sixty-two spring chinook entered Little White Salmon National Fish Hatchery. The hatchery escapement goal is one thousand fish. Surplus hatchery fish, including jacks, are available for harvest. Wind River: The hatchery is expected to meet its escapement goal, and surplus hatchery origin fish are available for harvest. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

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

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

Date Adopted: May 20, 2011.

Philip Anderson
 Director

NEW SECTION

WAC 232-28-61900Y Exceptions to statewide rules—Drano Lake and Wind River. Notwithstanding the provisions of WAC 232-28-619:

(1) Drano Lake - Effective May 19 through July 31, 2011, a person may fish in waters downstream of markers on the point of land downstream and across from Little White Salmon National Fish Hatchery and upstream of the Hwy. 14 Bridge. Daily limit six fish; up to four may be adults, of which no more than two may be hatchery steelhead. Release all salmon other than hatchery Chinook. Release wild Chinook and wild steelhead. Release all trout other than steelhead. Minimum size 12 inches for salmon and 20 inches for steelhead. Night closure, bank fishing only area near the outlet, and Wednesday closures will remain in effect through June 30, 2011.

(2) Wind River - Effective May 19 through June 30, 2011, a person may fish in waters from mouth (boundary line/markers) to 400 feet below Shipherd Falls; from 100 feet above Shipherd Falls to 400 feet below the coffer dam; and from 100 feet above the coffer dam to 800 yards downstream of Carson National Fish Hatchery. Daily limit six fish; up to four may be adults, of which no more than two may be hatchery steelhead. Release wild steelhead and all other game fish. Release all salmon other than Chinook. Release wild Chinook downstream from Shipherd Falls. Minimum size 12 inches for salmon and 20 inches for steelhead. Night closure will remain in effect. In addition, the anti-snagging rule remains in effect from the Burlington Northern Railroad Bridge upstream. Only fish hooked inside the mouth may be retained.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900W Exceptions to statewide rules—Drano Lake and Wind River. (11-103)

The following section of the Washington Administrative Code is repealed effective August 1, 2011:

WAC 232-28-61900Y Exceptions to statewide rules—Drano Lake and Wind River.

**WSR 11-12-039
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-110—Filed May 25, 2011, 3:17 p.m., effective May 25, 2011, 3:17 p.m.]

Effective Date of Rule: Immediately.
Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25500D; and amending WAC 220-56-255.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The Marine Area 2 recreational halibut fishery is projected to have taken the Pacific halibut quota set aside for the primary season. There is sufficient halibut quota remaining in Marine Areas 3 and 4 to reopen the recreational halibut fishery for two additional days. This emergency rule is necessary to conform state rules to federal regulations approved by the Pacific Fishery Management Council and adopted by the National Marine Fishery Service.

There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

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

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

Date Adopted: May 25, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-56-25500E Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-56-250 and WAC 220-56-255, effective immediately until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(1) **Catch Record Card Area 1** - Open until further notice, Thursdays through Saturdays only. It is unlawful during any vessel trip to bring into port or land bottomfish except sablefish or Pacific Cod when halibut are on board.

(2) **Catch Record Card Area 2** - Closed.

(i) **Catch Record Card Area 2 (Northern Nearshore fishery)** Those waters from 47°31.70'N. latitude south to 46°58.00'N latitude and east of a line approximating the 30 fathom depth contour as defined by the following coordinates, open seven days per week until further notice:

47° 31.70 N. lat, 124° 37.03 W. long
47° 25.67 N. lat, 124° 34.79 W. long

47 ° 12.82 N. lat, 124 ° 29.12 W. long

46 ° 58.00 N. lat, 124 ° 24.24 W. long

(ii) Lingcod may be taken, retained and possessed seaward of the 30 fathom line on any day open to the primary halibut fishery as described in (2) above.

(3) **Catch Record Card Areas 3 and 4** - Open June 2, 2011 and June 4, 2011, Thursday and Saturday only. The following area southwest of Cape Flattery is closed to fishing for halibut at all times:

Beginning at 48°18' N., 125°18' W.; thence to 48°18'N., 124°59'W.; thence to 48°11'N., 124°59'W.; thence to 48°11'N., 125°11'W.; thence to 48°04'N., 125°11'W.; thence to 48°04'N., 124°59'W.; thence to 48°N., 124°59'W.; thence to 48°N., 125°18'W.; thence to point of origin.

(i) Effective immediately through May 31, 2011, it is permissible to fish for or possess bottomfish seaward of a line approximating the 20-fathom depth contour as defined by the following coordinates:

48°23.9'N. lat., 124°44.2'W. long.
 48°23.6'N. lat., 124°44.9'W. long.
 48°18.6'N. lat., 124°43.6'W. long.
 48°18.6'N. lat., 124°48.2'W. long.
 48°10.0'N. lat., 124°48.8'W. long.
 48°02.4'N. lat., 124°49.3'W. long.
 47°37.6'N. lat., 124°34.3'W. long.
 47°31.7'N. lat., 124°32.4'W. long.

(4) **Catch Record Card Area 5** - Open May 26 through June 18, 2011, Thursdays through Saturdays only. However, May 26 through May 29, 2011, open Thursday, Friday, Saturday and Sunday.

(5) **Catch Record Card Areas 6, 7, 8, 9 and 10** - Open through May 29, 2011, Thursdays through Saturdays only. However, May 26 through May 29, 2011, open Thursday, Friday, Saturday and Sunday.

(6) Daily limit one halibut, no minimum size limit. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

(7) All other permanent rules remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-25500D Halibut—Seasons—Daily and possession limits. (11-108)

WSR 11-12-040 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 11-112—Filed May 26, 2011, 8:46 a.m., effective May 27, 2011]

Effective Date of Rule: May 27, 2011.

Purpose: The purpose of this rule making is to allow nontreaty recreational fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900M; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Opens the lower Columbia River to boat angling for salmonids from Beacon Rock upstream to the Bonneville Dam boat deadline. Reopens the area from Bonneville Dam upstream to the Oregon/Washington border for salmonid retention. Harvestable fish remain available based on the inseason upriver spring chinook run size forecast (213,400 fish) and harvest guidelines. Stipulates that the hatchery adult chinook bag limit in Deep River is consistent with the adjacent Columbia River when both areas are open. Include rules that prohibit filleting of fish in the field and full removal of nonlegal fish from the water. Regulation is consistent with guidance from Washington fish and wildlife commission and director and joint state action of May 13 and May 25, 2011. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. There is insufficient time to adopt permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish; and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v.*

Oregon, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

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

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

Date Adopted: May 26, 2011.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900D Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

1. Columbia River:

i. Effective May 27 through June 15, 2011: From the Rocky Point/Tongue Point line upstream to Bonneville Dam (except for those waters closed under permanent regulations): Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead or sockeye), of which no more than 2 may be adults and no more than 1 may be an adult Chinook. Release all wild Chinook and wild steelhead. Sockeye count toward the daily adult salmonid limit. Salmon minimum size is 12 inches.

ii. Effective May 28 through June 2, 2011: From Tower Island power lines in the Bonneville Pool upstream to the Oregon and Washington border, plus the Washington bank between Bonneville Dam and the Tower Island power lines located approximately 6 miles below The Dalles Dam (except for those waters closed under permanent regulations): Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead or sockeye), of which no more than 2 may be adults. Release all wild Chinook and wild steelhead. Sockeye count toward the daily adult salmonid limit. Salmon minimum size is 12 inches.

iii. Effective immediately through June 15, 2011: For the mainstem Columbia River salmon and steelhead fishery from the Rocky Point/Tongue Point line upstream to the Oregon/Washington border, it is unlawful when fishing from vessels which are less than 30 feet in length, substantiated by Coast Guard documentation or Marine Board registration, to totally remove from the water any salmon or steelhead required to be released.

iv. Effective immediately until further notice: On the mainstem Columbia River, salmon and steelhead anglers may not possess in the field fish mutilated so that size, species or fin clip cannot be determined until anglers have reached their automobile or principle means of land transportation and have completed their daily angling.

2. Deep River (Wahkiakum Co.): Effective immediately through June 15, 2011: the hatchery adult Chinook daily limit will be the same as the adjacent mainstem Columbia River during those days when the mainstem Columbia River is open for adult Chinook retention. When the adjacent mainstem Columbia River is closed for adult Chinook retention, the salmon daily limit will revert to permanent rules for Deep River.

REPEALER

The following section of the Washington Administrative Code is repealed effective May 27, 2011:

WAC 232-28-61900M	Exceptions to statewide rules—Columbia River. (11-99)
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**WSR 11-12-041
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-113—Filed May 26, 2011, 8:46 a.m., effective May 28, 2011]

Effective Date of Rule: May 28, 2011.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900L and 232-28-61900E; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or

general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: There are upriver fish remaining on the harvest guideline for the non-Indian recreational fisheries, based on current forecasts and management agreements. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

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

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

Date Adopted: May 26, 2011.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900E Exceptions to statewide rules—Snake River. Notwithstanding the provisions of WAC 232-28-619:

(1) Effective May 28 through June 2, 2011, a person may fish for and possess salmon in the following waters of the Snake River:

(a) From the Railroad Bridge about 0.5 miles downstream of the Tucannon River mouth, upriver about 9 miles to the Army Corps of Engineers boat launch (approximately 1 mile upstream of Little Goose Dam along the south shore). This zone includes the area between the juvenile bypass return pipe and Little Goose Dam along the south shoreline of the facility (includes the walkway area locally known as "the wall" in front of the juvenile collection facility).

(b) From the intersection of Steptoe Canyon Road with Hwy 193 (Snake River Road) in Whitman County, upriver about 12 miles to the Idaho state line that runs from the north termination of the rock levee on the east side of the Greenbelt boat launch (near the US Army Corps of Engineers Office) northwest across the Snake River to the Idaho/Washington marker on the north shore in Whitman County.

(i) Daily limit of two adult hatchery Chinook and four jack Chinook salmon. Minimum size for Chinook is 12 inches in length.

(ii) However, when fishing along the "wall" and walkway area upstream of the juvenile fish bypass return pipe below Little Goose Dam, the daily limit is one adult hatchery Chinook and one jack salmon. May continue to fish until the daily adult limit is retained. Minimum size for Chinook is 12 inches in length.

(iii) All Chinook with the adipose fin intact, and all steelhead, must be released immediately, unharmed.

(iv) Hooks must be barbless when fishing for all species, and only single barbless hooks are allowed when fishing for sturgeon.

(v) It is unlawful to use any hook larger than 5/8-inch (point of hook to shank) for all species except sturgeon.

(vi) Night closure is in effect for salmon and sturgeon.

(vii) For areas open for Chinook, anglers must cease fishing for salmon for the day when they retain the adult daily limit.

REPEALER

The following section of the Washington Administrative Code is repealed effective May 28, 2011:

WAC 232-28-61900L Exceptions to statewide rules—Snake River. (11-95)

The following section of the Washington Administrative Code is repealed effective June 3, 2011:

WAC 232-28-61900E Exceptions to statewide rules—Snake River.

WSR 11-12-042

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 11-111—Filed May 26, 2011, 8:50 a.m., effective May 28, 2011]

Effective Date of Rule: May 28, 2011.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900C; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Kalama River - Through May 20, 2011, just eleven adult spring chinook (including three unmarked fish) had returned to Kalama Falls Hatchery. The hatchery brood stock goal is four hundred fish. Lewis River - To date, less than one hundred adult spring chinook have entered the traps on the Lewis. The hatchery escapement goal is one thousand three hundred fish. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

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

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

Date Adopted: May 26, 2011.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900C Exceptions to statewide rules—Kalama and Lewis rivers. Notwithstanding the provisions of WAC 232-28-619, effective May 28 through July 31, 2011, it is unlawful to fish for or possess Chinook salmon in the following waters:

(1) Kalama River - from the boundary markers at the mouth to the upper salmon hatchery.

(2) Lewis River - Mainstem Lewis River from the mouth to the mouth of the East Fork.

