

WSR 11-11-084
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Medicaid Purchasing Administration)

[Filed May 18, 2011, 8:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-23-122.

Title of Rule and Other Identifying Information: WAC 388-475-0820 SSI-related medical—Child-related income exclusions, 388-475-0840 SSI-related medical—Work- and agency-related income exclusions, 388-475-0900 SSI-related medical—Allocating income, 388-475-0920 SSI-related medical—Deeming/allocation of income from nonapplying spouse (new), 388-475-0940 SSI-related medical—Deeming income from an ineligible parent(s) to a child applying for SSI-related medical (new), 388-475-0960 SSI-related medical—Allocating income—How the department considers income and resources when determining eligibility for an individual applying for noninstitutional medicaid when another household member is receiving institutional medicaid (new), and 388-506-0620 SSI-related medical clients (repeal).

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on July 5, 2011, at 10:00 a.m.

Date of Intended Adoption: Not sooner than July 6, 2011.

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

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by June 21, 2011, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:

- DSHS is updating WAC to change the deeming and allocation rules for SSI-related medical programs so they mirror the federal rules. The department is creating new WAC to further clarify deeming rules relating to deeming from ineligible parents to applicant children; deeming between an applicant spouse and a non-applying spouse; and deeming between spouses when one spouse is institutionalized.
- DSHS is adding new language in WAC 388-475-0840 to support the student earned income exclusion and adding language in WAC 388-475-0820 to define a student for SSI-related medical.
- DSHS is repealing WAC 388-506-0620 and incorporating the language to a new rule in chapter 388-475 WAC series.

Reasons Supporting Proposal: See Purpose statement above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500.

Statute Being Implemented: RCW 74.04.050, 74.04.-057, 74.08.090, 74.09.500.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Catherine Fisher, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1357.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not impact small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Client eligibility rules for medical assistance are exempt from the cost-benefit analysis requirement per RCW 34.05.328 (5)(b)(vii).

May 13, 2011

Katherine I. Vasquez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-04-046, filed 1/26/06, effective 2/26/06)

WAC 388-475-0820 SSI-related medical—Child-related income exclusions and allocations. (1) ~~((The department excludes an allowance from a person's earned and/or unearned income for a child living in the home when))~~ For the purposes of SSI-related medical eligibility determinations under chapter 388-475 WAC, a child is defined as an individual who is:

(a) ~~((The minor child lives with an SSI-related parent))~~ Unmarried; ((and))

(b) ~~((The minor child is not receiving a needs-based cash payment such as TANF or SSI))~~ Living in the household of the SSI-related applicant; ((and))

(c) ~~((The SSI-related parent is single))~~ The natural, adopted or stepchild of the SSI-related applicant or the applicant's spouse; ((or))

(d) ~~((The SSI-related parent lives with a spouse who has no income; and))~~ Not receiving a needs-based cash payment such as TANF or SSI; and

(e) ~~((The individual applying for or receiving SSI-related medical benefits is the adult parent. The maximum allowance is one-half the Federal Benefit Rate (FBR) for each child.))~~ Is either:

(i) Age seventeen or younger; or

(ii) Age twenty-one or younger and meets the SSI-related definition of a student described in subsection (6) of this section.

(2) The department allows an allocation for the support of a child when determining the countable income of an SSI-related applicant. The allocation is calculated as follows:

(a) For categorically needy (CN) medical coverage, the allocation is deducted from the countable income of a nonapplying spouse before determining the amount of the nonapplying spouse's income to be deemed to the SSI-related appli-

cant. Allocations to children are not deducted from the income of an unmarried SSI-related applicant.

(b) For medically needy (MN) medical coverage, the allocation is first deducted from the income of the nonapplying spouse as described in subsection (2)(a) of this section when the SSI-related applicant is married, and from the income of the applicant when the applicant is not married.

(3) The child's countable income, if any, is subtracted from the maximum child's allowance before determining ((this allowance)) the amount of allocation.

((2)) (4) Foster care payments received for a child who is not SSI-eligible and who is living in the household, placed there by a licensed, nonprofit or public child placement or childcare agency are excluded from income regardless of whether the person requesting or receiving SSI-related medical is the adult foster parent or the child who was placed.

((3)) (5) Adoption support payments, received by an adult for a child in the household that are designated for the child's needs, are excluded as income. Adoption support payments that are not specifically designated for the child's needs are not excluded and are considered unearned income to the adult.

((4)) (6) The department excludes the earned income of a person ((under age twenty-two is excluded)) age twenty-one or younger if that person is a student. A student must meet one of the following criteria in order to allow the student earned income exclusion:

(a) Attend a school, college, or university a minimum of eight hours a week; or

(b) Pursue a vocational or technical training program designed to prepare the student for gainful employment a minimum of twelve hours per week; or

(c) Attend school or be home schooled in grades seven through twelve at least twelve hours per week.

((5) Child support payments received from an absent parent for a child living in the home are considered the income of the child.

((6)) (7) Any portion of a grant, scholarship, fellowship, or gift used for tuition, fees and/or other necessary educational expenses at any educational institution is excluded from income and not counted as a resource for nine months after the month of receipt.

(8) One-third of child support payments received for a child ((are)) who is an applicant for SSI-related medical is excluded from the child's income. Child support payments that are subject to the one-third deduction may be voluntary or court-ordered payments for current support or arrears.

((7) Any portion of a grant, scholarship, fellowship, or gift used for tuition, fees and/or other necessary educational expenses at any educational institution is excluded from income for nine months after the month of receipt.

((8)) (9) The one-third deduction described in subsection (8) of this section does not apply to child support payments received from an absent parent for a child living in the home when the parent(s) or their spouse is the applicant for SSI-related medical. Voluntary or court-ordered payments for current support or arrears are always considered the income of the child for whom they are intended and not income to the parent(s).

(10) Gifts to, or for the benefit of, a person under eighteen years old who has a life-threatening condition, from an organization described in section 501 (c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of that code, is excluded as follows:

(a) In-kind gifts that are not converted to cash; or

(b) Cash gifts up to a total of two thousand dollars in a calendar year.

((9)) (11) Veteran's payments made to, or on behalf of, natural children of Vietnam veterans regardless of their age or marital status, for any disability resulting from spina bifida suffered by these children are excluded from income. Any portion of a veteran's payment that is designed as the dependent's income is countable income to the dependent and not the applicant (assuming the applicant is not the dependent).

((10) Unless it is specifically contributed to the client, all earned income of an ineligible or nonapplying person under the age of twenty-one who is a student:

(a) Attending a school, college, or university; or

(b) Pursuing a vocational or technical training program designed to prepare the student for gainful employment.)

AMENDATORY SECTION (Amending WSR 04-09-005, filed 4/7/04, effective 6/1/04)

WAC 388-475-0840 SSI-related medical—Work and agency-related income exclusions. The department excludes the following when determining eligibility for SSI-related medical programs:

(1) Work related expenses:

(a) ((Including child care,)) That enable an SSI-related client to work;

(b) That allows a blind or disabled client to work and that are directly related to the person's impairment.

(2) First sixty-five dollars plus one-half of the remainder of earned income. This is considered a work allowance/incentive. This deduction does not apply to income already excluded.

(3) Any portion of self-employment income normally allowed as an income deduction by the Internal Revenue Service (IRS).

(4) Earned income of a person age twenty-one or younger if that person meets the definition of a student as defined in WAC 388-475-0820.

(5) Veteran's Aid and Attendance, housebound allowance, unusual/unreimbursed medical expenses (UME) paid by the VA to some disabled veterans, their spouses, widows or parents. For people receiving long-term care services, see chapter 388-513 WAC.

((5)) (6) Department of Veterans Affairs benefits designated for the veteran's dependent as long as the SSI-related applicant is not the dependent receiving the income. If an SSI-related applicant receives a dependent allowance based on the veteran's or veteran's survivor claim, the income is countable as long as it is not paid due to unusual medical expenses (UME).

(7) Payments provided in cash or in-kind, to an ineligible or nonapplying spouse, under any government program that provides social services provided to the client, such as chore services or attendant care.

~~((6))~~ (8) SSA refunds for medicare buy-in premiums paid by the client when the state also paid the premiums.

~~((7))~~ (9) Income that causes a client to lose SSI eligibility, due solely to reduction in the SSP.

~~((8) Department of Veteran's Affairs benefits designated for the veteran's dependent. It is considered income of that dependent.~~

~~(9))~~ (10) Tax rebates or special payments excluded under other statutes.

~~((10))~~ (11) Any public agency refund of taxes paid on real property or on food.

AMENDATORY SECTION (Amending WSR 04-09-005, filed 4/7/04, effective 6/1/04)

WAC 388-475-0900 SSI-related medical—(~~Allocating~~) Deeming and allocation of income. The department considers income of financially responsible persons to determine if a portion of that income must be regarded as available to other household members.

(1) ~~((When income is allocated from an SSI-related person to other household members, that income is considered as the other members' income.~~

(2) A portion of the income of a spouse or parent is allocated to the needs of an SSI-related applicant when the spouse or parent is:

(a) Financially responsible for the SSI-related person as described in WAC 388-408-0055 and 388-506-0620. For long term care programs, see WAC 388-513-1315, 388-513-1330, 388-513-1350; for waiver programs see WAC 388-515-1505 through 388-515-1530;

(b) Living in the same household;

(c) Not receiving SSI; and

(d) Either not related to SSI or is not applying for medical assistance.

(3) Allocations to children are deducted from the nonapplying spouse's unearned income, then from their earned income, before they are deducted from the applicant's income. See WAC 388-475-0820.

(4) If the conditions in subsection (2) are met, the income to be allocated from a parent to an SSI-related minor child applying for medical benefits is the amount remaining after deducting:

(a) All allowable income exclusions and disregards as described in WAC 388-475-750 through 388-475-880;

(b) One-half of the federal benefit rate (FBR) for each SSI-ineligible sibling of the SSI-related child living in the household, minus any countable income of that child. See WAC 388-478-0055 for FBR amount;

(c) The parent's allowance, either the one person FBR for a single parent or two person FBR for a two parent household.

(5) A portion of the countable income of a nonapplying spouse remaining after the deductions in subsection (4) may be allocated to the SSI-related spouse as follows for CN medical determinations:

(a) If the income is less than or equal to one-half of the FBR after allowing the income exclusions in subsection (4) of this section, no income is allocated to the client.

~~(b) If the income is equal to or more than one-half of the FBR after allowing the income exclusions in subsection (4) of this section, all income other than the excluded amounts is allocated to the applying spouse.~~

~~(6) Deductions from the income of the nonapplying spouse of an SSI-related applicant for CN medical determinations are:~~

~~(a) Income exclusions as described in WAC 388-475-0750 through 388-478-0880;~~

~~(b) One-half of the federal benefit rate (FBR) as described in WAC 388-478-0055 for each eligible child in the household, minus the child's countable income.~~

~~(7) In determining MN medical eligibility for SSI-related applicants:~~

~~(a) If the income of the nonapplying spouse is less than the MNIL (see WAC 388-478-0070) after applying any child allocation, a portion of the applying spouse's countable income is added to the nonapplying spouse's income to raise it to the MNIL for MN;~~

~~(b) If the income of the nonapplying spouse is more than the MNIL after applying any child allocation, the entire amount exceeding the MNIL is allocated to the applying spouse.~~

(8)) Deeming is the process of determining how much of another person's income is counted when determining eligibility of an SSI-related applicant. When income is deemed to the SSI-related applicant from other household members, that income is considered the applicant's income. Income is deemed only:

(a) From a nonapplying spouse who lives with the SSI-related applicant; or

(b) From a parent(s) residing with an SSI-related applicant child.

(2) An allocation is an amount deducted from income counted in the eligibility determination and considered to be set aside for the support of a person other than the SSI-related applicant. When income is allocated to other household members from the SSI-related applicant(s) or from the applicant's spouse, that income is not counted as income of the SSI applicant.

(3) An SSI-related person applying for categorically needy (CN) medical coverage must have countable income at or below the SSI categorically needy income level (CNIL) described in WAC 388-478-0080 unless the person is working and meets all requirements for the healthcare for workers with disabilities (HWD) program described in WAC 388-475-1000 through 388-475-1250.

(4) For institutional or home and community based waiver programs, use rules described in WAC 388-513-1315.

(5) The department follows rules described in WAC 388-475-0600 through 388-475-0880 to determine the countable income of an SSI-related applicant or SSI-related couple.

(6) If countable income of the applicant exceeds the one-person SSI CNIL prior to considering the income of a nonapplying spouse or children, the applicant is not eligible for CN medical coverage and the department determines eligibility for the medically needy (MN) program. If the countable income does not exceed the SSI CNIL, see WAC 388-475-0920 to determine if income is to be deemed to the applicant from the nonapplying spouse.

(7) If countable income (after allowable deductions) of an SSI-related couple both applying for medical coverage exceeds the two-person SSI CNIL, the couple is not eligible for CN medical coverage and the department determines eligibility for the medically needy (MN) program.

(8) For CN medical coverage, allocations to children are deducted from the nonapplying spouse's unearned income, then from their earned income before income is deemed to the SSI-related applicant. See WAC 388-475-0820.

(9) For MN medical coverage, allocations to children are deducted from the income of the SSI-related applicant or SSI-related applicant couple. See subsection (10) of this section to determine the amount of the allocation.

(10) An SSI-related individual or couple applying for MN medical coverage is allowed an allocation to a nonapplying spouse, their SSI recipient spouse or their dependent child(ren) to reduce countable income before comparing income to the medically needy income level (MNIL) described in WAC 388-478-0070. The department allocates income:

(a) Up to the one-person MNIL to a nonapplying spouse or SSI recipient spouse minus the spouse's countable income; and

(b) Up to one-half of the federal benefit rate (FBR) to each dependent minus each dependent's countable income. See WAC 388-475-0820 for child exclusions.

(11) A portion of a nonapplying spouse's income may be deemed to the SSI-related applicant:

(a) See WAC 388-475-0920(5) to determine how much income is deemed from a nonapplying spouse to the SSI-related applicant when determining CN eligibility; and

(b) See WAC 388-475-0920(10) to determine how much income is deemed from a nonapplying spouse to the SSI-related applicant when determining MN eligibility.

(12) A portion of the income of an ineligible parent or parents is allocated to the needs of an SSI-related applicant child. See WAC 388-475-0940 (4) through (7) to determine how much income is allocated from ineligible parent(s).

(13) Only income and resources actually contributed to an alien applicant from their sponsor are counted as income. For allocation of income from an alien sponsor, refer to WAC 388-450-0155.

NEW SECTION

WAC 388-475-0920 SSI-related medical—Deeming/allocation of income from nonapplying spouse. The department considers the income of financially responsible persons to determine if a portion of that income is available to other household members.

(1) A portion of the income of a nonapplying spouse is considered available to meet the needs of an SSI-related applicant. A nonapplying spouse is defined as someone who is:

(a) Financially responsible for the SSI-related applicant as described in WAC 388-408-0055 and 388-475-0960. For institutional and home and community based waiver programs, see WAC 388-513-1315;

(b) Living in the same household with the SSI-related applicant;

(c) Not receiving a needs based payment such as temporary assistance to needy families (TANF), state funded cash assistance (SFA); or

(d) Not related to SSI, or is not applying for medical assistance including spouses receiving SSI.

(2) An ineligible spouse is the spouse of an SSI cash recipient and is either not eligible for SSI for themselves or who has elected to not receive SSI cash so that their spouse may be eligible. An SSI-related applicant who is the ineligible spouse of an SSI cash recipient is not eligible for categorically needy (CN) medical coverage and must be considered for medical coverage under the medically needy (MN) program.

(3) When determining whether a nonapplying spouse's income is countable, the department:

(a) Follows the income rules described in WAC 388-475-0600 through 388-475-0750;

(b) Excludes income described in WAC 388-475-0800 (2) through (11), and all income excluded under federal statute or state law as described in WAC 388-475-0860.

(c) Excludes work-related expenses described in WAC 388-475-0840, with the exception that the sixty-five dollars plus one half earned income deduction described in WAC 388-475-0840(2) does not apply;

(d) Deducts any court ordered child support which the nonapplying spouse pays for a child outside of the home (current support or arrears); and

(e) Deducts any applicable child-related income exclusions described in WAC 388-475-0820.

(4) The department allocates income of the nonapplying spouse to nonapplying children who reside in the home as described in WAC 388-475-0820. Allocations to children are deducted first from the nonapplying spouse's unearned income, then from their earned income.

(a) For CN medical determinations, allocations to children are not allowed out of the income of the SSI-related applicant, only from the income of the nonapplying spouse.

(b) For MN medical determinations, allocations to children are allowed from the income of the SSI-related applicant if the applicant is unmarried.

(5) For SSI-related CN medical determinations, a portion of the countable income of a nonapplying spouse remaining after the deductions and allocations described in subsections (3) and (4) of this section may be deemed to the SSI-related applicant. If the nonapplying spouse's countable income is:

(a) Less than or equal to one-half of the federal benefit rate (FBR), no income is deemed to the applicant. Compare the applicant's countable income to the one-person SSI categorically needy income level (CNIL) described in WAC 388-470-0040. For healthcare for workers with disabilities (HWD) applicants, compare to the one-person HWD standard described in WAC 388-478-0075 (1)(c).

(b) Greater than one-half of the FBR, then the entire nonapplying spouse's countable income is deemed to the applicant. Compare the applicant's income to the two-person SSI CNIL. For HWD applicants, compare to the two-person HWD standard described in WAC 388-478-0075 (1)(c).

(6) When income is not deemed to the SSI-related applicant from the nonapplying spouse per section (5)(a):

(a) Allow all allowable income deductions and exclusions as described in chapter 388-475 WAC to the SSI-related applicant's income; and

(b) Compare the net remaining income to the one-person SSI CNIL or the one-person HWD standard.

(7) When income is deemed to the SSI-related applicant from the nonapplying spouse per subsection (5)(b) of this section:

(a) Combine the applicant's unearned income with any unearned income deemed from the nonapplying spouse and allow one twenty dollar general income exclusion to the combined amount.

(b) Combine the applicant's earned income with any earned income deemed from the nonapplying spouse and allow the sixty-five dollar plus one half of the remainder earned income deduction (described in WAC 388-475-0840(2)) to the combined amount.

(c) Add together the net unearned and net earned income amounts and compare the total to the two-person SSI CNIL or the two-person HWD standard described in WAC 388-478-0075 (1)(c). If the income is equal to or below the applicable two-person standard, the applicant is eligible for CN medical coverage.

(8) An SSI-related applicant under the age of sixty-five who is working at or below the substantial gainful activity (SGA) level but who is not eligible for CN coverage under the regular SSI-related program, may be considered for eligibility under the MN program or under the HWD program. The SGA level is determined annually by the Social Security Administration and is posted at: <https://secure.ssa.gov/apps10/poms.nsf/lrx/0410501015>.

(9) If the SSI-related applicant's countable income is above the applicable SSI CNIL standard, the department considers eligibility under the MN program or under the HWD program if the individual is under the age of sixty-five and working. An SSI-related applicant who meets the following criteria is not eligible for MN coverage and eligibility must be determined under HWD:

(a) A blind or disabled individual who is under the age of sixty-five;

(b) Who has earned income over the SGA level; and

(c) Is not receiving a Title II social security cash benefit based on blindness or disability.

(10) For SSI-related MN medical determinations, a portion of the countable income of a nonapplying spouse remaining after the deductions and allocations described in subsections (3) and (4) of this section may be deemed to the SSI-related applicant. If the nonapplying spouse's countable income is:

(a) Less than or equal to the one person MNIL described in WAC 388-478-0070, no income is deemed to the applicant and a portion of the applicant's countable income is allocated to the nonapplying spouse's income to raise it to the MNIL.

(b) Greater than the MNIL, then the amount in excess of the one-person MNIL is deemed to the applicant. Compare the applicant's income to the one-person MNIL.

(11) When income is not deemed to the SSI-related applicant from the nonapplying spouse per subsection (10)(a) of this section:

(a) Allocate income from the applicant to bring the income of the nonapplying spouse up to the one-person MNIL standard;

(b) Allow all allowable income deductions and exclusions as described in chapter 388-475 WAC to the SSI-related applicant's remaining income;

(c) Allow a deduction for medical insurance premium expenses (if applicable); and

(d) Compare the net countable income to the one-person MNIL.

(12) When income is deemed to the SSI-related applicant from the nonapplying spouse per subsection (10)(b) of this section:

(a) Combine the applicant's unearned income with any unearned income deemed from the nonapplying spouse and allow one twenty dollar general income exclusion to the combined amount;

(b) Combine the applicant's earned income with any earned income deemed from the nonapplying spouse and allow the sixty-five dollar plus one half of the remainder earned income deduction (described in WAC 388-475-0840(2)) to the combined amount;

(c) Add together the net unearned and net earned income amounts;

(d) Allow a deduction for medical insurance premium expenses (if applicable) per WAC 388-519-0100(5); and

(e) Compare the net countable income to the one-person MNIL described in WAC 388-478-0070. If the income is:

(i) Equal to or below the one-person MNIL, the applicant is eligible for MN medical coverage with no spenddown.

(ii) Greater than the MNIL, the applicant is only eligible for MN medical coverage after meeting a spenddown liability as described in WAC 388-519-0110.

(13) The ineligible spouse of an SSI-cash recipient applying for MN coverage is eligible to receive the deductions and allocations described in subsection (10)(a) of this section.

NEW SECTION

WAC 388-475-0940 SSI-related medical—Deeming income from an ineligible parent(s) to a child applying for SSI-related medical. The department considers income of financially responsible persons to determine if a portion of that income must be regarded as available to other household members.

(1) A portion of the income of a parent(s) is considered available to the SSI-related applicant child when the child is age seventeen or younger and the parent(s) is:

(a) Financially responsible for the SSI-related child as described in WAC 388-408-0055(2);

(b) The natural, adoptive, or step-parent of the child;

(c) Living in the same household with the child;

(d) Not receiving a needs-based payment such as TANF, SFA or SSI; and

(e) Not related to SSI or not applying for medical assistance.

(2) If an SSI-related applicant between the ages of eighteen to twenty-one lives with their parents, only consider the parent's income available to the applicant if it is actually con-

tributed to the applicant. If income is not contributed, count only the applicant's own separate income.

(3) Income that is deemed to the child is considered as that child's income.

(4) When determining whether a parent's income is countable, the department follows:

(a) The income rules described in WAC 388-475-0600 through 388-475-0750; and

(b) Excludes income described in WAC 388-475-0800 and WAC 388-475-0840, and all income excluded under a federal statute or state law as described in WAC 388-475-0860.

(5) When determining the amount of income to be deemed from a parent(s) to an SSI-related minor child for categorically needy (CN) and medically needy (MN) coverage, the department reduces the parent(s) countable income in the following order:

(a) Court ordered child support paid out for a child not in the home;

(b) An amount equal to one half of the federal benefit rate (FBR) for each SSI-eligible sibling living in the household, minus any countable income of that child. See WAC 388-478-0055 for FBR amount;

(c) A twenty dollar general income exclusion;

(d) A deduction equal to sixty-five dollars plus one-half of the remainder from any remaining earned income of the parent(s);

(e) An amount equal to the one-person SSI CNIL for a single parent or the two-person SSI CNIL for a two parent household;

(f) Any income remaining after these deductions is considered countable income to the SSI-related child and is added to the child's own income. If there is more than one child applying for SSI-related medical coverage, the deemed parental income is divided equally between the applicant children; and

(g) The deductions described in this section are deducted first from unearned income then from earned income unless they are specific to earned income.

(6) The SSI-related applicant child is also allowed all applicable income exclusions and disregards described in chapter 388-475 WAC from their own income. After determining the child's nonexcluded income, the department:

(a) Allows the twenty dollar general income exclusion from any unearned income;

(b) Deducts sixty-five dollars plus one half of the remainder from any earned income which has not already been excluded under the student earned income exclusion (see WAC 388-475-0820).

(c) Adds the child's countable income to the amount deemed from their parent(s). If the combination of the child's countable income plus deemed parental income is equal to or less than the SSI CNIL, the child is eligible for SSI-related CN medical coverage.

(7) If the combination of the child's countable income plus deemed parental income is greater than the SSI CNIL, the department considers the child for SSI-related medically needy (MN) coverage. Any amount exceeding the medically needy income level (MNIL) is used to calculate the amount of the child's spenddown liability as described in WAC 388-

519-0110. See WAC 388-478-0070 for the current MNIL standards.

NEW SECTION

WAC 388-475-0960 SSI-related medical—Allocating income—How the department considers income and resources when determining eligibility for an individual applying for noninstitutional medicaid when another household member is receiving institutional medicaid. (1)

The department follows rules described in WAC 388-513-1315 for an individual residing in a medical institution, approved for a home and community based waiver, or approved for the institutional hospice program. The rules in this section describe how the department considers household income and resources when the household contains both institutional and noninstitutionalized household members.

(2) An institutionalized individual (adult or child) who is not SSI-related may be considered under the long-term care for families and children programs described in WAC 388-505-0230 through 388-505-0265.

(3) The department considers the income and resources of spouses as available to each other through the end of the month in which the spouses stopped living together. See WAC 388-513-1330 and 388-513-1350 when a spouse is institutionalized.

(4) The department considers income and resources separately as of the first day of the month following the month of separation when spouses stop living together because of placement into a boarding home (assisted living, enhanced adult residential center, adult residential center), adult family home (AFH), adult residential rehabilitation center/adult residential treatment facility (ARRC/ARTF), or division of developmental disabilities-group home (DDD-GH) facility when:

(a) Only one spouse enters the facility;

(b) Both spouses enter the same facility but have separate rooms; or

(c) Both spouses enter separate facilities.

(5) The department considers income and resources jointly when both spouses are placed in a boarding home, AFH, ARRC/ARTF, or DDD-GH facility and share a room.

(6) When determining SSI-related categorically needy (CN) or medically needy (MN) eligibility for a community spouse applying for medical coverage, the department counts:

(a) The separate income of the community spouse; plus

(b) One half of any community income received by the community spouse and the institutionalized spouse; plus

(c) Any amount allocated to the community spouse from the institutionalized spouse. The terms "community spouse" and "institutional spouse" are defined in WAC 388-513-1301.

(7) For the purposes of determining the countable income of a community spouse applying for medical coverage as described in subsection (6) above, it does not matter whether the spouses reside together or not. Income that is allocated and actually available to a community spouse is considered that person's income.

(8) For the purposes of determining the countable income of a community spouse or children applying for medical coverage under family, pregnancy or children's medical programs, the department uses the following rules to determine if the income of the institutionalized person is considered in the eligibility calculation:

(a) When the institutionalized spouse or parent lives in the same home with the community spouse and/or children, their income is counted in the determination of household income following the rules for the medical program that is being considered.

(b) When the institutionalized spouse or parent does not live in the same home as the spouse and/or children, only income that is allocated and available to the household is counted.

(9) When determining the countable income of a community spouse applying for medical coverage under the MN program, the department allocates income from the community spouse to the institutionalized spouse in an amount up to the one-person medically needy income level (MNIL) less the institutionalized spouse's income, when:

(a) The community spouse is living in the same household as the institutionalized spouse; and

(b) The institutionalized spouse is receiving home and community-based waiver or institutional hospice services described in WAC 388-515-1505; and

(c) The institutionalized spouse has gross income of less than the MNIL.

(10) See WAC 388-408-0055 for rules on how to determine medical assistance units for households that include SSI-related persons. A separate medical assistance unit is always established for individuals who meet institutional status described in WAC 388-513-1320.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-506-0620 SSI-related medical clients.

WSR 11-12-002
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed May 18, 2011, 2:48 p.m.]

Supplemental Notice to WSR 11-07-090.

Preproposal statement of inquiry was filed as WSR 11-03-058 on January 14, 2011.

Title of Rule and Other Identifying Information: WAC 220-47-307, 220-47-311, 220-47-401, 220-47-411, 220-47-427, and 220-47-428, rules for commercial salmon fishing in Puget Sound.

Hearing Location(s): Natural Resources Building, Room 682, 1111 Washington Street S.E., Olympia, WA 98504, on Tuesday, July 5, 2011, at 10:30 a.m. to 12:00 p.m.

Date of Intended Adoption: On or after July 5, 2011.

Submit Written Comments to: Rules Coordinator, WDFW Enforcement, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Lori.preuss@dfw.wa.gov, fax (360) 902-2155, by June 21, 2011.

Assistance for Persons with Disabilities: Contact Susan Galloway by June 21, 2011, at (360) 902-2267 or TTY 1-800-833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal reflects changes from the rules as proposed in WSR 11-07-090, filed on March 22, 2011. These changes are based on recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable numbers of fish in commercial salmon fisheries in Puget Sound while protecting species of fish listed as endangered.

Closures:

Hale's Pass Area of 7B will be closed in September for conservation of Thompson River coho, per Pacific Salmon Treaty requirements.

The Snohomish River mouth closure will be modified during pink fishing season per industry request to allow for a reduction of gear crowding.

The Shilshole Bay closure will be expanded during pink season to reduce commercial and recreational conflict.

Area 10 will close east of a line from Alki Point to Fourmile Rock per request of the Muckleshoot Tribe and to meet obligations under *U.S. v. Washington*, 1974.

Season Structural Changes:

For purse seine gear, WAC 220-47-311, changes include:

Areas 7 and 7A, per tribal agreement;

Area 8, to move pink fishing back a week per industry request and tribal agreement;

Area 8A, to separate pink fishing into three weeks per industry request and tribal agreement;

Area 8D, to modify the schedule for accommodations with tribal schedules; and

Area 10, to allow for days of pink fishing to overlap with other areas per industry request.

All other changes are housekeeping items that were included in the previous filing in WSR 11-07-090.

For reef net gear, WAC 220-47-401, changes were made to Areas 7 and 7A, as the Fraser Panel will not be relinquishing regulatory control of these areas until October 1, 2011.

For gill net gear, WAC 220-47-411, changes include:

Area 6D, per Endangered Species Act requirements for when fisheries may open per federally approved management plans;

Areas 7 and 7A per tribal agreement;

Area 7B, to allow additional time during coho season per industry request and tribal agreement;

Area 8, to move pink fishing back a week and adjust open hours per industry request and tribal agreement;

Area 8A, to separate pink fishing into three weeks and adjust open hours per industry request and tribal agreement;

Area 8D, to increase openings and adjust the schedule for accommodations with tribal schedules; and

Area 10, to allow for days of pink fishing to overlap with other areas, adjust open hours during pink fishing, and impose mesh size restrictions during pink fishing per industry request.

All other changes are housekeeping items that were included in the previous filing in WSR 11-07-090.

Reasons Supporting Proposal: To reflect the recommendations of tribes and stakeholders, and to protect species of fish listed as endangered while supporting commercial salmon fishing in Puget Sound.

Statutory Authority for Adoption: RCW 77.04.020, 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.04.020, 77.12.-045, and 77.12.047.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Jeremy Jording, 1111 Washington Street S.E., Olympia, (360) 902-2171; Implementation: Jim Scott, 1111 Washington Street S.E., Olympia, (360) 902-2651; and Enforcement: Bruce Bjork, 1111 Washington Street S.E., Olympia, (360) 902-2373.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

1. Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule: These rules will incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable salmon while protecting species of fish, marine mammals, and sea birds listed as endangered. The rules include legal gear requirements, area restrictions, and open periods for commercial salmon fisheries occurring in Puget Sound.

2. Kinds of Professional Services That a Small Business Is Likely to Need in Order to Comply with Such Requirements: These rule changes clarify dates for anticipated open periods and areas for full-fleet and limited-participation salmon fisheries, and legal gear requirements for those fisheries. License holders selected to participate in the Area 10 pink salmon limited-participation fishery will be required to purchase an additional permit prior to fishing, to allow for a department observer to be on-board the licensed vessel to complete work associated with biological data collection, consistent with WAC 220-47-500.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: The changes proposed by these rules that carry potential compliance costs include (a) gear restrictions and (b) additional permit fees required for participation in the Area 10 pink salmon fishery.

(a) These rules would impose several gear restrictions during pink salmon fisheries. WAC 220-47-311 requires that purse seine vessels use a brailer or brailing bunt, and a recovery box in compliance with WAC 220-47-301 (7)(a) through (f), when participating in the Area 10 pink salmon fishery. WAC 220-47-411 specifies gill net mesh requirements of 5"

minimum and 5 1/2" maximum for pink salmon fisheries in Catch Areas 8 and 8A. The section also specifies a maximum net depth of 60 meshes when fishing for pink salmon in Catch Area 8. For pink salmon fisheries in Catch Area 10, this section specifies 4 1/2" minimum and 5 1/2" maximum mesh requirements, as well as short net soak times and use of a recovery box meeting the same standards required for purse seines above.

All of the gear restrictions and permit fees proposed by the rules apply to pink salmon fisheries, and are identical to gear restrictions the department has proposed in recent years for pink salmon fisheries. Because pink salmon return to Puget Sound only in odd years, these rules are consistently implemented in odd years, when pink salmon fisheries are scheduled. Businesses should be accustomed to these gear restrictions, and vessels that have participated in pink salmon fisheries in recent years have already purchased equipment that meets the requirements. The only change from recent year pink salmon season rules is a decrease in the minimum mesh size allowed in Area 10 gill net fisheries for pink salmon. The new minimum of 4.5" allows, but does not require, the use of nets with smaller mesh than was allowed in past seasons, so there is no additional cost of compliance with this change.

Although the Washington department of fish and wildlife (WDFW) does not consider the pink salmon fishery gear restrictions new requirements since they have been imposed in recent odd years when pink salmon fisheries were scheduled, WDFW estimates the cost of compliance with these requirements as follows. For purse seine license holders, the purchase cost of a brailer as required for use in the Area 10 fishery is estimated at \$2,000. For purse seine and gill net license holders, the cost of construction of a recovery box meeting the legal requirements is estimated at \$1,250. For gill net license holders participating in pink fisheries, the cost of a net meeting the mesh size requirements is estimated to be \$4,500.

(b) License holders participating in the Area 10 limited-participation pink salmon fishery will be required to purchase an additional permit for a fee of \$250 for each day they participate in the fishery. This fee will apply to each of the eight license holders (four gill net and four purse seine) that are selected for the duration of the season, a maximum of three fishing days per license holder. The additional permit fee required for the Area 10 pink salmon fishery has also been required in recent past seasons, and is necessary to provide in-season monitoring of the fishery, to insure that allowable bycatch levels of Puget Sound chinook salmon are not exceeded.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? The proposed rules are necessary in order to provide the opportunity to catch harvestable pink salmon, thereby effectively increasing the harvestable numbers of salmon available to nontreaty fleets. Therefore, the proposed rules should not cause any businesses to lose sales or revenue but will likely increase sales and revenue relative to opportunities for the nontreaty fleets absent compliance with the rules.

5. Cost of Compliance for Small Businesses Compared with the Cost of Compliance for the Ten Percent of

Businesses That are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs:

1. Cost per employee;
2. Cost per hour of labor; or
3. Cost per one hundred dollars of sales.

The only metric available to the department for identifying the largest ten percent of businesses, or for use in a cost comparison for small and large businesses, is the ex-vessel value of salmon sold by each Puget Sound salmon commercial license in recent years. This ex-vessel value is used as a surrogate for sales in this analysis, but it is an underestimate of total sales, since the majority of the businesses affected have additional revenue from other fisheries and related ventures. In addition, this analysis assumes that all license holders will be required to purchase equipment described above in 3. The majority of license holders already own gear that meets the requirements, and will not be required to purchase new gear. These two factors combined mean that the cost of compliance per one hundred dollars of sales will be overestimated for small and large businesses. Also note that each individual license was treated as a business for this analysis, although some businesses own more than one license.

There were approximately 274 Puget Sound salmon licenses that participated in at least one Puget Sound fishery in 2009 or 2010. The cost of compliance will vary between license types, but the average cost per license is approximately \$4,730, assuming that all license holders will be required to spend the amounts described above in 3. For the ten percent of licenses with the highest ex-vessel sales values for 2009 and 2010 combined, the average ex-vessel value per year was \$134,182. This means that the cost of compliance per one hundred dollars of ex-vessel value would be \$3.53. Most businesses affected by these rules qualify as small businesses, so an average cost of compliance for all businesses was calculated for comparison. The average ex-vessel value per year for all licenses for 2009 and 2010 was \$27,107, meaning the average cost of compliance would be \$17.45 per one hundred dollars of ex-vessel value. Again, both of these estimates of cost of compliance are believed to be overestimates, for the reasons described above.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So: Most businesses affected by these rules are small businesses. As indicated above, all of the gear restrictions proposed by the rules apply to pink salmon fisheries, and are identical to gear restrictions the department has required in past pink salmon fishery seasons. By imposing similar requirements every other year, it is likely that commercial fishers will already have the gear needed to comply with the regulations, and therefore the gear restrictions will not impose new costs on small businesses.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: As in previous years, WDFW interacted with and received input from affected businesses through the North of Falcon process, which is a series of public meetings occurring from February through April each year. These meetings allowed constituents to participate in formulating these rules.

8. A List of Industries That Will Be Required to Comply with the Rule: All licensed fishers attempting to harvest salmon in the all-citizen commercial salmon fisheries occurring in Puget Sound will be required to comply with these rules.

9. An Estimate of the Number of Jobs That Will Be Created or Lost as a Result of Compliance with the Proposed Rule: As explained above, these rules impose similar requirements used in the past for odd-year pink salmon fisheries. Compliance with the rules will not result in the creation or loss of jobs.

A copy of the statement may be obtained by contacting Lori Preuss, WDFW Enforcement, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail Lori.preuss@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not affect hydraulics.

May 18, 2011

Lori Preuss

Rules Coordinator

AMENDATORY SECTION (Amending Order 10-137, filed 7/7/10, effective 8/7/10)

WAC 220-47-307 Closed areas—Puget Sound salmon. It is unlawful at any time, unless otherwise provided, to take, fish for, or possess salmon taken for commercial purposes with any type of gear from the following portions of Puget Sound Salmon Management and Catch Reporting Areas, except that closures listed in this section do not apply to reef net fishing areas listed in RCW 77.50.050:

Areas 4B, 5, 6, 6B, and 6C - The Strait of Juan de Fuca Preserve as defined in WAC 220-47-266.

Area 6D - That portion within 1/4-mile of each mouth of the Dungeness River.

Area 7 - (1) The San Juan Island Preserve as defined in WAC 220-47-262.

(2) Those waters within 1,500 feet of shore on Orcas Island from Deer Point northeasterly to Lawrence Point, thence west to a point intercepting a line projected from the northernmost point of Jones Island, thence 90° true to Orcas Island.

(3) Those waters within 1,500 feet of the shore of Cypress Island from Cypress Head to the northernmost point of Cypress Island.

(4) Those waters easterly of a line projected from Iceberg Point to Iceberg Island, to the easternmost point of Charles Island, then true north from the northernmost point of Charles Island to the shore of Lopez Island.

(5) Those waters northerly of a line projected from the southernmost point of land at Aleck Bay to the westernmost point of Colville Island, thence from the easternmost point of Colville Island to Point Colville.

(6) Those waters easterly of a line projected from Biz Point on Fidalgo Island to the Williamson Rocks Light, thence to the Dennis Shoal Light, thence to the light on the westernmost point of Burrows Island, thence to the southwesternmost point of Fidalgo Head, and including those waters within 1,500 feet of the western shore of Allan Island, those waters within 1,500 feet of the western shore of Bur-

rows Island, and those waters within 1,500 feet of the shore of Fidalgo Island from the southwestern-most point of Fidalgo Head northerly to Shannon Point.

(7) Additional Fraser sockeye and pink seasonal closure: Those waters within 1,500 feet of the shore of Fidalgo Island from the Initiative 77 marker northerly to Biz Point.

(8) Those waters within 1,500 feet of the eastern shore of Lopez Island from Point Colville northerly to Lopez Pass, and those waters within 1,500 feet of the eastern shore of Decatur Island from the southernmost point of land northerly to Fauntleroy Point, and including those waters within 1,500 feet of the shore of James Island.

Area 7A - The Drayton Harbor Preserve as defined in WAC 220-47-252.

Area 7B - That portion south and east of a line from William Point on Samish Island to Saddlebag Island to the south-eastern tip of Guemes Island, and that portion northerly of the railroad trestle in Chuckanut Bay.

Additional coho seasonal closure: During the month of September, closed to gill nets in the waters of Area 7B west of a line from Point Francis (48°41'42"N, 122°36'40"W) to the red and green buoy southeast of Point Francis (48°40'22"N, 122°35'30"W), then to the northernmost tip of Eliza Island (48°39'37"N, 122°35'45"W), then along the eastern shore of the island to a point intersecting a line drawn through Eliza Rock Light (48°38'35"N, 122°34'40"W) and Fish Point (48°34'35"N, 122°29'45"W), and then southeastward along that line to Fish Point. Nontreaty purse seiners fishing in this area must release coho.

Area 7C - That portion southeasterly of a line projected from the mouth of Oyster Creek 237° true to a fishing boundary marker on Samish Island.

Area 8 - (1) That portion of Skagit Bay easterly of a line projected from Brown Point on Camano Island to a white monument on the easterly point of Ika Island, thence across the Skagit River to the terminus of the jetty with McGlenn Island.

(2) Those waters within 1,500 feet of the western shore of Camano Island south of a line projected true west from Rocky Point.

Area 8A - (1) Those waters easterly of a line projected from ~~((Mission Point to Buoy C1, excluding the waters of))~~ Mission Point to Buoy C1, excluding the waters of Area 8D, thence through the green light at the entrance jetty of the Snohomish River and across the mouth of the Snohomish River to landfall on the eastern shore, and those waters northerly of a line from Camano Head to the northern boundary of Area 8D, except when open for pink fisheries.

(2) Additional ~~((pink and))~~ coho seasonal closure prior to October 3: Those waters southerly of a line projected from the Clinton ferry dock to the Mukilteo ferry dock.

(3) Adjusted pink seasonal closure: Those waters easterly of a line projected from the southernmost point of Area 8D, the point of which begins from a line projected 225° from the pilings at Old Bower's Resort to a point 2,000 feet offshore, thence through the green light at the entrance jetty of the Snohomish River and across the mouth of the Snohomish River to landfall on the eastern shore, and those waters northerly of a line from Camano Head to the northern boundary of

Area 8D, and waters southerly of a line projected from the Clinton ferry dock to the Mukilteo ferry dock.

Area 8D - Those waters easterly of a line projected from Mission Point to Hermosa Point.

Area 9 - Those waters lying inside and westerly of a line projected from the Point No Point light to Sierra Echo buoy, thence to Forbes Landing wharf east of Hansville.

Area 10 - (1) Those waters easterly of a line projected from Meadow Point to West Point.

(2) Those waters of Port Madison westerly of a line projected from Point Jefferson to the northernmost portion of Point Monroe.

(3) Additional pink seasonal closure: The area east inside of the line originating from West Point and extending west to the closest midchannel buoy, thence true through Point Wells until reaching latitude 47°44'500"N, thence extending directly east to the shoreline.

(4) Additional coho and chum seasonal closure: Those waters of Elliott Bay east of a line from Alki Point to the light at Fourmile Rock, and those waters northerly of a line projected from Point Wells to "SF" Buoy, then west to President's Point.

Area 10E - Those waters of Liberty Bay north of a line projected due east from the southernmost Keyport dock, those waters of Dyes Inlet north of the Manette Bridge, and those waters of Sinclair Inlet southwest of a line projected true east from the Bremerton ferry terminal.

Area 11 - (1) Those waters northerly of a line projected true west from the light at the mouth of Gig Harbor, and those waters south of a line from Browns Point to the northernmost point of land on Point Defiance.

(2) Additional coho seasonal closure: Those waters south of a line projected from the light at the mouth of Gig Harbor to the Tahlequah ferry dock, then south to the Point Defiance ferry dock, and those waters south of a line projected from the Point Defiance ferry dock to Dash Point.

Area 12 - Those waters inside and easterly of a line projected from Lone Rock to the navigation light off Big Beef Creek, thence southerly to the tip of the outermost northern headland of Little Beef Creek.

Area 12A - Those waters north of a line projected due east from Broad Spit.

Area 12B - Those waters within 1/4-mile of the mouths of the Dosewallips, Duckabush, and Hamma Hamma rivers and Anderson Creek.

Areas 12, 12A, and 12B - (1) Those waters within 1,000 feet of the mouth of the Quilcene River.

(2) Additional Chinook seasonal closure: Those waters north and east of a line projected from Tekiu Point to Triton Head.

Areas 12, 12B and 12C - Those waters within 1,000 feet of the eastern shore.

Area 12C - (1) Those waters within 2,000 feet of the western shore between the dock at Glen Ayr R.V. Park and the Hoodspout marina dock.

(2) Those waters south of a line projected from the Cushman Powerhouse to the public boat ramp at Union.

(3) Those waters within 1/4-mile of the mouth of the Dewatto River.

Areas 12 and 12D - Additional coho and chum seasonal closure: Those waters of Area 12 south and west of a line projected 94 degrees true from Hazel Point to the light on the opposite shore, bounded on the west by the Area 12/12B boundary line, and those waters of Area 12D.

Area 13A - Those waters of Burley Lagoon north of State Route 302; those waters within 1,000 feet of the outer oyster stakes off Minter Creek Bay, including all waters of Minter Creek Bay; those waters westerly of a line drawn due north from Thompson Spit at the mouth of Glen Cove; and those waters within 1/4-mile of Green Point.

AMENDATORY SECTION (Amending Order 10-137, filed 7/7/10, effective 8/7/10)

WAC 220-47-311 Purse seine—Open periods. It is unlawful to take, fish for, or possess salmon taken with purse seine gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas and during the periods provided for in each respective Management and Catch Reporting Area:

AREA	TIME	DATE
7, 7A:	7AM - 6PM	- 10/10, 10/11, 10/14, 10/15, 10/16, 10/17, 10/18, 10/19, 10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2, 11/3, 11/4, 11/5((+1/6))
	7AM - 5PM	- 11/6, 11/7, 11/8, 11/9, 11/10, 11/11, 11/12((+1/3))
7B, 7C:	6AM - 8PM	- ((8/18, 8/25, 9/1)) 8/17, 8/24, 8/31
7B:	7AM - 8PM	- ((9/8)) 9/7
	7AM - 7PM	- ((9/13, 9/15, 9/17)) 9/12, 9/14, 9/16
	7AM ((9/19))	- 6PM ((10/30)) 10/29, 9/18
	7AM ((11/4))	- 4PM ((11/5)) 11/4, 10/31
	7AM ((11/8))	- 4PM ((11/2)) 11/11, 11/7
	7AM ((11/15))	- 4PM ((11/19)) 11/18, 11/14
	7AM ((11/22))	- 4PM ((11/26)) 11/25, 11/21
	8AM ((11/29))	- 4PM ((12/3)) 12/2, 11/28

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to purse seines beginning at 12:01 a.m. on the last Monday in October and until 4:00 p.m. on the first Friday in December.

8	6AM - 8PM	= 8/22, 8/24, 8/30, 9/1
8A:	6AM - 8PM	= 8/18, 8/23, 8/25, 8/29

AREA	TIME	DATE
	7AM - 7PM	- Limited participation - two boats ((9/27, 10/4)) 9/19, 9/26
	((7AM-6PM))	- 10/11
8D:	7AM - 7PM	- ((9/20, 9/27, 10/4)) 9/19, 9/26, 10/3
	7AM - 6PM	- ((10/11, 10/18, 10/25, 10/27, 11/3)) 10/10, 10/18, 10/24, 10/26, 11/1
	7AM - 5PM	- ((11/9, 11/11, 11/17)) 11/7, 11/9, 11/15
	7AM - 4PM	- ((11/22, 11/24)) 11/29
10	6AM - 8PM	= Limited participation - four boats (8/22, 8/24, 8/30)
10, 11:	7AM - 6PM	- 10/18, 10/24, 10/26, ((10/28,)) 11/1
	7AM - 5PM	- 11/7, 11/9, ((11/11,)) 11/15
	7AM - 4PM	- ((11/23)) 11/22
12, 12B:	7AM - 6PM	- 10/18, 10/24, 10/26, ((10/28,)) 11/1
	7AM - 5PM	- 11/7, 11/9, ((11/11,)) 11/15
12C:	7AM - 5PM	- 11/7, 11/9, ((11/11,)) 11/15
	7AM - 4PM	- ((11/23)) 11/21

Note: ((In Areas 12, 12B, and 12C, it is unlawful to take or fish for salmon during any open period with purse seine gear unless purse seine fishers are using a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).)) In Area 10 during any open period occurring in August or September, it is unlawful to fail to brail or use a brailing bunt when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f). During limited participation fisheries it is unlawful for vessels to take or fish for salmon without department observers on board.

It is unlawful to retain the following salmon species taken with purse seine gear within the following areas during the following periods:

Chinook salmon - at all times in Areas 7, 7A, 8, 8A, 8D, 10, 11, 12, 12B, and 12C, and after October ((23)) 22 in Area 7B.

Coho salmon - at all times in Areas 7, 7A, 10, and 11, and prior to September ((5)) 4 in Area 7B((+and wild coho in Areas 12, 12B, and 12C)).

Chum salmon - prior to October 1 in Areas 7 and 7A, and at all times in 8A.

All other saltwater and freshwater areas - closed.

AMENDATORY SECTION (Amending Order 10-137, filed 7/7/10, effective 8/7/10)

WAC 220-47-401 Reef net open periods. (1) It is unlawful to take, fish for, or possess salmon taken with reef net gear for commercial purposes in Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas, during the periods provided for in each respective area:

AREA	TIME	DATE(S)
7, 7A	5AM - 9PM Daily	((9/42)) 10/2 - 11/13

(2) It is unlawful at all times to retain wild Chinook salmon taken with reef net gear, and it is unlawful prior to

October 1 to retain chum or wild coho salmon taken with reef net gear.

(3) It is unlawful to retain marked Chinook after September 30.

(a) It is unlawful to retain marked Chinook with reef net gear if the fisher does not have in his or her immediate possession a department-issued Puget Sound Reef Net Logbook with all retained Chinook accounted for in logbook. Marked Chinook are those with a clipped adipose fin and a healed scar at the site of the clipped fin.

(b) Completed logs must be submitted and received within six working days to: Puget Sound Commercial

Salmon Manager, Department of Fish & Wildlife, 600 Capitol Way N, Olympia WA, 98501-1091.

(4) All other saltwater and freshwater areas - closed.

AMENDATORY SECTION (Amending Order 10-137, filed 7/7/10, effective 8/7/10)

WAC 220-47-411 Gill net—Open periods. It is unlawful to take, fish for, or possess salmon taken with gill net gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided for in each respective fishing area:

AREA	TIME		DATE(S)	MINIMUM MESH	
6D: Skiff gill net only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM	-	7PM	9/21, 9/22, 9/23, ((9/24)) <u>9/26</u> , 9/27, 9/28, 9/29, 9/30, ((10/1)) <u>10/3</u> , 10/4, 10/5, 10/6, 10/7, ((10/8)) <u>10/10</u> , 10/11, 10/12, 10/13, ((10/14, 10/15)) <u>10/17</u> , 10/18, 10/19, 10/20, 10/21 ((10/22))	5"
Note: In Area 6D, it is unlawful to use other than 5-inch minimum mesh in the skiff gill net fishery. It is unlawful to retain Chinook taken in Area 6D at any time, or any chum salmon taken in Area 6D prior to October 16. In Area 6D, any Chinook or chum salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.					
7, 7A:	7AM	-	Midnight; use of recovery box required	10/10, 10/11, 10/14, 10/15	6 1/4"
	7AM	-	Midnight	<u>10/16, 10/17, 10/18, 10/19, 10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2, 11/3, 11/4, 11/5, 11/6, 11/7, 11/8, 11/9, 11/10, 11/11, 11/12</u> ((11/13))	6 1/4"

Note: In Areas 7 and 7A after ~~((September 26))~~ October 9 but prior to October ~~((17))~~ 16, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 45 minutes. Net soak time is defined as the time elapsed from when the first of the gill net web enters the water, until the gill net is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f).

7B, 7C:	7PM	-	8AM	NIGHTLY ((8/15, 8/17, 8/18, 8/22, 8/24, 8/25, 8/29, 8/31, 9/1)) <u>8/14, 8/16, 8/17, 8/21, 8/22, 8/23, 8/24, 8/28, 8/30, 8/31</u>	7"
7B:	7AM	-	7 AM the day following	<u>9/4, 9/5, 9/6, 9/7, 9/8, ((9/9)) 9/11, 9/12, 9/13, 9/14, ((9/16)) 9/15</u>	5"
	7AM	-	Midnight ((10/23))	<u>10/22</u>	5"
	((9/19)) <u>9/18</u>	-	Midnight ((10/30))	<u>10/29</u>	6 1/4"
	12:01AM ((10/24)) <u>10/23</u>	-			
	7AM ((11/1)) <u>10/31</u>	-	4PM ((11/5)) <u>11/4</u>		6 1/4"
	6AM ((11/8)) <u>11/7</u>	-	4PM ((11/12)) <u>11/11</u>		6 1/4"
	6AM ((11/15)) <u>11/14</u>	-	4PM ((11/19)) <u>11/18</u>		6 1/4"
	7AM ((11/22)) <u>11/21</u>	-	4PM ((11/26)) <u>11/25</u>		6 1/4"
	8AM ((11/29)) <u>11/28</u>	-	4PM ((12/3)) <u>12/2</u>		6 1/4"

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to gill nets using 6 1/4-inch minimum mesh beginning 12:01 AM on the last day in October and until 4:00 PM on the first Friday in December.

8: 5AM = 11PM 8/23, 8/25 5" minimum and 5 1/2" maximum

AREA	TIME		DATE(S)	MINIMUM MESH
	<u>5:30AM</u>	-	<u>11PM</u>	<u>5" minimum and 5 1/2" maximum</u>
<u>Note: In Area 8 it is unlawful to take or fish for pink salmon with drift gill nets greater than 60 mesh maximum depth.</u>				
8A:	<u>5AM</u>	-	<u>11:30PM</u>	<u>5" minimum and 5 1/2" maximum</u>
	<u>5AM</u>	-	<u>11PM</u>	<u>5" minimum and 5 1/2" maximum</u>
	<u>5:30AM</u>	-	<u>11PM</u>	<u>5" minimum and 5 1/2" maximum</u>
((8A:))	6PM	-	8AM	5"
	((7AM	-	8PM	5"))
8D:	6PM	-	8AM	5"
	5PM	-	8AM	5"
	<u>5PM</u>	-	<u>9AM</u>	<u>5"</u>
			<u>10/16, 10/17, 10/18, 10/19, 10/20, 10/23, 10/24, 10/25, 10/26, 10/27, 10/30, 10/31, 11/1, 11/2, 11/3</u>	
	7AM	-	9PM	5"
			<u>9/20, 9/21, ((9/22)) 9/27, 9/28, ((9/29)) 10/4, 10/5((-10/6))</u>	
	7AM	-	8PM	5"
			<u>10/11, 10/12, ((10/13, 10/21, 10/28, 11/4)) 10/18, 10/19, 10/25, 10/26, 11/1, 11/2</u>	
	((7AM	-	4PM	5"))
	6AM	-	6PM	6 1/4"
			<u>((11/10, 11/18)) 11/9, 11/10, 11/16, 11/17</u>	
	7AM	-	6PM	6 1/4"
			<u>((11/25)) 11/23, 11/24</u>	
	6AM	-	4PM	6 1/4"
			<u>((11/12, 11/19)) 11/11, 11/18</u>	
	7AM	-	4PM	6 1/4"
			<u>((11/26)) 11/25</u>	
9A: Skiff gill net only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM <u>8/21</u>	-	7PM <u>10/29</u>	5"
			<u>((8/22 through 10/30 daily))</u>	
<u>Note: It is unlawful to retain chum salmon taken in Area 9A prior to October 1, and it is unlawful to retain Chinook salmon at any time. Any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.</u>				
10	<u>5AM</u>	-	<u>11PM</u>	<u>Limited participation - four boats (8/23, 8/25)</u>
	<u>5:30AM</u>	-	<u>11PM</u>	<u>Limited participation - four boats (8/30)</u>
				<u>4 1/2" minimum and 5 1/2" maximum</u>
				<u>4 1/2" minimum and 5 1/2" maximum</u>
<u>Note: In Area 10 during August or September openings coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 45 minutes. Net soak time is defined as the time elapsed from when the first of the gill net web enters the water, until the gill net is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f). During all limited participation fisheries it is unlawful for vessels to take or fish for salmon without department observers on board.</u>				
10, 11:	5PM	-	9AM	6 1/4"
			<u>NIGHTLY ((10/19, 10/24, 11/2)) 10/16, 10/27, 10/30</u>	
	5PM	-	8AM	6 1/4"
			<u>NIGHTLY ((10/27)) 10/25</u>	
	4PM	-	8AM	6 1/4"
			<u>NIGHTLY ((11/7)) 11/8, 11/10, ((11/16)) 11/13</u>	
	3PM	-	8AM	6 1/4"
			<u>NIGHTLY ((11/21)) 11/20</u>	
	4PM	-	Midnight	6 1/4"
			<u>NIGHTLY ((10/20, 11/3, 11/17, 11/24)) 10/19, 11/2, 11/16, 11/23</u>	
12A: Skiff gill net only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM	-	7PM	5"
			<u>Dates determined per agreement with tribal comanagers in-season if Summer Chum Salmon Conservation Initiative goals are met allowing for openings of gill net gear.</u>	
<u>Note: In Area 12A, it is unlawful to use other than 5-inch minimum mesh in the skiff gill net fishery. It is unlawful to retain Chinook or chum salmon taken in Area 12A at any time, and any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.</u>				
12, 12B:	7AM	-	8PM	6 1/4"
			<u>10/17, 10/19, ((10/21)) 10/25, 10/27, 10/31, 11/2((-11/4))</u>	
	6AM	-	6PM	6 1/4"
			<u>11/8, 11/10, 11/14, 11/16((-11/18))</u>	

AREA	TIME	DATE(S)	MINIMUM MESH
12C:	6AM - 6PM	11/8, 11/10, <u>11/14</u> , 11/16(11/18)	6 1/4"
	7AM - 6PM	11/22, (11/25) <u>11/24</u>	6 1/4"

All other saltwater and freshwater areas - closed.

Nightly openings refer to the start date.

Within an area or areas, a mesh size restriction remains in effect from the first date indicated until a mesh size change is shown, and the new mesh size restriction remains in effect until changed.

AMENDATORY SECTION (Amending Order 10-137, filed 7/7/10, effective 8/7/10)

WAC 220-47-427 Puget Sound—Beach seine—Emerging commercial fishery—Eligibility—Lawful gear.

(1) The Puget Sound beach seine salmon fishery is designated as an emerging commercial fishery for which a vessel is required. An emerging commercial fishery license and an experimental fishery permit are required to participate in this fishery.

(2) The department will issue four salmon beach seine experimental fishery permits.

(3) The following is the selection process the department will use to offer a salmon beach seine experimental permit.

(a) Persons who held a salmon beach seine experimental fishery permit in the previous management year will be eligible for a permit in the current management year.

(b) The department (~~established a pool of applicants by drawing on August 13, 2002~~) will work with the advisory board, per RCW 77.70.160(1), to establish criteria by which applicants would qualify to enter the pool. The pool established by this drawing will be maintained to replace any permit(s) which may be voided.

(4) Permit holders are required to participate in the salmon beach seine experimental fishery.

(a) For purposes of this section, "participation" means the holder of the salmon beach seine experimental permit being aboard the designated vessel in the open fishery.

(b) If the salmon beach seine experimental permit holder fails to participate, the salmon beach seine experimental permit issued to that fisher will be void and a new salmon beach seine experimental permit will be issued through a random drawing from the applicant pool (~~established in 2002~~).

(c) The department may require proof of participation by maintaining a department approved log book or registering with state officials each day the salmon beach seine experimental permit holder participates.

(d) Persons who participate, but violate conditions of a salmon beach seine experimental permit, will have the permit voided and a new salmon beach seine experimental permit will be reissued through a random drawing from the pool of the voided permit holder.

(5) In Quilcene Bay, chum salmon may not be retained by a salmon beach seine experimental permit holder. Chum salmon in Quilcene Bay must be released alive.

(6) Any person who fails to purchase the license, fails to participate, or violates the conditions of a salmon beach seine experimental permit will have his or her name permanently withdrawn from the pools.

(7) It is unlawful to take salmon with beach seine gear that does not meet the requirements of this subsection.

(a) Beach seine salmon nets in Puget Sound shall not exceed 600 feet in length or 100 meshes in depth, or contain meshes of a size less than 3 inches or greater than 4 inches.

(b) Mesh webbing must be constructed with a twine size no smaller than 210/30d nylon, 12 thread cotton, or the equivalent diameter in any other material.

AMENDATORY SECTION (Amending Order 10-137, filed 7/7/10, effective 8/7/10)

WAC 220-47-428 Beach seine—Open periods. It is unlawful to take, fish for, or possess salmon taken with beach seine gear for commercial purposes from Puget Sound except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided hereinafter in each respective Management and Catch Reporting Area:

All areas:

AREA	TIME	DATE(S)
12A:	7AM - 7PM	<u>8/22</u> , 8/23, 8/24, 8/25, 8/26, <u>8/29</u> , 8/30, 8/31, 9/1, 9/2, <u>9/5</u> , 9/6, 9/7, 9/8, 9/9, <u>9/12</u> , 9/13, 9/14, 9/15, 9/16, <u>9/19</u> , 9/20, 9/21, 9/22, 9/23, <u>9/26</u> , 9/27, 9/28, 9/29, 9/30
12H:	7AM - 7PM	November (dates determined per agreement with tribal comanagers in-season if harvestable surplus of salmon remain).

It is unlawful to retain Chinook taken with beach seine gear in all areas, and unlawful to retain chum from Area 12A.

WSR 11-12-003

WITHDRAWAL OF PROPOSED RULES

DEPARTMENT OF FISH AND WILDLIFE

[Filed May 18, 2011, 3:48 p.m.]

The Washington department of fish and wildlife is withdrawing WAC 220-47-325 filed as part of WSR 11-07-090 on March 22, 2011. We do not need to change that rule for this year's fishing season.

Lori Preuss
Rules Coordinator

WSR 11-12-014
PROPOSED RULES
REDISTRICTING COMMISSION

[Filed May 20, 2011, 3:36 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-08-077.

Title of Rule and Other Identifying Information: Rules governing the operations of the Washington redistricting commission, specifically WAC 417-01-110, 417-01-125, 417-01-150, 417-01-155, 417-02-100, 417-02-110, 417-02-115, 417-02-125, 417-02-130, 417-02-135, 417-02-140, 417-02-155, 417-06-130, and 417-06-150.

Hearing Location(s): Conference Room, Washington State Redistricting Commission Office, 1063 Capitol Way South, Suite 16, Olympia, WA 98504, on July 6, 2011, at 9:00 a.m.

Date of Intended Adoption: July 6, 2011.

Submit Written Comments to: Bonnie Bunning, Washington Redistricting Commission, 1063 Capitol Way South, Suite 16, P.O. Box 40948, Olympia, WA 98501-0948, e-mail bonnie.bunning@redistricting.wa.gov, fax (360) 586-0433, by July 1, 2011.