Also, the North Fork Lewis from the mouth of the East Fork to the overhead powerlines below Merwin Dam.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective August 1, 2011:

WAC 232-28-61900C Exceptions to statewide rules—Kalama and Lewis river.

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

**WSR 11-12-051
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed May 26, 2011, 2:33 p.m., effective May 26, 2011, 2:33 p.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of these amended WACs is to allow school districts to loan money from their transportation vehicle fund to their general fund in order to maintain a positive cash flow for the general fund. The legislature is delaying a portion of district's June apportionment payment, and to ensure that they will have a positive cash flow they need to be able to borrow from the transportation vehicle fund as well as the capital projects fund.

Citation of Existing Rules Affected by this Order: Amending WAC 392-123-140 and 392-123-145.

Statutory Authority for Adoption: RCW 28A.150.290.

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

Reasons for this Finding: The legislature is delaying a portion of school district's general apportionment payment from June 30 to July 1, which may affect the cash flow within a district's general fund. To help maintain a positive cash flow, districts will need to borrow from other funds to cover that apportionment delay. To borrow from the transportation vehicle fund, a district would need to pass a board resolution authorizing the loan, which cannot pass without general authority to borrow from the transportation vehicle fund. Due to this condensed timeline, there would be insufficient time to hold public hearings on these rules before districts would need to pass their resolutions to establish the loan.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: May 26, 2011.

Randy Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending Order 83-12, filed 10/10/83)

WAC 392-123-140 Interfund loans allowable. (1) Loans are allowable to the general fund, the transportation vehicle fund, the capital projects fund and the debt service fund. Loans are allowable from the general fund and the capital projects fund. Loans shall not be made to the detriment of any function or project for which the fund was established.

(2) For the month of June 2011 only, loans may originate from the transportation vehicle fund and be used for the general fund.

AMENDATORY SECTION (Amending Order 87-3, filed 4/6/87)

WAC 392-123-145 Interfund loans—Identification of temporary loans. (1) Except for loans under WAC 392-

123-140(2), a temporary loan is considered to be a loan which is completely liquidated in less than one year.

(2) For loans under WAC 392-123-140(2), the loan must be completely liquidated no later than the last business day of July 2011.

WSR 11-12-052
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-109—Filed May 27, 2011, 8:53 a.m., effective June 1, 2011, 12:01 a.m.]

Effective Date of Rule: June 1, 2011, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900Z; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule change is necessary to ensure a successful youth fishing event. The fish will be planted in the lake two days prior to the event to better acclimate them. On the day of the event, only juvenile anglers will be allowed to fish in the lake. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

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

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

Date Adopted: May 27, 2011.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900Z Exceptions to statewide rules—Heart Lake (Skagit Co.) Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. June 1

through June 4, 2011, it is unlawful to fish in those waters of Heart Lake, except open to fishing 6:00 a.m. to 1:00 p.m. June 4, 2011, to anglers participating in the youth fishing event. Juvenile anglers can continue to fish on June 4, 2011, after the youth fishing event closes.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. June 5, 2010:

WAC 232-28-61900Z	Exceptions to statewide rules—Heart Lake (Skagit Co.)
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WSR 11-12-053
EMERGENCY RULES
DEPARTMENT OF
EARLY LEARNING

[Filed May 27, 2011, 9:09 a.m., effective May 27, 2011, 9:09 a.m.]

Effective Date of Rule: Immediately.

Purpose: The department of early learning (DEL) is extending emergency rules for the working connections child care (WCCC) and seasonal child care (SCC) programs chapter 170-290 WAC while the department completes permanent rule making. The rules revise consumer entry into and eligibility for WCCC and SCC as follows:

a. WAC 170-290-0001, amended: This rule allows DEL to limit the number of families enrolled in the WCCC by providing for caps, priority lists and/or waiting list [lists] as appropriate to keep the program within available funds.

b. WAC 170-290-0005, 170-290-0085, 170-290-3520 and 170-290-3640 amendments: Consumers must have countable income at or below one hundred seventy-five percent of the federal poverty guidelines (FPG) to qualify for and to remain eligible for WCCC or SCC subsidy benefits. This is \$2,671 per month for a family of three. Once a family's income exceeds one hundred seventy-five percent of the FPG, they are no longer eligible for WCCC or SCC.

c. WAC 170-290-0075, amended: Monthly child care copayments are increased for some WCCC and SCC families, as follows:

- Effective February 1, 2011, through February 28, 2011:
- For consumers whose countable monthly income is above eighty-two percent of the FPG up to 137.5 percent of the FPG, copayments increased to \$60 per month.
- For consumers whose countable monthly income is above 137.5 percent of the FPG through one hundred seventy-five percent of the FPG, monthly copayments increased by amending the sliding scale formula as follows: The dollar amount equal to subtracting 137.5 percent of FPG from countable income, multiplying by forty-four percent, then adding \$60.
- Effective March 1, 2011:

- For consumers whose countable monthly income is above eighty-two percent of the FPG up to 137.5 percent of the FPG, copayments increased to \$65 per month.
- For consumers whose countable monthly income is above 137.5 percent of the FPG through one hundred seventy-five percent of the FPG, monthly copayments will increase by amending the sliding scale formula as follows: The dollar amount equal to subtracting 137.5 percent of FPG from countable income, multiplying by fifty percent, then adding \$65.
- No copayment change for families with income at or below eighty-two percent of the FPG - their copayment remains at \$15 a month.

d. WAC 170-290-0247, amended: Only DEL-licensed or certified family home child care providers are eligible to field trip fee reimbursements for children in subsidized care. Child care centers and school-age centers are no longer eligible for WCCC field trip fees. The age limit is removed.

The one hundred seventy-five percent of FPG income limit applies to families applying for the SCC program. SCC has been suspended since January 2011 due to lack of funds. DEL plans to reopen applications and enrollment for SCC in July 2011 when revised rules proposed filed as WSR 11-08-009 are adopted as final. The SCC proposal includes amended WAC 170-290-3520 and 170-290-3640 also included in this emergency rule.

This emergency rule replaces and supersedes emergency rules filed on January 31, 2011, filing number WSR 11-04-078, and on February 15, 2011, filing number WSR 11-05-088. DEL plans to file proposed rules in June 2011 including WAC 170-290-0001, 170-290-0005, 170-290-0075, 170-290-0085 and 170-290-0247 included in this emergency rule, as well as other sections of chapter 170-290 WAC.

The WCCC program provides child care assistance to eligible parents who are working or attending approved school, training or other activities. The SCC program helps eligible parents who are working in seasonal crop harvesting or processing pay for child care. For more information about these rules, please visit the DEL web site at <http://www.del.wa.gov/laws/development/income.aspx>.

Citation of Existing Rules Affected by this Order: Amending WAC 170-290-0001, 170-290-0005, 170-292-0075, 170-290-0085, 170-290-0247, 170-290-3520, and 170-290-3640.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070; section 612(16), chapter 5, Laws of 2011 regular session.

Other Authority: Chapter 43.215 RCW.

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

the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: DEL is extending emergency rules filed as WSR 11-04-078 and 11-05-088 while the department completes permanent rule making. Earlier proposed WCCC and SCC income eligibility rules filed on August 30, 2010 (WSR 10-18-064) were withdrawn.

The department has filed proposed SCC rules - including amended WAC 170-290-3520 and 170-290-3640 and other related sections of this chapter - as WSR 11-08-009, and public hearings were held on the proposal on May 12 and 14, 2011. Permanent rules will be filed soon.

DEL plans to file proposed WCCC rules shortly, including amended WAC 170-290-0001, 170-290-0005, 170-290-0075, 170-290-0085, 170-290-0247 included in this emergency rule, and other related sections of this chapter.

The department remains under a directive to reduce child care subsidy expenditures to help close a projected \$82 million shortfall in the state fiscal year (SFY) 2011 budget for the state's WorkFirst program. WorkFirst is Washington state's combined welfare-to-work agencies and programs, including WCCC and SCC.

Under the emergency rules filed on February 15, 2011 (WSR 11-05-088), since March 2011 DEL has been limiting entry into WCCC to approximately 35,200 families per month - this is the number of WCCC families per month that DEL has determined can be provided child care subsidy benefits and allow the program to remain within available SFY 2011 funds. Once the monthly target of 35,200 WCCC families is reached, remaining families who apply for WCCC in the month are placed on a waiting list. Priority is given to: First, applicants receiving a temporary assistance to needy families (TANF) grant; second, families who have a child with special needs who needs WCCC child care; and third, other families with countable monthly income at or below one hundred seventy-five percent of the FPG. DSHS notifies a family on the waiting list in writing when space becomes available - the family must then complete the application process and be determined eligible for WCCC subsidy benefits. As of May 2011, individual families have remained on the waiting list for WCCC from about three to four weeks.

Failure to reduce WCCC enrollment and eligibility by emergency rule would result in this program becoming over-subscribed and over budget, because of insufficient revenues to pay program benefits and higher than anticipated caseloads, causing the state to likely run out of WCCC funds before the end of SFY 2011 on June 30, 2011. If that occurs, the state could be faced with terminating child care benefits to thousands more families receiving WCCC benefits, with serious disruptive impacts to children, families, child care providers, employers and the public welfare. DEL plans to adopt the current enrollment and eligibility limits as permanent rules to give the department tools to regulate WCCC program expenditures and to keep the program within the extent of available funding in the 2011-2013 biennium.

Washington state's economic situation remains unstable. Current forecasts indicate that revenues will remain insufficient to meet state general fund appropriations in the 2010-2011 Supplemental Operating Budget Act ESSB 6444 (chap-

ter 37, Laws of 2010 1st sp. sess.) and future fiscal years. The legislature has been grappling with how to cut spending by more than \$5,000,000,000 from current levels to keep the 2011-2013 state budget in balance (a 2011-2013 operating appropriations bill, 2ESHB 1087, was passed on May 25, 2011, but has not been signed into law as of the date of this emergency rule filing).

On September 13, 2010, Governor Gregoire formally declared that a budget shortfall is imminent and directed state agencies to implement nearly 6.3 percent across-the-board spending cuts to avoid a [an] SFY 2011 deficit. Executive Order 10-04 - Ordering Expenditure Reductions in Allotments of State General Fund Appropriations, declared that:

- Revenues have fallen short of projections;
- The current official state economic and revenue forecast of general fund revenues is less than the official estimate upon which the state's 2009-2011 operating budget and supplemental operating budget were enacted; and
- The anticipated revenues combined with the beginning cash balance of the general fund are insufficient to meet anticipated expenditures from this fund for the remainder of the state fiscal year 2011.

In the 2011 Supplemental Operation Appropriations Act, ESHB 1086 (chapter 5, Laws of 2011 regular session), section 612(16), the legislature directed DEL to set the WCCC income eligibility limit no lower than one hundred seventy-five percent of the federal poverty guidelines. As a result, DEL may not reduce the income eligibility limit further as a means of regulating WCCC or SCC enrollment and expenditures. The 2011 legislature also passed EHB 1248 extending authority through SFY 2013 for state agencies to file emergency rules to implement requirements and reductions contained in appropriations legislation (as of the date of this filing the governor has not signed EHB 1248 into law).

The legislature's anticipated shortfall in the WorkFirst program, combined with the Governor's Executive Order 10-04, adoption of ESHB 1086 and passage of EHB 1248, and continued legislative efforts to balance the state's 2011-2013 budget, demonstrate that an emergency rule is necessary to implement WCCC and WorkFirst spending reductions, and observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary both to the public interest and to the state's fiscal needs and requirements.

DEL has determined that the rules meet office of financial management guidance 3.d. regarding the Governor's Executive Order 10-06 suspending noncritical rule making, but allowing rules to proceed that are "... *necessary to manage budget shortfalls, maintain fund solvency, or for revenue generating activities* ..."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 7, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 7, Repealed 0.