Assistance for Persons with Disabilities: Contact Heather Boe, by July 1, 2011, TTY (800) 635-9993 or (360) 786-0047.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Pursuant to Washington Constitution Art. II, Section 43, and RCW 44.05.030, the Washington redistricting commission is required to submit to the state legislature, no later than January 1, 2012, a redistricting plan. The commission's administrative rules encourages members of the public to submit proposed redistricting plans, and encourages early submission of third party plans. In order for the public to be able to participate in a timely and meaningful way in the development of a plan, the procedures applicable to the process must be known to the public immediately. These procedures include such things as a correct address and format for plan submission. As this has changed since the 2001 effort, it is necessary to amend the rules. With normal time periods for permanent rule making, the new procedures would not be known to the public for several months, and would impede the public's participation in the process.

Statutory Authority for Adoption: RCW 44.05.080(2).

Statute Being Implemented: Chapter 44.05 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Pursuant to Washington Constitution Art. II, Section 43, and RCW 44.05.030, the Washington redistricting commission is required to submit to the state legislature, no later than January 1, 2012, a redistricting plan. The commission's administrative rules encourages members of the public to submit proposed redistricting plans, and encourages early submission of third party plans. In order for the public to be able to participate in a timely and meaningful way in the development of a plan, the procedures applicable to the process must be known to the public immediately. These proce-

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Name of Proponent: Washington state redistricting commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Bonnie Bunning, 1063 Capitol Way South, Suite 16, (360) 786-0040.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rule changes update the commission's address; correct statutory citations; and update the electronic means by which third party plans may be submitted. There are no economic impacts from these housekeeping changes.

May 20, 2011

Bonnie Bunning
Executive Director

AMENDATORY SECTION (Amending WSR 01-13-123, filed 6/20/01, effective 7/9/01)

WAC 417-01-110 Commission responsibilities and duties. Pursuant to article 2, section 43 of the state constitution and chapter 44.05 RCW, the commission's duties are:

- (1) To accomplish state legislative and congressional redistricting;
- (2) To act as the legislature's recipient of the final redistricting data and maps from the United States Bureau of the Census;
- (3) To disclose and preserve public records as specified in chapters 42.17, 42.17A, and 40.14 RCW;
- (4) To hold open public meetings pursuant to the Open Public Meetings Act, RCW 42.30;
- (5) To prepare and disclose its minutes pursuant to RCW 42.32.030;
- (6) To prepare and adopt agency rules pursuant to the Administrative Procedure Act, chapter 34.05 RCW;
- (7) To prepare and publish a report with a redistricting plan as provided in RCW 44.05.080(7);
- (8) To distribute census data to counties for local redistricting as required by chapter ~~((29.70))~~ 29A.76 RCW.

AMENDATORY SECTION (Amending WSR 01-13-123, filed 6/20/01, effective 7/9/01)

WAC 417-01-125 Offices. (1) The commission office is located at ~~((505 East Union Avenue, Suite 350))~~ 1063 Capitol Way South, Suite 16, Olympia, Washington. The mailing address is: Washington State Redistricting Commission, P.O. Box 40948, Olympia, WA, 98504-0948. Telephone number: ~~((360) 586-9000))~~ 360-786-0770. Facsimile number: ~~((360) 586-8995))~~ 360-586-0433. Internet address: www.redistricting.wa.gov. Electronic mail address: contact@redistricting.wa.gov. Office hours for the commission shall be from 8 a.m. to 5 p.m. on all normal business days. Office hours for inspection and copying of public records shall be as provided in chapter two hereof.

(2) The commission address and contact information shall remain in effect for the duration of the ~~((2001-2002))~~ 2011-2012 commission. Inquiries after that date shall be directed to the secretary of state.

AMENDATORY SECTION (Amending WSR 01-13-123, filed 6/20/01, effective 7/9/01)

WAC 417-01-150 Meetings. (1) Regular meetings: The commission shall meet regularly during the months of April through December in each year ending in one, at the commission's offices, or other suitable location, in Olympia, as published in the *Washington State Register*.

(2) Special meetings: The commission shall meet at other times and places, at the call of the chair or of a majority of the commissioners. Notice of special meetings shall be given at least twenty-four hours before the time of such meeting as specified in the notice, to the media and to all others who have requested notice of commission meetings.

(3) Agenda: The chair, or the commission majority calling a special meeting, shall propose an agenda for the meeting, which shall be distributed to commissioners, to the media, and to others who have requested notice, at the earliest practical date prior to the meeting.

AMENDATORY SECTION (Amending WSR 01-13-123, filed 6/20/01, effective 7/9/01)

WAC 417-01-155 Conduct of commission business.

(1) Three voting members of the commission shall constitute a quorum for the conduct of business.

(2) The votes of any three of the commissioners shall be required for any official action of the commission: Provided, That the chair shall have the authority on behalf of the commission to execute contracts and leases, and approve expenditures and reimbursements, related to the business of the commission. The chair may, without the prior approval of the commission, authorize expenditures for equipment and supplies not to exceed \$15,000. Expenditures made pursuant to this section shall be reported as a separate item on the agenda at the next commission meeting.

(3) The chair shall not have a vote at any meeting of the commission.

(4) Commission meetings shall be conducted in accordance with the Open Public Meetings Act (chapter 42.30 RCW).

(5) The commission shall not adopt any redistricting plan, or partial redistricting plan, except at a public meeting, notice of which has been given in accordance with these rules.

(6) The commission shall not take any action by secret ballot.

(7) ~~((When not inconsistent with the state constitution, statute, or these rules, parliamentary matters before the commission shall be governed by Robert's Rules of Order, Tenth Edition.~~

~~((8)))~~ Motions shall not require a second in order to be placed before the commission for a vote.

~~((9)))~~ (8) All public meetings of the commission shall be electronically recorded. The minutes and tapes thereof shall be available to the public in accordance with the rules

regarding access to public records held by the commission. At all meetings of the commission where public testimony regarding redistricting boundaries is a scheduled agenda item, the commission shall provide for the presence of a court reporter to record such testimony. A typewritten transcript of such testimony shall be prepared as soon as possible after such hearings and shall be made available to the public in accordance with the rules regarding access to public records held by the commission. The transcript of a court reporter prepared pursuant to this section shall become part of the official records of the commission.

~~((10)))~~ (9) Except as provided in this section, the chair shall preside at all meetings. In the event of the chair's absence the commission shall select from among the voting members a temporary chair to preside in the chair's absence. The position of temporary chair shall alternate between a member of the two parties represented on the commission.

AMENDATORY SECTION (Amending WSR 01-17-078, filed 8/16/01, effective 9/4/01)

WAC 417-02-100 Purpose. The purpose of this chapter is to establish methods by which the commission will comply with the provisions of chapter ~~((42-17))~~ 42.56 RCW dealing with public records.

AMENDATORY SECTION (Amending WSR 01-17-078, filed 8/16/01, effective 9/4/01)

WAC 417-02-105 Definitions. As used in this chapter:

(1) All words and phrases defined in chapter one of this title (WAC 417-01-120) and RCW 44.05.020 shall have the same meaning for the purposes of this chapter.

(2) "Public records" shall have the same meaning as defined in RCW ~~((42-17-020))~~ 42.56.010.

AMENDATORY SECTION (Amending WSR 01-17-078, filed 8/16/01, effective 9/4/01)

WAC 417-02-110 Public records available. All public records of the commission are available for public inspection and copying pursuant to these rules except as otherwise provided in RCW ~~((42-17-310))~~ 42.56.010 or other law.

AMENDATORY SECTION (Amending WSR 01-17-078, filed 8/16/01, effective 9/4/01)

WAC 417-02-115 Public records officer. The commission's public records shall be in the charge of the public records officer, who shall be the executive director of the commission. The public records officer shall be responsible for: Implementation of commission policy as to release of public records; authorizing release of records, which authorization shall be in writing; and ensuring staff compliance with the requirements of these rules and the requirements of chapter ~~((42-17))~~ 42.56 RCW. The public records officer may designate in writing an assistant public records officer to perform the duties of public records officer when he or she is absent or unavailable.

AMENDATORY SECTION (Amending WSR 01-17-078, filed 8/16/01, effective 9/4/01)

WAC 417-02-125 Requests of public records. In accordance with chapter ~~((42-17))~~ 42.56 RCW that agencies provide full public access to public records, prevent unreasonable invasion of privacy, protect public records from damage or disorganization and prevent excessive interference with essential functions of the agency, public records may be inspected or copied, or copies of such records may be obtained by members of the public upon compliance with the following procedure:

(1) A request to inspect or copy public records shall be made in writing or upon a form prescribed herein which shall be available at the commission's office. The written request or form shall be presented to the public records officer or designated assistant during the office hours established in this chapter. The written request or form shall include the following information:

- (a) The name of the person requesting the record;
- (b) The time and date on which the request was made;
- (c) A specific identification or description of each requested record;
- (d) If the matter requested is referenced within the current index maintained by the commission, a reference to the requested record as it is described in such current index; and
- (e) If the requested matter is not identifiable by reference to the current index, an appropriate description of the record requested.

(2) The public records officer or designated assistant will ascertain whether the information requested is exempt from public inspection and copying as defined in RCW ~~((42-17-310))~~ 42.56.210 or other law.

(3) Only after a determination has been made that all or such portion of a public record as is not deleted may be inspected, shall such public record or portion thereof be made available for inspection by a member of the public.

(4) In all cases, it shall be the obligation of the public records officer or designated assistant to:

- (a) Locate the specific document(s) requested by the member of the public in the most timely manner possible;
- (b) Assist the member of the public in appropriately identifying the public record requested;
- (c) Protect and otherwise prevent damage to the public record being inspected and copied;
- (d) Prevent the disorganization of file folders or document containers; and
- (e) Prevent excessive interference with the other essential functions of the commission.

(5) Only the staff and commissioners may open files to gain access to commission records.

(6) Original copies of public records of the commission may not be taken from the premises of the commission by a member of the public without being accompanied by staff or a commissioner.

(7) Public inspection and copying of commission records shall be done only in such locations as are approved by the public records officer or designated assistant at locations that must provide an opportunity for staff to ensure that no public record of the commission is damaged, destroyed, unreason-

ably disorganized, or removed from its proper location or order by a member of the public.

(8) Public records of the commission may be copied only on the copying machine of the commission unless the public records officer or designated assistant authorizes other arrangements.

AMENDATORY SECTION (Amending WSR 01-17-078, filed 8/16/01, effective 9/4/01)

WAC 417-02-130 Copying. No fee shall be charged for the inspection of public records. The commission shall charge for copies of public records and the use of commission copy equipment such amount as is necessary to reimburse the commission for its actual cost incident to such copying. The commission shall charge a fee of fifteen cents per page for copying 8.5" x 11" documents as established in RCW ~~((42-17-300))~~ 42.56.120. The executive director shall establish other charges based upon actual costs for copying public records. Charges will not be assessed if the total cost involved in a particular request is less than one dollar. If the public records officer or designated assistant deems it more efficient to have copying done outside the office of the commission, the charges will be based on the actual cost of such outside copying service.

AMENDATORY SECTION (Amending WSR 01-17-078, filed 8/16/01, effective 9/4/01)

WAC 417-02-135 Exemptions. (1) The public records officer or designated assistant shall delete information from any record prior to permitting public inspection or copying if the information is exempt from disclosure pursuant to RCW ~~((42-17-310))~~ 42.56.210 or other law. After such information is deleted, the remainder of the record shall be made available.

(2) To the extent allowed by law, the commission reserves the right to allow the public to inspect but not copy certain public records where there is reason to believe that the ability to copy such records would be a violation of copyright agreements, contracts, or census bureau or other governmental requirements.

(3) Pursuant to RCW ~~((42-17-260))~~ 42.56.070, the commission reserves the right to delete identifying details when it makes available or publishes any public record in any cases where there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter ~~((42-17))~~ 42.56 RCW. The public records officer or designated assistant will justify such deletion in writing.

(4) All denials of requests for public records must be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record or information and a brief explanation of how the exemption applies to the records or information withheld.

AMENDATORY SECTION (Amending WSR 01-17-078, filed 8/16/01, effective 9/4/01)

WAC 417-02-140 Review of denials of public records requests. (1) Any person who objects to the denial of a

request for a public record may petition the commission chair for prompt review of such decisions by rendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or designated assistant, which constituted or accompanied the denial.

(2) Immediately after receiving a written request or review of a decision denying a public record, the public records officer or designated assistant denying the request shall refer it to the commission chair. The chair shall immediately consider the matter and either affirm or reverse, in whole or in part, such denial or call a special meeting of the commission as soon as legally possible to review the denial. In any case, the request shall be returned with a final decision from the chair or commission within two business days following the original denial, in accordance with RCW ((42.17.320)) 42.56.520.

(3) Administrative remedies shall not be considered exhausted until the chair, or in the event of a special meeting scheduled to address the denial, the commission has returned the petition with a decision within two business days of the denial, or until the close of the second business day following the denial, whichever occurs first.

AMENDATORY SECTION (Amending WSR 01-17-078, filed 8/16/01, effective 9/4/01)

WAC 417-02-155 Records index. (1) The commission shall implement a records index for the identification and location of official agency records. Those records which are considered exempt for the purposes of this chapter, RCW ((42.17.340)) 42.56.210 and other law shall be noted on the index.

(2) The index shall be available for inspection and copying according to the provisions of WAC 417-02-120.

(3) The index shall be updated quarterly in those months when the commission is convened.

AMENDATORY SECTION (Amending WSR 01-13-123, filed 6/20/01, effective 7/9/01)

WAC 417-06-130 Format for formal plans. (1) Any formal plan submitted to the commission shall be submitted in ((one of)) the following approved formats:

(a) ~~((Paper map submissions: The commission will have available for public purchase paper maps, created using current geographic data provided by the U.S. Bureau of the Census. The maps will be sold for an amount (to be established by the executive director) sufficient to cover the cost to the commission of producing the map copies. Map scale may vary, depending on the population density in the area covered. Maps may be purchased singly or in sets. Formal plan paper map submissions from individuals and groups shall be made on the maps provided by the commission, or on full-size copies thereof. Explanations of the commission's maps, and instructions to users for submission of formal plans, shall be made available free of charge from the commission.~~

~~((b))~~ Electronic submissions: Formal plan electronic submissions from individuals and groups are encouraged, and shall be made on ((3.5-inch floppy disks or on)) either:

(i) CD-ROMs containing a table of equivalencies file giving the census block to district assignments as assignment files in ((dBase, INFO,)) Excel or Access; or

(ii) Text file format containing polygon identification and polygon district assignment columns; or

(iii) As district files containing a district identification number; or

(iv) As a shape file or geodatabase; or

(v) In a format approved by the U.S. Department of Justice.

(b) Paper map submissions: The commission will have available for public purchase paper maps, created using current geographic data provided by the U.S. Bureau of the Census. The maps will be sold for an amount (to be established by the executive director) sufficient to cover the cost to the commission of producing the map copies. Map scale may vary, depending on the population density in the area covered. Maps may be purchased singly or in sets. Formal plan paper map submissions from individuals and groups shall be made on the maps provided by the commission, or on full-size copies thereof. Explanations of the commission's maps, and instructions to users for submission of formal plans, shall be made available free of charge from the commission.

Materials explaining ((this)) these format(s) shall be posted on the commission web site (www.redistricting.wa.gov), and made available free of charge from the commission. The commission shall ((make electronic information available which shall include)) post census and geographic data on the commission web site (www.redistricting.wa.gov). ((The electronic information will be made)) Such data will also be available on CD-ROM at a charge (to be established by the executive director) sufficient to cover the cost to the commission of producing CD-ROM copies of the electronic files.

Each electronic formal plan submission shall be based upon current and official Bureau of the Census geography and Public Law 94-171 file unique block identity code of state, county, tract, and block, and shall be accompanied by a full description of its contents, including an identification by name and/or location of each data file that is contained, a detailed record layout for each such file, a record count for each such file, and a full description of the format.

(2) Individuals and groups submitting formal plans shall supplement their paper map or electronic submissions with the following information: Name, address and telephone number of a contact person; a submission cover letter; the total number of plans submitted; a narrative explanation of the plan's compliance with the constitutional and statutory requirements identified in WAC 417-06-120; and a description of the original source materials and data used for the submission. They may also include with the formal plan such other supporting materials and data as they deem appropriate.

AMENDATORY SECTION (Amending WSR 01-13-123, filed 6/20/01, effective 7/9/01)

WAC 417-06-150 Time and place of submissions. Early submission of third party plans is encouraged. All submissions and supporting materials should be mailed or delivered to the commission's office (not to a commissioner) in

Olympia, or they may be presented to commission staff at any public hearing held by the commission. Submissions may be electronically mailed to the commission's address identified in WAC 417-01-125 (~~only if the U.S. Postal Service or other carrier delivers a physical copy of all submission and supporting materials to the commission offices~~), or made directly to the commission through any redistricting mapping tool on its web site. The date of the electronically mailed submission shall be the date the delivered materials are received by the commission. The submission envelope, cover letter and all other submission materials should be clearly marked: "Redistricting Plan Submission." The person or organization submitting the plan bears the responsibility and accepts the risk to ensure timely delivery of the plan to the commission. The commission has no responsibility to review untimely or improperly submitted plans.

WSR 11-12-015
PROPOSED RULES
STATE BOARD OF EDUCATION

[Filed May 23, 2011, 2:33 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-04-038.

Title of Rule and Other Identifying Information: WAC 180-16-195 Annual reporting and review process.

Hearing Location(s): Holiday Inn Express and Suites, 8606 36th Avenue N.E., Marysville, WA 98270, on July 13, 2011, at 4:30 p.m.

Date of Intended Adoption: July 14, 2011.

Submit Written Comments to: Loy McColm, Washington State Board of Education (SBOE), P.O. Box 47206, 600 Washington Street, Olympia, WA 98504-7206, e-mail loy.mccolm@k12.wa.us, fax (360) 586-2357, by July 7, 2011.

Assistance for Persons with Disabilities: Contact Loy McColm, (360) 725-6027, by July 7, 2011, TTY (360) 664-3631 or (360) 725-6027.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SBOE is proposing amendments to WAC 180-16-195 in order to improve efficiency and streamline compliance regarding the annual reporting requirements of school districts to the board. The proposed revisions include a change in the signature requirements, the submission date, and require school districts to submit compliance forms electronically.

Reasons Supporting Proposal: See above statement.

Statutory Authority for Adoption: RCW 28A.150.220 (4).

Statute Being Implemented: RCW 28A.150.220, 28A.150.250, and 28A.150.260.

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

Name of Proponent: SBOE, governmental.

Name of Agency Personnel Responsible for Drafting: Loy McColm, 600 Washington Street, Olympia, WA 98504-7206, (360) 725-6027; Implementation and Enforcement: Kathe Taylor, 600 Washington Street, Olympia, WA 98504-7206, (360) 725-6027.

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

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

May 18, 2011

Kathe Taylor

Interim Executive Director

AMENDATORY SECTION (Amending WSR 02-18-056, filed 8/28/02, effective 9/28/02)

WAC 180-16-195 Annual reporting and review process. (1) **Annual school district reports.** A review of each school district's kindergarten through twelfth grade program shall be conducted annually for the purpose of determining compliance or noncompliance with basic education program approval requirements. On or before the first Monday in (~~November~~) September of each school year, each school district superintendent shall complete and return the program assurance form (OSPI Form 1497) distributed by the state board of education as a part of an electronic submission to OSPI. The form shall be designed to elicit data necessary to a determination of a school district's compliance or noncompliance with basic education program approval requirements. (~~Data reported by a school district shall accurately represent the actual status of the school district's program as of the first school day in October and as thus far provided and scheduled for the entire current school year.~~) The form shall be submitted electronically and signed by:

- (a) The school board president or chairperson, and
- (b) The superintendent of the school district.

(2) State board staff review.

(a) State board of education staff shall review each school district's program assurance form, conduct on-site monitoring visits of randomly selected school districts, as needed and subject to funding support, and prepare recommendations and reports for presentation to the state board of education: Provided, That, if a school district's initial program assurance form does not establish compliance with the basic education program approval requirements, the district shall be provided the opportunity to explain the deficiency or deficiencies. School districts which foresee that they will not be able to comply with the program approval requirements, or that are deemed by the state board to be in noncompliance, may petition for a waiver on the basis of substantial lack of classroom space as set forth in WAC 180-16-225 and instructional hours offering requirements under WAC 180-18-030.

(b) School districts may use the personnel and services of the educational service district to assist the district and schools in the district that are out of compliance with basic education program approval requirements.

(3) Annual certification of compliance or noncompliance—Withholding of funds for noncompliance.

(a) At the (~~annual spring~~) November meeting of the state board of education, or at such other meeting as the board shall designate, the board shall certify by motion each school district as being in compliance or noncompliance with the basic education program approval requirements.

(b) A certification of compliance shall be effective for the then current school year subject to any subsequent ad hoc

review and determination of noncompliance as may be deemed necessary by the state board of education or advisable by the superintendent of public instruction. In addition, a certification of compliance shall be effective tentatively for the succeeding school year until such time as the state board takes its annual action certifying compliance or noncompliance with the program approval requirements.

(c) A certification of noncompliance shall be effective until program compliance is assured by the school district to the satisfaction of state board of education staff, subject to review by the state board. Basic education allocation funds shall be deducted from the basic education allocation of a school district that has been certified as being in noncompliance unless such district has received a waiver from the state board for such noncompliance, pursuant to WAC 180-16-225 or 180-18-030, or assurance of program compliance is subsequently provided for the school year previously certified as in noncompliance and is accepted by the state board.

(d) The withholding of basic education allocation funding from a school district shall not occur for a noncompliance if the school district has remediated the noncompliance situation within sixty school business days from the time the district receives notice of the noncompliance from the state board of education. The state board of education may extend the sixty days timeline only if the district demonstrates by clear and convincing evidence that sixty days is not reasonable to make the necessary corrections. For the purposes of this section, a school business day shall mean any calendar day, exclusive of Saturdays, Sundays, and any federal and school holidays upon which the office of the superintendent of the school district is open to the public for the conduct of business. A school business day shall be concluded or terminated upon the closure of said office for the calendar day.

(e) The superintendent of public instruction, or his/her designee, after notification by the state board of education to a school district regarding an existing noncompliance, shall enter into a compliance agreement with the school district that shall include, but not be limited to, the following criteria:

(i) A deadline for school district remediation of the noncompliance(s), not to exceed sixty school business days per noncompliance as specified in (d) of this subsection.

(ii) A listing of all the noncompliance areas and the necessary terms that must be satisfied in each area in order for the school district to gain compliance status. This listing also shall specify additional deadlines for the accomplishment of the stated terms if different from the final deadline as specified in subsection (1) of this section.

(iii) A closing statement specifying that a school district's failure to remediate a noncompliance by the determined deadline shall result in the immediate withholding of the district's basic education allocation funding by the superintendent of public instruction.

(iv) The date and the signatures of the superintendent of the school district, the chair of the district's board of directors, and the superintendent of public instruction, or his/her designee, to the agreement. A copy of the completed compliance agreement shall be sent to the chairperson of the school district's board of directors and the school district superintendent.

(f) In the event a school district fails to sign the compliance agreement within five school business days from the date of issuance or does not satisfy the terms of the signed compliance agreement within the designated amount of time, the superintendent of public instruction shall withhold state funds for the basic education allocation until program compliance is assured based on the following procedure:

(i) For the first month that a noncompliance exists following the conditions as specified in (f) of this subsection, the superintendent of public instruction shall withhold twenty-five percent of the state funds for the basic education allocation to a school district.

(ii) For the second month that a noncompliance exists following the conditions as specified in (f) of this subsection, the superintendent of public instruction shall withhold fifty percent of the state funds for the basic education allocation to a school district.

(iii) For the third month that a noncompliance exists following the conditions as specified in (f) of this subsection, the superintendent of public instruction shall withhold seventy-five percent of the state funds for the basic education allocation to a school district.

(iv) For the fourth month, and every month thereafter, that a noncompliance exists following the conditions as specified in (f) of this subsection, the superintendent of public instruction shall withhold one hundred percent of the state funds for the basic education allocation to a school district until compliance is assured.

(g) Any school district may appeal to the state board of education the decision of noncompliance by the state board of education. Such appeal shall be limited to the interpretation and application of these rules by the state board of education. Such appeal shall not stay the withholding of any state funds pursuant to this section. The state board of education may not waive any of the basic education entitlement requirements as set forth in this chapter, except as provided in WAC 180-16-225 or 180-18-030.

(4) The provisions of subsection (3)(f) of this section shall not apply if the noncompliance is related to the district's fiscal condition and results in the implementation of a financial plan under RCW 28A.505.140(3).

WSR 11-12-016

PROPOSED RULES

STATE BOARD OF EDUCATION

[Filed May 23, 2011, 2:35 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-04-040.

Title of Rule and Other Identifying Information: WAC 180-16-210 Kindergarten through grade three students to classroom teacher ratio requirement.

Hearing Location(s): Holiday Inn Express and Suites, 8606 36th Avenue N.E., Marysville, WA 98270, on July 13, 2011, at 4:30 p.m.

Date of Intended Adoption: July 14, 2011.

Submit Written Comments to: Loy McColm, Washington State Board of Education (SBOE), P.O. Box 47206, 600

Washington Street, Olympia, WA 98504-7206, e-mail loy.mccolm@k12.wa.us, fax (360) 586-2357, by July 7, 2011.

Assistance for Persons with Disabilities: Contact Loy McColm by July 7, 2011, TTY (360) 664-3631 or (360) 725-6027.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SBOE is proposing repeal of WAC 180-16-210 due to changes to RCW 28A.150.260 that becomes effective September 1, 2011, as set forth in ESHB 2261, chapter 548, Laws of 2009. Specifically, the legislature is eliminating the requirement currently in state law providing that operation of a program approved by SBOE must include a finding that the ratio of students per classroom teacher in grades kindergarten through three is not greater than the ratio of students per classroom teacher in grades four and above for such district. Repeal of this rule is necessary to reflect this change in the law adopted by the legislature.

Reasons Supporting Proposal: See above statement.

Statutory Authority for Adoption: RCW 28A.150.220

(4).

Statute Being Implemented: RCW 28A.150.260.

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

Name of Proponent: SBOE, governmental.

Name of Agency Personnel Responsible for Drafting: Loy McColm, 600 Washington Street, Olympia, WA 98504-7206, (360) 725-6027; Implementation and Enforcement: Kathe Taylor, 600 Washington Street, Olympia, WA 98504-7206, (360) 725-6027.

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

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

May 18, 2011

Kathe Taylor

Interim Executive Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 180-16-210	Kindergarten through grade three students to classroom teacher ratio requirement.
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WSR 11-12-017

PROPOSED RULES

STATE BOARD OF EDUCATION

[Filed May 23, 2011, 2:43 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-06-020.

Title of Rule and Other Identifying Information: WAC 180-16-215 Minimum one hundred eighty school day year.

Hearing Location(s): Holiday Inn Express and Suites, 8606 36th Avenue N.E., Marysville, WA 98270, on July 13, 2011, at 4:30 p.m.

Date of Intended Adoption: July 14, 2011.

Submit Written Comments to: Loy McColm, Washington State Board of Education (SBOE), P.O. Box 47206, 600 Washington Street, Olympia, WA 98504-7206, e-mail loy.mccolm@k12.wa.us, fax (360) 586-2357, by July 7, 2011.

Assistance for Persons with Disabilities: Contact Loy McColm by July 7, 2011, TTY (360) 664-3631 or (360) 725-6027.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SBOE is proposing repeal of WAC 180-16-215 due to recent legislation. The current version of WAC 180-16-215 is consistent with existing state statutory requirements. However, this will not be the case as of September 1, 2011, when the definition of "school day" is changed due to legislation adopted in 2009. The basic education program requirements are set forth in statute. Therefore, it is unnecessary for the board to adopt a rule setting forth these requirements. Deletion of this rule in its entirety will insure that the rules don't conflict with state law and avoid the need to continue amending the rule to conform to subsequent changes to statutory law. The basic education program requirements will continue to be implemented as provided in WAC 180-16-195.

Reasons Supporting Proposal: See the above statement.

Statutory Authority for Adoption: RCW 28A.150.220 (4).

Statute Being Implemented: RCW 28A.150.220(4).

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

Name of Proponent: SBOE, governmental.

Name of Agency Personnel Responsible for Drafting: Loy McColm, 600 Washington Street, Olympia, WA 98504-7206, (360) 725-6027; Implementation and Enforcement: Kathe Taylor, 600 Washington Street, Olympia, WA 98504-7206, (360) 725-6027.

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

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

May 23, 2011

Kathe Taylor

Interim Executive Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 180-16-215	Minimum one hundred eighty school day year.
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WSR 11-12-026
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed May 24, 2011, 3:17 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-16-141.

Title of Rule and Other Identifying Information: Chapter 246-255A WAC, Rules and regulations—Radiation safety and diagnostic imaging quality standards for dental facilities.

Hearing Location(s): Washington State Department of Health, 111 Israel Road S.E., Town Center 3, Room 123, Tumwater, WA 98501, on July 6, 2011, at 2:00 p.m.

Date of Intended Adoption: July 7, 2011.

Submit Written Comments to: Phyllis Barney, P.O. Box 47827, Olympia, WA 98504-7827, web site http://www3.doh.wa.gov/policyreview/, fax (360) 236-2255, by July 6, 2011.

Assistance for Persons with Disabilities: Contact Sharon Grundhoffer by June 29, 2011, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule establishes criteria for the use of hand-held dental X-ray equipment. It amends existing requirements for quality assurance testing, safelights, and film and screen use. It includes editorial changes for clarification and consistency with existing requirements.

Reasons Supporting Proposal: At the request of stakeholders, the department reviewed the regulations regarding the use of hand-held dental X-ray equipment. Based on this review, the department determined this equipment can be used safely when specific dose rate criteria and operator requirements are met. The proposed rule changes would allow use of hand-held dental X-ray equipment under the specified criteria.

Statutory Authority for Adoption: RCW 70.98.050.

Statute Being Implemented: RCW 70.98.080.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Andrew Thatcher, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-3231.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

Section 1. What is the scope of the proposed rule package? This proposed rule establishes criteria for the use of hand-held dental X-ray equipment. It amends existing requirements for quality assurance testing, safelights, and film and screen use. It also proposes new definitions and editorial changes for clarification and consistency with existing requirements.

At the public hearing for the original adoption of chapter 246-225A WAC, Radiation safety and diagnostic image quality standards for dental facilities, the department of health (department) agreed to review the regulations regarding the use of hand-held dental X-ray equipment. Currently

these devices are only allowed under a variance. The department's recent testing of hand-held X-ray equipment from several manufacturers determined this equipment can be used safely when specific dose rate criteria and operator requirements are met. These proposed changes promote better patient care and lower cost in Washington without posing a higher risk of harm to the operator or patient.

Based on inspection results and feedback from registrants and stakeholders, the department proposes to modify the requirement for weekly quality assurance (QA) testing of dental X-ray film processors. Chapter 246-225A WAC currently requires all dental registrants to perform weekly QA testing. However, department inspections show the majority of dental registrants process film effectively, and do not need to perform quality assurance testing. The proposed QA requirements apply only to those facilities with inadequate film processing.

The current text is very specific about wattage and placement of safelights used in dental darkrooms. Improper bulb wattage or placement could create fogging of the film which detracts from the diagnostic quality and requires more exposure to achieve an adequate image. Because image clarity is affected by multiple factors including bulb wattage and placement, light leaks into the darkroom, and lights from equipment in the darkroom, the proposed rule replaces prescriptive bulb requirements with performance based requirements for image clarity.

The proposed rule also adds requirements for film and screen use. Some dental facilities continue to use damaged or dirty screens, film that is not compatible with the screens, or film beyond its expiration date. This can result in poor image quality. These discrepancies are addressed during inspections under the general authority in WAC 246-225-020 (2)(l). The proposed rule adds clarity to chapter 246-225A WAC.

Section 2. Which businesses are impacted by the proposed rule package? What are their North American Industry Classification System (NAICS) codes? What are their minor cost thresholds?

Table with 5 columns: NAICS Code (4, 5 or 6 digit), NAICS Business Description, # of businesses in Washington, Minor Cost Threshold = 1 Percent of Average Annual Payroll, Minor Cost Threshold = .3 Percent of Average Annual Receipts. Row 1: 6212, Office of Dentists, 3,223, \$3,150, \$2,351

Section 3. What is the range of cost per business of the proposed rule?

Table with 3 columns: Cost Category, Description, Cost. Rows: Reporting (0), Record keeping (0), Training (0), Professional services (e.g., engineers, lawyers) (0), Equipment (type) X-ray screen (\$80 - \$155/screen) (\$125.00)

Cost Category	Description	Cost
Supplies (type, amount)	X-ray film (\$25 - \$40/box)	\$35.00
Labor (show hours multiplied by cost per hour)		0
Administration		0
Lost sales or revenue		0
Other		0
Total average cost		\$160.00

Section 4. Does the rule impose more than minor costs on impacted businesses?

Average cost per business \$160.00 (from Section 3)
 Minor cost threshold - one \$3,150 (from Section 2) percent payroll
 Minor cost threshold - \$2,351 (from Section 2) 3/10 percent of receipts

Does the average cost per business exceed both of the minor cost thresholds? No.

Section 5. Does the rule have a disproportionate impact on small businesses?

Cost Category	Small Businesses ¹	All Large Businesses	Largest Ten Percent of "Large" Businesses ²	Total
I. Number of businesses (NAICS-minor cost threshold spreadsheet on rules web page)	3,217	6	1	3,224
II. Cost per business (A+B+C)	\$160.00	\$160.00	\$160.00	
A. Reporting	0	0	0	
B. Record keeping	0	0	0	
C. Compliance costs				
C1. Professional services	0	0	0	
C2. Equipment	\$125.00	\$125.00	\$125.00	
C3. Supplies	\$35.00	\$35.00	\$35.00	
C4. Labor	0	0	0	
C5. Administration	0	0	0	
C6. Lost sales or revenue	0	0	0	
C7. Training	0	0	0	
C8. Other	0	0	0	
III. Total costs (I*II)	\$514,720.00	\$960.00	\$160.00	\$515,840.00
IV. Number of employees per business (NAICS-minor cost threshold spreadsheet on rules web page)	49	99	175	
V. Total number of employees (I*IV)	157,633	594	175	158,402
VI. Cost of rule per employee (III/V)	\$3.27	\$1.62	\$0.91	\$3.25

Is the average cost per employee for small businesses more than the average cost per employee for the largest businesses? No. If it is, we will have to show how we mitigate this disparity, if possible.

¹When estimating costs for small businesses, if you think that there will be a difference in costs for different sized small businesses (e.g., 1-5, 6-20, 21-50, etc.), you may want to provide cost estimates for the different size categories.

²The statute requires us to compare the cost for the average small business compared to the cost for ten percent of the "largest" large businesses. You may want to estimate costs for all large businesses in addition to the subset of largest ten percent of large businesses.

A copy of the statement may be obtained by contacting Phyllis Barney, Office of Radiation Protection, P.O. Box 47827, Olympia, WA 98504-7827, phone (360) 236-3239, fax (360) 236-2266, e-mail phyllis.barney@doh.wa.gov. A

small business economic impact statement was not prepared. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Phyllis Barney, Office of Radiation Protection, P.O. Box 47827, Olympia, WA 98504-7827, phone (360) 236-3239, fax (360) 236-2266, e-mail phyllis.barney@doh.wa.gov.

May 23, 2011
 Mary C. Selecky
 Secretary

AMENDATORY SECTION (Amending WSR 08-14-074, filed 6/26/08, effective 7/27/08)

WAC 246-225A-010 Definitions. ~~((As used in this chapter, the following definitions apply.))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Artifact" means an undesirable optical density or blemish on a radiographic image that detracts from the diagnostic information.

(2) "Barrier" (see "protective barrier").

(3) "Beam" (see "X ray").

(4) "Beam-limiting device," sometimes called a collimator or cone, means a device that controls the size of the X-ray field.

(5) "Cephalometric" means X-ray imaging specific to the human head and jaw.

(6) "Control panel" means the part of the X-ray system where the switches, knobs, pushbuttons, and other hardware necessary to operate the X-ray system are located.

(7) "CR (computed radiography ((CR)))" means creating an X-ray image using plates consisting of a special phosphor that when exposed to radiation and then processed by a scanner, provides the information to a computer for display and manipulation.

(8) "CT (computed tomography ((CT)))" means creating a cross-sectional X-ray image generated by an X-ray source and detector moving around the patient's body.

~~((Control panel" means the part of the X-ray system where the switches, knobs, pushbuttons, and other hardware necessary to operate the X-ray system are located.))~~

(9) "Dead-man ((switch or)) button" means ((a switch)) an X-ray exposure button designed so that it can only be operated by continuous pressure on the ((switch)) button by the operator, and when released before the preset exposure time will stop the exposure.

(10) "Department" means the department of health, which is the state radiation control agency under chapter 70.98 RCW.

(11) "Detector" means a device capable of receiving and recording an X-ray image.

(12) "Diagnostic source assembly" means the combination of the tube housing assembly and the collimator.

(13) "Direct scattered radiation" means radiation discharged in a straight line from the object being radiographed.

(14) "DR (direct digital radiography ((DR)))" means creating an X-ray image by sending signals directly from a solid state detector to a computer for display and manipulation.

~~((Diagnostic source assembly" means the combination of the tube housing assembly and the collimator.~~

~~"Direct scattered radiation" means radiation discharged in a straight line from the object being radiographed.))~~

(15) "Exposure," as the context implies, means:

(a) The number of electrons, measured in coulombs per kilogram of air, released through the ionization of air molecules by electromagnetic radiation; ~~((and))~~ or

(b) An occupational worker or patient being subjected to radiation either directly or indirectly.

(16) "Extra-oral radiography" means creating a film or digital X-ray image on an image receptor placed outside the

mouth. Examples include panoramic and cephalometric X rays.

(17) "Filter" means material, such as copper or aluminum, placed in the useful beam of the X ray to block selected energies, and in a safelight to block light that could fog the X-ray film.

(18) "Floor plan" means a drawing of the X-ray room, along with its dimensions, identification of adjacent areas and occupiable space above and below.

(19) "Focal spot" means the area on the anode end of the X-ray tube bombarded by the electrons accelerated from the cathode and from which the useful X-ray beam begins.

(20) "Grid" means a device placed between the patient and the image receptor in extra-oral radiography that reduces scattered radiation that would decrease the quality of the image being created.

~~((Half-value layer (HVL)" means the thickness of material that reduces the intensity of radiation to one-half of its original value.))~~ (21) "Hand-held" (see "X-ray system").

(22) "Healing arts screening" means using X-ray equipment without an order by a licensed practitioner on an individual who does not have a known or diagnosed disease or symptom to learn if the individual may have an indication of ill health.

(23) "HVL (half-value layer)" means the thickness of material that reduces the intensity of radiation to one-half of its original value.

(24) "Image receptor" means a device that ((transforms)) captures an X-ray beam ((into a visible film or digital)) for image processing.

(25) "Intra-oral radiography" means creating a film or digital X-ray image on an image receptor placed inside the mouth.

(26) "kV (kilovolt ((kV)))" means the unit used to measure electrical energy.

(27) "kVp (kilovolts peak ((kVp)))" means the highest possible voltage across the X-ray tube during an exposure (see also "peak tube potential").

(28) "Leakage radiation" means radiation coming from the X-ray tube, other than the ((main)) useful X-ray beam.

(29) "Leakage technique factors" means the technique factors associated with the tube housing assembly that are used to measure leakage radiation. They are defined as the maximum rated peak tube potential and the maximum rated continuous tube current at the maximum peak tube potential.

(30) "Licensed practitioner" means an individual ((who holds a license)) licensed to practice dentistry under chapter 18.32 RCW.

(31) "mA (milliamperere ((mA)))" means the unit used to measure electrical current in an X-ray tube.

(32) "mAs (milliamperere second ((mAs)))" means the product of the electrical current in the X-ray tube in ((milliamperes)) mA and the time of exposure in seconds.

(33) "Mobile ((equipment))" (see "X-ray system").

(34) "Operator" means a person working under the direction of a licensed practitioner to operate X-ray equipment and who has been properly trained according to WAC 246-225A-020.

(35) "Operatory" means a room in which dental health care procedures are performed.

(36) "Peak tube potential" means the maximum voltage in the X-ray tube during an exposure.

(37) "Portable ((equipment))" (see "X-ray ((equipment)) system").

(38) "Position-indicating device" means a device on X-ray equipment that shows where the X-ray beam will be directed and establishes the distance from the X-ray tube to the patient's body. The device may or may not incorporate or serve as a beam-limiting device.

(39) "Primary beam" (see "useful beam").

(40) "Primary protective barrier" means the material placed in the useful beam, beyond the patient and image receptor, to reduce remnant primary beam exposure.

(41) "Protected area" means a space for X-ray equipment operators that is shielded so that X-ray exposures are reduced enough to meet the exposure limits of WAC 246-221-010 (Occupational dose limits for adults) and WAC 246-220-007 (Statement of philosophy). In addition, the space must have no exposure to direct scattered radiation.

(42) "Protective apron" means a garment made of radiation absorbing materials used to reduce a person's radiation exposure.

(43) "Protective barrier" means a structure made of radiation absorbing material used to reduce radiation exposure.

(44) "Quality assurance" means a program designed to produce high quality X-ray images at minimal cost and with minimal patient exposure to radiation.

~~("Quality control" means the regular testing of X-ray equipment and associated equipment, such as processors, to verify that the equipment is working properly. Controls include performing routine tests of the diagnostic X-ray imaging system such as X-ray beam output, viewing X-ray test images, and continually adjusting the performance of the X-ray equipment and processor to an optimal and consistent level.)~~ (45) "Quick developer" means small-volume chemistry designed to process dental intra-oral film in less than a minute.

(46) "Radiation safety" means ways to protect patients and staff from unnecessary radiation exposure. Safety measures may include patient exposure reduction, image quality improvement, diagnostic imaging system quality assurance, radiation measurements, dose evaluations, compliance with state and federal regulations, and related issues.

(47) "Radiographic" means the production of an image created when an X-ray pattern exits an X-rayed object.

(48) "Radiography" means a way of creating a permanent film or digital image using X rays.

(49) "Recording" means creating a permanent image, on film or in a computer, from an X-ray exposure.

(50) "Registrant" means the owner or controller of the radiation equipment who is responsible for the safe operation of the radiation equipment in accordance with this chapter and chapter 70.98 RCW.

(51) "Registration" means providing required information and continuing contact with the department by any person possessing a radiation machine in accordance with chapter 246-224 WAC, Radiation protection—Radiation machine assembly and registration.

(52) "Remnant primary beam" means the part of the useful beam that completely passes through the patient and image receptor.

(53) "Ring-detector type CT" means computed tomography performed with a fan-shaped beam that generates image slices of anatomy rather than using a cone-shaped beam creating a volumetric picture.

(54) "Safelight" means a lamp with a filter that is used in an X-ray darkroom to provide enough light to see, but not enough to ((over-expose)) fog the film.

(55) "Scattered radiation" means radiation that has changed direction, or generated other radiation as it impacts or passes through matter (~~((see also "direct scattered radiation"))~~).

(56) "Scram button" means a large, prominently displayed button, mounted in an X-ray operator's area to allow quick termination of an X-ray exposure in case of an emergency.

(57) "Secondary protective barrier" means an object or material sufficient to reduce stray radiation to the required degree as stated in chapter 246-221 WAC (Radiation protection standards).

(58) "SID (source-to-image-receptor distance (~~((SID)))") means the distance from the focal spot in the X-ray tube to the center of the surface of the image receptor.~~

(59) "Source" means the focal spot of the X-ray tube.

(60) "SSD (source-to-skin distance (~~((SSD)))") means the distance between the focal spot of the X-ray tube and the nearest point on the patient's skin where the primary beam enters.~~

(61) "Stationary ((equipment))" (see "X-ray system").

(62) "Stray radiation" means the sum of leakage and scattered radiation.

(63) "Technique chart" means a written instruction or guide that X-ray equipment operators use to determine which radiation technique factors to select for each type of radiographic examination.

(64) "Technique factors" means the X-ray system settings selected for a given radiographic examination. They are specified as the peak tube potential in ((kilovolts)) kVp and either:

(a) Tube current measured in ((milliamperes)) mA and exposure time in seconds or pulses; or

(b) The product of tube current and exposure time expressed in ((milliamperere seconds)) mAs.

(65) "Tube" means a glass tube that produces an X ray when high-voltage electricity is passed between the cathode at one end and the anode at the other.

(66) "Tube housing assembly" means the X-ray tube and its housing. It includes high-voltage ((and/or)) filament transformers and other appropriate elements when they are contained within the tube housing.

(67) "Tube housing port" means the portion of the tube housing assembly that the X rays pass through.

(68) "Useful beam" means the radiation that passes through the tube housing port and the opening of the beam-limiting device.

(69) "Variance" means a department-authorized alternative to a requirement of this chapter.

(70) "X ray" means a beam of ionizing radiation produced by a machine.

(71) "X-ray control" means a device that controls how much electricity enters the X-ray high-voltage generator ~~((and/))~~ or the X-ray tube. It includes equipment that controls the technique factors for an exposure.

(72) "X-ray equipment" means the entire X-ray system or parts of the system.

(73) "X-ray exposure ~~((switch or))~~ button" means the part of the X-ray system that when engaged generates the production of an X ray. ~~((See also "dead-man switch or button."))~~

(74) "X-ray high-voltage generator" means a device that supplies electrical energy to the X-ray tube to create an X-ray beam.

(75) "X-ray system" means all of the components of a machine used for the controlled production of X rays. It includes minimally an X-ray high-voltage generator, an X-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components which function with the system, such as the image receptor, are considered integral parts of the system. Types of X-ray systems are:

(a) "Hand-held" means a self-contained X-ray system designed to be held in one or two hands to perform intra-oral radiography. Hand-held X-ray systems used on a tripod or stand are considered to be "portable" systems.

(b) "Mobile" means an X-ray ~~((equipment))~~ system mounted on a permanent base with wheels ~~((and/))~~ or casters for moving the X-ray ~~((equipment))~~ system fully assembled. It is intended to be taken from one geographical location to another or from one room to another.

~~((b))~~ (c) "Portable" means an X-ray ~~((equipment))~~ system designed to be hand-carried, but not hand-held during use.

~~((e))~~ (d) "Stationary" means an X-ray ~~((equipment))~~ system that is installed in a fixed location, such as bolted to a floor or wall.

(76) "X-ray tube" means any electron tube which is designed to be used primarily for the production of X rays.

AMENDATORY SECTION (Amending WSR 08-14-074, filed 6/26/08, effective 7/27/08)

WAC 246-225A-020 General requirements and administrative controls. The registrant is responsible for directing the operation of the X-ray system and assuring the provisions of ~~((WAC))~~ chapter 246-222 WAC (Radiation protection—Worker rights) are met. In addition, the registrant shall:

(1) Verify that any operator of the X-ray equipment is trained and able to show that he or she can correctly and safely operate the X-ray equipment used by the registrant. The department may determine compliance by observation, interview, ~~((and/))~~ or testing in these subject areas:

(a) Knowledge of the X-ray system controls and their function;

(b) Knowledge of radiation safety and shielding methods for both operators and patients;

(c) Proper image processing.

(2) Post a technique chart at each X-ray system's control panel that specifies the following information for the examinations being performed by that system:

(a) Patient's teeth, jaw, or head anatomy versus technique factors to be used;

(b) If applicable, settings for automatic exposure devices; and

(c) The type and size of screen-film combination or other imaging system to be used.

(3) Require that all individuals, other than the patient being examined:

(a) Be positioned so that no part of the body, including the extremities, will be struck by the useful beam;

(b) Be protected from stray radiation by wearing protective aprons or by being positioned behind protective barriers of not less than 0.25 millimeters lead equivalent; and

(c) Not be present in the room during the X-ray exposure, except:

(i) As described in subsection (4)(b) of this section; or

(ii) When a hand-held, portable, or mobile X-ray system is used.

(4) Use mechanical holding devices when a patient, film, or image receptor needs to be supported during an X-ray exposure when the technique permits.

(a) ~~((No))~~ An individual ~~((shall))~~ may not be allowed to routinely hold a patient, film, or image receptor; and

(b) Holding a patient, film, or image receptor ~~((shall))~~ must only be allowed in very unusual and rare situations. In these cases the patient's name, the date, and the name of the person holding the patient must be recorded in writing and maintained by the registrant for at least five years.

(5) Comply with the occupational exposure limits and the requirements for the determination of prior occupational dose stated under WAC 246-221-020 (Determination of prior occupational dose) for all individuals associated with the operation of the registrant's X-ray system. In addition, when protective clothing or devices are worn on portions of the body and a dosimeter is required, at least one dosimeter ~~((shall))~~ must be used and documented as follows:

(a) When an apron is worn, the dosimeter ~~((shall))~~ must be worn at the collar outside the apron;

(b) The dose to the whole body based on the maximum dose attributed to the most critical organ must be recorded on the reports required under WAC 246-221-230 (Records important to radiation safety). If more than one dosimeter is worn, each dose must be identified with the area where the dosimeter was worn on the body.

(6) Require personnel dosimetry ~~((monitoring))~~ of an operator when:

(a) Mobile ~~((or))~~, portable, or hand-held X-ray systems are used, i.e., when X-ray exposure buttons or X-ray exposure ~~((switch))~~ button cords are used that allow the operator to stand in an unprotected area during exposures; ~~((or))~~ and

(b) Measurements by the department show ten percent of the exposure limits as specified under WAC 246-221-010 (Occupational dose limits for adults) are exceeded.

(7) Use only X-ray equipment, and the accessories used in connection with making X rays, that meet the requirements of this chapter.

(8) Not allow anyone in the dental office to operate X-ray equipment for diagnostic purposes when the X-ray equipment:

- (a) Does not meet the provisions of this chapter; or
- (b) Is malfunctioning or threatens the health or safety of a patient, dental employee, or the public.

(9) Not allow patients to be exposed to the useful X-ray beam except for healing arts purposes. Only a licensed practitioner may authorize an exposure to the useful beam. Deliberate exposure of an individual for the following purposes is prohibited:

(a) Training, demonstration, or other purposes unless there are also healing arts requirements and proper prescription provided; or

(b) Except for exposure required under medicare provisions, any exposure for which the sole purpose is satisfying a third party's prerequisite for reimbursement under any health care plan.

(10) Submit shielding specifications designed by a qualified expert as defined in chapter 246-220 WAC and floor plans to the department for review if the registrant proposes to use ring-detector type CT or medical X-ray systems for dental imaging. The submittal must:

- (a) Meet the requirements of WAC 246-225A-050; and
- (b) Be based on the criteria and methods found in National Council on Radiation Protection and Measurements (NCRP) report #147, *Structural Shielding Design for Medical X-Ray Imaging Facilities*, issued November 19, 2004.

AMENDATORY SECTION (Amending WSR 08-14-074, filed 6/26/08, effective 7/27/08)

WAC 246-225A-025 X-ray system radiation safety procedure. ~~((If required by the department, the registrant shall adopt a written X-ray system radiation safety procedure.))~~ (1) The department may require ~~((an))~~ the registrant to adopt a written X-ray system radiation safety procedure if there is reason to believe the registrant needs increased attention because of:

- (a) ~~((Poor))~~ Inadequate operator ~~((staff))~~ training;
- (b) Extremely high workload;
- (c) Increased risk of exposure due to staff supporting patients during radiography;
- (d) Increased risk of exposure to scattered radiation;
- (e) Unnecessarily high patient exposure values; or
- (f) Other similar conditions.

(2) The X-ray system radiation safety procedures ~~((shall))~~ must:

- (a) Address patient and occupationally exposed personnel safety; and
- (b) Define any restrictions of the operating technique required for safe operation of the X-ray system.

AMENDATORY SECTION (Amending WSR 08-14-074, filed 6/26/08, effective 7/27/08)

WAC 246-225A-050 Dental X-ray facility design. ~~((All registrants proposing to use X-ray equipment designed to produce computed tomography images using a "ring detector" type CT, or where medical X-ray systems are used for dental imaging, shall submit shielding and floor plans to the~~

~~department for review. The submittal shall be based on the criteria and methods found in National Council on Radiation Protection and Measurements (NCRP) report #147, issued November 19, 2004. The intent of this requirement is to assure protection of patients, dental employees, and the public. A copy of this report is available for review at Department of Health, Office of Radiation Protection, 111 Israel Road S.E., Tumwater, Washington. Shielding and floor plans shall meet the following requirements:))~~

(1) Each X-ray exposure ~~((switch or))~~ button ~~((shall))~~ must be located to meet the following criteria:

(a) For stationary X-ray systems, the X-ray exposure ~~((switch or))~~ button ~~((shall))~~ must be permanently mounted in a protected area ~~((such as a corridor outside the room))~~ so that the operator can make an exposure only from the protected area; and

(b) Mobile X-ray systems ~~((shall))~~ must have an X-ray exposure ~~((switch or))~~ button located at the end of a cord at least twelve feet (3.7 meters) long.

(2) Shielding for cephalometric X ray ~~((shall))~~ must meet the following criteria:

(a) Be at least one foot (30.5 centimeters) larger, in both the horizontal and vertical directions, than the area of the primary beam where it strikes the nearest wall; and

(b) Shielding between the nearest wall struck by the primary beam and the next occupied area ~~((shall))~~ must have two-pound lead or equivalent installed in the wall ~~((based on 20 films per week))~~. Exterior walls or concrete block walls need no additional shielding.

(3) Acceptable shielding materials for dental X-ray facilities are as follows:

(a) The minimum shielding for intra-oral stray radiation protection is standard gypsum wallboard/sheetrock construction (two layers each of five-eighths inch thickness).

(b) Where windows are provided to observe patients during radiography, the windows are at least one-half inch plate glass, or equivalent ability to reduce exposure.

(c) All other materials used for shielding between operatories and for operator protection areas are equivalent to 0.2 millimeters of lead.

(4) Barriers ~~((between))~~ surrounding dental X-ray rooms and dental operatories where intra-oral X-ray equipment is installed ~~((shall))~~ must meet the following criteria:

(a) Be at least six feet (1.83 meters) high and composed of materials capable of reducing scattered radiation as required under subsection (3) of this section;

(b) There ~~((shall))~~ must be no line of sight between workers or patients in one operatory and the X-ray tube housing assembly in the next operatory when that X-ray tube housing assembly is in its operating position;

(c) X-ray tube housing assemblies ~~((shall))~~ must not be mounted between operatories on top of barriers less than six feet (1.83 meters) high, unless those barriers are at the foot end of the patient ~~((couches))~~ chairs, and there is no line of sight between adjacent operatories.

AMENDATORY SECTION (Amending WSR 08-14-074, filed 6/26/08, effective 7/27/08)

WAC 246-225A-060 General requirements for all dental X-ray systems. Registrants shall use only dental X-ray systems and medical X-ray systems for dental imaging that meet the following requirements:

(1) The leakage radiation from the tube housing assembly, measured at a distance of one meter in any direction from the source, ~~((shall))~~ must not exceed 100 milliroentgens in one hour when the X-ray tube is operated at its leakage technique factors. The department will determine compliance by measuring leakage averaged over an area of 100 square centimeters with no dimension of that area greater than 20 centimeters.

(2) The ~~((half-value layer))~~ HVL of the useful beam for a given X-ray tube potential ~~((shall))~~ must not be less than the values shown in Table 1 of this section. To determine ~~((a half-value layer))~~ the HVL at an X-ray tube potential which is not listed in Table 1 of this section, linear interpolation or extrapolation may be made.

Table 1

Design operating range ((kilovolts-peak)) <u>kVp</u>	Measured potential ((kilovolts-peak)) <u>kVp</u>	((Half-value layer)) <u>HVL</u> (meters of aluminum equivalent)
70 and below	70 and below	1.5
Above 70	71	2.1
	80	2.3
	90	2.5
	100	2.7

(3) If two or more X-ray tubes are controlled by one X-ray exposure ~~((switch-or))~~ button, the tube or tubes in operation ~~((shall))~~ must be clearly marked before an exposure, on both the X-ray control panel and near or on the selected tube housing assembly.

(4) The tube housing assembly supports ~~((shall))~~ of a stationary, portable, or mobile X-ray system must be adjusted so that the tube housing assembly remains stable and does not drift during an exposure unless the tube housing movement during exposure is a designed function of the X-ray system. ~~((The))~~ Except for X-ray systems specifically designed to be hand-held, an X-ray system ((and/)) or tube housing assembly ((shall)) must not be hand-held by anyone during the exposure.

(5) Except for CT X-ray systems that have a scram button, each X-ray control ((shall)) must have a dead-man ((switch-or)) button.

(6) Technique indicators ~~((shall))~~ must be set as follows:

(a) All exposure technique factors ~~((shall))~~ must be set on the control panel before the exposure begins, except when automatic exposure controls are used. When automatic exposure controls are used, any preselected settings for each exposure ~~((shall))~~ must be indicated.

(b) On equipment having fixed technique factors, the requirement in (a) of this subsection may be met by permanent markings or labels.

(7) Linearity ~~((shall))~~ must be measured and met as follows:

(a) The difference between the ratio of milliroentgens (mR) exposure to ~~((milliamperere-second-))~~ mAs((+)) at one ~~((milliamperere-))~~ mA((+)) or mAs setting and the ratio of mR exposure to ~~((milliamperere-second-))~~ mAs((+)) at another ~~((milliamperere-))~~ mA((+)) or mAs setting must not exceed 0.1 times the sum of the ratios. This is written as:

$$X_1 - X_2 \leq 0.10 (X_1 + X_2)$$

Where X1 and X2 are the ratios (mR/mAs) for each mA or mAs setting.

(b) The measurement ~~((shall))~~ must be performed at any selection of mA or mAs without regard to focal spot size, provided neither focal spot size is less than 0.45 millimeters.

(8) When four exposures are made at identical operating settings, the difference between the maximum exposure (Emax) and the minimum exposure (Emin) must be less than or equal to ten percent of the average exposure (E). This is written as:

$$(E_{max} - E_{min}) \leq 0.1E$$

(9) The difference between the kVp indicated on an X-ray system and the measured kVp ~~((shall))~~ must not be greater than ten percent of the indicated kVp.

(10) Timers ~~((shall))~~ must be able to:

(a) Stop the exposure at a preset time interval, a preset product of current and time, a preset number of pulses, or a preset radiation exposure to the image receptor; and

(b) Reset automatically to the initial setting or to zero when the exposure is stopped.

(11) X-ray equipment ~~((shall))~~ must not be ~~((operated))~~ capable of making an exposure when the timer is set to the zero or off position if either position is provided.

(12) Each X-ray control ~~((shall))~~ must have a visual indicator (such as a light) or audible signal so that the operator knows that X rays are being produced or the exposure is occurring or has ended.

(13) Registrants shall not use dental fluoroscopy without electronic amplification.

AMENDATORY SECTION (Amending WSR 08-14-074, filed 6/26/08, effective 7/27/08)

WAC 246-225A-070 Special requirements for dental extra-oral radiography. Registrants shall use X-ray systems for extra-oral radiography that meet the following requirements for:

(1) Beam limitation.

(a) X-ray equipment designed for only one image receptor size at a fixed ~~((source-to-image-receptor-distance-))~~ SID((+shall)) must be able to limit the size of the beam at the plane of the image receptor to no larger than the image receptor, and to align the center of the X-ray beam with the center of the image receptor to within two percent of the SID. In the case of extra-oral imaging systems where the image receptor can be turned vertically or horizontally, the beam-limiting device must also be able to be turned so that the dimensions of the beam match the image receptor dimensions at the image receptor plane.

(b) Intra-oral radiography systems used to perform cephalometric projections, including trans-cranial exams, must be equipped with a stable means to:

- (i) ~~((Set the source to skin distance; (iii)))~~ Comply with the beam size dimensions in subsection (1)(a) of this section; and
- ~~((iii))~~ (ii) Center the beam to the image receptor as required in subsection (1)(a) of this section.

(c) General purpose medical X-ray equipment used to perform ~~((cephalometric exams))~~ dental radiography must:

(i) Have stepless adjustment of the dimensions of the X-ray beam so that the width and height of the X-ray beam are independently adjustable. The minimum beam size at ~~((a))~~ an SID of 100 centimeters must be equal to or less than 10 by 10 centimeters.

(ii) Have a means for operators to visually set the width and height of the X-ray beam. The misalignment of the edges of the visually set light field with the respective edges of the X-ray beam along either the length or width of the visually set light field must not be more than two percent of the distance from the source to the center of the visually defined light field when the surface upon which it appears is perpendicular (at a 90 degree angle) to the central axis of the X-ray beam.

(iii) Have a ~~((way))~~ means to indicate on the X-ray equipment when the axis of the X-ray beam is perpendicular to the plane of the image receptor and to align the center of the X-ray beam to the center of the image receptor to within two percent of the SID (five percent for equipment manufactured before August 1974). Dental lateral jaw examinations are excluded from this requirement.

(iv) Have a beam-limiting device that ~~((shows))~~ indicates the X-ray beam size in centimeters or inches at the plane of the image receptor to which the beam-limiting device is adjusted.

(v) Have ~~((beam size dimension settings that are able to produce X-ray beam dimensions at the plane of the image receptor to within two percent of the SID when the beam axis is perpendicular to the plane of the image receptor.~~

~~((vi) Have SID displayed in inches and/or centimeters.))~~ an actual beam size at the plane of the image receptor that matches the indicated size to within two percent of the SID.

(2) ~~((Source to skin distance))~~ SSD and SID.

(a) Dental extra-oral radiography systems must have a durable, securely fastened means to limit the ~~((source to skin distance))~~ SSD to not less than 23 centimeters. The requirement may be met when the beam-limiting device provides the required limits.

(b) Dental extra-oral radiography systems in which the SID is not fixed (such as an intra-oral system used for cephalometrics) must have a device or reference that will indicate the actual SID ~~((distance))~~ to within two percent of the indicated SID.

(3) Viewing device.

Dental extra-oral radiography installations must provide a viewing device (mirror, video camera, or glass window ~~((or video))~~) designed to reduce exposure so that operators of the X-ray equipment may observe the ~~((patient))~~ patient's head and neck area during the exposure without being exposed to the primary beam or stray radiation.

(4) Scattered radiation suppressing grids. When using scattered radiation suppressing grids, the grids ~~((shall))~~ must be:

(a) Clearly labeled with the SID for which the grids are designed to be used; and

(b) Used at the proper SID.

(5) X-ray film and screen requirements.

(a) X-ray film used for extra-oral imaging must be used before the expiration date specified by the manufacturer.

(b) The spectral sensitivity of the X-ray film used must be matched by the appropriate spectral output of the intensifying screens used in the cassettes as recommended by the film and screen manufacturers.

(c) Screens must be free of dirt, abrasions, and discoloration that would cause artifacts on the image.

AMENDATORY SECTION (Amending WSR 08-14-074, filed 6/26/08, effective 7/27/08)

WAC 246-225A-080 Special requirements for dental intra-oral radiography. (1) Registrants using an X-ray system designed for use with an intra-oral image receptor shall use equipment that:

(a) Limits the ~~((source to skin distance))~~ SSD to not less than 18 centimeters;

(b) Limits the X-ray beam so that the beam diameter at the minimum SSD is no greater than 7 centimeters in diameter;

(c) Has an open-ended position-indicating device; and

(d) Has shielding included in the beam-limiting device or position-indicating device equivalent to that required for the diagnostic source assembly under WAC 246-225A-060(1).

(2) ~~((After January 1, 2010,))~~ Registrants shall not use diagnostic dental X-ray systems with a fixed, nominal ~~((kilo-volts peak))~~ kVp of less than 55.

NEW SECTION

WAC 246-225A-085 Hand-held X-ray system. The following requirements apply to hand-held X-ray systems:

(1) Registrants using hand-held X-ray systems must provide for security and safe storage while not in use.