Date Adopted: May 27, 2011.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0001 Purpose and intent. (1) This chapter establishes the requirements for eligible families to receive subsidized child care through the working connections child care (WCCC) and seasonal child care (SCC) programs under applicable state and federal law, to the extent of available funds. As used in chapter 170-290 WAC, "to the extent of available funds" includes one or more of the following:

(a) Limiting or closing enrollment;

(b) Establishing a priority list for new enrollees subject to applicable state and federal law; or

(c) Creating and maintaining a waiting list.

(2) The purpose of WCCC, as provided in part II of this chapter, is to:

(a) Assist eligible families in obtaining child care subsidies for approvable activities that enable them to work, attend training, or enroll in educational programs; and

(b) Consider the health and safety of children while they are in care and receiving child care subsidies.

(3) The purpose of SCC, as provided in part III of this chapter, is to:

(a) Assist eligible families who are seasonally employed in agriculturally related work to pay for licensed child care; and

(b) Consider the health and safety of children while they are in care and receiving child care subsidies.

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

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0005 Consumers. (1) In WCCC, an eligible consumer has parental control of one or more children, lives in the state of Washington, and is the child's:

(a) Parent, either biological or adopted;

(b) Stepparent;

(c) Legal guardian verified by a legal or court document;

(d) Adult sibling or step-sibling;

(e) Nephew or niece;

(f) Aunt;

(g) Uncle;

(h) Grandparent; or

(i) Any of the relatives in (f), (g), or (h) of this subsection with the prefix great (for example, great-aunt).

(2) Consumers may be eligible for WCCC benefits if they:

(a) Meet eligibility requirements for WCCC described under part II of this chapter;

(b) Participate in an approved activity under WAC 170-290-0040, 170-290-0045, 170-290-0050, or have been approved per WAC 170-290-0055;

(c) Comply with any special circumstances that might affect WCCC eligibility under WAC 170-290-0020; and

(d) Have countable income at or below ~~((two hundred percent of the federal poverty guidelines (FPG) (under WAC 170-290-0065)))~~ one hundred seventy-five percent of the federal poverty guidelines.

(3) A consumer's eligibility shall end if the consumer's countable income is greater than one hundred seventy-five percent of the FPG.

(4) A consumer is not eligible for WCCC benefits when he or she:

(a) Is the only parent in the family and will be away from the home for more than thirty days in a row; or

(b) Has a monthly copayment that is higher than the rate the state will pay for all eligible children in care.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0075 Determining income eligibility and copayment amounts. (1) DSHS takes the following steps to determine a consumer's eligibility and copayment:

(a) Determine the consumer's family size (under WAC 170-290-0015); and

(b) Determine the consumer's countable income (under WAC 170-290-0065).

(2) Before February 1, 2011, if the consumer's family's countable monthly income falls within the range below, then his or her copayment is:

IF A CONSUMER'S INCOME IS:	THEN THE CONSUMER'S COPAYMENT IS:
(a) At or below 82% of the federal poverty guidelines (FPG)	\$15
(b) Above 82% of the FPG up to 137.5% of the FPG	\$50
(c) Above 137.5% of the FPG through ((200)) 175% of the FPG	The dollar amount equal to subtracting 137.5% of FPG from countable income, multiplying by 44%, then adding \$50
(d) Above ((200)) 175% of the FPG, a consumer is not eligible for WCCC benefits.	

(3) Effective February 1, 2011 through February 28, 2011, if the consumer's family countable income falls within the range below, then his or her copayment is:

IF A CONSUMER'S INCOME IS:	THEN THE CONSUMER'S COPAYMENT IS:
(a) At or below 82% of the federal poverty guidelines (FPG)	\$15
(b) Above 82% of the FPG up to 137.5% of the FPG	\$60

IF A CONSUMER'S INCOME IS:	THEN THE CONSUMER'S COPAYMENT IS:
(c) Above 137.5% of the FPG through 175% of the FPG	The dollar amount equal to subtracting 137.5% of FPG from countable income, multiplying by 44%, then adding \$60
(d) Above 175% of the FPG, a consumer is not eligible for WCCC benefits.	

(4) On or after March 1, 2011, if the consumer's family countable income falls within the range below, then his or her copayment is:

IF A CONSUMER'S INCOME IS:	THEN THE CONSUMER'S COPAYMENT IS:
(a) At or below 82% of the federal poverty guidelines (FPG)	\$15
(b) Above 82% of the FPG up to 137.5% of the FPG	\$65
(c) Above 137.5% of the FPG through 175% of the FPG	The dollar amount equal to subtracting 137.5% of FPG from countable income, multiplying by 50%, then adding \$65
(d) Above 175% of the FPG, a consumer is not eligible for WCCC benefits.	

(5) DSHS does not prorate the copayment when a consumer uses care for part of a month.

~~((4))~~ (6) The FPG is updated every year on April 1. The WCCC eligibility level is updated at the same time every year to remain current with the FPG.

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

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0085 Change in copayment. (1) Once DSHS determines that a consumer is eligible for WCCC benefits, his or her copayment may change when:

- (a) The consumer's monthly income decreases;
- (b) The consumer's family size increases;
- (c) DSHS makes an error in the consumer's copayment computation;
- (d) The consumer did not report all income, activity and household information at the time of eligibility determination or application/reapplication;
- (e) The consumer is no longer eligible for the minimum copayment under WAC 170-290-0090;
- (f) DEL makes a mass change in benefits due to a change in law or program funding;
- (g) The consumer is approved for a new eligibility period; or
- (h) The consumer is approved for the fourteen-day wait period or twenty-eight-day gap period as provided in WAC 170-290-0055.

(2) If a consumer's copayment changes during his or her eligibility period, the change is effective on the first day of the month following DSHS becoming aware of the change.

(3) DSHS does not increase a consumer's copayment during his or her current eligibility period when his or her countable income remains at or below ~~((two hundred percent of the FPG))~~ the maximum eligibility limit as provided in WAC 170-290-0005 (2)(d) and (3), and:

- (a) The consumer's monthly countable income increases; or
 (b) The consumer's family size decreases.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0247 Field trip fees. ~~((+))~~ DSHS pays licensed or certified family home child care providers ~~((and DEL contracted seasonal day camps))~~ a monthly field trip fee up to twenty dollars per child or the provider's actual cost for the field trip, whichever is less, only if the fees are required of all parents whose children are in the provider's care. DEL-licensed or certified child care centers and school-age centers are not eligible to receive field trip fees. The field trip fee is to cover the provider's actual expenses for:

- ~~((a))~~ (1) Admission;
~~((b))~~ (2) Transportation (not to include the provider's gas and insurance); and
~~((c))~~ (3) The cost of hiring a nonemployee to provide an in-house field trip activity.
~~((2) The field trip fee can only be reimbursed for children three years of age and older.))~~

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

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3520 Eligible consumers. (1) In SCC, an eligible consumer is not currently receiving temporary aid for needy families (TANF), lives in the state of Washington, has parental control of one or more children, and is the child's:

- (a) Parent, either biological or adopted;
 (b) Stepparent;
 (c) Legal guardian as verified by a legal or court document;
 (d) Adult sibling or step-sibling;
 (e) Aunt;
 (f) Uncle;
 (g) Niece or nephew;
 (h) Grandparent; or
 (i) Any of the above relatives in (e), (f), or (h) of this subsection, with the prefix "great," such as great-aunt.
 (2) Consumers may be eligible for SCC benefits if they:
 (a) Meet eligibility requirements in this chapter;
 (b) Participate in an approved activity under WAC 170-290-3555; and
 (c) Have countable income at or below ~~((two hundred percent of the federal poverty guidelines (FPG)))~~ the maximum eligibility limit described in WAC ~~((170-290-3640))~~ 170-290-0005 (2)(d) and (3).
 (3) Consumers are not eligible for SCC benefits if they:

(a) Have a copayment, under WAC 170-290-0075, that is higher than the maximum monthly state rate for all of the consumer's children in care;

(b) Were employed with one employer more than eleven months in the previous twelve months;

(c) Are receiving TANF benefits; or

(d) Are the only parent in the household and will be away from the home for more than thirty days in a row.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-3640 Determining income eligibility and copayment. (1) For the SCC program, DEL determines a consumer's family's income eligibility and copayment by:

(a) The consumer's family size as defined under WAC 170-290-3540;

(b) The consumer's average monthly income as calculated under WAC 170-290-3620;

(c) The consumer's family's average monthly income as compared to the federal poverty guidelines (FPG); and

(d) The consumer's family's average monthly income as compared to the copayment chart defined in WAC 170-290-0075.

(2) If a consumer's family's income is above ~~((two hundred percent of the FPG as defined in WAC 170-290-0075))~~ the maximum eligibility limit as provided in WAC 170-290-0005 (2)(d) and (3), his or her family is not eligible for the SCC program.

(3) SCC does not prorate the copayment when a consumer uses care for part of a month.

(4) The FPG is updated every year on April 1. The SCC eligibility level is updated at the same time every year to remain current with the FPG.

(5) SCC shall assign a copayment amount based on the family's countable income. The copayment amount will be on the consumer's child care plan. The consumer pays the copayment directly to the provider.

WSR 11-12-055

RESCISSION OF EMERGENCY RULES

DEPARTMENT OF EARLY LEARNING

[Filed May 27, 2011, 10:10 a.m.]

Effective immediately upon this filing, the department of early learning (DEL) rescinds emergency rules filed on February 15, 2011, as WSR 11-05-008 [11-05-088], amending WAC 170-290-0001 regarding the working connections child care and seasonal child care programs.

DEL has filed subsequent emergency rules, WSR 11-12-053, that will replace and supersede the emergency rule filed as WSR 11-05-088.

Elizabeth M. Hyde
Director

WSR 11-12-056
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-115—Filed May 27, 2011, 10:32 a.m., effective June 5, 2011, 12:01 a.m.]

Effective Date of Rule: June 5, 2011, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25500E; and amending WAC 220-56-255.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: There is sufficient halibut quota remaining in Marine Area 1 to allow the fishery to remain open through June 4, 2011. This rule conforms to federal action taken by the Pacific Fisheries Management Council. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

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

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

Date Adopted: May 27, 2011.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-56-25500F Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-56-250 and WAC 220-56-255, effective 12:01 a.m. June 5, 2011, until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(1) **Catch Record Card Area 1** - Closed.

(2) **Catch Record Card Area 2** - Closed.

(i) Catch Record Card Area 2 (Northern Nearshore fishery) Those waters from 47°31.70'N. latitude south to 46°58.00'N latitude and east of a line approximating the 30 fathom depth contour as defined by the following coordinates, open seven days per week until further notice:

47° 31.70 N. lat, 124° 37.03 W. long

47° 25.67 N. lat, 124° 34.79 W. long

47° 12.82 N. lat, 124° 29.12 W. long

46° 58.00 N. lat, 124° 24.24 W. long

(ii) Lingcod may be taken, retained and possessed seaward of the 30 fathom line on any day open to the primary halibut fishery as described in (2) above.

(3) **Catch Record Card Areas 3 and 4** - Closed

(4) **Catch Record Card Area 5** - Open through June 18, 2011, Thursdays through Saturdays only.

(5) **Catch Record Card Areas 6, 7, 8, 9 and 10** - Closed.

(6) Daily limit one halibut, no minimum size limit. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

(7) All other permanent rules remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. June 5, 2011:

WAC 220-56-25500E	Halibut—Seasons—Daily and possession limits. (11-110)
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WSR 11-12-058
EMERGENCY RULES
DEPARTMENT OF REVENUE

[Filed May 27, 2011, 12:04 p.m., effective May 27, 2011, 12:04 p.m.]

Effective Date of Rule: Immediately.

Purpose: Part I of chapter 23, Laws of 2010 1st sp. sess. (2ESSB 6143) changed the apportionment and nexus requirements for apportionable activities, effective June 1, 2010. The department has adopted the following emergency rules to explain how these requirements apply: WAC 458-20-19402 (Rule 19402) Single factor receipts apportionment—Generally and 458-20-19403 (Rule 19403) Single factor receipts apportionment—Royalties.