(2) The image receptor used with hand-held dental X-ray systems must either be:

(a) A speed class of intra-oral film designated as "F," "E/F" or faster; or

(b) A digitally acquired image (CR or DR).

(3) The hand-held X-ray system must be equipped with a backscatter shield of not less than 0.25 mm lead equivalent and 15.2 cm (6 inches) in diameter that can be positioned to within 1 cm of the end of the position indicating device. The hand-held X-ray system must always be used with the backscatter shield in place.

(4) Conditions and restrictions using the predicted whole body dose rate (effective dose) to the operator and shallow dose to the fingers:

If the predicted whole body dose rate (effective dose) is:	And the shallow dose rate to the fingers is:	The operator:
<100 mrem/yr	<1 rem/yr	Can operate equipment with no additional requirements
>100 mrem/yr	<1 rem/yr	Must wear a leaded apron of 0.25 mm lead equivalent
>100 mrem/yr	>1 rem/yr	<ul style="list-style-type: none"> • Must wear a leaded apron of 0.25 mm lead equivalent; and • Must use equipment for special needs patients outside of routine dental office settings only

AMENDATORY SECTION (Amending WSR 08-14-074, filed 6/26/08, effective 7/27/08)

WAC 246-225A-090 X-ray image processing requirements. Standards in this section are designed to assure that optimal X-ray image quality and diagnostic information are produced so that fewer retakes are needed, and associated patient and operator exposure ~~((are minimal))~~ is minimized.

(1) When performing manual film processing~~((;))~~ (also known as hand tank processing~~((;))~~) registrants or an operator working under the registrant's direction shall:

(a) Use appropriate chemicals for manual film processing as indicated in chemical and film manufacturer's labels and recommendations.

(b) Mix chemicals in accordance with the chemical manufacturer's recommendations.

(c) Periodically add film developer/fixer replenisher based on the recommendations of the chemical or film manufacturer. Solution may be removed from the tank to permit the addition of an adequate volume of replenisher.

(d) Completely replace all manual processing chemicals at least every two months, or follow the manufacturer's recommendations for periodic chemistry replenishment and maintenance, whichever is shorter.

(e) Except when quick developer chemistry is used, post and keep for department inspection, the most recent twelve months of a log that shows when each chemistry change was done and by whom ~~((for department inspection)).~~

(f) Process film to achieve the best image quality by either:

(i) Following the film manufacturer's published temperature and time recommendations for X-ray film development; or

(ii) Developing film according to the temperature-time chart in (g) of this subsection.

(g) For standard developer solution, follow the X-ray film developing time specified for the appropriate developer solution temperature in Table 1 of this section:

Table 1

THERMOMETER READINGS (DEGREES)		MINIMUM DEVELOPING TIMES (MINUTES)
C	F	
27	80	2
	79	2
	78	2 1/2
	77	2 1/2

THERMOMETER READINGS (DEGREES) MINIMUM DEVELOPING TIMES (MINUTES)

24	76	3
	75	3
	74	3 1/2
	73	3 1/2
22	72	4
	71	4
	70	4 1/2
	69	4 1/2
20	68	5
	67	5 1/2
	66	5 1/2
	65	6
18	64	6 1/2
	63	7
	62	8
	61	8 1/2
16	60	9 1/2

(h) Use X-ray film developing devices that give:

- (i) The actual temperature of the developer solution;
- (ii) The developing time in minutes and seconds; and
- (iii) An audible or visible signal when developing is complete.

(2) When performing automatic film processing, registrants or an operator working under the registrant's direction shall:

(a) Set up and maintain automatic film processors so that X-ray image density and contrast are optimal;

(b) Follow the film manufacturer's published specifications for time and temperature, and the processor manufacturer's recommendations for type of developer chemistry used. If manufacturer's specifications are not available, the film must be developed using the developer temperatures and immersion times specified in Table 2 of this section:

Table 2

DEVELOPER TEMPERATURE		PROCESSOR DEVELOPER IMMERSION TIME*
°C	°F	Seconds
35	95	20
34.5	94	21
34	93	22

DEVELOPER TEMPERATURE		PROCESSOR DEVELOPER IMMERSION TIME*
°C	°F	Seconds
33.5	92	23
33	91	24
32	90	25
31.5	89	26
31	88	27
30.5	87	28
30	86	29
29.5	85	30

* Immersion time only, no cross-over time included.

(c) Replenish the developer chemistry to create optimal X-ray images by:

(i) Replacing all automatic processor chemicals at least every month, or follow the manufacturer's recommendations for periodic chemistry replenishment and maintenance, whichever is shorter.

(ii) Posting and maintaining a log that shows when each chemistry change was performed and by whom. The most recent twelve months of the log (~~shall~~) must be kept for department inspection.

(iii) Verifying that the processor delivers an adequate rate of developer replenishment; and

(iv) Verifying that standby replenishment, flood replenishment, or prefixed film processing (~~is~~) are done (~~periodically~~) as necessary for facilities with a low X-ray workload.

(3) When developing film, registrants or an operator working under the registrant's direction shall:

(a) Set up darkrooms and daylight film loaders so that film being processed, handled, or stored will be exposed only to light passed through a safelight filter. The filter must be of the type specified by the film manufacturer and must not cause excess fog (~~evidence of light exposure~~) on X-ray-exposed film. Fog greater than 0.1 optical density is considered unacceptable.

~~(b) (Use bulbs in the darkroom's safelight of fifteen watts or less.~~

~~(c) Mount the safelight in the darkroom at least four feet (1.2 meters) above work areas.~~

~~(d)) Use daylight loaders in darkened areas or where light is dimmed so that the fog standard in (a) of this subsection is met.~~

(4) When processing digital images, registrants or an operator working under the registrant's direction shall:

(a) Follow the (~~computed radiography~~)CR(~~is~~) and (~~direct digital radiography~~)DR(~~is~~) sensor or detector manufacturer's recommendations to achieve adequate diagnostic image quality for the least possible patient exposure.

(b) Process CR phosphor plates using the longest processing time recommended by the manufacturer of the plate processor.

(5) The department may make X-ray film development and darkroom tests as necessary to determine compliance with this section.

AMENDATORY SECTION (Amending WSR 08-14-074, filed 6/26/08, effective 7/27/08)

WAC 246-225A-110 (~~Image~~) Film processing quality assurance. (~~Beginning January 1, 2010,~~) Registrants (~~making images on film~~) found in violation of WAC 246-225A-090 (1)(f) or (2) shall comply with the following quality assurance requirements for (~~X-ray image processing~~) a minimum of three months:

(1) Conduct an acceptable quality assurance program that includes weekly tests of (~~manual and automatic~~) film processing to include:

(a) Density (~~and contrast on~~) of test films; and

(b) Action taken when test film density (~~or contrast~~) falls below 15 percent of initial reference levels.

(2) Keep a written or computer log of all periodic quality assurance testing covered in subsection (1) of this section, including the weekly test films(~~from the preceding twelve months for inspection by the department~~).

WSR 11-12-028
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD
 [Filed May 25, 2011, 9:15 a.m.]

Continuance of WSR 10-17-058.

Preproposal statement of inquiry was filed as WSR 10-11-097.

Title of Rule and Other Identifying Information: Amends WAC 181-79A-006, 181-79A-123, 181-79A-145, 181-79A-221, 181-79A-223 and 181-79A-250. Changes requirements for school social workers. Clarifies other educator service associates (ESA) certification requirements.

Hearing Location(s): New Market Skills Center, 7299 Newmarket Street S.W., Tumwater, WA 98501, on July 7, 2011, at 8:30 a.m.

Date of Intended Adoption: July 7, 2011.

Submit Written Comments to: David Brenna, Legislative and Policy Coordinator, P.O. Box 47236, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by June 30, 2011.

Assistance for Persons with Disabilities: Contact David Brenna, by June 30, 2011, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amends rules for ESA in line with professional certification in the areas of counseling and psychological testing. Removes initial certification from definitions of certificates for ESAs. Changes requirements for school social workers. These are changes sought and approved by professionals holding these licenses.

Reasons Supporting Proposal: Stakeholder support.

Statutory Authority for Adoption: RCW 28A.410.210.

Statute Being Implemented: RCW 28A.410.270.

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

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

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

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

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

May 25, 2011
David Brenna
Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-79A-006 Purpose. The purposes of this chapter are:

(1) To establish a performance-based certification system to be fully implemented for all teacher candidates applying for the residency certificate after August 31, 2000, and for all teacher candidates applying for the professional certificate after August 31, 2001. A performance-based certification system shall be fully implemented for all principals/program administrators applying for the residency certificate after August 31, 2004, and for all principal/program administrator candidates applying for the professional certificate after August 31, 2006. A performance-based professional certificate system shall be fully implemented for school psychologists(§) and school counselors(~~and school social workers~~) applying for the residency certificate after August 31, 2005, and for the professional certificate after August 31, 2007.

(2) To establish the various certificates which must be held as a condition to employment in the Washington school system. The performance-based certification system shall include the issuance of a residency certificate, a professional certificate, and other certificates which the professional educator standards board may add in the future.

(3) To establish the conditions and procedures governing issuance and retention of those and other certificates, including endorsements thereon.

AMENDATORY SECTION (Amending WSR 10-16-124, filed 8/3/10, effective 9/3/10)

WAC 181-79A-123 Certificates—Previous standards. (1) Certificates issued under previous standards which were issued for a specific term shall continue to be effective for that term.

(2) Certificates issued under standards prior to September 1, 2000, which were issued for an indefinite period shall continue to be in effect.

(3) All persons who hold any standard teacher, administrator, or specialized personnel certificate issued under previous standards of the professional educator standards board

shall be issued a continuing certificate at such time as it is necessary for them to reissue a standard certificate or on application and payment of the fee as specified in WAC 181-79A-130.

(4) Any person who holds a provisional principal's or provisional superintendent's certificate under previous standards of the professional educator standards board shall be issued upon application, including payment of applicable fees, a continuing administrator's certificate for the appropriate role and such certificates shall be subject to the continuing education requirements of chapter 181-85 WAC.

(5) Any person holding a provisional certificate as a school nurse under provisions of chapter 180-84 WAC shall be granted a continuing certificate.

(6) All persons who hold a valid initial certificate granted under previous standards of the professional educator standards board shall be authorized to meet requirements for continuing certification as set forth in the relevant previous standards except as noted below in subsections (7), (8) or (9) of this section.

(7) Any person with a valid initial teacher's certificate granted under previous standards of the professional educator standards board may renew that certificate once after August 31, 2000. The individual shall meet requirements for and apply for the continuing certificate by the expiration date on the renewed certificate or meet requirements for the residency certificate for further certification: Provided, That any person who qualified for initial renewal or continuing certificate under the provisions of WAC 181-79A-250 (1)(a) prior to their expiration date, but whose initial certificate expired after August 31, 2000, because they applied for certification too late, may apply once for such renewal or continuing certificate and will be issued such certificate.

(8) Any person with a valid initial administrator certificate granted under previous standards of the professional educator standards board shall meet requirements for and apply for the continuing certificate by the expiration date on the initial certificate or meet requirements for the residency certificate for further certification: Provided, That any person who qualified for a continuing certificate under the provisions of WAC 181-79A-250 (1)(b) prior to their expiration date, but whose initial certificate expired after June 30, 2004, because they applied for certification too late, may apply for such continuing certificate and will be issued such certificate.

(9) Any person with a valid initial ESA certificate granted under previous standards of the professional educator standards board shall meet requirements for and apply for the continuing certificate by the expiration date on the initial certificate or meet requirements for the residency certificate for further certification: Provided, That any person who qualified for a continuing certificate under the provisions of WAC 181-79A-250 (1)(c) prior to their expiration date, but whose initial certificate expired after June 30, 2005, because they applied for certification too late, may apply for such continuing certificate and will be issued such certificate.

(10) Any person with a valid residency ESA school social work certificate may meet requirements for and apply for the continuing certificate by the expiration date on the residency certificate.

AMENDATORY SECTION (Amending WSR 10-16-124, filed 8/3/10, effective 9/3/10)

WAC 181-79A-145 Levels and validity of certificates.

Two levels of certification may be issued.

(1) Initial and continuing certificates: Teachers with program completion dates through August 31, 2000, administrators with program completion dates through August 31, 2004, and educational staff associates with program completion dates through August 31, 2005, will be issued the following levels of certificates: Provided, That initial and continuing teachers' certificates after August 31, 2000, initial and continuing principal and program administrator certificates after August 31, 2004, and initial and continuing educational staff associate certificates after August 31, 2005, will be issued only to previous Washington certificate holders, pursuant to WAC 181-79A-123:

(a) Initial certificate. The initial teacher certificate is valid for four years and the initial administrator and educational staff associate certificates are valid for seven years. Initial teacher certificates shall be subject to renewal pursuant to WAC 181-79A-250(1) and 181-79A-123. Initial administrator and educational staff associate certificates shall not be subject to renewal. Initial administrator and educational staff associate certificate holders shall be issued a continuing certificate if they meet the requirements for such certificate. Initial administrator and educational staff associate certificate holders shall be issued a residency certificate if their initial certificate has expired or they do not meet the requirements for a continuing certificate.

(b) Continuing certificate. The continuing certificate is valid on a continuing basis as specified in WAC 181-79A-250(3).

(2) Residency and professional certificates: Teachers, administrators, and educational staff associates with program completion dates commencing with the dates indicated below will be issued the following levels of certificates:

(a) Residency certificate. The residency certificate will be issued to teachers beginning September 1, 2000, to principal/program administrators beginning September 1, 2004, and to educational staff associate school counselors(~~(:)~~) and school psychologists(~~(-and school social workers)~~) no later than September 1, 2005.

(b) The first issue of a residency certificate for teachers, principals, program administrators, and educational staff associates shall be valid until the holder has completed two consecutive years of successful service in the role in Washington with a school district, state approved private school, or state agency that provides educational services for students. When the principal, program administrator, or educational staff associate completes two consecutive years of successful service in the role in the state with the same employer, their residency certificate will be reissued with a five-year expiration date; provided, that the second consecutive year of successful service in the role will be considered to be complete for purposes of reissuance if a contract for the third such year has been signed and returned to the employer. Prior to the expiration date, the candidate must earn a professional certificate or meet residency renewal requirements under WAC 181-79A-250.

(c) For teachers, after September 1, 2011, a first issue teacher residency certificate remains undated until the teacher is eligible to register for the professional certificate assessment under WAC 181-79A-206, at which time the residency certificate is dated for three years as verified by the certification office of the superintendent of public instruction: Provided, That teachers who hold an undated initial residency certification and teach in nonpublic school settings as defined under chapter 180-55 WAC are considered to hold a valid certificate and may participate in the professional certificate requirements by submitting proof of experience under WAC 181-79A-206.

(d) Professional certificate. The professional certificate will be issued to teachers beginning September 1, 2001, to principals/program administrators beginning September 1, 2007, and to educational staff associate school counselors(~~(:)~~) and school psychologists(~~(-and school social workers)~~) beginning September 1, 2007. The professional certificate is valid for five years and shall be subject to renewal pursuant to WAC 181-79A-250. Provided, That a professional teacher's certificate based on the possession of a valid teacher's certificate issued by the National Board for Professional Teaching Standards National Board Certification pursuant to WAC 181-79A-257 (3)(b) or 181-79A-206 (3)(a) shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater. Provided further that a professional educational staff associate certificate for school counselors based on the possession of a valid school counselor's certificate issued by the National Board for Professional Teaching Standards National Board Certification pursuant to WAC 181-79A-257 or 181-79A-206 shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater.

(3) First peoples' language, culture, and oral tribal traditions certificates: The first peoples' language, culture, and oral tribal traditions certificate will be issued beginning in January 2007. The first peoples' language, culture, and oral tribal traditions certificate is valid for five years and shall be subject to renewal pursuant to WAC 181-79A-252.

AMENDATORY SECTION (Amending WSR 08-12-055, filed 6/2/08, effective 7/3/08)

WAC 181-79A-221 Academic and experience requirements for certification—School counselors(~~(:)~~) and school psychologists(~~(-and school social workers)~~). Candidates for school counselor(~~(:)~~) and school psychologist (~~(and school social worker)~~) certification shall complete the following requirements in addition to those set forth in WAC 181-79A-150 and 181-79A-226: Provided, That it shall not be necessary for any candidate who holds a master's or doctorate degree to obtain the specified master's degree if the candidate provides satisfactory evidence to the superintendent of public instruction that he or she has completed all course work requirements relevant to the required master's degree and has satisfactorily completed a comprehensive written examination required in such master's degree program. This examination shall be an examination of a regionally accredited institution of higher education or the National Counselor Examination (NCE) of the National Board of Cer-

tified Counselors (NBCC) or, in the case of school psychologists, hold the NCSP accreditation from the National Association of School Psychologists (NASP): Provided, That if any candidate has been awarded a master's degree without a comprehensive (~~written~~) examination, the candidate, as a condition for certification, shall (~~arrange to take such an examination with any accredited college or university and provide the superintendent of public instruction with an affidavit from the chair of the department of such academic field that he or she has successfully completed the above noted comprehensive examination~~) successfully complete the Praxis II exam in the appropriate role.

(1) School counselor.

(a) ~~(Initial:~~

~~(i) The candidate shall have completed all requirements for the master's degree (except special projects or thesis) with a major in counseling.~~

~~(ii) The candidate shall have successfully completed a written comprehensive examination of the knowledge included in the course work for the required master's degree. This examination shall be an examination of a regionally accredited institution of higher education or the National Counselor Examination (NCE) of the National Board of Certified Counselors (NBCC).~~

~~(b))~~ Residency.

(i) The candidate shall hold a master's degree with a major in counseling.

(ii) The candidate shall have successfully completed a ~~(written)~~ comprehensive examination of the knowledge included in the course work for the required master's degree. This examination shall be a proctored ~~(written)~~ examination of a regionally accredited institution of higher education or the candidate may meet this requirement by receiving a passing score on the Praxis II guidance and counseling examination ~~(administered by Educational Testing Service (ETS))~~.

~~((e))~~ (b) Continuing.

(i) The candidate shall hold a master's degree with a major in counseling.

(ii) The candidate shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(iii) The candidates must demonstrate their respective knowledge ~~(s)~~ and skills while employed in that role by passing a one-quarter or one-semester college or university course that includes peer review. The college or university shall establish the procedures for the peer review with advice from the respective professional education advisory board.

~~((d))~~ (c) Professional. The candidate shall have completed an approved professional certificate program, provided, that an individual who holds a school counseling certificate issued by the National Board for Professional Teaching Standards (NBPTS) shall be deemed to have met the requirement for completion of a professional certificate program, in recognition that NBPTS certification is issued only

to individuals who have demonstrated highly advanced skills as a school counselor.

(2) School psychologist.

(a) ~~(Initial:~~

~~(i) The candidate shall have completed all requirements for the master's degree (except special projects or thesis) with a major or specialization in school psychology.~~

~~(ii) The candidate shall have successfully completed a written comprehensive examination of the knowledge included in the course work for the required master's degree. This examination shall be an examination from a regionally accredited institution of higher education or the National Certification of School Psychologist (NCSP) examination.~~

~~(b))~~ Residency.

(i) The candidate shall hold a master's degree with a major or specialization in school psychology.

(ii) The candidate shall have successfully completed a ~~(written)~~ comprehensive examination of the knowledge included in the course work for the required master's degree. This examination shall be a proctored ~~(written)~~ examination of a regionally accredited institution of higher education or the candidate may meet this requirement by receiving a passing score on the Praxis II school psychology examination ~~(administered by Educational Testing Service (ETS))~~.

~~((e))~~ (b) Continuing.

(i) The candidate shall hold a master's degree with a major or specialization in school psychology.

(ii) The candidate shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(iii) The candidates must demonstrate their respective knowledge ~~(s)~~ and skills while employed in that role by passing a one-quarter or one-semester college or university course that includes peer review. The college or university shall establish the procedures for the peer review with advice from the respective professional education advisory board.

~~((d))~~ (c) Professional. The candidate shall have completed an approved professional certificate program: Provided, That an individual who holds an NCSP certificate issued by the National Association of School Psychologists (NASP) shall be deemed to have met the requirement for completion of a professional certificate program, in recognition that NCSP certification is issued only to individuals who have demonstrated highly advanced skills as a school psychologist.

~~((3))~~ School social worker.

(a) Initial.

~~(i) The candidate shall have completed all requirements for a master's degree in social work except special projects or thesis.~~

~~(ii) The candidate shall have successfully completed a written comprehensive examination of the knowledge included in the course work for the required master's degree. This examination shall be an examination from a regionally accredited institution of higher education, the social worker examination of the Academy of Certified Social Workers or~~

the National Teacher Examination—School Social Worker Specialty Area examination required for certification as a school social worker by the National Association of Social Workers.

(b) Residency.

(i) The candidate shall hold a master's degree in social work.

(ii) The candidate shall have successfully completed a written comprehensive examination of the knowledge included in the course work for the required master's degree. This examination shall be a proctored, written examination of a regionally accredited institution of higher education or the candidate may meet the requirement by receiving a passing score on the Praxis II school social work examination administered by Educational Testing Service (ETS).

(c) Continuing.

(i) The candidate shall hold a master's degree in social work.

(ii) The candidate shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(iii) The candidates must demonstrate their respective knowledges and skills while employed in that role by passing a one-quarter or one-semester college or university course that includes peer review. The college or university shall establish the procedures for the peer review with advice from the respective professional education advisory board.

(d) Professional. The candidate shall have completed an approved professional certificate program.))

AMENDATORY SECTION (Amending WSR 08-08-045, filed 3/26/08, effective 4/26/08)

WAC 181-79A-223 Academic and experience requirements for certification—School nurse, school occupational therapist, school physical therapist (~~and~~), school speech-language pathologist or audiologist, or school social worker. Candidates for school nurse, school occupational therapist, school physical therapist (~~and~~), school speech-language pathologist or audiologist, and school social worker certification shall apply directly to the professional education and certification office. Such candidates shall complete the following requirements, in addition to those set forth in WAC 181-79A-150, except state approved college/university professional preparation program: Provided, That it shall not be necessary for any candidate who holds a master's or doctorate degree to obtain the specified master's degree if the candidate provides satisfactory evidence to the superintendent of public instruction that he or she has completed all course work requirements relevant to the required master's degree and has satisfactorily completed a comprehensive examination required in such master's degree program: Provided, That if any candidate has been awarded a master's degree without a comprehensive examination, the candidate, as a condition for certification,

shall successfully complete the Praxis II exam in the appropriate role.

(1) School nurse.

(a) Initial.

(i) The candidate shall hold a valid license as a registered nurse (RN) in Washington state.

(ii) The candidate shall hold a baccalaureate degree or higher in nursing from a program accredited by the National League for Nursing Accrediting Commission or the Commission on Collegiate Nursing Education.

(iii) The candidate shall successfully complete thirty clock hours or three quarter hours (two semester hours) of course work approved by the professional educator standards board which will include the following course outcomes in which candidates will:

(A) Demonstrate an understanding of school and special education law;

(B) Understand and demonstrate knowledge of working within the culture of the schools, creating an environment that fosters safety, health, and learning for the students;

(C) Demonstrate knowledge of appropriate resources in the school setting;

(D) Demonstrate knowledge of collaboration with team members which may include parents, teachers, administrators, and others to support learning outcomes for all students;

(E) Demonstrate knowledge of how to support the outcomes for all students through strategies such as scientifically based practices, collaborative teaming, and ethical decision making;

(F) Recognize ways ESAs can use national, state, and local policies, as well as professional standards, to support decision making in educational settings;

(G) Demonstrate an understanding of the use of human, community, and technological resources. Provided, That an individual who meets all other requirements but who has not completed the required course work shall be issued a temporary permit valid for one hundred eighty calendar days which will allow the individual to practice in the role. The candidate shall verify to OSPI the completion of the required course work during the one hundred eighty-day period.

(b) Continuing.

(i) The candidate shall have completed the requirements for the initial certificate as a school nurse and have completed forty-five quarter hours (thirty semester hours) of postbaccalaureate course work in education, nursing, or other health sciences.

(ii) The candidate shall provide documentation of one hundred eighty days of full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(2) School occupational therapist.

(a) Initial.

(i) The candidate shall hold a valid license as an occupational therapist in Washington state.

(ii) The candidate shall hold a baccalaureate (or higher) degree from an American Occupational Therapy Association approved program in occupational therapy.

(iii) The candidate shall successfully complete thirty clock hours or three quarter hours (two semester hours) of course work approved by the professional educator standards board which will include the following course outcomes in which candidates will:

(A) Demonstrate an understanding of school and special education law;

(B) Understand and demonstrate knowledge of working within the culture of the schools, creating an environment that fosters safety, health, and learning for the students;

(C) Demonstrate knowledge of appropriate resources in the school setting;

(D) Demonstrate knowledge of collaboration with team members which may include parents, teachers, administrators, and others to support learning outcomes for all students;

(E) Demonstrate knowledge of how to support the outcomes for all students through strategies such as scientifically based practices, collaborative teaming, and ethical decision making;

(F) Recognize ways ESAs can use national, state, and local policies, as well as professional standards, to support decision making in educational settings;

(G) Demonstrate an understanding of the use of human, community, and technological resources. Provided, That an individual who meets all other requirements but who has not completed the required course work shall be issued a temporary permit valid for one hundred eighty calendar days which will allow the individual to practice in the role. The candidate shall verify to OSPI the completion of the required course work during the one hundred eighty-day period.

(b) Continuing.

(i) The candidate shall have completed the requirements for the initial certificate as a school occupational therapist and have completed at least fifteen quarter hours (ten semester hours) of course work beyond the baccalaureate degree in occupational therapy, other health sciences or education.

(ii) The candidate shall provide documentation of one hundred eighty days of full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(3) School physical therapist.

(a) Initial.

(i) The candidate shall hold a valid license as a physical therapist in Washington state.

(ii) The candidate shall hold a baccalaureate (or higher) degree from an American Physical Therapy Association accredited program in physical therapy.

(iii) The candidate shall successfully complete thirty clock hours or three quarter hours (two semester hours) of course work approved by the professional educator standards board which will include the following course outcomes in which candidates will:

(A) Demonstrate an understanding of school and special education law;

(B) Understand and demonstrate knowledge of working within the culture of the schools, creating an environment that fosters safety, health, and learning for the students;

(C) Demonstrate knowledge of appropriate resources in the school setting;

(D) Demonstrate knowledge of collaboration with team members which may include parents, teachers, administrators, and others to support learning outcomes for all students;

(E) Demonstrate knowledge of how to support the outcomes for all students through strategies such as scientifically based practices, collaborative teaming, and ethical decision making;

(F) Recognize ways ESAs can use national, state, and local policies, as well as professional standards, to support decision making in educational settings;

(G) Demonstrate an understanding of the use of human, community, and technological resources. Provided, That an individual who meets all other requirements but who has not completed the required course work shall be issued a temporary permit valid for one hundred eighty calendar days which will allow the individual to practice in the role. The candidate shall verify to OSPI the completion of the required course work during the one hundred eighty-day period.

(b) Continuing.

(i) The candidate shall have completed the requirements for the initial certificate as a school physical therapist and have completed fifteen quarter hours (ten semester hours) of course work beyond the baccalaureate degree in physical therapy, other health sciences or education.

(ii) The candidate shall provide documentation of one hundred eighty days of full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(4) School speech-language pathologist or audiologist.

(a) Initial.

(i) The candidate shall have completed all course work (except special project or thesis) for a master's degree from a college or university program accredited by the American Speech and Hearing Association (ASHA) with a major in speech pathology or audiology. Such program shall include satisfactory completion of a written comprehensive examination: Provided, That if any candidate has not completed a written comprehensive examination, the candidate may present verification from ASHA of a passing score on the National Teacher's Examination in speech pathology or audiology as a condition for certification.

(ii) The candidate shall successfully complete thirty clock hours or three quarter hours (two semester hours) of course work approved by the professional educator standards board which will include the following outcomes in which candidates will:

(A) Demonstrate an understanding of school and special education law;

(B) Understand and demonstrate knowledge of working within the culture of the schools, creating an environment that fosters safety, health, and learning for the students;

(C) Demonstrate knowledge of appropriate resources in the school setting;

(D) Demonstrate knowledge of collaboration with team members which may include parents, teachers, administrators, and others to support learning outcomes for all students;

(E) Demonstrate knowledge of how to support the outcomes for all students through strategies such as scientifically based practices, collaborative teaming, and ethical decision making;

(F) Recognize ways ESAs can use national, state, and local policies, as well as professional standards, to support decision making in educational settings;

(G) Demonstrate an understanding of the use of human, community, and technological resources. Provided, That an individual who meets all other requirements but who has not completed the required course work shall be issued a temporary permit valid for one hundred eighty calendar days which will allow the individual to practice in the role. The candidate shall verify to OSPI the completion of the required course work during the one hundred eighty-day period.

(b) Continuing.

(i) The candidate shall hold a master's degree with a major in speech pathology or audiology, with the exception of a candidate who holds a current and valid Washington state conditional certificate in speech/language pathology as of June 30, 2003.

(ii) The candidate shall provide documentation of one hundred eighty days of full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(5) School social worker.

(a) Initial.

(i) The candidate shall hold an MSW from a regionally accredited institution of higher learning.

(ii) The candidate shall successfully complete thirty clock hours or three quarter hours (two semester hours) of course work approved by the professional educator standards board which will include the following course outcomes in which candidates will:

(A) Demonstrate an understanding of school and special education law;

(B) Understand and demonstrate knowledge of working within the culture of the schools, creating an environment that fosters safety, health, and learning for the students;

(C) Demonstrate knowledge of appropriate resources in the school setting;

(D) Demonstrate knowledge of collaboration with team members which may include parents, teachers, administrators, and others to support learning outcomes for all students;

(E) Demonstrate knowledge of how to support the outcomes for all students through strategies such as scientifically based practices, collaborative teaming, and ethical decision making;

(F) Use national, state, and local policies, as well as professional standards, to support decision making in educational settings and inform professional growth planning;

(G) Demonstrate an understanding of the use of human, community, and technological resources: Provided, That an individual who meets all other requirements but who has not

completed the required course work shall be issued a temporary permit valid for one hundred eighty calendar days which will allow the individual to practice in the role. The candidate shall verify to OSPI the completion of the required course work during the one hundred eighty-day period.

(iii) The candidate shall have a passing score on the Praxis II school social worker examination.

(b) Continuing.

(i) The candidate shall have completed the requirements for the initial certificate as a school social worker and have completed a professional growth plan or forty-five quarter hours (thirty semester hours) or forty-five clock hours specific to the role of the school social worker.

(ii) The candidate shall provide documentation of one hundred eighty days of full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

AMENDATORY SECTION (Amending WSR 10-16-124, filed 8/3/10, effective 9/3/10)

WAC 181-79A-250 Initial and continuing certificates—Renewal, reinstatement, and continuing education requirements. The following shall apply to initial and continuing certificates issued pursuant to this chapter:

(1) Initial certificate.

(a) Teachers.

An initial teacher certificate may be renewed for an additional three-year period on application and verification that the individual has completed all course work requirements from a regionally accredited institution of higher education as defined in WAC 181-78A-010(6) for continuing certification or has completed at least fifteen quarter credit hours (ten semester credit hours) since the certificate was issued or renewed. After August 31, 2000, provisions of WAC 181-79A-123 will apply.

(b) Administrators.

After June 30, 2004, provisions of WAC 181-79A-123(8) will apply.

(c) Educational staff associates.

After June 30, 2005, provisions of WAC 181-79A-123(9) will apply to school psychologists and school counselors.

(2) Continuing certificate.