No changes from the previous emergency rule filed January 28, 2011, under WSR 11-04-068 were made.

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

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: An emergency adoption of these new rules is necessary because permanent rules cannot be adopted at this time.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or

Recently Enacted State Statutes: New 2, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 0.

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

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

Date Adopted: May 27, 2011.

Alan R. Lynn
Rules Coordinator

NEW SECTION

WAC 458-20-19402 Single factor receipts apportionment—Generally. (1) Introduction.

(a) Section 105, chapter 23, Laws of 2010 1st sp. sess. establishes a new apportionment method for businesses engaged in apportionable activities and that have nexus with Washington. The new apportionment method explained in this rule only applies to business and occupation (B&O) tax liability incurred after May 31, 2010. This rule does not apply to the apportionment of income of financial institutions taxable under RCW 82.04.290, which is governed by WAC 458-20-19404, nor the receipt of royalty income from granting the right to use intangible property under WAC 458-20-19403.

(b) Taxpayers may also find helpful information in the following sections:

(i) WAC 458-20-19401 Minimum nexus thresholds for apportionable activities. This rule describes minimum nexus thresholds that are effective June 1, 2010.

(ii) WAC 458-20-19403 Single factor receipts apportionment—Royalties. This rule describes the application of single factor receipts apportionment to gross income from royalties and applies only to tax liability incurred after May 31, 2010.

(iii) WAC 458-20-19404 Single factor receipts apportionment—Financial institutions. This rule describes the application of single factor receipts apportionment to certain income of financial institutions and applies only to tax liability incurred after May 31, 2010.

(iv) WAC 458-20-194 Doing business inside and outside the state. This rule describes separate accounting and cost apportionment and applies only to tax liability incurred from January 1, 2006 through May 31, 2010.

(v) WAC 458-20-14601 Financial institutions—Income apportionment. This rule describes the apportionment of income for financial institutions for tax liability incurred prior to June 1, 2010.

(c) Examples included in this rule identify a number of facts and then state a conclusion; they should be used only as a general guide. The tax results of all situations must be determined after a review of all the facts and circumstances

(2) **Definitions.** The following definitions apply to this rule:

(a) "Apportionable income" means gross income of the business generated from engaging in apportionable activities, including income received from apportionable activities performed outside this state if the income would be taxable under this chapter if received from activities in this state, less the exemptions and deductions allowable under chapter 82.04 RCW.

(i) Example 1. Corporation A received \$2,000,000 in gross income from its world-wide apportionable activities, including \$500,000 in world-wide bona fide initiation fees deductible under RCW 82.04.4282. Corporation A's apportionable income would be \$1,500,000.

(b) "Apportionable activities" means only those activities subject to B&O tax under the following classifications:

(i) Service and other activities,
(ii) Royalties (see WAC 458-20-19403 for apportionment of royalties),

(iii) Travel agents and tour operators,
(iv) International steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent,

(v) Stevedoring and associated activities,
(vi) Disposing of low-level waste,
(vii) Title insurance producers, title insurance agents, or surplus line brokers,

(viii) Public or nonprofit hospitals,
(ix) Real estate brokers,
(x) Research and development performed by nonprofit corporations or associations,

(xi) Inspecting, testing, labeling, and storing canned salmon owned by another person,

(xii) Representing and performing services for fire or casualty insurance companies as an independent resident managing general agent licensed under the provisions of chapter 48.17 RCW,

(xiii) Contests of chance,
(xiv) Horse races,
(xv) International investment management services,
(xvi) Room and domiciliary care to residents of a boarding home;

(xvii) Aerospace product development,
(xviii) Printing or publishing a newspaper (but only with respect to advertising income),

(xix) Printing materials other than newspapers and publishing periodicals or magazines (but only with respect to advertising income), and

(xx) Cleaning up radioactive waste and other by-products of weapons production and nuclear research and development, but only with respect to activities that would be taxable as an "apportionable activity" under any of the tax classifications listed in (a)(i) through (xviii) of this subsection (2) if this special tax classification did not exist.

(c) "Business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a state. The term includes taxes measured in whole or in part on net income or gross income or receipts. The term includes personal income taxes if the gross income from

apportionable activities is included in the gross income subject to the personal income tax. The term "business activities tax" does not include a sales tax, use tax, or similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.

(d) "Customer" means a person or entity to whom the taxpayer makes a sale or renders services or from whom the taxpayer otherwise receives gross income of the business.

(e) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

(f) "Taxable in another state" means either:

(i) The taxpayer is actually subject to a business activities tax by another state on its income received from engaging in apportionable activity; or

(ii) The taxpayer is not subject to a business activities tax by another state on its income received from engaging in apportionable activity, but the other state has jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus thresholds described in WAC 458-20-19401.

(3) **Apportionment general:** Persons earning apportionable income subject to B&O tax and that are also taxable in another state are entitled to determine their taxable income for B&O tax purposes by using the apportionment method provided in this rule. Taxable income is determined by multiplying apportionable income from each apportionable activity by its receipts factor.

(4) **Receipts Factor.** The receipts factor is a fraction that applies to all apportionable income for each calendar year. Separate receipts factors must be calculated for each apportionable activity taxed under a separate business and occupation tax classification.

(a) The numerator of the receipts factor is the total gross income of the business of the taxpayer attributable to this state during the calendar year from engaging in an apportionable activity.

(b) The denominator of the receipts factor is the total gross income of the business of the taxpayer from engaging in an apportionable activity everywhere in the world during the tax year, less amounts that are attributed to states where the taxpayer is not taxable and at least some of the activity is performed in Washington.

(c) Example 2. XYZ Corp. is a Washington business, has no property or payroll outside of Washington, and performs all of its services inside this state. XYZ Corp. has gross income from apportionable activities that is attributed using the criteria listed in subsection (5) below as follows: Washington \$500,000; Idaho \$200,000; Oregon \$100,000; and California \$300,000. XYZ Corp. is subject to Oregon corporate income tax, but does not owe any California or Idaho business activities taxes. The \$200,000 that would be attributed to Idaho is excluded from the denominator because XYZ Corp. performs the services in Washington, and it is not subject to actual Idaho business activities taxes and does not have substantial nexus with Idaho under Washington thresholds. Although California does not impose a business activities tax on XYZ Corp., XYZ Corp. does have substantial

nexus with California using Washington thresholds (more than \$250,000 in receipts). Therefore, the California attributed income is not excluded from the denominator. The Oregon receipts remain in the denominator because XYZ Corp. is subject to Oregon corporate income taxes. The receipts factor is 500,000/900,000 or 55.56%.

(d) Example 3. The same facts as Example 2 except all of XYZ's property and payroll are located in Oregon, and XYZ Corp. performs no activities in Washington related to the \$200,000 attributed to Idaho. In this situation, the \$200,000 is not excluded from the denominator. The receipts factor is 500,000/1,100,000 or 45.45%.

(5) **Attribution of income.** Income is attributed to states based on a cascading method. That is, each receipt is attributed to a state based on a series of rules. These rules are:

(a)(i) If a taxpayer can reasonably determine the amount of apportionable receipts related to the benefit of the services received in a state, that amount of apportionable receipts is attributable to that state. This may be shown by application of a reasonable method of proportionally assigning the benefit among states. The result determines the receipts attributed to each state. A taxpayer receives the benefit of a service in this state when:

(A) The service relates to real property that is located in this state;

(B) An apportionable service relates to tangible personal property that is located in this state at the time the service is received; or

(C) The service does not relate to real or tangible personal property, and:

(I) The service is provided to a person not engaged in business who is physically present in this state at the time the service is received; or

(II) The service is provided to a person engaged in business in this state, and the service relates to the person's business activities in this state.

(ii) Examples.

(A) Example 4. Director serves on the board of directors of DEF, Inc. DEF, Inc. is commercially domiciled in State Z. DEF, Inc. is Director's customer. DEF is engaged in business in State Z, and the director's services relate to the management of DEF, Inc. Therefore, DEF, Inc. receives the benefit of Director's services in State Z.

(B) Example 5. ABC is headquartered outside of Washington and provides retail services to customers in Washington, Oregon, and Idaho. When those customers fail to pay ABC for its services, ABC contracts with Debt Collector located outside of Washington to collect the debt. ABC pays Debt Collector a percentage of the amount collected. ABC is engaged in business in Washington and the activities of Debt Collector relate to that business, therefore the benefit of the service is received by ABC in Washington when Debt Collector obtains payment from debtors located in Washington.

(C) Example 6. The same facts as Example 5, except Debt Collector is paid a fixed amount per month regardless of the total amount collected from debtors, and the debtors are located in Idaho and Washington. If Debt Collector can reasonably determine the proportion of the benefit received by ABC in each state, then that proportion of the fixed amount is the benefit received in each state. Depending on the circum-

stances, reasonable means to determine the proportion received in each state could be amounts recovered.

(b) If a taxpayer is unable to separately determine the benefit of the services in specific states under (a), and as a result the customer received the benefit of the service in multiple states, the apportionable receipts of the business is attributed to the state in which the benefit of the service was primarily received. Primarily means in this case more than 50%.

(i) Example 7. The same facts as Example 6, except Debt Collector cannot reasonably determine the portion of the benefit received in each state, Debt Collector will have to use the remaining rules in (c) through (g) of this subsection (5) to attribute the income from ABC.

(c) If the taxpayer is unable to attribute gross income of the business under (a) or (b) of this subsection (5), gross income of the business must be attributed to the state from which the customer ordered the service.

(d) If the taxpayer is unable to attribute gross income of the business under (a), (b), or (c) of this subsection (5), gross income of the business must be attributed to the state to which the billing statements or invoices are sent to the customer by the taxpayer.

(e) If the taxpayer is unable to attribute gross income of the business under (a), (b), (c), or (d) of this subsection (5), gross income of the business must be attributed to the state from which the customer sends payment to the taxpayer.

(f) If the taxpayer is unable to attribute gross income of the business under (a), (b), (c), (d), or (e) of this subsection (5), gross income of the business must be attributed to the state where the customer is located as indicated by the customer's address: (i) Shown in the taxpayer's business records maintained in the regular course of business; or (ii) obtained during consummation of the sale or the negotiation of the contract for services, including any address of a customer's payment instrument when readily available to the taxpayer and no other address is available.

(g) If the taxpayer is unable to attribute gross income of the business under (a), (b), (c), (d), (e) or (f) of this subsection (5), gross income of the business must be attributed to the commercial domicile of the taxpayer.

(6) Reporting methods.

(a) Taxpayers entitled to use the apportionment method described in this rule may report their apportionable income based on the receipts factor for the most recent calendar year for which the taxpayer has information. If a taxpayer does not calculate the receipts factor for the current tax year based on the most recent tax year for which information is available, the taxpayer must use current year information.

(b) Regardless of how a taxpayer reports its apportionable income under (a) of this subsection 6, when the taxpayer has the information from which to determine the receipts for a calendar year, it must file reconciliation and either obtain a refund or pay the additional tax. In either event (refund or additional taxes due), interest will apply retroactively to the due date of each tax return. If the reconciliation is completed prior to October 31st of the following year, no penalties will apply.

(c) Example 8: Assume that LMN is headquartered in Washington, reports B&O taxes on a quarterly basis, and its

apportionable income is a constant \$300,000 per quarter. LMN's receipts factor after performing the reconciliation is as follows:

Year	Receipt factor	When Determined
Year 1	0.28	March of Year 2
Year 2	0.25	September of Year 3
Year 3	0.35	June of Year 4
Year 4	0.30	June of Year 5

The following table demonstrates how LMN should report its apportionable income for Years 3 and 4.

Tax return	Gross income	Receipt factor used	Taxable reported	Reconciliation amount
Year 3 Quarter 1	300,000	0.28 ¹	84,000	
Year 3 Quarter 2	300,000	0.28	84,000	
Year 3 Quarter 3	300,000	0.25 ²	75,000	
Year 3 Quarter 4	300,000	0.25	75,000	
Year 4 Quarter 1	300,000	0.25	75,000	
Year 4 Quarter 2	300,000	0.35 ³	105,000	
Year 3 reconciliation	1,200,000	0.35	420,000	102,000 ⁴
Year 4 Quarter 3	300,000	0.35	105,000	
Year 4 Quarter 4	300,000	0.35	105,000	
Year 4 reconciliation	1,200,000	0.30	360,000	(30,000) ⁵

¹ LMN will be using its year 1 receipts factor for the first 2 quarters of year 3 because it is the most recent year for which it has accurate numbers.

² LMN will change its receipts factor for the third quarter to year 2's actual receipts factor because it now has that information.

³ LMN will change its receipts factor for the third quarter to year 3's actual receipts factor because it now has that information.

⁴ LMN will file its reconciliation for Year 3. The taxable amount is \$420,000 less the previously reported taxable amount of \$318,000. This means LMN will owe taxes on \$102,000 plus interest on the underpaid taxes. However, no penalties will be imposed if the reconciliation is filed with the department no later than October 31st of Year 4.

⁵ LMN will file its reconciliation for Year 3. The taxable amount is \$360,000 less the previously reported taxable amount of \$390,000. This means LMN overpaid taxes by \$30,000. LMN will receive interest on the overpaid taxes.

NEW SECTION

WAC 458-20-19403 Single factor receipts apportionment—Royalties. (1) Introduction. Effective June 1, 2010, section 105, chapter 23, Laws of 2010 1st sp. sess. changed

Washington's method of apportioning the gross income from royalties. This rule addresses how such gross income must be apportioned when the business receives royalty payments from both within and outside the state.

(a) This rule is limited to the apportionment of gross income from royalties. This rule does not apply to apportionment or allocation of income from any other business activity.

(b) Taxpayers may also find helpful information in the following rules:

(i) WAC 458-20-19401 Minimum nexus thresholds for apportionable activities. This rule describes minimum nexus thresholds that are effective June 1, 2010.

(ii) WAC 458-20-19402 Single factor receipts apportionment—Generally. This rule describes the general application of single factor receipts apportionment that is effective June 1, 2010.

(iii) WAC 458-20-19404 Single factor receipts apportionment—Financial institutions. This rule describes the application of single factor receipts apportionment to certain income of financial institutions and applies only to tax liability incurred after May 31, 2010.

(iv) WAC 458-20-194 Doing business inside and outside the state. This rule describes separate accounting and cost apportionment and applies only to tax liability incurred from January 1, 2006 through May 31, 2010.

(v) WAC 458-20-14601 Financial institutions—Income apportionment. This rule describes the apportionment of income for financial institutions for periods prior to June 1, 2010.

(2) **Definitions for the purposes of this rule.** Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this rule.

(a) "Apportionable activity" means those activities conducted by a person in the business of receiving gross income from royalties.

(b) "Apportionable income" means gross income of the business generated from engaging in apportionable activity, including income received from apportionable activity performed outside Washington if the income would be taxable under the business and occupation tax if received from activities in Washington less any allowable exemptions and deductions under chapter 82.04 RCW.

(c) "Business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a state by a person. The term includes taxes measured in whole or in part on net income or gross income or receipts. In the case of sole proprietorships and pass-through entities, the term includes personal income taxes if the gross income from royalties is included in the gross income subject to the personal income tax. The term "business activities tax" does not include a sales tax, use tax, or similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not referred to as a gross receipts tax or a tax imposed on the privilege of doing business.

(d) "Customer" means a person who pays royalties or charges in the nature of royalties for the use of the taxpayer's intangible property.

(e) "Gross income from royalties" means compensation for the use of intangible property, including charges in the

nature of royalties regardless of where the intangible property will be used. "Gross income from royalties" does not include compensation for any natural resources, the licensing of pre-written computer software to the end user, or the licensing of digital goods, digital codes, or digital automated services to the end user as defined in RCW 82.04.190(11).

(f) "Intangible property" includes: copyrights, patents, licenses, franchises, trademarks, trade names and similar items.

(g) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

(h) "Taxable in another state" means either:

(i) The taxpayer is actually subject to a business activities tax by another state on its income received from engaging in apportionable activity; or

(ii) The taxpayer is not subject to a business activities tax by another state on its income received from engaging in apportionable activity, but the other state has jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus thresholds described in WAC 458-20-19401.

(iii) "Not Taxable" with respect to a particular state means the taxpayer is not actually subject to a business activities tax by that state on its income received from engaging in apportionable activities and that state does not have jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus thresholds described in WAC 458-20-19401.

(3) **How does a taxpayer apportion its gross income from royalties?** A taxpayer earning gross income from royalties generated on or after June 1, 2010, must apportion such income when the taxpayer is taxable in another state. Gross income is apportioned to Washington by multiplying apportionable income by the receipts factor. The resulting amount of taxable income is then multiplied by the applicable tax rate.

(4) **What is the receipts factor?** The "receipts factor" is a fraction with the following numerator and denominator:

(a) Numerator: is the total gross income from royalties attributable to Washington during the tax year. Generally, a tax year is the same as a calendar year. For the purposes of this rule, tax years will be referred to as calendar years.

(b) Denominator: is the total gross income from royalties attributable to everywhere in the world during the calendar year, less amounts that are attributed to states where the taxpayer is not taxable if at least some of the apportionable activity is performed in Washington.

(5) **How are royalty receipts attributed to Washington?** To compute the numerator of the receipts factor, gross income from royalties is attributable to states as follows:

(a) Place of use: where the customer used the taxpayer's intangible property. If a taxpayer can reasonably determine the amount of royalty receipts related to the use in a state, that amount of royalty receipts is attributable to that state. This may be shown by application of a reasonable method of proportionally assigning the use of the intangible property among states.

(b) If a taxpayer is unable to separately determine the use of the intangible property in specific states under (a), and as a result the customer used the intangible property in multiple states, the royalty receipts are attributed to the state in which the intangible property was primarily used. Primarily means in this case more than 50%.

(c) Office of negotiation: if the taxpayer is unable to attribute gross income to a location under (a) or (b) of this subsection (5), then gross income must be attributed to the office of the customer from which the royalty agreement with the taxpayer was negotiated.

(d) Billing state: if the taxpayer is unable to attribute gross income to a location under (a), (b), or (c) of this subsection (5), then gross income must be attributed to the state to which the billing statement or invoices are sent to the customer by the taxpayer.

(e) Payment state: if the taxpayer is unable to attribute gross income to a location under (a), (b), (c), or (d) of this subsection (5), then gross income must be attributed to the state from which the customer sends payment to taxpayer.

(f) Customer's address: if the taxpayer is unable to attribute gross income under (a), (b), (c), (d), or (e) of this subsection (5), then gross income must be attributed to the state where the customer is located as indicated by customer's address:

(i) As shown in the taxpayer's business records maintained in the regular course of business; or

(ii) Obtained during negotiation of the contract for the use of the taxpayer's intangible property, including any address of a customer's payment instrument when readily available to the taxpayer and no other address is available.

(g) Taxpayer's domicile: if the taxpayer is unable to attribute gross income under (a), (b), (c), (d), (e), or (f) of this subsection (5), then gross income must be attributed to the commercial domicile of the taxpayer.

(6) **Examples.** Examples included in this subsection identify a number of facts and then state a conclusion; they should be used only as a general guide. The tax results of all situations must be determined after a review of all the facts and circumstances.

(a) **Example 1:** Taxpayer has its domicile in California and runs a national restaurant franchising business. Taxpayer enters into a contract with Company A under which Taxpayer licenses the right to use its trademark to Company A's so that Company A can display that trademark on its restaurant, menus, marketing materials, etc. Company A has a single restaurant that is located in Washington. Company A pays Taxpayer \$500,000 per calendar year for the right to use the trademark at its restaurant in Washington. Pursuant to the first sourcing rule, the intangibles (trademark) are used in Washington. Therefore, Taxpayer would attribute the \$500,000 in receipts from Company A to Washington.

(b) **Example 2:** Same facts as Example 1 except Company A in a single contract receives the right to use Taxpayer's trademark in as many restaurants as it wants in Washington and Idaho and pays \$500,000 for each restaurant when the restaurant opens and each calendar year thereafter. Company A opens two restaurants in Idaho and one in Washington. Taxpayer would attribute \$500,000 it received from Company A to Washington and \$1,000,000 to Idaho.

(c) **Example 3:** Same facts as Example 1 above, except that Company A now has many locations in Idaho but still only one in Washington. Further, Company A enters into a new contract with Taxpayer under which Company A must now pay \$1,500,000 per calendar year for the exclusive and unlimited right to the use of the trademark in Idaho but only a single location in Washington. Because the intangible is used in more than one state, but is primarily used in Idaho, Taxpayer would attribute all receipts received from Company A, (i.e. \$1,500,000) to Idaho pursuant to the second sourcing rule.

(7) What data can be used for calculating the receipts factor?

(a) A taxpayer may calculate the receipts factor for the current calendar year based on the most recent calendar year for which information is available for the full calendar year. Taxpayers may refer to WAC 458-20-19402 for an example of the application of the use of the most current information available.

(b) If a taxpayer does not calculate the receipts factor for the current calendar year based on the previous calendar year information as authorized in this rule, the business must use current year information to calculate the receipts factor for the current tax year.

(c) In either case, a taxpayer must correct the reporting for the current calendar year when complete information is available to calculate the receipts factor for that year, but not later than October 31st of the following calendar year. Taxpayers may refer to WAC 458-20-19402 for an example of the reconciliation.

(8) What interest applies to underpayments and overpayments?

(a) Interest will apply to any additional tax due on a corrected tax return. Interest must be assessed at the rate provided for delinquent excise taxes under RCW 82.32.050 retroactively to the date the original return was due and will accrue until the additional taxes are paid.

(b) Interest as provided in RCW 82.32.060 will apply to any tax paid in excess of that properly due on a return as a result of a taxpayer using previous calendar year data or incomplete current year data to calculate the receipts factor.

(9) **What penalties may apply?** Penalties as provided in RCW 82.32.090 will apply to any additional taxes due only if the current calendar year reporting is not corrected and the additional tax is not paid by October 31st of the following calendar year.

WSR 11-12-062

EMERGENCY RULES

DEPARTMENT OF REVENUE

[Filed May 27, 2011, 2:32 p.m., effective May 27, 2011, 2:32 p.m.]

Effective Date of Rule: Immediately.

Purpose: Part I of chapter 23, Laws of 2010 1st sp. sess. (2ESSB 6143) changed the apportionment and nexus requirements for apportionable activities, effective June 1, 2010. The department has adopted the following emergency rule to explain how these requirements apply: WAC 458-20-19404 (Rule 19404) Financial institutions—Income apportionment.

Changes from the previous emergency rule filed January 28, 2011, under WSR 11-04-068 were made as follows: Rule 19404 - changes to same language as proposed final rule. These changes include formatting, clarifying language, and additional details.

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

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: An emergency adoption of this new rule is necessary because the permanent rule cannot be adopted at this time.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

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

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

Date Adopted: May 27, 2011.

Alan R. Lynn
Rules Coordinator

NEW SECTION

WAC 458-20-19404 Financial institutions—Income apportionment. (1) Introduction.

(a) Effective June 1, 2010, RCW 82.04.460 was amended to change Washington's method of apportioning certain gross income from engaging in business as a financial institution. This rule addresses how such gross income must be apportioned when the financial institution engages in business both within and outside the state.

(b) Taxpayers may also find helpful information in the following rules:

(i) WAC 458-20-19401 Minimum nexus thresholds for apportionable activities. This rule describes minimum nexus thresholds that are effective after May 31, 2010.

(ii) WAC 458-20-19402 Single factor receipts apportionment - Generally. This rule describes the general application of single factor receipts apportionment and applies only to tax liability incurred after May 31, 2010.