(a) The continuing certificates of holders who were eligible for such certificates prior to August 31, 1987, and who applied for such certificates prior to July 1, 1988, or who would have been eligible for such certificates prior to August 31, 1987, but for one of the three-year experience requirement and who complete such requirement and apply for such certificate prior to August 31, 1988, will be valid for life. Holders of valid continuing certificates affected by this subsection shall be entitled to have such certificate reissued and subject to the terms and conditions applicable to certification at the time of reissuance including the continuing education requirements of chapter 181-85 WAC.

(b) All continuing certificates not affected by the exception stated in (a) of this subsection shall expire if the holder does not complete the continuing education requirement, to include the filing requirement specified in chapter 181-85 WAC. To reinstate such an expired continuing certificate the individual must complete the requirements for reinstatement stated within chapter 181-85 WAC and must meet the conditions stated in WAC 181-79A-253.

WSR 11-12-029
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed May 25, 2011, 9:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-10-012.

Title of Rule and Other Identifying Information: Revises WAC 181-78A-105 and 181-78A-270, removes physical location requirements from rules governing educator preparation programs. Also requires teacher candidates to complete draft professional growth plan (PGP) as a graduation requirement.

Hearing Location(s): New Market Skills Center, 7299 Newmarket Street S.W., Tumwater, WA 98501, on July 7, 2011, at 8:30 a.m.

Date of Intended Adoption: July 7, 2011.

Submit Written Comments to: David Brenna, Legislative and Policy Coordinator, P.O. Box 47236, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by June 30, 2011.

Assistance for Persons with Disabilities: Contact David Brenna by June 30, 2011, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Permits on-line education preparation programs without a physical location within the state. Adds PGP preparation to graduation requirements.

Reasons Supporting Proposal: Technical changes in compliance with new programs authorized by legislature.

Statutory Authority for Adoption: RCW 28A.410.210.

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

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

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

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, P.O. Box 47236,

Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-3631, e-mail david.brenna@k12.wa.us.

May 25, 2011
David Brenna
Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 11-01-047, filed 12/7/10, effective 1/7/11)

WAC 181-78A-105 Procedures for initial approval of an educator preparation program. Each institution or organization desiring to establish a preparation program shall comply with the following:

(1) Advise the professional educator standards board of its desire to establish a preparation program.

(2) Develop with the assistance of the professional education advisory board a written preproposal plan which addresses all preproposal components adopted and published by the professional educator standards board and submit such plan to the designated official of the professional educator standards board for review and comment.

(3) Submit such plan to the professional educator standards board. The institution or organization may be granted approval for full proposal development or denied approval.

(a) If approved, the institution or organization shall comply with the following:

(i) Establish the appropriate professional education advisory board pursuant to WAC 181-78A-205;

(ii) Develop with assistance of the professional education advisory board a written plan which includes the following:

(A) Timelines for the implementation of all applicable program approval standards during the first year of the program;

(B) The criteria that the program will use to assess, in multiple ways over time, its candidates' knowledge and skills including evidence related to positive impact on student learning (WAC 181-78A-205(4));

(C) How the professional education advisory board was involved in program development, including a letter of support; and

(D) Letters of support from partnership districts and/or other agencies.

(iii) Present the written plan to the professional educator standards board.

(A) The program may be conditionally approved in a specific location(s) for a period of up to twenty-seven months following the beginning of instruction. The institution or organization shall notify the professional educator standards board when instruction has begun. If not approved, the institution or organization may resubmit its revised plan or request a contested hearing via an appeal team appointed by the professional educator standards board.

(B) Prior to the expiration of approval, staff of the professional educator standards board shall conduct a site visit and/or other forms of documentation to determine if the program is in full compliance with the 1997 program approval standards; provided that a college/university with an approved residency principal program which adds an

approved program administrator program is not required to have a site visit of the program administrator program until the next regularly scheduled site visit of that institution.

(b) If denied, the institution or organization may resubmit its plan based upon the suggestions of the professional educator standards board.

~~((4) Programs shall be approved for a specific location(s) identified in the written plan presented to the professional educator standards board. Institutions and organizations seeking to expand an existing program to a new location shall submit a request to the professional educator standards board which contains the following:~~

- ~~(a) A description of the location and facilities;~~
- ~~(b) Verification that no complaints have been filed against the program in its current location(s);~~
- ~~(c) A summary of the findings from the most recent site review, including how weaknesses, if any, have been addressed;~~
- ~~(d) A statement that supports need for the program;~~
- ~~(e) Cost to the students;~~
- ~~(f) Mode(s) of the program delivery; and~~
- ~~(g) Letters of support from program partners. The length of time for which the program approval status shall be granted shall coincide with the length of time for which the program in its current location(s) last received approval. The program review cycle for programs at all locations shall be the same.))~~

AMENDATORY SECTION (Amending WSR 10-17-029, filed 8/9/10, effective 9/9/10)

WAC 181-78A-270 Approval standard—Knowledge and skills. Building on the mission to prepare educators who demonstrate a positive impact on student learning based on the Improvement of Student Achievement Act of 1993 (1209), the following evidence shall be evaluated to determine whether each preparation program is in compliance with the program approval standards of WAC 181-78A-220(5):

- (1) **TEACHER RESIDENCY CERTIFICATION.**
 - (a) **EFFECTIVE TEACHING.**
 - (i) Using multiple instructional strategies, including the principles of second language acquisition, to address student academic language ability levels and cultural and linguistic backgrounds;
 - (ii) Applying principles of differentiated instruction, including theories of language acquisition, stages of language, and academic language development, in the integration of subject matter across the content areas of reading, mathematical, scientific, and aesthetic reasoning;
 - (iii) Using standards-based assessment that is systematically analyzed using multiple formative, summative, and self-assessment strategies to monitor and improve instruction;
 - (iv) Implementing classroom/school centered instruction, including sheltered instruction that is connected to communities within the classroom and the school, and includes knowledge and skills for working with other;
 - (v) Planning and/or adapting standards-based curricula that are personalized to the diverse needs of each student;

(vi) Aligning instruction to the learning standards and outcomes so all students know the learning targets and their progress toward meeting them;

(vii) Planning and/or adapting curricula that are standards driven so students develop understanding and problem-solving expertise in the content area(s) using reading, written and oral communication, and technology;

(viii) Preparing students to be responsible citizens for an environmentally sustainable, globally interconnected, and diverse society;

(ix) Planning and/or adapting learner centered curricula that engage students in a variety of culturally responsive, developmentally, and age appropriate strategies;

(x) Using technology that is effectively integrated to create technologically proficient learners; and

(xi) Informing, involving, and collaborating with families/neighborhoods, and communities in each student's educational process, including using information about student cultural identity, achievement and performance.

(b) **PROFESSIONAL DEVELOPMENT.** Developing reflective, collaborative, professional growth-centered practices through regularly evaluating the effects of his/her teaching through feedback and reflection.

(c) **TEACHING AS A PROFESSION.**

(i) Participating collaboratively and professionally in school activities and using appropriate and respectful verbal and written communication.

(ii) Demonstrating knowledge of professional, legal, and ethical responsibilities and policies.

(d) **PERFORMANCE ASSESSMENT.** An approved preparation program for teachers shall require that each candidate engage in an assessment process approved by the professional educator standards board. The assessment will verify that the candidate for a residency teacher certificate can meet the teacher standards in (a), (b) and (c) of this subsection and understands teacher impact on student learning. All candidates shall exit the residency certificate program with a draft professional growth plan.

(2) **PRINCIPAL AND PROGRAM ADMINISTRATOR.**

(a) Effective August 31, 1997, through August 31, 2004, principal and program administrator candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experiences in an approved preparation program which shall include:

(i) Specific performance domains. An approved preparation program shall require the candidate to demonstrate in course work and the internship the following:

(A) **Leadership:** Formulating goals with individuals or groups; initiating and maintaining direction with groups and guiding them to the accomplishment of tasks; setting priorities for one's school in the context of community and district priorities and student and staff needs; integrating own and others' ideas for task accomplishment; initiating and planning organizational change.

(B) **Information collection:** Gathering data, facts, and impressions from a variety of sources about students, parents, staff members, administrators, and community members; seeking knowledge about policies, rules, laws, precedents, or

practices; managing the data flow; classifying and organizing information for use in decision making and monitoring.

(C) **Problem analysis:** Identifying the important elements of a problem situation by analyzing relevant information; framing problems; identifying possible causes; identifying additional needed information; framing and reframing possible solutions; exhibiting conceptual flexibility; assisting others to form reasoned opinions about problems and issues.

(D) **Judgment:** Reaching logical conclusions and making high quality, timely decisions given the best available information.

(E) **Organizational oversight:** Planning and scheduling one's own and others' work so that resources are used appropriately, and short-term and long-term priorities and goals are met; monitoring projects to meet deadlines.

(F) **Implementation:** Making things happen; putting programs and plans into action; applying management technologies; applying methods of organizational change including collaborative processes; facilitating tasks; establishing progress checkpoints; considering alternative approaches; providing "mid-course" corrections when actual outcomes start to diverge from intended outcomes; adapting to new conditions.

(G) **Delegation:** Assigning projects or tasks together with clear authority to accomplish them and responsibility for their timely and acceptable completion.

(H) **Instructional program:** Envisioning and enabling instructional and auxiliary programs for the improvement of teaching and learning; recognizing the developmental needs of students; insuring appropriate instructional methods that address students' gender and cultural differences; designing positive learning experiences; accommodating differences in cognition and achievement; mobilizing the participation of appropriate people or groups to develop these programs and to establish a positive learning environment.

(I) **Curriculum design:** Interpreting school district curricula; planning and implementing with staff a framework for instruction that shall include the implementation of the state learning goals and essential academic learning requirements; initiating needs analyses and monitoring social and technological developments as they affect curriculum; responding to international content levels; adjusting content as needs and conditions change.

(J) **Student guidance and development:** Providing for student guidance, counseling, and auxiliary services; utilizing community organizations; responding to family needs; enlisting the participation of appropriate people and groups to design and conduct these programs and to connect schooling with plans for adult life; planning for a comprehensive program of student activities.

(K) **Staff development:** Identifying with participants the professional needs of individuals and groups; planning and organizing programs to improve staff effectiveness; supervising individuals and groups; engaging staff and others to plan and participate in recruitment and development; initiating self-development.

(L) **Measurement and evaluation:** Determining what diagnostic information is needed about students, staff, and the school environment; examining the extent to which outcomes meet or exceed previously defined standards, goals, or

priorities for individuals or groups; drawing inferences for program revisions; interpreting measurements or evaluations for others; relating programs to desired outcomes; developing equivalent measures of competence.

(M) **Resource allocation:** Planning and developing the budget with appropriate staff; seeking, allocating, and adjusting fiscal, human, and material resources; utilizing the physical plant; monitoring resource use and reporting results.

(N) **Motivating others:** Building commitment to a course of action; creating and channeling the energy of self and others; planning and encouraging participation; supporting innovation; recognizing and rewarding effective performance; providing coaching, guidance, or correction for performance that needs improvement; serving as a role model.

(O) **Sensitivity:** Perceiving the needs and concerns of others; dealing with others tactfully; working with others in emotionally stressful situations or in conflict; managing conflict; obtaining feedback; recognizing multicultural sensitivities.

(P) **Oral expression:** Making oral presentations that are clear and easy to understand; clarifying and restating questions; responding, reviewing, and summarizing for groups; utilizing appropriate communicative aids; adapting for audiences.

(Q) **Written expression:** Expressing ideas clearly in writing; writing appropriately for different audiences such as students, teachers, and parents; preparing brief memoranda.

(R) **Philosophical and cultural values:** Acting with a reasoned understanding of the role of education in a democratic society and in accord with accepted ethical standards; recognizing philosophical and historical influences in education; reflecting an understanding of American culture, including current social and economic issues related to education; recognizing global influences on students and society.

(S) **Legal and regulatory applications:** Acting in accordance with relevant federal and Washington state laws, rules, and policies; recognizing governmental influences on education; working within local rules, procedures, and directives; administering contracts.

(T) **Policy and political influences:** Identifying relationships between public policy and education; recognizing policy issues; examining and affecting policies individually and through professional and public groups; relating policy initiatives to the welfare of students; addressing ethical issues.

(U) **Public and media relationships:** Developing common perceptions about school issues; interacting with parental and community opinion leaders; understanding and responding skillfully to the electronic and printed news media; initiating and reporting news through appropriate channels; enlisting public participation; recognizing and providing for market segments.

(ii) Performance assessment. An approved preparation program for principals shall require that prior to the internship each candidate shall engage in a performance assessment through a process determined by each preparation program. The results of this assessment shall be utilized by the college/university supervisor, the cooperating principal, and the principal candidate to cooperatively design the internship plan.

(b) Effective September 1, 2004, principal and program administrator candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:

(i) Successful demonstration of standards.

(A) A school administrator is an educational leader who promotes the success of each student by leading the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by school and community stakeholders;

(B) A school administrator is an educational leader who promotes the success of each student by leading through advocating, nurturing, and sustaining district/school cultures and coherent instructional programs that are conducive to student learning and staff professional growth;

(C) A school administrator is an educational leader who promotes the success of each student by ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment;

(D) A school administrator is an educational leader who promotes the success of each student by collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources;

(E) A school administrator is an educational leader who promotes the success of each student by acting with integrity, fairness, and in an ethical manner; and

(F) A school administrator is an educational leader who promotes the success of each student by understanding, responding to, and influencing the larger political, social, economic, legal and cultural context.

(ii) Performance assessment. An approved preparation program for principals shall require that each candidate engage in an assessment process using the standards-based benchmarks approved by the professional educator standards board and published by the office of the superintendent of public instruction. The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan.

(3) **SUPERINTENDENT.** An approved preparation program for superintendents shall require the candidate to demonstrate in course work and the internship the following standards:

(a) A school administrator is an educational leader who promotes the success of each student by leading the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by school and community stakeholders;

(b) A school administrator is an educational leader who promotes the success of each student by leading through advocating, nurturing, and sustaining district/school cultures and coherent instructional programs that are conducive to student learning and staff professional growth;

(c) A school administrator is an educational leader who promotes the success of each student by ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment;

(d) A school administrator is an educational leader who promotes the success of each student by collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources;

(e) A school administrator is an educational leader who promotes the success of each student by acting with integrity, fairness, and in an ethical manner; and

(f) A school administrator is an educational leader who promotes the success of each student by understanding, responding to, and influencing the larger political, social, economic, legal, and cultural context.

(4) **SCHOOL COUNSELOR.** Effective August 31, 1997 through August 31, 2005, school counselor candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experiences in which they acquire and apply knowledge about:

(a) Human growth and development (studies that provide an understanding of the nature and needs of individuals at all developmental levels).

(b) Social and cultural foundations (studies that provide an understanding of issues and trends in a multicultural and diverse society).

(c) Helping relationships (studies that provide an understanding of counseling and consultation processes).

(d) Group work (studies that provide an understanding of group development, dynamics, counseling theories, group counseling methods and skills, and other group work approaches).

(e) Career and lifestyle development (studies that provide an understanding of career development and related life factors).

(f) Appraisal (studies that provide an understanding of individual and group approaches to assessment and evaluation), including assessment of the state learning goals and essential academic learning requirements.

(g) Research and program evaluation (studies that provide an understanding of types of research methods, basic statistics, and ethical and legal considerations in research).

(h) Professional orientation (studies that provide an understanding of all aspects of professional functioning including history, roles, organizational structures, ethics, standards, and credentialing).

(i) Foundations of school counseling including:

(i) History, philosophy, and trends in school counseling;

(ii) Role and function of the school counselor in conjunction with the roles of the professional and support personnel in the school;

(iii) Knowledge of the school setting and curriculum including the state learning goals and essential academic learning requirements;

(iv) Ethical standards and guidelines of the American School Counselor Association (ASCA);

(v) State and federal policies, laws, and legislation relevant to school counseling; and

(vi) Implications of sociocultural, demographic, and lifestyle diversity relevant to school counseling.

(j) Studies that provide an understanding of the coordination of counseling program components as they relate to the total school community including:

(i) Referral of children and adolescents for specialized help;

(ii) Coordination efforts with resource persons, specialists, businesses, and agencies outside the school to promote program objectives;

(iii) Methods of integration of guidance curriculum in the total school curriculum;

(iv) Promotion of the use of counseling and guidance activities and programs by the total school community to enhance a positive school climate; and

(v) Methods of planning and presenting guidance-related educational programs for school personnel and parents.

(k) Theory, knowledge and skills for the practice of school counseling including:

(i) Program development, implementation and evaluation. Studies in this area include:

(A) Use of surveys, interviews, and needs assessments;

(B) Design, implementation and evaluation of a comprehensive, developmental school program;

(C) Implementation and evaluation of specific strategies designed to meet program goals and objectives;

(D) Preparation of a counseling schedule reflecting appropriate time commitments and priorities in a developmental school counseling program; and

(E) Use of appropriate technology and information systems.

(ii) Counseling and guidance. Studies in this area include:

(A) Individual and group counseling and guidance approaches appropriate for the developmental stage and needs of children and adolescents;

(B) Group guidance approaches that are systematically designed to assist children and adolescents with developmental tasks;

(C) Approaches to peer helper programs;

(D) Issues which may affect the development and function of children and adolescents (e.g., abuse, eating disorders, attention deficit hyperactivity disorder, exceptionality, substance abuse, violence, suicide, dropout);

(E) Developmental approaches to assist students and parents at points of educational transition (e.g., postsecondary education, career and technical education, and career options);

(F) Crisis intervention and referral; and

(G) System dynamics, including family, school, community, etc.

(iii) Consultation. Studies in this area shall include:

(A) Methods of enhancing teamwork within the school community; and

(B) Methods of involving parents, teachers, administrators, support staff and community agency personnel.

(5) **SCHOOL COUNSELOR.** Effective September 1, 2005, school counselor candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:

(a) **Successful demonstration of standards:**

(i) **Foundations of the school counseling profession:** Certified school counselors design, deliver, and evaluate student-centered, data-driven school counseling programs that advance the mission of the school in light of recognized theory, research, exemplary models, community context, and professional standards.

(ii) **School counseling and student competencies:** Certified school counselors integrate academic, career, and personal/social student competencies, including Washington state learning goals and essential academic learning requirements, into the school counseling program; teach counseling and guidance related material by using effective curriculum, instructional strategies, and instructional management; support teachers and parents in helping students develop knowledge and skill for learning, living, and working; and provide information about best practices to a school community.

(iii) **Human growth and development:** Certified school counselors apply comprehensive, in-depth knowledge of human growth and development to improve student learning, well-being, and to enhance resiliency; provide guidance to parents and teachers about developmentally appropriate practices that support students throughout their schooling experience.

(iv) **Counseling theories and technique:** Certified school counselors demonstrate an understanding of established and emerging counseling theories through effective use of individual and group techniques for working with a diverse population.

(v) **Equity, fairness, and diversity:** Certified school counselors value and show respect for all members of the community; demonstrate fairness, equity, and sensitivity to every student, and advocate for equitable access to instructional programs and activities; use data for designing and implementing plans that remove barriers to learning; and help to close achievement gaps among subgroups of students.

(vi) **School climate:** Certified school counselors establish and foster a safe, inclusive, and nurturing learning environment for students, staff, and families and use strategies designed to prevent or resolve problems that could limit or diminish the capacity of students to learn and achieve at their highest levels.

(vii) **Collaboration with school staff, family, and community:** Certified school counselors work collaboratively with school staff, families and community members to achieve common goals for the education of students, improvement of schools, and advancement of the larger community; know appropriate behavior management strategies and can team with staff and families to improve student achievement; and use their knowledge of community resources to make appropriate referrals based on the needs of students.

(viii) **Information resources and technology:** Certified school counselors select and use informational resources and technology to facilitate delivery of a comprehensive school counseling program that meets student needs; and skillfully use technology to enhance communication.

(ix) **Student assessment and program evaluation:** Certified school counselors understand the basic principles and purposes of assessment; collection and use of data; regu-

larly monitor student progress and are able to communicate the purposes, design, and results of assessments to various audiences; know basic principles of research design, action research, and program evaluation for purposes of program improvement and accountability.

(x) **Leadership and advocacy:** Certified school counselors support practices and policies that promote academic rigor-skills for learning, living, and working; provide leadership that enhances student academic, career, and personal/social development and advocate for guidance as an integral part of a school's educational system; model practices that help students, parents, teachers, and policy makers understand how curriculum, instruction and assessment can help students see the relationship between effort, performance, and success beyond high school. Certified school counselors help promote understanding of graduation requirements, WASL scores, and development of the high school and beyond plan.

(xi) **Professionalism, ethics, and legal mandates:** Certified school counselors develop a professional identity congruent with knowledge of all aspects of professional functions, professional development, and state and national school counselor organizations. They adhere strictly to the profession's codes of ethics, especially those that have been established by the American Counseling Association (ACA), the American School Counselor Association (ASCA), the National Board for Certified Counselors (NBCC), and other relevant codes of ethics. They are familiar with state and federal policies, laws, and legislation relevant to school counseling.

(xii) **Reflective practice:** Certified school counselors integrate knowledge, skills, and life experiences to respond effectively to new or unexpected critical events and situations; serve as change agents by using their understanding of schools as social, cultural and political systems within a larger organizational context; monitor practice with continuous, in-depth reflection; and make adjustments as needed.

(b) **Performance assessment.** An approved preparation program for school counselors shall require that each candidate engage in an assessment process using the standards-based benchmarks approved by the professional educator standards board and published by the office of the superintendent of public instruction. The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan.

(6) **SCHOOL PSYCHOLOGIST.** Effective August 31, 1997, through August 31, 2005, school psychologist candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experiences in which they acquire and apply knowledge about:

(a) Knowledge of the field. The candidate has knowledge and skill in relevant fields of study, including:

- (i) Learning theory.
- (ii) Personality theory and development.
- (iii) Individual and group testing and assessment.
- (iv) Individual and group counseling and interviewing theory and techniques.

(v) Basic statistics.

(vi) Child development.

(vii) Exceptional children.

(viii) Social and cultural factors.

(ix) Deviant personality.

(x) Curriculum, including the state learning goals and essential academic learning requirements.

(xi) Research design.

(xii) Physiological and biological factors.

(b) Assessment and diagnosis. The candidate has knowledge and skill necessary to select, administer, score, and interpret instruments and techniques in the following areas:

(i) Intellectual and cognitive assessment.

(ii) Individual and group academic skills: Standardized norm-referenced and criteria-referenced measurements and curriculum-based measurements.

(iii) Personality assessment.

(iv) Assessment of perceptual skills.

(v) Assessment of adaptive behavior; assessment of language skills.

(c) Behavioral observation and analysis. The candidate has knowledge and skill in behavior observation, including:

(i) Data taking.

(ii) Frequency measures.

(ii) Qualitative and quantitative analysis of classroom behavior.

(iv) Developmental and personality analysis, including perceptual, cognitive, social, and affective and language development in children.

(d) Counseling and interviewing. The candidate has the knowledge and skill necessary to:

(i) Provide individual and group counseling to students and parents.

(ii) Conduct interviews essential to information collecting from parents, teachers, and other professionals.

(e) Program development. The candidate has the knowledge and skill to make educational prescriptions, including specification of remedial environmental changes, both curricular and behavioral, for a particular student.

(f) Consultation. The candidate has the knowledge and skill to:

(i) Function on multidisciplinary teams in evaluating and placing students.

(ii) Confer with and make recommendations to parents, specialists, teachers, referral personnel, and others relative to student's characteristics and needs in the educational and home environments.

(g) Program evaluation and recordkeeping. The candidate has the knowledge and skill necessary to develop and implement program evaluation and maintain required records.

(h) Professionalism. The candidate has knowledge of professional standards regarding ethical and legal practices relevant to the practice of school psychology. The candidate demonstrates knowledge and skill in written and oral reporting of assessment and remedial recommendations which will meet ethical and legal standards.

(i) Research. The candidate has knowledge and skill to:

(i) Evaluate and perform research.

(ii) Apply school-oriented research.

(iii) Construct criterion-referenced instruments with reference to such educational decisions as:

- (A) Retention in grade.
- (B) Acceleration and early entrance.
- (C) Early entrance.

(7) **School psychologist.** Effective September 1, 2005, school psychologist candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:

(a) **Successful demonstration of standards:**

(i) **Data-based decision making and accountability:** Certified school psychologists have knowledge of varied models and methods of assessment that yield information useful in identifying strengths and needs, in understanding problems, and in measuring progress and accomplishments; use such models and methods as part of a systematic process to collect data and other information, translate assessment results into empirically based decisions about service delivery, evaluate the outcomes of services; and data-based decision making permeates every aspect of professional practice.

(ii) **Consultation and collaboration:** Certified school psychologists have knowledge of behavioral, mental health, collaborative, and/or other consultation models and methods and of their application to particular situations; collaborate effectively with others in planning and decision-making processes at the individual, group, and system levels.

(iii) **Effective instruction and development of cognitive/academic skills:** Certified school psychologists have knowledge of human learning processes, techniques to assess these processes, and direct and indirect services applicable to the development of cognitive and academic skills; collaborate with others, develop appropriate cognitive and academic goals for students with different abilities, disabilities, strengths, and needs; implement interventions to achieve those goals; and evaluate the effectiveness of interventions, including, but not limited to, instructional interventions and consultation.

(iv) **Socialization and development of life skills:** Certified school psychologists have knowledge of human developmental processes, techniques to assess these processes, and direct and indirect services applicable to the development of behavioral, affective, adaptive, and social skills; collaborate with others, develop appropriate behavioral, affective, adaptive, and social goals for students of varying abilities, disabilities, strengths, and needs; implement interventions to achieve those goals; and evaluate the effectiveness of interventions, including, but not limited to, consultation, behavioral assessment/intervention, and counseling.

(v) **Student diversity in development and learning:** Certified school psychologists have knowledge of individual differences, abilities, and disabilities and of the potential influence of biological, social, cultural, ethnic, experiential, socioeconomic, gender-related, and linguistic factors in development and learning; demonstrate the sensitivity and skills needed to work with individuals of diverse characteristics and to implement strategies selected and/or adapted based on individual characteristics, strengths, and needs.

(vi) **School and systems organization, policy development, and climate:** Certified school psychologists have knowledge of general education, special education, and other educational and related services; understanding of schools and other settings as systems; work with individuals and groups to facilitate policies and practices that create and maintain safe, supportive, and effective learning environments for children and others.

(vii) **Prevention, crisis intervention, and mental health:** Certified school psychologists have knowledge of human development and psychopathology and of associated biological, cultural, and social influences on human behavior; provide or contribute to prevention and intervention programs that promote the mental health and physical well-being of students.

(viii) **Home/school/community collaboration:** Certified school psychologists have knowledge of family systems, including family strengths and influences on student development, learning, and behavior, and of methods to involve families in education and service delivery; work effectively with families, educators, and others in the community to promote and provide comprehensive services to children and families.

(ix) **Research and program evaluation:** Certified school psychologists have knowledge of research, statistics, and evaluation methods; evaluate research, translate research into practice, and understand research design and statistics in sufficient depth to plan and conduct investigations and program evaluations for improvement of services.

(x) **School psychology practice and development:** Certified school psychologists have knowledge of the history and foundations of their profession; of various service models and methods; of public policy development applicable to services to children and families; and of ethical, professional, and legal standards, including the Washington Administrative Code; practice in ways that are consistent with applicable standards, are involved in their profession, and have the knowledge and skills needed to acquire career-long professional development.

(xi) **Information technology:** Certified school psychologists have knowledge of information sources and technology relevant to their work; access, evaluate, and utilize information sources and technology in ways that safeguard or enhance the quality of services.

(b) **Performance assessment.** An approved preparation program for school psychologists shall require that each candidate engage in an assessment process using the standards-based benchmarks approved by the professional educator standards board and published by the office of the superintendent of public instruction. The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan.

(8) **SCHOOL SOCIAL WORKER.** Effective August 31, 1997, through August 31, 2005, school social worker candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experiences in which they acquire and apply knowledge about:

(a) Knowledge for social work practice. The candidate has knowledge and skills in relevant fields of study including:

(i) Values.

(A) Knowledge of profession including values, skills, and ethics; and

(B) National Association of Social Workers (NASW) Code of Ethics and school social work guidelines for practice.

(ii) Human behavior and the social environment.

(A) Community theory and community change (e.g., community organization and development, social planning, networking, and case management);

(B) Systems and organizational theory (e.g., school as a bureaucracy);

(C) Social disorganization (e.g., poverty, family and community violence, unemployment, addictions, multiple losses), and context of family in a changing society;

(D) Family dynamics and theories of family therapy;

(E) Human/child growth and development;

(F) Diverse populations of: Race, culture, social class, life style, age, gender and the disabled;

(G) Theories of personality; and

(H) Use of computer technology for social work practice.

(b) Service delivery and program development. The candidate will have knowledge and skills in the following activities:

(i) Direct practice.

(A) Referring, developing, and coordinating resources and services in the local education agency and community;

(B) Knowledge and skills related to families;

(C) Case management;

(D) Working with vulnerable and "hard to reach" individuals and families, including those from diverse populations;

(E) Crisis intervention, conflict resolution, stress management and decision-making skills;

(F) Individual and group counseling to improve students' self-knowledge and interactional skills for personal empowerment;

(G) Interviewing and counseling students in relation to social-personal problems adjudged to be impairing student's ability to learn;

(H) Family interventions including parent education; referral to resources; family counseling;

(I) Teaching children communication and interpersonal relationship skills through individual/group/classroom interventions;

(J) Collaborating and consulting with parents and community to assure readiness to learn for all students;

(K) Multidimensional assessment of student's social-emotional adjustment, adaptive behaviors, individual strengths, and environmental assets;

(L) Intervention case planning processes; and

(M) Career and academic guidance to students in their school to work transitions.

(ii) Indirect practice.

(A) Liaison and facilitator between and among home, school and community;

(B) Collaborate and consult with other educational staff to assure student progress;

(C) Use computer technology for practice and efficiency;

(D) Develop strategies for increased parental and community involvement with the school;

(E) Develop programs of remediation for students and their families;

(F) Design, coordinate and facilitate programs such as suicide prevention, truancy and drop-out prevention, and prevention of teenage pregnancy;

(G) Provide staff development programs;

(H) Work collaboratively with educational staff to develop programs to address school-community identified needs; and

(I) Function as change agents.

(c) Research and evaluation. The candidate will have necessary skills and knowledge to:

(i) Collect and interpret data in order to evaluate student, school, and community needs;

(ii) Evaluate own practice;

(iii) Become consumer of research findings;

(iv) Understand use of program evaluation methods; and

(v) Utilize computer technology for research and evaluation.

(d) Context for educational system. The candidate will have necessary knowledge and skills to apply the following:

(i) State learning goals and essential academic learning requirements;

(ii) Theories of learning;

(iii) School law and professional ethics;

(iv) Computer technology in the workplace; and

(v) Understanding of policies, laws, and procedures.

(9) **School social workers.** Effective September 1, 2005, school social worker candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:

(a) **Successful demonstration of standards:**

(i) **Core concepts and professional practice foundations:** The certified school social worker understands and applies the core concepts, tools of inquiry, theories, and skills and values of the general field of social work to the educational system; relates these core concepts to the Washington state learning goals, essential academic learning requirement (EALRS), Revised Code of Washington (RCW), Washington Administrative Code (WAC) and the Individuals With Disabilities Education Act (IDEA); and utilizes these constructs to facilitate the educational, social and emotional development of students by working towards reducing the impact of nonacademic barriers to academic success.

(ii) **Planning, ecological assessment and evaluation:** The certified school social worker understands and knows how to apply various formal and informal assessment tools to identify student, family, school and community needs using a strengths and systems perspective; engage students (individually or in groups), families, school staff and/or the larger community in designing interventions and developing programs, which bolsters the strengths and meets the needs iden-

tified; uses best practices in evaluation criteria to monitor the success of the intervention; revisions to the intervention plan are based on systematic data collection; and to utilize the principles of research design and program evaluation to improve student learning outcomes.