(iii) WAC 458-20-19403 Single factor receipts apportionment - Royalties. This rule describes the application of single factor receipts apportionment to gross income from royalties and applies only to tax liability incurred after May 31, 2010.

(iv) WAC 458-20-194 Doing business inside and outside the state. This rule describes separate accounting and cost apportionment. It applies only to the period January 1, 2006 through May 31, 2010.

(v) WAC 458-20-14601 Financial institutions - Income apportionment. This rule describes the apportionment of income for financial institutions for periods prior to June 1, 2010.

(c) Financial institutions engaged in making interstate sales of tangible personal property should also refer to WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property).

(2) Apportionment and allocation.

(a) Except as otherwise specifically provided, a financial institution taxable under RCW 82.04.290 and taxable in another state must allocate and apportion its income taxable under RCW 82.04.290 as provided in this rule. Any other income from apportionable activities must be apportioned pursuant to WAC 458-20-19402 (Single factor receipts apportionment - Generally) or WAC 458-20-19403 (Single factor receipts apportionment - Royalties). "Apportionable income" means gross income taxable under RCW 82.04.290, including income taxable under RCW 82.04.290 attributed outside this state if the income would be taxable under RCW 82.04.290 if attributed to this state, less the exemptions and deductions allowable under chapter RCW 82.04. All gross income that is not apportioned must be allocated pursuant to chapter 82.04 RCW. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States, except such institutions that are exempt under RCW 82.04.315, whose effectively connected income (as defined under the Federal Internal Revenue Code) is taxable both in this state and another state, other than the state in which it is organized, must allocate and apportion its gross income as provided in this rule.

(b) The apportionment percentage is determined by the taxpayer's receipts factor (as described in subsection (4) of this rule).

(c) The receipts factor must be computed according to the method of accounting (cash or accrual basis) used by the taxpayer for Washington state tax purposes for the taxable period. Persons should refer to WAC 458-20-197 (When tax liability arises) and WAC 458-20-199 (Accounting methods) for further guidance on the requirements of each accounting method. Generally, financial institutions are required to file returns on a monthly basis. To enable financial institutions to more easily comply with this rule, financial institutions may file returns using the receipts factor calculated based on the most recent calendar year for which information is available. If a financial institution does not calculate its receipts factor based on the previous calendar year for which information is available, it must use the current year information to make that calculation. In either event, a reconciliation must be filed for each year not later than October 31st of the following year. See WAC 458-20-19402 for an example of how to use the most recent calendar year for which information is available and how to perform the reconciliation. In the case of consolidations, mergers, or divestitures, a taxpayer must

make the appropriate adjustments to the receipts factor to reflect its changed operations.

(d) Interest and penalties on reconciliations under (c) of this subsection (2) apply as follows:

(i) Interest must be assessed on any additional tax due at the rate provided for delinquent excise taxes under RCW 82.32.050, retroactively to the date the original return was due, and will accrue until the additional taxes are paid.

(ii) Interest as provided in RCW 82.32.060 will apply to any tax paid in excess of that properly due on a return as a result of a taxpayer using previous calendar year data or incomplete current year data to calculate the receipts factor.

(iii) Penalties as provided in RCW 82.32.090 will apply to any additional tax due only if the reconciliation for a tax year is not completed and additional tax is not paid by October 31st of the following year.

(e) If the allocation and apportionment provisions of this rule do not fairly represent the extent of its business activity related to this state, the taxpayer may petition for, or the department may require, in respect to all or any part of the taxpayer's business activity:

(i) Separate accounting;

(ii) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(iii) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's receipts.

(3) **Definitions.** The following definitions apply throughout this rule unless the context clearly requires otherwise:

(a) "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable period (or on such later date in the taxable period when the customer relationship began) as the address where any notice, statement and/or bill relating to a customer's account is mailed.

(b) "Borrower or credit card holder located in this state" means:

(i) A borrower, other than a credit card holder, that is engaged in a trade or business and maintains its commercial domicile in this state; or

(ii) A borrower that is not engaged in a trade or business or a credit card holder, whose billing address is in this state.

(c) "Commercial domicile" means:

(i) The headquarters of the trade or business, that is, the place from which the trade or business is principally managed and directed; or

(ii) If a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, such taxpayer's commercial domicile is deemed for the purposes of this rule to be the state of the United States or the District of Columbia from which such taxpayer's trade or business in the United States is principally managed and directed. It is presumed, subject to rebuttal by a preponderance of the evidence, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which

they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable period.

(d) "Credit card" means credit, travel or entertainment card.

(e) "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.

(f) "Department" means the department of revenue.

(g) "Employee" means, with respect to a particular taxpayer, any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(h) "Financial institution" means:

(i) Any corporation or other business entity chartered under Titles 30, 31, 32, or 33 RCW, or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended;

(ii) A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. Sec. 21 et seq.;

(iii) A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1813 (b)(1);

(iv) Any bank or thrift institution incorporated or organized under the laws of any state;

(v) Any corporation organized under the provisions of 12 U.S.C. Secs. 611 to 631;

(vi) Any agency or branch of a foreign depository as defined in 12 U.S.C. Sec. 3101 that is not exempt under RCW 82.04.315;

(vii) Any credit union, other than a state or federal credit union exempt under state or federal law;

(viii) A production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired.

(i) "Gross income of the business," "gross income," or "income":

(i) Has the same meaning as in RCW 82.04.080 and means the value proceeding or accruing by reason of the transaction of the business engaged in and includes compensation for the rendition of services, gains realized from trading in stocks, gains realized from trading in bonds or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses. Provided, that for the purposes of this rule, gross income of the business is limited to income taxable under RCW 82.04.290; and

(ii) Does not include amounts received from an affiliated person if those amounts are required to be determined at arm's length per sections 23A or 23B of the Federal Reserve Act. For the purpose of this subsection (3)(i) affiliated means the affiliated person and the financial institution are under

common control. Common control means the possession (directly or indirectly), of more than fifty percent of power to direct or cause the direction of the management and policies of each entity. Control may be through voting shares, contract, or otherwise.

(iii) Financial institutions must determine their gross income of the business from gains realized from trading in stocks, bonds, and other evidences of indebtedness on a net annualized basis.

(j) "Income taxable under RCW 82.04.290" means the gross income of the business taxable under the service and other activities or international investment management services classifications.

(k) "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such extension of credit from another. "Loan" includes participations, syndications, and leases treated as loans for federal income tax purposes. "Loan" does not include: futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; non-interest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a REMIC, or other mortgage-backed or asset-backed security; and other similar items.

(l) "Loan secured by real property" means that fifty percent or more of the aggregate value of the collateral used to secure a loan or other obligation was real property, when valued at fair market value as of the time the original loan or obligation was incurred.

(m) "Merchant discount" means the fee (or negotiated discount) charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.

(n) "Participation" means an extension of credit in which an undivided ownership interest is held on a *pro rata* basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(o) "Person" has the meaning given in RCW 82.04.030.

(p) "Regular place of business" means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied and used by employees of the taxpayer.

(q) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

(r) "Syndication" means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

(s) "Taxable in another state" means either:

(i) The taxpayer is subject to business activities tax by another state on its income taxable under RCW 82.04.290; or

(ii) The taxpayer is not subject to a business activities tax by another state on its income taxable under RCW 82.04.290, but that state has jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus standards explained in WAC 458-20-19401.

For purposes of this subsection (3)(s), "business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a state. The term includes taxes measured in whole or in part on net income or gross income or receipts. "Business activities tax" does not include a retail sales tax, use tax, or a similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.

(t) "Taxable period" means the calendar year during which tax liability is incurred.

(4) Receipts factor.

(a) General. The receipts factor is a fraction, the numerator of which is the gross income of the taxpayer in this state during the taxable period and the denominator of which is the gross income of the taxpayer inside and outside this state during the taxable period. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator. Separate receipts factors must be determined for business and occupation tax under the service and other activities and the international investment management services classifications.

(b) Interest from loans secured by real property.

(i) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the income described in this subsection (4)(b)(i) is included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, then the income described in this subsection (4)(b)(i) must be included in the numerator of the receipts factor if the borrower is located in this state.

(ii) The determination of whether the real property securing a loan is located within this state must be made as of the time the original agreement was made and any and all subsequent substitutions of collateral must be disregarded.

(c) Interest from loans not secured by real property. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state. Interest and fees on loans secured by commercial aircraft that qualifies for the exemption from business and occupation tax under RCW 82.04.43391 are not included in either numerator or the denominator of the receipts factor.

(d) Net gains from the sale of loans. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of Section 1286 of the Federal Internal Revenue Code.

(i) The amount of net gains (but not less than zero) from the sale of loans secured by real property included in the

numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (b) of this subsection (4) and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(ii) The amount of net gains (but not less than zero) from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (c) of this subsection (4) and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(e) Receipts from credit card receivables. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and income from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.

(f) Net gains from the sale of credit card receivables. The numerator of the receipts factor includes net gains (but not less than zero) from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (e) of this subsection (4) and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(g) Credit card issuer's reimbursement fees. The numerator of the receipts factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (e) of this subsection (4) and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(h) Receipts from merchant discount. The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. Such receipts must be computed net of any cardholder charge backs, but must not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

(i) Loan servicing fees.

(i)(A) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under (b) of this subsection (4) and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(B) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under (c) of this subsection (4) and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(ii) If the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the

numerator of the receipts factor includes such fees if the borrower is located in this state.

(j) Receipts from services. The numerator of the receipts factor includes receipts from services not otherwise apportioned under this subsection (4) if the service is performed in this state. If the service is performed both inside and outside this state, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this subsection (4), if a greater proportion of the activity producing the receipts is performed in this state based on cost of performance.

(k) Receipts from investment assets and activities and trading assets and activities.

(i) Interest, dividends, net gains (but not less than zero) and other income from investment assets and activities and from trading assets and activities are included in the receipts factor. Investment assets and activities and trading assets and activities include but are not limited to: Investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions. With respect to the investment and trading assets and activities described in (k)(i)(A) and (B) of this subsection (4), the receipts factor includes the following:

(A) The receipts factor includes the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(B) The receipts factor includes the amount by which interest, dividends, gains and other receipts from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.

(ii) The numerator of the receipts factor includes interest, dividends, net gains (but not less than zero) and other receipts from investment assets and activities and from trading assets and activities described in (k)(i) of this subsection (4) that are attributable to this state.

(A) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(A) of this subsection (4) from such funds and such securities by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of busi-

ness of the taxpayer within this state and the denominator of which is the average value of all such funds and such securities.

(C) The amount of interest, dividends, gains and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book and foreign currency transactions, (but excluding amounts described in (k)(i)(A) and (B) of this subsection (4)), attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(B) of this subsection (4) by a fraction, the numerator of which is the average value of such trading assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(D) For purposes of this subsection (4)(k)(ii), the average value of trading assets owned by the taxpayer is the original cost or other basis of such property for federal income tax purposes without regard to depletion, depreciation, or amortization.

(iii) In lieu of using the method set forth in (k)(ii) of this subsection (4), the taxpayer may elect, or the department may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this paragraph.

(A) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross receipts from such assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(A) of this subsection (4) from such funds and such securities by a fraction, the numerator of which is the gross income from such funds and such securities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such funds and such securities.

(C) The amount of interest, dividends, gains and other receipts from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book and foreign currency transactions, (but excluding amounts described in (k)(ii)(A) or (B) of this subsection (4)), attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(B) of this subsection (4) by a fraction, the numerator of which is the gross income from such trading assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(iv) If the taxpayer elects or is required by the department to use the method set forth in (k)(iii) of this subsection (4), it must use this method on all subsequent returns unless the taxpayer receives prior permission from the department to use, or the department requires a different method.

(v) The taxpayer has the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. If the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one such regular place of business is in this state and one such regular place of business is outside this state, such asset or activity is considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Such policies and guidelines are presumed, subject to rebuttal by preponderance of the evidence, to be established at the commercial domicile of the taxpayer.

(l) Attribution of certain receipts to commercial domicile. All receipts which would be assigned under this rule to a state in which the taxpayer is not taxable are included in the numerator of the receipts factor, if the taxpayer's commercial domicile is in this state.

(5) **Effective date.** This rule applies to gross income that is reportable with respect to tax liability beginning on and after June 1, 2010.

WSR 11-12-064
EMERGENCY RULES
DEPARTMENT OF REVENUE

[Filed May 27, 2011, 2:48 p.m., effective May 27, 2011, 2:48 p.m.]

Effective Date of Rule: Immediately.

Purpose: Part I of chapter 23, Laws of 2010 1st sp. sess. (2ESSB 6143) changed the apportionment and nexus requirements for apportionable activities, effective June 1, 2010. The department has adopted the following emergency rule to explain how these requirements apply: WAC 458-20-19401 (Rule 19401) Minimum nexus thresholds for apportionable activities.

Changes from the previous emergency rule filed January 28, 2011, under WSR 11-04-068 were made as follows: Rule 19401 - changes to same language as proposed final rule. These changes include formatting, adding examples, clarifying language, and additional details.

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

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: An emergency adoption of this new rule is necessary because the permanent rule cannot be adopted at this time.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

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

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

Date Adopted: May 27, 2011.

Alan R. Lynn
Rules Coordinator

NEW SECTION

WAC 458-20-19401 Minimum nexus thresholds for apportionable activities. (1) Introduction.

(a) This rule only applies to periods after May 31, 2010.

(b) The State of Washington imposes Business and Occupation (B&O) tax on "apportionable activities" measured by the gross income of the business. B&O tax may only be imposed if a person has "substantial nexus" with this state. For the purposes of apportionable activities, substantial nexus does not require a person to have physical presence in this state.

(c) The following rules may also be helpful:

(i) WAC 458-20-19402 Single factor receipts apportionment - Generally. This rule describes the general application of single factor receipts apportionment and applies only to tax liability incurred after May 31, 2010.

(ii) WAC 458-20-19403 Single factor receipts apportionment - Royalties. This rule describes the application of single factor receipts apportionment to gross income from royalties and applies only to tax liability incurred after May 31, 2010.

(iii) WAC 458-20-19404 Single factor receipts apportionment - Financial institutions. This rule describes the application of single factor receipts apportionment to certain income of financial institutions and applies only to tax liability incurred after May 31, 2010.

(iv) WAC 458-20-193 Inbound and outbound interstate sales of tangible personal property.

(v) WAC 458-20-194 Doing business inside and outside the state. This rule describes separate accounting and cost apportionment and applies only to tax liability incurred from January 1, 2006 through May 31, 2010.

(d) Examples included in this rule identify a number of facts and then state a conclusion; they should be used only as a general guide. The tax results of all situations must be determined after a review of all the facts and circumstances. For the examples in this rule, gross income received by the taxpayer is from engaging in apportionable activities. Also,

unless otherwise stated, the examples do not apply to tax liability for periods prior to June 1, 2010.

(2) **Definitions.** Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this rule.

(a) "Apportionable activities" includes only those activities subject to B&O tax under the following classifications:

(i) Service and other activities;

(ii) Royalties;

(iii) Travel agents and tour operators;

(iv) International steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent;

(v) Stevedoring and associated activities;

(vi) Disposing of low-level waste;

(vii) Title insurance producers, title insurance agents, or surplus line brokers;

(viii) Public or nonprofit hospitals;

(ix) Real estate brokers;

(x) Research and development performed by nonprofit corporations or associations;

(xi) Inspecting, testing, labeling, and storing canned salmon owned by another person;

(xii) Representing and performing services for fire or casualty insurance companies as an independent resident managing general agent licensed under the provisions of chapter 48.17 RCW;

(xiii) Contests of chance;

(xiv) Horse races;

(xv) International investment management services;

(xvi) Room and domiciliary care to residents of a boarding home;

(xvii) Aerospace product development;

(xviii) Printing or publishing a newspaper (but only with respect to advertising income);

(xix) Printing materials other than newspapers and publishing periodicals or magazines (but only with respect to advertising income); and

(xx) Cleaning up radioactive waste and other by-products of weapons production and nuclear research and development, but only with respect to activities that would be taxable as an "apportionable activity" under any of the tax classifications listed in (b)(i) through (xix) of this subsection (1) if this special tax classification did not exist.

(b) "Credit card" means a card or device existing for the purpose of obtaining money, property, labor, or services on credit

(c) "Gross income of the business" means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, gains realized from trading in bonds or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

(d) The term "gross receipts" means gross income of the business from engaging in from apportionable activities.

(e) "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such extension of credit from another. "Loan" includes participations, syndications, and leases treated as loans for federal income tax purposes. "Loan" does not include: futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; non-interest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a REMIC, or other mortgage-backed or asset-backed security; and other similar items.

(f) "Net annual rental rate" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(g) The terms "nexus" and "substantial nexus" are used interchangeably in this rule.

(h) "Property" means tangible, intangible, and real property owned or rented and used in this state in apportionable and non-apportionable activities during the calendar year, except property does not include ownership of or rights in computer software, including computer software used in providing a digital automated service; master copies of software; and digital goods or digital codes residing on servers located in this state. Refer to RCW 82.04.192 and 82.04.215 for definitions of the terms "computer software," "digital automated services," "digital goods," "digital codes," and "master copies."

(i) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

(j) "Securities" includes any intangible property defined as a security under Section 2 (a)(1) of the Securities Act of 1933, including, but not limited to, negotiable certificates of deposit and municipal bonds.

(3) Substantial nexus.

(a) Substantial nexus with Washington exists where a person is:

(i) An individual and is a resident or domiciliary of this state during the calendar year;

(ii) A business entity and is organized or commercially domiciled in this state during the calendar year; or

(iii) A nonresident individual or a business entity that is organized and commercially domiciled outside this state, and in any calendar year the person has:

(A) More than fifty thousand dollars of property in this state;

(B) More than fifty thousand dollars of payroll in this state;

(C) More than two hundred fifty thousand dollars of receipts attributed to this state; or

(D) At least twenty-five percent of the person's total property, total payroll, or total receipts attributed to this state.

(b) The Department will adjust the amounts listed in (a) of subsection (3) based on changes in the consumer price index as required by RCW 82.04.067.

(c) The minimum nexus thresholds in subsection (3)(a), above, are determined on a tax year basis. Generally, a tax year is the same as a calendar year. See RCW 82.32.270. For the purposes of this rule, tax years will be referred to as calendar years. This means that if a person meets the minimum nexus thresholds in a calendar year, that person is subject to B&O taxes for the entire calendar year.

Example 1. Company C is commercially domiciled in Washington and has only one employee in Washington who earns \$30,000 per year. Company C has substantial nexus with Washington because it is commercially domiciled in Washington. The minimum nexus thresholds described in subsection (3)(a)(iii) do not apply to business entities commercially domiciled in this state.

Example 2. Company Q is organized and domiciled outside of Washington. In a calendar year, Company Q maintains an office in Washington which houses a single employee. Company Q has \$40,000 in property located in Washington, the employee receives \$45,000 in compensation, and has \$200,000 in apportionable receipts attributed to Washington. Company Q's total property is valued at \$200,000, total payroll compensation is \$400,000, and total apportionable receipts is \$5,000,000. Although Company Q has physical presence in Washington, it does not have substantial nexus with Washington for apportionable activities because: (a) it is not organized or domiciled in Washington and (b) does not have sufficient property, payroll, or receipts to meet the minimum nexus thresholds identified in subsection 3(a) of this rule. See table below:

	Total	Washington	Percentage in Washington
Property	\$200,000	\$40,000	20%
Payroll	\$400,000	\$45,000	11.25%
Receipts	\$5,000,000	\$200,000	4%

(4) Property threshold.

(a) Location of property.

(i) Real property — Real property owned or rented is in this state if the real property is located in this state.

(ii) Tangible personal property — Tangible personal property is in this state if it is physically located in this state.

(iii) Intangible property — Intangible property is in this state based on the following:

(A) A loan is located in this state if:

(I) More than fifty percent (50%) of the fair market value of the real and/or personal property securing the loan is in this state. Property that is subject to ownership registration (e.g., motor vehicles, aircraft, watercraft) is in the state where it is properly registered. For other property (not subject to ownership registration), the determination of whether the real or personal property securing a loan is in this state must be made as of the time the original agreement was made, and any and all subsequent substitutions of collateral must be disregarded; or

(II) If (I) above does not apply and the borrower is located in this state.

(iv) A borrower located in this state if:

(A) The borrower is engaged in business and the borrower's commercial domicile is located in this state; or

(B) The borrower is not engaged in business and the borrower's billing address is located in this state.

(v) A credit card receivable is in this state if the billing address of the card holder is located in this state.

(vi) A non-negotiable certificate of deposit is property in this state if the issuing bank branch is in this state.

(vii) Securities

(A) A negotiable certificate of deposit is property in this state if the owner is located in this state.

(B) A municipal bond is property in this state if the owner is located in this state.

(b) Value of property.

(i) Property the taxpayer owns and uses in this state, other than loans and credit card receivables, is valued at its original cost basis.

Example 3. In January 2008, ABC Corp. bought Machinery for \$65,000 for use in State X. On January 1, 2011, ABC Corp. brought that Machinery into Washington for the remainder of the year. ABC Corp. has nexus with Washington based on Machinery's original cost basis value of \$65,000. The value is \$65,000 even though the property has depreciated prior to entering the state.

(ii) Property the taxpayer rents and uses in this state is valued at eight times the net annual rental rate.

Example 4. Out-of-state Business X rents office space in Washington for \$6,000 per year and has \$5,000 of office furniture and equipment in Washington. Business X has nexus with Washington because the value of the rented office space (\$6,000 multiplied by eight, which is \$48,000) plus the value of office furniture and equipment exceeds the \$50,000 property threshold.

(iii) Loans and credit card receivables owned by the taxpayer are valued at their outstanding principal balance, without regard to any reserve for bad debts. However, if a loan or credit card receivable is actually charged off as a bad debt in whole or in part for federal income tax purposes (see 26 USC 166), the portion of the loan or credit card receivable charged off is deducted from the outstanding principal balance.

(c) Determining substantial nexus based on property value.

To determine whether the \$50,000 property threshold has been met, average the value of property in this state on the first and last day of the calendar year. The Department may require the averaging of monthly values during the calendar year if reasonably required to properly reflect the average value of the taxpayer's property in this state throughout the taxable period.

Example 5. Company Y has property in Washington valued at \$90,000 on January 1 and \$20,000 on December 31 of the same year. The value of property in Washington is \$55,000 $((90,000+20,000)/2)$. Company Y has substantial nexus with Washington.

Example 6. Company A has no property located in Washington on January 1st and on December 31st of a calendar year. However, it brought \$100,000 in property into Washington on January 15th and removed it from Washington on November 15th of that calendar year. The Department may compute the value of Company A's property on a monthly

basis in this situation because it is required to properly reflect the average value of Company A's property in Washington (\$100,000 multiplied by ten (months) divided by 12 (months), which is \$83,333). Company A has substantial nexus with Washington based on the value of the property averaged over the calendar year.

Example 7. Company B has no property located in Washington on January 1st and on December 31st of a calendar year. However, it brought \$100,000 in property into Washington on January 15th and removed it from Washington on February 15th of that calendar year. The Department may compute the value of Company A's property on a monthly basis in this situation because it is required to properly reflect the average value of Company B's property in Washington (\$100,000 multiplied by one (month) divided by 12 (months), which is \$8,333.) Company B does not have substantial nexus with Washington based on the value of the property averaged over the calendar year, unless this amount exceeds 25% of Company B's total property value.