(iii) **Prevention/intervention services:** The certified school social worker has knowledge of and ability to provide prevention education and skill building in such areas as violence, mediation, bullying, substance misuse and abuse, conflict resolution/management, and stress management; provide direct intervention services to students through crisis management, case management, counseling, skill building, behavior management, teaching of psycho-educational curriculums, personal development skills and classroom presentations; and provide both prevention and intervention services to students individually, in small group or classroom settings as well as with students' families.

(iv) **Home, school and community consultation and collaboration:** The certified school social worker understands and has the ability to develop consultative and collaborative relationships both individually and on a systemic level with students, colleagues, families and the community to support students' learning and social/emotional development; assist students and their families in networking with various social support systems in order to benefit student learning; and use their extensive knowledge of community resources to appropriately refer students and families to various community services.

(v) **Advocacy and facilitation:** The certified school social worker understands and has the ability to advocate and facilitate changes that empower students, families, educators and others to gain access to and effectively use school and community resources.

(vi) **Diversity and school climate:** The certified school social worker understands how a student's learning is influenced and impacted by culture, family dynamics, community values, individual learning styles, talents, gender, sexual orientation, language, prior learning, economics and disabilities; utilize this knowledge to design, implement and evaluate programs that enhance student learning and social interaction in school, family and community settings; and how to create and support a safe, nurturing and secure learning environment by designing and using strategies to prevent or resolve ecological barriers that could limit or diminish the capacity of students to learn and achieve at their highest levels.

(vii) **Professional development:** The certified school social worker understands and values the need for professional development and is able to use supervision, consultation, collaboration, continuing education and professional research to evaluate and enhance their practice.

(viii) **Information resources and technology:** The certified school social worker uses informational resources and technology to communicate, monitor student progress and evaluate programs; and access, appraise and utilize information sources and technology in ways that safeguard and enhance their quality of services.

(ix) **Professional code of conduct and ethics:** The certified school social worker understands, maintains and applies the professional codes of conduct and ethical practice guidelines embodied in the National Association of Social

Work (NASW) code of ethics and School Social Work standards developed for the field of education; and are familiar with district, state and federal laws and policies relevant to the educational setting.

(b) **Performance assessment.** An approved preparation program for school social workers shall require that each candidate engage in an assessment process using the standards-based benchmarks approved by the professional educator standards board and published by the office of the superintendent of public instruction. The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan.

WSR 11-12-031

PROPOSED RULES

PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed May 25, 2011, 10:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-09-035.

Title of Rule and Other Identifying Information: Amends WAC 181-79A-150, 181-79A-211 and 181-79A-257, clarifies general requirements for educator licenses given new legislation (2009) permitting nonhigher education programs to offer preparation.

Hearing Location(s): New Market Skills Center, 7299 Newmarket Street S.W., Tumwater, WA 98501, on July 7, 2011, at 8:30 a.m.

Date of Intended Adoption: July 7, 2011.

Submit Written Comments to: David Brenna, Legislative and Policy Coordinator, P.O. Box 47236, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by June 30, 2011.

Assistance for Persons with Disabilities: Contact David Brenna by June 30, 2011, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes requirements in line with legislative changes. Clarifies out-of-state program requirements as well.

Reasons Supporting Proposal: Changes in requirements supported in legislation.

Statutory Authority for Adoption: RCW 28A.410.210.

Statute Being Implemented: RCW 28A.410.270.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore

does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

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

May 25, 2011
David Brenna
Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 08-03-100, filed 1/20/08, effective 2/20/08)

WAC 181-79A-150 General requirements—Teachers, administrators, educational staff associates and first peoples' language, culture, and oral tribal traditions teachers. The following requirements are to be met by candidates for certification as teachers including career and technical education teachers, administrators, educational staff associates, or first peoples' language, culture, and oral tribal traditions teachers:

(1) Age. No person who is less than eighteen years of age shall receive a certificate to serve in the public or nonpublic schools of Washington state.

(2) Character. Applicants for certificates in Washington state who are not holders of a valid Washington state teacher's, administrator's, educational staff associate's, career and technical education, or first peoples' language, culture, and oral tribal traditions teacher's certificate must give evidence of good moral character and personal fitness as specified in WAC 181-79A-155 and must complete a record check through the Washington state patrol criminal identification system and through the Federal Bureau of Investigation at the applicant's expense as required by RCW 28A.410.010; such record check shall include a fingerprint check using a Washington state patrol approved fingerprint card: Provided, That the superintendent of public instruction may waive the record check for an applicant who has had a record check within the two years prior to application.

(3) Degrees and course work. A candidate for certification shall hold appropriate degrees, licenses, and additional course work as prescribed in chapters 181-79A and 181-77 WAC or have qualified under WAC 181-79A-257 or 181-78A-700.

(4) Approved preparation program. Applicants for certification as teachers, administrators, school counselors, school psychologists and school social workers, except as otherwise provided in WAC 181-79A-257, and 181-79A-231, and in chapter 181-77 WAC, in order to be certified within the state of Washington shall have completed a state approved (~~college/university~~) preparation program in the professional field for which certification is to be issued; such program shall have included a defined course of study and a supervised internship. Applicants for certification as first peoples' language, culture, and oral tribal traditions teachers shall have completed a sovereign tribal government's first peoples' language, culture, and oral tribal traditions teaching certification program.

~~(5) ((Certificates:~~

~~(a) Candidates for principal's certificates must hold or have held:~~

~~(i) A valid teacher's certificate, excluding certificates issued under WAC 181-79A-231, or comparable out-of-state certificates; or~~

~~(ii) A valid educational staff associate certificate and have demonstrated successful school-based experience in an instructional role with students. Persons whose teacher or educational staff associate certificates were revoked, suspended, or surrendered are not eligible for principal's certificates.~~

~~(b) Candidates for superintendent's certificates must hold a valid teacher, educational staff associate, program administrator, or principal certificate; excluding certificates issued under WAC 181-79A-231, or comparable out-of-state certificates.~~

~~(6)) Assessments. See RCW 28A.410.220.~~

AMENDATORY SECTION (Amending WSR 09-12-056, filed 5/28/09, effective 6/28/09)

WAC 181-79A-211 Academic and experience requirements for certification—Administrators. Candidates for the respective administrative certificate shall complete the following requirements in addition to those set forth in WAC 181-79A-150 and 181-79A-213.

(1) Superintendent.

(a) Initial.

(i) The candidate shall hold an approved master's degree and have completed subsequent to the baccalaureate degree at least forty-five quarter credit hours (thirty semester credit hours) of graduate level course work in education.

~~(ii) The candidate ((must meet requirements for a superintendent's certificate pursuant to WAC 181-79A-150(4))) shall hold a valid teacher, educational staff associate, program administrator or principal certificate; excluding certificates issued under WAC 181-79A-231, or comparable out-of-state certificates.~~

(b) Continuing.

(i) The candidate shall hold an approved master's degree and have completed subsequent to the baccalaureate degree at least sixty quarter credit hours (forty semester credit hours) of graduate level course work in education or shall hold a doctorate in education.

~~(ii) The candidate ((must meet requirements for a superintendent's certificate pursuant to WAC 181-79A-150(4))) shall hold a valid teacher, educational staff associate, program administrator or principal certificate; excluding certificates issued under WAC 181-79A-231, or comparable out-of-state certificates.~~

(ii) Candidates applying for continuing superintendent's certificate shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(2) Principal.

(a) Initial.

(i) The candidate shall hold an approved master's degree and have completed an approved program for the preparation of principals.

(ii) The candidate shall have documented successful school-based experience in an instructional role with students.

(b) Residency.

(i) The candidate shall hold an approved master's degree ~~((and have completed an approved program for the preparation of principals)).~~

(ii) The candidate shall have documented successful school-based experience in an instructional role with students.

(iii) The candidate shall have or have held:

(A) A valid teacher's certificate, excluding certificates issued under WAC 181-79A-231; or

(B) A valid education staff associate certificate, excluding certificates issued under WAC 181-79A-231.

(iv) Persons whose teacher of educational staff associate certificates were revoked, suspended or surrendered are not eligible for principals certificates.

(c) Continuing.

(i) The candidate who holds a valid initial principal's certificate issued prior to August 31, 1998, shall hold an approved master's degree and completed subsequent to the baccalaureate degree at least forty-five hours (thirty semester hours) of graduate level course work in education or shall hold a doctorate in education.

(ii) The candidate who applies on or after August 31, 1998, shall hold a valid initial principal's certificate, an approved master's degree and shall have completed at least fifteen quarter (ten semester) credit hours of graduate course work offered by a college or university with a state approved principal program or one hundred fifty clock hours of study, which meet the state continuing education clock hour criteria pursuant to chapter 181-85 WAC, or a combination of credits and clock hours equivalent to the above. Such study shall:

(A) Be based on the principal performance domains included in WAC 181-78A-270 (2)(a) or (b);

(B) Be taken subsequent to the issuance of the initial principal's certificate; and

(C) Be determined in consultation with and approved by the candidate's employer or the administrator of a state approved principal preparation program.

(iii) Provided, That a candidate who held a valid initial principal's certificate on August 31, 1998, may meet the academic requirement for the continuing certificate described in WAC 181-79A-211 (2)(c)(i), if the candidate meets requirements for and applies for the continuing certificate by the expiration date on that initial certificate.

(iv) The candidate must meet requirements for a principal's certificate pursuant to WAC 181-79A-150(4).

(v) Candidates applying for continuing principal's certificate shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer. Candidates applying for the continuing principal's certificate on or

after August 31, 1998, shall provide documentation of three contracted school years of full-time employment as a principal or assistant principal.

(vi) Provided, That a candidate who held a valid initial principal's certificate on August 31, 1998, may meet the one hundred-eighty day experience requirement described in WAC 181-79A-211 (2)(c)(v), if that candidate meets requirements and applies for the continuing certificate by the expiration date on that initial certificate.

(d) Professional certificate.

(i) The candidate shall have completed an approved professional certificate program.

(ii) The candidate shall have documentation of three contracted school years of employment as a principal or assistant principal.

(3) Program administrator.

(a) Initial.

~~((+))~~ The candidate shall hold an approved master's degree and have completed subsequent to the baccalaureate degree at least twenty-four quarter credit hours (sixteen semester credit hours) of graduate level course work in education.

(b) Residency certificate.

The candidate shall hold an approved master's degree and have completed an approved program for the preparation of program administrators.

(c) Continuing.

(i) The candidate shall hold a valid initial program administrator's certificate, an approved master's degree and have completed subsequent to the baccalaureate degree at least thirty quarter credit hours (twenty semester credit hours) of graduate level course work in education or shall hold a doctorate in education.

(ii) Candidates applying for continuing program administrator's certificate shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(d) Professional certificate.

The candidate shall have completed an approved professional certificate program.

AMENDATORY SECTION (Amending WSR 09-16-018, filed 7/24/09, effective 8/24/09)

WAC 181-79A-257 Out-of-state candidates. Candidates for certification from other states who meet the general certificate requirements described in WAC 181-79A-150 (1) and (2) shall be eligible for Washington certificates as follows:

(1) ~~((Initial and))~~ Residency certificates. The ~~((initial certificate-))~~ residency certificate ~~((for teachers after August 31, 2000,))~~ shall be issued by the superintendent of public instruction to any candidate who meets requirements for the residency certificate including testing requirements as described in RCW 28A.410.220, and who ~~((passes the WEST-B and))~~ meets one of the following:

(a) ~~((Qualifies under provisions of the interstate compact.~~

~~((b))~~) Holds the appropriate degree and, if applicable, credit hours and/or licensing as set forth in this chapter ~~((and))~~ has completed a state approved preparation program ~~((at a regionally accredited college or university))~~ in the professional field for which the certificate is to be issued and such additional professional fields as required by WAC 181-79A-150(4). Such programs shall include a defined course of study and a supervised internship.

~~((e))~~) (b) Provided, That if a candidate for teacher, administrator or educational staff associate certification does not meet the qualifications described in (a) ~~((or (b)))~~ of this subsection, ~~((an initial))~~ a residency certificate shall be issued to a candidate who:

(i) Holds an appropriate degree from a regionally accredited college or university ~~((and also))~~.

(ii) Holds or has held a certificate in the role, comparable to ~~((an initial))~~ a residency certificate, issued by another state and has practiced at the P-12 level in ~~((that respective))~~ the role outside the state of Washington for at least three years ~~((= Provided further, That the teacher preparation program through which the teacher earned their teaching certificate included a supervised classroom-based internship-~~

~~((d))~~) within the last seven years.

(c) Holds an appropriate degree from a regionally accredited college or university and has practiced three years as an educational staff associate in that role in a state where such certificate was not required.

~~((e))~~) (d) Holds a valid Nationally Certified School Psychologist (NCSP) certificate issued by the National School Psychology Certification Board (NSPCB) after December 31, 1991, and applies for an initial/residency educational staff associated school psychologist certificate.

(2) ~~((Continuing certificate. The continuing certificate shall be issued to administrators and educational staff associates on verification that the candidate has met all requirements for initial and continuing certification in the state of Washington-~~

~~((3))~~) Professional certificate. After August 31, 2000, the professional certificate shall be issued to out-of-state candidates if the candidate meets requirements for the residency certificate including testing requirements as described in RCW 28A.410.220, meets the child abuse course work requirement as described in WAC 181-79A-206 (3)(b), and if one of the following conditions is met:

(a) The candidate has completed an advanced level certification procedure approved by the professional educator standards board as equivalent to the approved program procedure required in Washington; or

(b) The candidate holds a valid teaching certificate issued by the National Board for Professional Teaching Standards; or

(c) The candidate holds a valid school counselor certificate issued by the National Board for Professional Teaching Standards; or

(d) A Washington state college or university with an approved professional certificate program verifies that the candidate has met all the requirements of that institution's approved program. The college/university shall evaluate the

candidate's background to determine whether or not course work or certification activities are equivalent to that college/university's approved program.

WSR 11-12-033
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed May 25, 2011, 11:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-15-040.

Title of Rule and Other Identifying Information: WAC 246-290-025 Adoption by reference, 246-290-300 Monitoring requirements, 246-290-320 Follow-up actions, 246-290-72010 Report contents—Required additional health information, to incorporate the federal Lead and copper rule—Short-term revisions.

Hearing Location(s): Department of Health, Point Plaza East, 310 Israel Road S.E., Tumwater, WA 98504, on July 5, 2011, at 10:00 a.m.

Date of Intended Adoption: July 12, 2011.

Submit Written Comments to: Theresa Phillips, Department of Health, P.O. Box 47822, Olympia, WA 98504-7822, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2253, by July 5, 2011.

Assistance for Persons with Disabilities: Contact Theresa Phillips by June 22, 2011, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule is to provide more effective public health protection by reducing exposure to lead in drinking water. The rule revisions clarify monitoring requirements, improve consumer awareness, as well as provide editorial changes to improve overall clarity and consistency with federal requirements.

Reasons Supporting Proposal: RCW 70.119A.080 establishes the department of health (department) as the state primacy agency for implementation of the federal Safe Drinking Water Act. The primacy agreement between the department and the Environmental Protection Agency outlines a number of activities that the department must do in order to maintain primacy for Group A public water systems. One of the activities involves adoption of regulations consistent with federal requirements.

Statutory Authority for Adoption: RCW 43.20.050(2).

Statute Being Implemented: RCW 70.119A.080.

Rule is necessary because of federal law, 40 C.F.R., Parts 141 and 142.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Theresa Phillips, 243 Israel Road S.E., Tumwater, WA 98501, (360) 236-3147; Implementation and Enforcement: Derrick Dennis, 243 Israel Road S.E., Tumwater, WA 98501, (360) 236-3122.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(c), a small business economic impact state-

ment is not required for proposed rules that adopt or incorporate by reference - without material change - federal statutes or regulations, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference without material change federal statutes or regulations, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

May 25, 2011
 Gregg L. Grunenfelder
 Deputy Secretary
 for Mary C. Selecky
 Secretary

AMENDATORY SECTION (Amending WSR 10-20-068, filed 9/29/10, effective 11/1/10)

WAC 246-290-025 Adoption by reference. The following sections and subsections of Title 40 Code of Federal Regulations (CFR) Part 141 National Primary Drinking Water Regulations revised as of July 1, 2009, and including all amendments and modifications thereto effective as of the date of adoption of this chapter are adopted by reference:

141.2 Definitions. Only those definitions listed as follows:

- Action level;
- Corrosion inhibitor;
- Effective corrosion inhibitor residual;
- Enhanced coagulation;
- Enhanced softening;
- Haloacetic acids (five) (HAA5);
- First draw sample;
- Large water system;
- Lead service line;
- Maximum residual disinfectant level (MRDL);
- Maximum residual disinfectant level goal (MRDLG);
- Medium-size water system;

- Service line sample;
- Single family structure;
- Small water system;
- Specific ultraviolet absorption (SUVA); and
- Total Organic Carbon (TOC).

- 141.12 Maximum contaminant levels for organic chemicals.
- 141.13 Maximum contaminant levels for turbidity.
- 141.21 Coliform monitoring.
- 141.22 Turbidity sampling and analytical requirements.

- 141.23(a) - 141.23(j), Inorganic chemical sampling, excluding (i)(2)
- 141.23(m) - 141.23(o)
- 141.24(a) - 141.24(d), Organic chemicals other than total trihalomethanes.
- 141.24 (f)(1) - 141.24 (f)(15),
- 141.24 (f)(18), 141.24 (f)(19),
- 141.24 (f)(21), 141.24 (f)(22)
- 141.24 (g)(1) - 141.24 (g)(9),
- 141.24 (g)(12) - 141.24 (g)(14),
- 141.24 (h)(1) - 141.24 (h)(11),
- 141.24 (h)(14) - 141.24 (h)(17)
- 141.24 (h)(20)
- 141.25(a), 141.25 (c) - (d), Analytical methods for radioactivity.
- 141.26 Monitoring frequency and compliance for radioactivity in community water systems.
- 141.31(d) Reporting of public notices and compliance certifications.
- 141.33(e) Record maintenance of public notices and certifications.
- 141.40 Monitoring requirements for unregulated contaminants.
- 141.61 Maximum contaminant levels for organic contaminants.
- 141.62, Maximum contaminant levels for inorganic excluding (b) chemical and physical contaminants.
- 141.64 Maximum contaminant levels and Best Available Technologies (BATs) for disinfection byproducts.
- 141.65(c) Best Available Technologies (BATs) for Maximum Residual Disinfectant Levels.
- 141.66 Maximum contaminant levels for radionuclides.
- Control of Lead and Copper
- 141.80, General requirements, excluding (c)(3)(v)
- 141.81 Applicability of corrosion control treatment steps to small, medium-size and large water systems.
- 141.82(a) - 141.82(h) Description of corrosion control treatment requirements.
- 141.83 Source water treatment requirements.
- 141.84 Lead service line replacement requirements.
- 141.85 Public education and supplemental monitoring requirements.
- 141.86 (a) - (f) Monitoring requirements for lead and copper in tap water.

- 141.87 Monitoring requirements for water quality parameters.
- 141.88 Monitoring requirements for lead and copper in source water.
- 141.89 Analytical methods for lead and copper testing.
- 141.90, Reporting requirements.
excluding
(a)(4)
- 141.91 Recordkeeping requirements.
- Disinfectants and Disinfection Byproducts (D/DBP)
- 141.130 General requirements.
- 141.131 Analytical requirements.
- 141.132 Monitoring requirements.
- 141.133 Compliance.
- 141.134 Reporting and recordkeeping.
- 141.135 Treatment technique for control of disinfection byproduct precursors.
- Subpart O - Consumer Confidence Reports
- 141.153 (h)(6) Contents of the reports.
- Enhanced Filtration - Reporting and Recordkeeping
- 141.175(b) Individual filter reporting and follow-up action requirements for systems treating surface water with conventional, direct, or in-line filtration and serving at least 10,000 people.
- Subpart Q - Public Notification
- 141.201, General public notification requirements.
excluding
(3)(ii) of
Table 1
- 141.202, Tier 1 Public Notice - Form, manner, and frequency of notice.
excluding
(3) of Table 1
- 141.203 Tier 2 Public Notice - Form, manner, and frequency of notice.
- 141.204 Tier 3 Public Notice - Form, manner, and frequency of notice.
- 141.205 Content of the public notice.
- 141.206 Notice to new billing units or new customers.
- 141.207 Special notice of the availability of unregulated contaminant monitoring results.
- 141.208 Special notice for exceedances of the SMCL for fluoride.
- 141.211 Special notice for *Cryptosporidium* monitoring failure.
- Appendix A - NPDWR violations and situations requiring PN
- Appendix B - Standard health effects language for PN
- Appendix C - List of acronyms used in PN regulation
- 141.400 General requirements and applicability.
- 141.402(c) Groundwater source microbial monitoring and analytical methods.
- 141.403 Treatment technique requirements for groundwater systems.
(b)(3)(i)
through (iii)
- Subpart T - Enhanced Filtration and Disinfection - Systems Serving Fewer Than 10,000 People
- 141.530 - Disinfection profile and benchmark.
- 141.544
- 141.563 Follow-up actions required.
- 141.570, Reporting requirements.
excluding (c)
- Subpart U and V - Initial Distribution System Evaluations and Stage 2 Disinfection Byproducts Requirements.
- 141.600 - Initial distribution system evaluations.
- 141.605
- 141.620 - Stage 2 Disinfection Byproducts Requirements.
- 141.629
- Subpart W - Enhanced Treatment for *Cryptosporidium*
- 141.700-722 Enhanced Treatment for *Cryptosporidium*
- Part 143 - National Secondary Drinking Water Regulations
- 143.1 Purpose.
- 143.2 Definitions.
- 143.3 Secondary maximum contaminant levels.
- 143.4 Monitoring.
- Copies of the incorporated sections and subsections of Title 40 CFR are available from the Department of Health, P.O. Box 47822, Olympia, Washington 98504-7822, or by calling the department's drinking water hotline at 800-521-0323.
- AMENDATORY SECTION** (Amending WSR 10-20-068, filed 9/29/10, effective 11/1/10)
- WAC 246-290-300 Monitoring requirements.** (1)
General.
- (a) The monitoring requirements specified in this section are minimums. The department may require additional monitoring when:
- (i) Contamination is present or suspected in the water system;
- (ii) A groundwater source is determined to be a potential GWI;
- (iii) The degree of source protection is not satisfactory;
- (iv) Additional monitoring is needed to verify source vulnerability for a requested monitoring waiver;
- (v) Under other circumstances as identified in a department order; or
- (vi) Additional monitoring is needed to evaluate continuing effectiveness of a treatment process where problems with the treatment process may exist.
- (b) Special purpose samples collected by the purveyor shall not count toward fulfillment of the monitoring requirements of this chapter unless the quality of data and method of sampling and analysis are acceptable to the department.

(c) The purveyor shall ensure samples required by this chapter are collected, transported, and submitted for analysis according to EPA-approved methods. The analyses shall be performed by a laboratory accredited by the state. Qualified water utility, accredited laboratory, health department personnel, and other parties approved by the department may conduct measurements for pH, temperature, residual disinfectant concentration, alkalinity, bromide, chlorite, TOC, SUVA, turbidity, calcium, conductivity, orthophosphate, and silica as required by this chapter, provided, these measurements are made according to EPA approved methods.

(d) Compliance samples required by this chapter shall be taken at locations listed in Table 3 of this section.

(e) Purveyors failing to comply with a monitoring requirement shall notify:

(i) The department under WAC 246-290-480; and

(ii) The owner or operator of any consecutive system served and the appropriate water system users under 40 CFR 141.201 and Part 7, Subpart A of this chapter.

(2) Selling and receiving water.

(a) Source monitoring. Purveyors, with the exception of those that "wheel" water to their consumers (i.e., sell water that has passed through another purchasing purveyor's distribution system), shall conduct source monitoring under this chapter for the sources under their control. The level of monitoring shall satisfy the monitoring requirements associated with the total population served by the source.

(b) Distribution system monitoring. The purveyor of a system that receives and distributes water shall perform distribution-related monitoring requirements. Monitoring shall include, but not be limited to, the following:

(i) Collect coliform samples under subsection (3) of this section;

(ii) Collect disinfection byproduct samples as required by subsection (6) of this section;

(iii) Perform the distribution system residual disinfectant concentration monitoring under subsection (6) of this section, and as required under WAC 246-290-451 or 246-290-694. Systems with fewer than one hundred connections shall measure residual disinfectant concentration at the same time and location that a routine or repeat coliform sample is collected, unless the department determines that more frequent monitoring is necessary to protect public health;

(iv) Perform lead and copper monitoring required under 40 CFR 141.86, 141.87, and 141.88;

(v) Perform the distribution system monitoring under 40 CFR 141.23(b) for asbestos if applicable;

(vi) Other monitoring as required by the department.

(c) Reduced monitoring for regional programs. The receiving purveyor may receive reductions in the coliform, lead and copper, disinfection byproduct (including THMs and HAA5) and distribution system disinfectant residual concentration monitoring requirements, provided the receiving system:

(i) Purchases water from a purveyor that has a department-approved regional monitoring program;

(ii) Has a written agreement with the supplying system or regional water supplier that is acceptable to the department, and which identifies the responsibilities of both the supplying and receiving system(s) with regards to monitor-

ing, reporting and maintenance of the distribution system; and

(iii) Has at least one compliance monitoring location for disinfection byproducts, if applicable.

(d) Periodic review of regional programs. The department may periodically review the sampling records of public water systems participating in a department-approved monitoring program to determine if continued reduced monitoring is appropriate. If the department determines a change in the monitoring requirements of the receiving system is appropriate:

(i) The department shall notify the purveyor of the change in monitoring requirements; and

(ii) The purveyor shall conduct monitoring as directed by the department.

(3) Bacteriological.

(a) The purveyor shall be responsible for collection and submittal of coliform samples from representative points throughout the distribution system. Samples shall be collected after the first service and at regular time intervals each month the system provides water to consumers. Samples shall be collected that represent normal system operating conditions.

(i) Systems providing disinfection treatment shall measure the residual disinfectant concentration within the distribution system at the same time and location of routine and repeat samples.

(ii) Systems providing disinfection treatment shall assure that disinfectant residual concentrations are measured and recorded on all coliform sample report forms submitted for compliance purposes.

(b) Coliform monitoring plan.

(i) The purveyor shall prepare a written coliform monitoring plan and base routine monitoring upon the plan. The plan shall include coliform sample collection sites and a sampling schedule.

(ii) The purveyor shall:

(A) Keep the coliform monitoring plan on file with the system and make it available to the department for inspection upon request;

(B) Revise or expand the plan at any time the plan no longer ensures representative monitoring of the system, or as directed by the department; and

(C) Submit the plan to the department for review and approval when requested and as part of the water system plan required under WAC 246-290-100.

(c) Monitoring frequency. The number of required routine coliform samples is based on total population served.

(i) Purveyors of **community** systems shall collect and submit for analysis no less than the number of routine samples listed in Table 1 during each calendar month of operation;

(ii) Unless directed otherwise by the department, purveyors of **noncommunity** systems shall collect and submit for analysis no less than the number of samples required in Table 1, and no less than required under 40 CFR 141.21. Each month's population shall be based on the average daily population and shall include all residents and nonresidents served during that month. During months when the average daily

population served is less than twenty-five, routine sample collection is not required when:

- (A) Using only protected groundwater sources;
- (B) No coliform were detected in samples during the previous month; and
- (C) One routine sample has been collected and submitted for analysis during one of the previous two months.

(iii) Purveyors of systems serving both a resident and a nonresident population shall base their minimum sampling requirement on the total of monthly populations served, both resident and nonresident as determined by the department, but no less than the minimum required in Table 1; and

(iv) Purveyors of systems with a nonresident population lasting two weeks or less during a month shall sample as directed by the department. Sampling shall be initiated at least two weeks prior to the time service is provided to consumers.

(v) Purveyors of TNC systems shall not be required to collect routine samples in months where the population served is zero or the system has notified the department of an unscheduled closure.

(d) Invalid samples. When a routine or repeat coliform sample is determined invalid under WAC 246-290-320 (2)(d), the purveyor shall:

- (i) Not include the sample in the determination of monitoring compliance; and
- (ii) Take follow-up action as defined in WAC 246-290-320 (2)(d).

(e) Assessment source water monitoring. If directed by the department, a groundwater system must conduct assessment source water monitoring which may include, but is not limited to, collection of at least one representative groundwater source sample each month the source provides groundwater to the public, for a minimum of twelve months.

(i) Sampling must be conducted as follows:
 (A) Source samples must be collected at a location prior to any treatment. If the water system's configuration does not allow sampling at the source itself, the department may approve an alternative source sampling location representative of the source water quality.

(B) Source samples must be at least 100 mL in size and must be analyzed for *E. coli* using one of the analytical methods under 40 CFR 141.402(c).

(ii) A groundwater system may use a triggered source water sample collected under WAC 246-290-320 (2)(g) to meet the requirements for assessment source water monitoring.

(iii) Groundwater systems with an *E. coli* positive assessment source water sample that is not invalidated under WAC 246-290-320 (2)(g)(vii), and consecutive systems receiving water from this source must:

(A) Provide Tier 1 public notice under Part 7, Subpart A of this chapter and special notification under WAC 246-290-71005 (4) and (5); and

(B) Take corrective action as required under WAC 246-290-453(1).

(iv) The purveyor of a groundwater system that fails to conduct assessment source water monitoring as directed by the department shall provide Tier 2 public notice under Part 7, Subpart A of this chapter.

(f) The purveyor using a surface water or GWI source shall collect representative source water samples for bacteriological density analysis under WAC 246-290-664 and 246-290-694 as applicable.

TABLE 1
 MINIMUM MONTHLY ROUTINE COLIFORM
 SAMPLING REQUIREMENTS

Population Served ¹	Minimum Number of Routine Samples/Calendar Month	
	When NO samples with a coliform presence were collected during the previous month	When ANY samples with a coliform presence were collected during the previous month
During Month		
1 - 1,000	1*	5
1,001 - 2,500	2*	5
2,501 - 3,300	3*	5
3,301 - 4,100	4*	5
4,101 - 4,900	5	5
4,901 - 5,800	6	6
5,801 - 6,700	7	7
6,701 - 7,600	8	8
7,601 - 8,500	9	9
8,501 - 12,900	10	10
12,901 - 17,200	15	15
17,201 - 21,500	20	20
21,501 - 25,000	25	25
25,001 - 33,000	30	30
33,001 - 41,000	40	40
41,001 - 50,000	50	50
50,001 - 59,000	60	60
59,001 - 70,000	70	70
70,001 - 83,000	80	80
83,001 - 96,000	90	90
96,001 - 130,000	100	100
130,001 - 220,000	120	120
220,001 - 320,000	150	150
320,001 - 450,000	180	180
450,001 - 600,000	210	210
600,001 - 780,000	240	240
780,001 - 970,000	270	270
970,001 - 1,230,000 ³	300	300

¹ Does not include the population of a consecutive system that purchases water. The sampling requirement for consecutive systems is a separate determination based upon the population of that system.

² Noncommunity systems using only protected groundwater sources and serving less than 25 individuals, may collect and submit for analysis, one sample every three months.

³ Systems serving populations larger than 1,230,000 shall contact the department for the minimum number of samples required per month.

*In addition to the provisions of subsection (1)(a) of this section, if a system of this size cannot show evidence of having been subject to a sanitary survey on file with the department, or has been determined to be at risk to bacteriological concerns following a survey, the minimum number of samples required per month may be increased by the department after additional consideration of factors such as monitoring history, compliance record, operational problems, and water quality concerns for the system.

(4) Inorganic chemical and physical.

(a) A complete inorganic chemical and physical analysis shall consist of the primary and secondary chemical and physical substances.

(i) Primary chemical and physical substances are antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate (as N), nitrite (as N), selenium, sodium, thallium, and for unfiltered surface water, turbidity. (Except that the MCL for arsenic under WAC 246-290-310 does not apply to TNC systems.)