Example 8. IT Co. is domiciled in State X with Employee located in Washington who works from a home office. IT Co. provided to Employee \$5,000 of office supplies and \$15,000 of equipment owned by IT Co. IT Co. does not have nexus with Washington based on the value of the property in this State (\$20,000) because it does not exceed \$50,000, unless this amount exceeds 25% of IT Co.'s total property value. This example does not address the payroll threshold.

(5) Payroll threshold.

"Payroll" is the total compensation defined as gross income under 26 U.S.C. Sec. 61 (section 61 Internal Revenue Code of 1986), as of June 1, 2010, earned from apportionable and non-apportionable activities paid during the calendar year to employees and to third-party representatives who represent the taxpayer in interactions with the taxpayer's clients and includes sales commissions.

(a) Employee compensation is received in this state if it is properly reportable in this state for unemployment compensation tax purposes, regardless of whether it was actually reported to this state.

Example 9. Company D is commercially domiciled in State X and has a single Employee whose payroll of \$80,000 is properly reportable in Washington for unemployment compensation purposes. Company D has substantial nexus with Washington during the calendar year based on compensation paid Employee.

Example 10. Assume the same facts as Example 9 except only 50% of Employee's payroll is properly reportable in Washington for unemployment compensation purposes for the calendar year. Employee's Washington compensation of \$40,000 does not meet the payroll threshold to establish substantial nexus with Washington, unless this amount exceeds 25% of total payroll compensation.

(b) Third party representatives receive payroll compensation in this state if the service(s) performed occurs entirely or primarily within this state.

(6) Receipts threshold.

The receipts threshold is met if a taxpayer receives more than \$250,000 from apportionable activities that is attributed to Washington.

(a) All receipts from all apportionable activities are accumulated to determine if the receipts threshold is satisfied. Receipts from activities that are not subject to apportionment (e.g., retailing, wholesaling, and extracting) are not used to determine if the receipts threshold has been satisfied.

(b) Receipts are attributed to Washington per WAC 458-20-19402 (General attribution), 19403 (Royalties), and 19404 (Financial institutions).

Example 11. Company E is commercially domiciled in State X. In a calendar year it has \$150,000 in royalty receipts attributed to Washington per WAC 458-20-19403 and \$150,000 in gross receipts from other apportionable activities attributed to Washington per WAC 458-20-19402. Company E has substantial nexus with Washington because it has a total of \$300,000 in receipts from apportionable activities attributed to Washington in a calendar year. It does not matter that the receipts were from apportionable activities that are subject to tax under different B&O tax classifications. The receipts threshold is determined by the totality of the taxpayer's apportionable activities in Washington.

Example 12. Calculation of minimum nexus thresholds during the 2010 transition year. Company F receives \$200,000 in gross receipts attributed to Washington on March 15, 2010; \$100,000 on July 12, 2010; and \$100,000 on November 1, 2010. Company F has substantial nexus with Washington for the period June 1, 2010, through December 31, 2010, because it received \$400,000 in gross receipts during 2010.

(7) Application of 25% threshold.

If at least twenty-five percent (25%) of a non-resident taxpayer's property, payroll, or receipts from apportionable activities is in Washington, then the taxpayer has substantial nexus with Washington. The twenty-five percent (25%) threshold is determined by dividing:

- (a) The value of property located in Washington by the total value of taxpayer's property;
- (b) Payroll located in Washington by taxpayer's total payroll; or
- (c) Apportionable receipts attributed to Washington by total apportionable receipts.

Example 13. Company G is organized and commercially domiciled in State X. In a calendar year it has \$45,000 in property, \$45,000 in payroll, and \$240,000 in gross receipts attributed to Washington. Its total property is valued at \$200,000; its world-wide payroll is \$150,000; and its total gross receipts are \$2,000,000. The percentages of property, payroll, and receipts are shown in the table below:

	Total	Washington	Percentage in Washington
Property	\$200,000	\$45,000	22.5%
Payroll	\$150,000	\$45,000	30%
Receipts	\$2,000,000	\$240,000	12%

Company G has substantial nexus with Washington because more than twenty-five (25%) percent of its payroll is located in Washington.

(8) Application to local gross receipts business and occupations taxes. This rule does not apply to the nexus requirements for local gross receipts business and occupation taxes.

(9) Continuing substantial nexus.

Pursuant to RCW 82.04.220, if a person meets any of the minimum nexus thresholds in subsection 3, above, in a calendar year, the person has nexus for the following calendar year and will owe B&O tax on its gross receipts attributable to Washington for that additional year.

Example 14: Assume Corporation J earns receipts attributable to Washington that do not exceed the minimum threshold from apportionable activities in any year, and whose physical presence in Washington ends on July 20, 2008. Corporation J's B&O tax reporting obligation for any gross receipts earned in Washington ends on Dec. 31, 2010.

Example 15: Assume Corporation K earns receipts attributable to Washington from July 1, 2008 through March 1, 2010 and exceeds the minimum threshold from apportionable activities in 2010. Assuming Corporation K does not exceed any of the minimum nexus thresholds in 2011, the taxpayer's B&O tax reporting obligation for any gross receipts attributable to Washington ends on Dec. 31, 2011.

Example 16: Assume Corporation L exceeded Washington's minimum nexus thresholds for apportionable income from 2010 through 2012, but does not meet them in 2013. Corporation L's B&O tax reporting obligation for any gross receipts earned in Washington ends on December 31, 2013.

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

WSR 11-12-080

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 11-114—Filed May 31, 2011, 4:16 p.m., effective June 1, 2011]

Effective Date of Rule: June 1, 2011.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-619, 232-28-620, and 232-28-621.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed to with resource co-managers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans and are interim until permanent rules take effect.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 0, Repealed 0.

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

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

Date Adopted: May 31, 2011.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900G Freshwater exceptions to statewide rules—2011 North of Falcon Notwithstanding the provisions of WAC 232-28-619, effective June 1, 2011, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Beaver Creek (Thurston County) and all tributaries west of I-5: Open the first Saturday in June until further notice. Selective gear rules, night closure, and anti-snagging rules are in effect. Trout: Minimum length is 14 inches.

(2) Black River (Thurston County) from mouth to Highway 12: Open the first Saturday in June until further notice. Selective gear rules. Trout: Minimum length is 14 inches.

(3) Black River (Thurston County) from Highway 12 to bridge on 128th Ave SW: Open the first Saturday in June until further notice. Night closure and anti-snagging rules are in effect. Single-point hooks required. Trout: Minimum length is 14 inches.

(4) Black River (Thurston County) from bridge on 128th Ave SW to Black Lake, and including all tributaries west of I-5, including Waddell Creek, Dempsey Creek, Salmon Creek, and Blooms Ditch: Open the first Saturday in June until further notice. Selective gear rules are in effect. Trout: Minimum length is 14 inches.

(5) Cloquallum Creek (Grays Harbor County): From mouth to the outlet of Stump Lake: Open the first Saturday in June until further notice. Trout: Minimum length is fourteen inches.

(6) Mima Creek (Thurston County) and all tributaries west of I-5: Open the first Saturday in June until further notice. Selective gear rules, night closure, and anti-snagging rules are in effect. Trout: Minimum length is 14 inches.

(7) Nooksack River (Whatcom County), from mouth to forks: Salmon: Open July 16, 2011, until further notice, from the Lummi Indian Reservation boundary to the Highway 544 Bridge at Everson. Daily limit 4 pink salmon only. Bait is prohibited. Only a single-point hook may be used, and the hook must measure less than 1/2" from point to shank.

(8) Samish River (Whatcom County): Salmon: Closed.

(9) Skagit River (Skagit/Whatcom counties):

(a) From Memorial Highway Bridge (Highway 536 at Mt. Vernon) upstream to Gilligan Creek: Anti-snagging rule in effect from July 1, 2011, until further notice.

(b) From the Highway 530 Bridge at Rockport to the Cascade River Road: Open June 1, 2011, until further notice. Anti-snagging rule and night closure are in effect. Trout, except Dolly Varden/Bull Trout: Minimum length is fourteen inches. It is legal to retain Dolly Varden/Bull Trout as part of the trout daily limit; minimum length for Dolly Varden/Bull Trout is twenty inches. Salmon: Open June 1 through July 15, 2011. Daily limit is 4 hatchery Chinook salmon, of which only 2 may be adult hatchery Chinook.

(c) From Cascade River Road to the Gorge Powerhouse: Open June 1, 2011, until further notice. Selective gear rules are in effect. It is unlawful to fish from a floating device equipped with an internal combustion motor. All species: Release all fish, except that up to 2 hatchery steelhead may be retained per day.

NEW SECTION

WAC 232-28-62000D Coastal salmon—2011 North of Falcon. Notwithstanding the provisions of WAC 232-28-620, effective June 1, 2011, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect. An area is open when a daily limit is provided:

(1) Catch Record Card Area 1:

(a) June 1 through June 17, 2011 - Closed.

(b) June 18 through June 25, 2011 - Daily limit of 2 salmon. Release coho and wild Chinook.

(c) June 26, 2011, until further notice - Daily limit of 2 salmon, of which not more than one may be a Chinook salmon. Release wild coho.

(d) Closed in the Columbia River Mouth Control Zone 1 during all open periods. See WAC 220-56-195.

(2) Catch Record Card Area 2:

(a) June 1 through June 17, 2011 - Closed.

(b) June 18 through June 25, 2011 - Daily limit of 2 salmon. Release coho and wild Chinook.

(c) June 26, 2011, until further notice - Open Sundays through Thursdays only. Daily limit is 2 salmon, of which not more than one may be a Chinook salmon. Release wild coho.

(3) Willapa Bay (Catch Record Card Area 2-1):

(a) June 1 through June 17, 2011 - Closed.

(b) June 18 through July 31, 2011 - Open concurrent with Area 2 when Area 2 is open for salmon angling. Area 2 rules apply.

(4) Catch Record Card Area 3:

(a) June 1 through June 17, 2011 - Closed.

(b) June 18 through June 25, 2011 - Daily limit of 2 salmon. Release coho and wild Chinook.

(c) June 26, 2011, until further notice - Daily limit is 2 salmon plus 1 additional pink salmon. Only one may be a Chinook salmon. Release wild coho.

(5) Catch Record Card Area 4:

(a) June 1 through June 17, 2011 - Closed.

(b) June 18 through June 25, 2011 - Daily limit is 2 salmon. Release coho and wild Chinook. Waters east of a true north-south line through Sail Rock are closed.

(c) June 26, 2011, until further notice - Daily limit is 2 salmon plus 1 additional pink salmon. Only one may be a Chinook salmon. Release wild coho. Waters east of a true north-south line through Sail Rock are closed June 26 through July 31, 2011.

NEW SECTION

WAC 232-28-62100K Puget Sound Salmon—2011 North of Falcon Notwithstanding the provisions of WAC 232-28-621, WAC 220-56-128, and WAC 220-56-195, effective June 1, 2011, until further notice, it is unlawful to fish for salmon in Puget Sound except as provided for in this section, provided that unless otherwise amended, all permanent rules remain in effect. An area is open when a daily limit is provided:

(1) Catch Record Card Area 8-2: June 1 through July 31, 2011 - Closed, except waters west of Tulalip Bay and within 2,000 feet of shore from the pilings at Old Bower's Resort to a fishing boundary marker approximately 1.4 miles northwest of Hermosa Point: From June 3 through June 11, 2011, and June 13 through July 31, 2011, open only Friday through 11:59 a.m. Monday of each week. Daily limit is 2 salmon plus 2 additional pink salmon.

(2) Catch Record Card Area 9: From July 16, 2011, until further notice - Daily limit of 2 salmon plus 2 additional pink salmon. Release chum and wild Chinook. Closed south of a line from Foulweather Bluff to Olele Point, except it is lawful to fish from shore between the Hood Canal Bridge and the northern boundary of Salsbury Point Park. The daily limit is 2 salmon plus 2 additional pink salmon. Release Chinook and chum.

(3) Catch Record Card Area 10: Waters of Elliott Bay east of a line from West Point to Alki Point: Closed July 1, 2011, until further notice.