(ii) Secondary chemical and physical substances are chloride, color, hardness, iron, manganese, specific conductivity, silver, sulfate, total dissolved solids*, and zinc.

* Required only when specific conductivity exceeds seven hundred micromhos/centimeter.

(b) Purveyors shall monitor for all primary and secondary chemical and physical substances identified in Table 4 and Table 5. Samples shall be collected in accordance with the monitoring requirements referenced in 40 CFR 141.23 introductory text, 141.23(a) through 141.23(j), excluding (i)(2), and 40 CFR 143.4, except for composite samples for systems serving less than three thousand three hundred one persons. For these systems, compositing among different systems may be allowed if the systems are owned or operated by a department-approved satellite management agency.

(c) Samples required by this subsection shall be taken at designated locations under 40 CFR 141.23(a) through 141.23(j), excluding (i)(2), and 40 CFR 143.4, and Table 3 herein.

(i) Wellfield samples shall be allowed from department designated wellfields; and

(ii) Under 40 CFR 141.23 (a)(3), alternate sampling locations may be used if approved by the department. The process for determining these alternate sites is described in department guidance. Purveyors of community and NTNC systems may ask the department to approve an alternate sampling location for multiple sources within a single system that are blended prior to entry to the distribution system. Alternate sampling plans shall address the following:

- (A) Source vulnerability;
- (B) Individual source characteristics;
- (C) Previous water quality information;
- (D) Status of monitoring waiver applications; and
- (E) Other information deemed necessary by the department.

(d) Composite samples:

(i) Under 40 CFR 141.23 (a)(4), purveyors may ask the certified lab to composite samples representing as many as five individual samples from within one system. Sampling procedures and protocols are outlined in department guidance; and

(ii) For systems serving a population of less than three thousand three hundred one, the department may approve

composite sampling between systems when those systems are part of an approved satellite management agency.

(e) When the purveyor provides treatment for one or more inorganic chemical or physical contaminants, the department may require the purveyor to sample before and after treatment. The department shall notify the purveyor if and when this additional source sampling is required.

(f) Inorganic monitoring plans.

(i) Purveyors of community and NTNC systems shall prepare an inorganic chemical monitoring plan and base routine monitoring on the plan.

(ii) The purveyor shall:

(A) Keep the monitoring plan on file with the system and make it available to the department for inspection upon request;

(B) Revise or expand the plan at any time the plan no longer reflects the monitoring requirements, procedures or sampling locations, or as directed by the department; and

(C) Submit the plan to the department for review and approval when requested and as part of the water system plan required under WAC 246-290-100.

(g) Monitoring waivers.

(i) Purveyors may request in writing, a monitoring waiver from the department for any nonnitrate/nitrite inorganic chemical and physical monitoring requirements identified in this chapter.

(ii) Purveyors requesting a monitoring waiver shall comply with applicable subsections of 40 CFR 141.23 (b)(3), and 141.23 (c)(3).

(iii) Purveyors shall update and resubmit requests for waiver renewals as applicable during each compliance cycle or period or more frequently as directed by the department.

(iv) Failure to provide complete and accurate information in the waiver application shall be grounds for denial of the monitoring waiver.

(h) The department may require the purveyor to repeat sample for confirmation of results.

(i) Purveyors with emergency and seasonal sources shall monitor those sources when they are in use.

(5) Lead and copper. Monitoring for lead and copper shall be conducted in accordance with 40 CFR 141.86 (a) - (f), 141.87, and 141.88. All systems that have fewer than five drinking water taps used for human consumption shall collect at least one sample from each tap and then collect additional samples from those taps on different days during the monitoring period to meet the required number of samples as described in 40 CFR 141.86(c).

(6) Disinfection byproducts (DBP), disinfectant residuals, and disinfection byproduct precursors (DBPP). Purveyors of community and NTNC systems providing water treated with chemical disinfectants and TNC systems using chlorine dioxide shall monitor as follows:

(a) General requirements.

(i) Systems shall collect samples during normal operating conditions.

(ii) All monitoring shall be conducted in accordance with the analytical requirements in 40 CFR 141.131.

(iii) Systems may consider multiple wells drawing from a single aquifer as one treatment plant for determining the minimum number of TTHM and HAA5 samples required,

with department approval in accordance with department guidance.

(iv) Systems required to monitor under this subsection shall prepare and implement a monitoring plan in accordance with 40 CFR 141.132(f) or 40 CFR 141.622, as applicable.

(A) Community and NTNC surface water and GWI systems that deliver water that has been treated with a disinfectant other than ultraviolet light and serve more than three thousand three hundred people shall submit a monitoring plan to the department.

(B) The department may require submittal of a monitoring plan from systems not specified in subsection (6)(a)(iv)(A) of this section, and may require revision of any monitoring plan.

(C) Failure to monitor for TTHM, HAA5, or bromate will be treated as a violation for the entire period covered by the annual average where compliance is based on a running annual average of monthly or quarterly samples or averages.

(D) Failure to monitor for chlorine and chloramine residuals will be treated as a violation for the entire period covered by the annual average where compliance is based on a running annual average of monthly or quarterly samples or averages and the systems' failure to monitor makes it impossible to determine compliance with the MRDLs.

(b) Disinfection byproducts - **Community** and **NTNC** systems only.

(i) TTHMs and HAA5.

(A) Systems shall monitor for TTHM and HAA5 in accordance with 40 CFR 141.132 (b)(1)(i) until the dates set in Table 2. On and after the dates set in Table 2, the systems shall monitor in accordance with 40 CFR 141.620, 141.621, and 141.622.

Table 2

Population Served	Routine Monitoring Start Date ¹
100,000 or more	April 1, 2012
50,000 - 99,999	October 1, 2012
10,000 - 49,999	October 1, 2013
Less than 10,000	October 1, 2013 ²
	October 1, 2014 ³

¹ Systems that have nonemergency interties with other systems must comply with the dates associated with the largest system in their combined distribution system.

² Surface water and GWI systems that did not have to do *Cryptosporidium* monitoring under 40 CFR 141.701 (a)(4).

³ Surface water and GWI systems that also did *Cryptosporidium* monitoring under 40 CFR 141.701 (a)(4).

(B) With department approval, systems may reduce monitoring in accordance with 40 CFR 141.132 (b)(1)(ii) and (iii), or 40 CFR 141.623, as applicable.

(C) Systems on department-approved reduced monitoring schedules may be required to return to routine monitoring, or initiate increased monitoring in accordance with 40 CFR 141.132 (b)(1)(iv), 40 CFR 141.625, or 40 CFR 141.627, as applicable.

(D) The department may return systems on increased monitoring to routine monitoring if, after one year, annual

average results for TTHMs and HAA5 are less than or equal to 0.060 mg/L and 0.045 mg/L, respectively, or monitoring results are consistently below the MCLs indicating that increased monitoring is no longer necessary. After the dates set in Table 2, systems must meet requirements of 40 CFR 141.628 and 40 CFR 141.625(c) to return to routine monitoring.

(E) After the dates set in Table 2, systems must calculate operational evaluation levels each calendar quarter and take action, as needed, in accordance with 40 CFR 141.626.

(F) NTNC systems serving ten thousand or more people and community systems must comply with the provisions of 40 CFR Subpart U - Initial Distribution System Evaluation at:

- 40 CFR 141.600 General requirements.
- 40 CFR 141.601 Standard monitoring.
- 40 CFR 141.602 System specific studies.
- 40 CFR 141.603 40/30 certification.
- 40 CFR 141.604 Very small system waivers.
- 40 CFR 141.605 Subpart V compliance monitoring location recommendations.

(ii) Chlorite - Only systems that use **chlorine dioxide**.

(A) Systems using chlorine dioxide shall conduct daily and monthly monitoring in accordance with 40 CFR 141.132 (b)(2)(i) and additional chlorite monitoring in accordance with 40 CFR 141.132 (b)(2)(ii).

(B) With department approval, monthly monitoring may be reduced in accordance with 40 CFR 141.132 (b)(2)(iii)(B). Daily monitoring at entry to distribution required by 40 CFR 141.132 (b)(2)(i)(A) may not be reduced.

(iii) Bromate - Only systems that use **ozone**.

(A) Systems using ozone for disinfection or oxidation must conduct bromate monitoring in accordance with 40 CFR 141.132 (b)(3)(i).

(B) With department approval, monthly bromate monitoring may be reduced to once per quarter in accordance with 40 CFR 141.132 (b)(3)(ii)(B).

(c) Disinfectant residuals.

(i) Chlorine and chloramines. Systems that deliver water continuously treated with chlorine or chloramines, including consecutive systems, shall monitor and record the residual disinfectant level in the distribution system under WAC 246-290-300 (2)(b), 246-290-451(7), 246-290-664(6), or 246-290-694(8), but in no case less than as required by 40 CFR 141.74 (b)(6), 40 CFR 141.74 (c)(3), 40 CFR 141.132(c), or 40 CFR 141.624.

(ii) Chlorine dioxide. Community, NTNC, or TNC systems that use chlorine dioxide shall monitor in accordance with 40 CFR 141.132 (c)(2) and record results.

(d) Disinfection byproducts precursors.

Community and NTNC surface water or GWI systems that use conventional filtration with sedimentation as defined in WAC 246-290-660(3) shall monitor under 40 CFR 141.132(d), and meet the requirements of 40 CFR 141.135.

(7) Organic chemicals.

(a) Purveyors of community and NTNC water systems shall comply with monitoring requirements under 40 CFR 141.24 (a) - (d), 141.24 (f)(1) - (f)(15), 141.24 (f)(18) - (19),

141.24 (f)(21), 141.24 (g)(1) - (9), 141.24 (g)(12) - (14), 141.24 (h)(1) - (11), and 141.24 (h)(14) - (17).

(b) Sampling locations shall be as defined in 40 CFR 141.24(f), 141.24(g), and 141.24(h).

(i) Wellfield samples shall be allowed from department designated wellfields; and

(ii) Under 40 CFR 141.24 (f)(3) and 141.24 (h)(3), alternate sampling locations may be allowed if approved by the department. These alternate locations are described in department guidance. Purveyors may ask the department to approve an alternate sampling location for multiple sources within a single system that are blended prior to entry to the distribution system. The alternate sampling location shall consider the following:

- (A) Source vulnerability;
- (B) An updated organic monitoring plan showing location of all sources with current and proposed sampling locations;
- (C) Individual source characteristics;
- (D) Previous water quality information;
- (E) Status of monitoring waiver applications; and
- (F) Other information deemed necessary by the department.

(c) Composite samples:

(i) Purveyors may ask the certified lab to composite samples representing as many as five individual samples from within one system. Sampling procedures and protocols are outlined in department guidance;

(ii) For systems serving a population of less than three thousand three hundred one, the department may approve composite sampling between systems when those systems are part of an approved satellite management agency.

(d) The department may require the purveyor to sample both before and after treatment for one or more organic contaminants. The department shall notify the purveyor if and when this additional source sampling is required.

(e) Organic chemical monitoring plans.

(i) Purveyors of community and NTNC systems shall prepare an organic chemical monitoring plan and base routine monitoring on the plan.

(ii) The purveyor shall:

(A) Keep the monitoring plan on file with the system and make it available to the department for inspection upon request;

(B) Revise or expand the plan at any time the plan no longer reflects the monitoring requirements, procedures or sampling locations, or as directed by the department; and

(C) Submit the plan to the department for review and approval when requested and as part of the water system plan required under WAC 246-290-100.

(f) Monitoring waivers.

(i) Purveyors may request in writing, a monitoring waiver from the department for any organic monitoring requirement except those relating to unregulated VOCs;

(ii) Purveyors requesting a monitoring waiver shall comply with 40 CFR 141.24 (f)(7), 141.24 (f)(10), 141.24 (h)(6), and 141.24 (h)(7);

(iii) Purveyors shall update and resubmit requests for waiver renewals as directed by the department; and

(iv) Failure to provide complete and accurate information in the waiver application shall be grounds for denial of the monitoring waiver.

(g) Purveyors with emergency and seasonal sources shall monitor those sources under the applicable requirements of this section when they are actively providing water to consumers.

(8) Radionuclides. Monitoring for radionuclides shall be conducted under 40 CFR 141.26.

(9) *Cryptosporidium* and *E. coli* source monitoring. Purveyors with surface water or GWI sources shall monitor the sources in accordance with 40 CFR 141.701 and 702.

(10) Other substances.

On the basis of public health concerns, the department may require the purveyor to monitor for additional substances.

TABLE 3
MONITORING LOCATION

Sample Type	Sample Location
Asbestos	One sample from distribution system or if required by department, from the source.
Bacteriological	From representative points throughout distribution system.
<i>Cryptosporidium</i> and <i>E. coli</i> (Source Water) - WAC 246-290-630(16)	Under 40 CFR 141.703.
Complete Inorganic Chemical & Physical	From a point representative of the source, after treatment, and prior to entry to the distribution system.
Lead/Copper	From the distribution system at targeted sample tap locations.
Nitrate/Nitrite	From a point representative of the source, after treatment, and prior to entry to the distribution system.
Disinfection Byproducts - TTHMs and HAA5 - WAC 246-290-300(6)	Under 40 CFR 141.132 (b)(1) (Subpart L of the CFR).
Disinfection Byproducts - TTHMs and HAA5 - WAC 246-290-300(6)	Under 40 CFR 141.600 - 629 (IDSE and LRAA in Subparts U and V of the CFR).
Disinfection Byproducts - Chlorite (Systems adding chlorine dioxide)	Under 40 CFR 141.132 (b)(2).
Disinfection Byproducts - Bromate (Systems adding ozone)	Under 40 CFR 141.132 (b)(3).
Disinfectant Residuals - Chlorine and Chloramines	Under 40 CFR 141.132 (c)(1).
Disinfectant Residuals - Chlorine dioxide	Under 40 CFR 141.132 (c)(2).
Disinfection Precursors - Total Organic Carbon (TOC)	Under 40 CFR 141.132(d).

Sample Type	Sample Location
Disinfection Precursors - Bromide (Systems using ozone)	From the source before treatment.
Radionuclides	From a point representative of the source, after treatment and prior to entry to distribution system.
Organic Chemicals (VOCs & SOCs)	From a point representative of the source, after treatment and prior to entry to distribution system.
Other Substances (unregulated chemicals)	From a point representative of the source, after treatment, and prior to entry to the distribution system, or as directed by the department.

AMENDATORY SECTION (Amending WSR 10-20-068, filed 9/29/10, effective 11/1/10)

WAC 246-290-320 Follow-up action. (1) General.

(a) When an MCL or MRDL violation or exceedance occurs, the purveyor shall take follow-up action as described in this section.

(b) When a primary standard violation occurs, the purveyor shall:

(i) Notify the department under WAC 246-290-480;

(ii) Notify the consumers served by the system and the owner or operator of any consecutive system served in accordance with 40 CFR 141.201 through 208, and Part 7, Subpart A of this chapter;

(iii) Determine the cause of the contamination; and

(iv) Take action as directed by the department.

(c) When a secondary standard violation occurs, the purveyor shall notify the department and take action as directed by the department.

(d) The department may require additional sampling for confirmation of results.

(2) Bacteriological.

(a) When coliform bacteria are present in any sample and the sample is not invalidated under (d) of this subsection, the purveyor shall ensure the following actions are taken:

(i) The sample is analyzed for fecal coliform or *E. coli*. When a sample with a coliform presence is not analyzed for *E. coli* or fecal coliforms, the sample shall be considered as having a fecal coliform presence for MCL compliance purposes;

(ii) Repeat samples are collected in accordance with (b) of this subsection;

(iii) Triggered source water monitoring is conducted in accordance with (g) of this subsection unless the department determines and documents in writing that the total coliform positive sample collected was caused by a distribution system deficiency;

(iv) The department is notified in accordance with WAC 246-290-480; and

(v) The cause of the coliform presence is determined and corrected.

(b) Repeat samples.

(i) The purveyor shall collect repeat samples in order to confirm the original sample results and to determine the cause of the coliform presence. Additional treatment, such as batch or shock chlorination, shall not be instituted prior to the collection of repeat samples unless prior authorization by the department is given. Following collection of repeat samples, and before the analytical results are known, there may be a need to provide interim precautionary treatment or other means to insure public health protection. The purveyor shall contact the department to determine the best interim approach in this situation.

(ii) The purveyor shall collect and submit for analysis a set of repeat samples for every sample in which the presence of coliforms is detected. A set of repeat coliform samples consists of:

(A) Four repeat samples for systems collecting one routine coliform sample each month; or

(B) Three repeat samples for all systems collecting more than one routine coliform sample each month.

(iii) The purveyor shall collect repeat sample sets according to Table 7;

(iv) The purveyor shall collect one set of repeat samples for each sample with a coliform presence. All samples in a set of repeat samples shall be collected on the same day and submitted for analysis within twenty-four hours after notification by the laboratory of a coliform presence, or as directed by the department.

(v) When repeat samples have coliform presence, the purveyor shall:

(A) Contact the department and collect a minimum of one additional set of repeat samples as directed by the department; or

(B) Collect one additional set of repeat samples for each sample where coliform presence was detected.

(vi) The purveyor of a system providing water to consumers via a single service shall collect repeat samples from the same location as the sample with a coliform presence. The set of repeat samples shall be collected:

(A) On the same collection date;

(B) Over consecutive days with one sample collected each day until the required samples in the set of repeat samples are collected; or

(C) As directed by the department.

(vii) If a sample with a coliform presence was collected from the first two or last two active services, the purveyor shall monitor as directed by the department;

(viii) The purveyor may change a previously submitted routine sample to a sample in a set of repeat samples when the purveyor:

(A) Collects the sample within five active adjacent service connections of the location from which the initial sample with a coliform presence was collected;

(B) Collects the sample after the initial sample with a coliform presence was submitted for analysis;

(C) Collects the sample on the same day as other samples in the set of repeat samples, except under (b)(iv) of this subsection; and

(D) Requests and receives approval from the department for the change.

(ix) The department may determine that sets of repeat samples specified under this subsection are not necessary during a month when a nonacute coliform MCL violation is determined for the system.

Table 7
REPEAT SAMPLE REQUIREMENTS

# OF ROUTINE SAMPLES COLLECTED EACH MONTH	# OF SAMPLES IN A SET OF REPEAT SAMPLES	LOCATIONS FOR REPEAT SAMPLES (COLLECT AT LEAST ONE SAMPLE PER SITE)
1	4	<ul style="list-style-type: none"> ◆ Site of previous sample with a coliform presence ◆ Within 5 active services upstream of site of sample with a coliform presence ◆ Within 5 active services downstream of site of sample with a coliform presence ◆ At any other active service or from a location most susceptible to contamination (i.e., well or reservoir)
more than 1	3	<ul style="list-style-type: none"> ◆ Site of previous sample with a coliform presence ◆ Within 5 active services upstream of site of sample with a coliform presence ◆ Within 5 active services downstream of site of sample with a coliform presence

(c) Monitoring frequency following a coliform presence. Systems having one or more coliform presence samples that were not invalidated during the previous month shall collect and submit for analysis the minimum number of samples shown in the last column of Table 2.

(i) The purveyor may obtain a reduction in the monitoring frequency requirement when one or more samples with a coliform presence were collected during the previous month, if the purveyor proves to the satisfaction of the department;

(A) The cause of the sample with a coliform presence; and

(B) The problem is corrected before the end of the next month the system provides water to the public.

(ii) If the monitoring frequency requirement is reduced, the purveyor shall collect and submit at least the minimum number of samples required when no samples with a coliform presence were collected during the previous month.

(d) Invalid samples. Routine and repeat coliform samples may be determined to be invalid under any of the following conditions:

(i) A certified laboratory determines that the sample results show:

(A) Multiple tube technique cultures that are turbid without appropriate gas production;

(B) Presence-absence technique cultures that are turbid in the absence of an acid reaction;

(C) Occurrence of confluent growth patterns or growth of TNTC (too numerous to count) colonies without a surface sheen using a membrane filter analytic technique;

(ii) The analyzing laboratory determines there is excess debris in the sample.

(iii) The analyzing laboratory establishes that improper sample collection or analysis occurred;

(iv) The department determines that a nondistribution system problem has occurred as indicated by:

(A) All samples in the set of repeat samples collected at the same location, including households, as the original coliform presence sample also are coliform presence; and

(B) All other samples from different locations (households, etc.) in the set of repeat samples are free of coliform.

(v) The department determines a coliform presence result is due to a circumstance or condition that does not reflect water quality in the distribution system.

(e) Follow-up action when an invalid sample is determined. The purveyor shall take the following action when a coliform sample is determined to be invalid:

(i) Collect and submit for analysis an additional coliform sample from the same location as each invalid sample within twenty-four hours of notification of the invalid sample; or

(ii) In the event that it is determined that the invalid sample resulted from circumstances or conditions not reflective of distribution system water quality, collect a set of samples in accordance with Table 7; and

(iii) Collect and submit for analysis samples as directed by the department.

(f) Invalidated samples shall not be included in determination of the sample collection requirement for compliance with this chapter.

(g) Triggered source water monitoring.

(i) All groundwater systems with their own groundwater source(s) must conduct triggered source water monitoring unless the following conditions exist:

(A) The system has submitted a project report and received approval that it provides at least 4-log treatment of viruses (using inactivation, removal, or a department approved combination of 4-log virus inactivation and removal) before or at the first customer for each groundwater source; and

(B) The system is conducting compliance monitoring under WAC 246-290-453(2).

(ii) Any groundwater source sample required under this subsection must be collected at the source prior to any treatment unless otherwise approved by the department.

(iii) Any source sample collected under this subsection must be at least 100 mL in size and must be analyzed for *E. coli* using one of the analytical methods under 40 CFR 141.402(c).

(iv) Groundwater systems must collect at least one sample from each groundwater source in use at the time a routine sample collected under WAC 246-290-300(3) is total coliform-positive and not invalidated under (d) of this subsection. These source samples must be collected within twenty-four hours of notification of the total coliform-positive sample. The following exceptions apply:

(A) The twenty-four hour time limit may be extended if granted by the department and will be determined on a case-by-case basis. If an extension is granted, the system must sample by the deadline set by the department.

(B) Systems with more than one groundwater source may meet the requirements of (g)(iv) of this subsection by sampling a representative groundwater source or sources. The system must have an approved triggered source water monitoring plan that identifies one or more groundwater sources that are representative of each monitoring site in the system's coliform monitoring plan under WAC 246-290-300 (3)(b). This plan must be approved by the department before representative sampling will be allowed.

(C) Groundwater systems serving one thousand people or fewer may use a repeat sample collected from a groundwater source to meet the requirements of (b) and (g)(iv) of this subsection. If the repeat sample collected from the groundwater source is *E. coli* positive, the system must comply with (g)(v) of this subsection.

(v) Groundwater systems with an *E. coli* positive source water sample that is not invalidated under (g)(vii) of this subsection, must:

(A) Provide Tier 1 public notice under Part 7, Subpart A of this chapter and special notification under WAC 246-290-71005 (4) and (5);

(B) If directed by the department, take corrective action as required under WAC 246-290-453(1); and

(C) Systems that are not directed by the department to take corrective action must collect five additional samples from the same source within twenty-four hours of being notified of the *E. coli* positive source water sample. If any of the five additional samples are *E. coli* positive, the system must take corrective action under WAC 246-290-453(1).

(vi) Any consecutive groundwater system that has a total coliform-positive routine sample collected under WAC 246-290-300(3) and not invalidated under (d) of this subsection, must notify each wholesale system it receives water from within twenty-four hours of being notified of the total coliform-positive sample and comply with (g) of this subsection.

(A) A wholesale groundwater system that receives notice from a consecutive system under (g)(vi) of this subsection must conduct triggered source water monitoring under (g) of this subsection unless the department determines and documents in writing that the total coliform-positive sample collected was caused by a distribution system deficiency in the consecutive system.

(B) If the wholesale groundwater system source sample is *E. coli* positive, the wholesale system must notify all consecutive systems served by that groundwater source within twenty-four hours of being notified of the results and must meet the requirements of (g)(v) of this subsection.

(C) Any consecutive groundwater system receiving water from a source with an *E. coli* positive sample must notify all their consumers as required under (g)(v)(A) of this subsection.

(vii) An *E. coli* positive groundwater source sample may be invalidated only if the following conditions apply:

(A) The system provides the department with written notice from the laboratory that improper sample analysis occurred; or

(B) The department determines and documents in writing that there is substantial evidence that the *E. coli* positive groundwater sample is not related to source water quality.

(viii) If the department invalidates an *E. coli* positive groundwater source sample, the system must collect another source water sample within twenty-four hours of being notified by the department of its invalidation decision and have it analyzed using the same analytical method. The department may extend the twenty-four hour time limit under (g)(iv)(A) of this subsection.

(ix) Groundwater systems that fail to meet any of the monitoring requirements of (g) of this subsection must conduct Tier 2 public notification under Part 7, Subpart A of this chapter.

(3) Inorganic chemical and physical follow-up monitoring shall be conducted in accordance with the following:

(a) For nonnitrate/nitrite primary inorganic chemicals, 40 CFR 141.23 (a)(4), 141.23 (b)(8), 141.23 (c)(7), 141.23 (c)(9), 141.23 (f)(1), 141.23(g), 141.23(m) and 141.23(n);

(b) For nitrate, 40 CFR 141.23 (a)(4), 141.23 (d)(2), 141.23 (d)(3), 141.23 (f)(2), 141.23(g), 141.23(m), 141.23(n), and 141.23(o);

(c) For nitrite, 40 CFR 141.23 (a)(4), 141.23 (e)(3), 141.23 (f)(2), and 141.23(g); or

(d) The purveyor of any public water system providing service that has secondary inorganic MCL exceedances shall take follow-up action as required by the department. Follow-up action shall be commensurate with the degree of consumer acceptance of the water quality and their willingness to bear the costs of meeting the secondary standard. For new community water systems and new nontransient noncommunity water systems without active consumers, treatment for secondary contaminant MCL exceedances will be required.

(4) Lead and copper follow-up monitoring shall be conducted in accordance with 40 CFR 141.85(~~(f)~~) (c), 141.86 (d)(2), 141.86 (d)(3), 141.87(c), 141.87(d) and 141.88(b) through 141.88(d).

(5) Turbidity.

Purveyors monitoring turbidity in accordance with Part 6 of this chapter shall provide follow-up under WAC 246-290-634.

(6) Organic chemicals. Follow-up monitoring shall be conducted in accordance with the following:

(a) For VOCs, 40 CFR 141.24 (f)(11) through 141.24 (f)(15), and 141.24 (f)(22); or

(b) For SOCs, 40 CFR 141.24(b), 141.24(c) and 141.24 (h)(7) through 141.24 (h)(11), and 141.24 (h)(20).

(7) Radionuclide follow-up monitoring shall be conducted under 40 CFR 141.26 (a)(2)(iv), 141.26 (a)(3)(ii) through (v), 141.26 (a)(4), 141.26 (b)(6), and 141.26 (c)(5).

(8) The department shall determine the purveyor's follow-up action when a substance not included in this chapter is detected.

AMENDATORY SECTION (Amending WSR 08-03-061, filed 1/14/08, effective 2/14/08)

WAC 246-290-72010 Report contents—Required additional health information. All reports must prominently display the following language: Some people may be more vulnerable to contaminants in drinking water than the general population. Immuno-compromised persons such as persons with cancer undergoing chemotherapy, persons who

have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice about drinking water from their health care providers. Environmental Protection Agency/Centers for Disease Control guidelines on appropriate means to lessen the risk of infection by *Cryptosporidium* and other microbial contaminants are available from the Safe Drinking Water Hotline (800-426-4791).

(1) Beginning in the report due by July 1, 2002, a system which detects arsenic levels above 0.005 mg/L and up to and including 0.010 mg/L:

(a) Must include in its report a short informational statement about arsenic, using language such as: While your drinking water meets EPA's standard for arsenic, it does contain low levels of arsenic. EPA's standard balances the current understanding of arsenic's possible health effects against the cost of removing arsenic from drinking water. EPA continues to research the health effects of low levels of arsenic, which is a mineral known to cause cancer in humans at high concentrations and is linked to other health effects such as skin damage and circulatory problems.

(b) May write its own educational statement, but only in consultation with the department.

(2) A system which detects nitrate at levels above 5 mg/l, but below the MCL:

(a) Must include a short informational statement about the impacts of nitrate on children using language such as: Nitrate in drinking water at levels above 10 ppm is a health risk for infants of less than six months of age. High nitrate levels in drinking water can cause blue-baby syndrome. Nitrate levels may rise quickly for short periods of time because of rainfall or agricultural activity. If you are caring for an infant, you should ask for advice from your health care provider.

(b) May write its own educational statement, but only in consultation with the department.

(3) Systems (~~which detect lead above the action level in more than five percent, and up to and including ten percent, of homes sampled~~) that monitor for lead within the reporting period:

(a) Must include a short informational statement about the special impact of lead on children (~~using language such as: Infants and young children are typically more vulnerable to lead in drinking water than the general population. It is possible that lead levels at your home may be higher than at other homes in the community as a result of materials used in your home's plumbing. If you are concerned about elevated lead levels in your home's water, you may wish to have your water tested and flush your tap for thirty seconds to two minutes before using tap water. Additional information is available from the Safe Drinking Water Hotline (800-426-4791)~~). The statement must include the following information: If present, elevated levels of lead can cause serious health problems, especially for pregnant women and young children. Lead in drinking water is primarily from materials and components associated with service lines and home plumbing. (NAME OF UTILITY) is responsible for providing high quality drinking water, but cannot control the variety of materials used in plumbing components. When your water has been

sitting for several hours, you can minimize the potential for lead exposure by flushing your tap for thirty seconds to two minutes before using water for drinking or cooking. If you are concerned about lead in your water, you may wish to have your water tested. Information on lead in drinking water, testing methods, and steps you can take to minimize exposure is available from the Safe Drinking Water Hotline or at <http://www.epa.gov/safewater/lead>.

(b) May write its own educational statement, but only in consultation with the department.

WSR 11-12-034

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed May 25, 2011, 11:41 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 246-282-005 Sanitary control of shellfish—Minimum performance standards and 246-282-032 Relay permit, to update the reference to the National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish (guide), update the name of the office of shellfish and water protection, and correct a subsection numbering error.

Hearing Location(s): Department of Health, Town Center 2, Room 530, 111 Israel Road S.E., Tumwater, WA 98501, on July 7, 2011, at 11:00 a.m.

Date of Intended Adoption: July 8, 2011.

Submit Written Comments to: Brandy Brush, Department of Health, Office of Shellfish and Water Protection, P.O. Box 47824, Olympia, WA 98504-7824, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2257, by July 7, 2011.

Assistance for Persons with Disabilities: Contact Brandy Brush by June 30, 2011, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: All shellfish-producing states are required to follow the most current NSSP guide in order to place molluscan shellfish into interstate commerce. Currently, WAC 246-282-005 references the United States Food and Drug Administration (FDA) 2007 NSSP guide. FDA has now adopted a 2009 version of the NSSP guide, leaving the current rule out of date. This proposed rule making will amend the section to update the reference. The information shown below lists the differences between the 2007 and 2009 versions of the NSSP guide. This proposal will also change the office name in WAC 246-282-005 (1)(a) to shellfish and water protection and correct a subsection numbering error in WAC 246-282-032(4).

2007-2009 MO Crosswalk

Section/Chapter	Citation	Change
Definitions	(53)	Add In-Shell Product Packing
	(61)	Add Lot of In-Shell Product
	(65)	Add Male-specific Coliphage
	(91)	Add Repacking In-Shell Product
	(96)	Add Restricted Use Shellstock
		110
		Definitions now is 115 Definitions
Chapter II	@.02.B.(3)c	Add c Promptly initiate recall procedures consistent with the Recall Enforcement Policy Title 21 of Federal Regulations [Regulations] Part 7.
	@.02.B.(4)	Add (4) When the Authority determines that the growing area may be the source of pathogens the Authority shall promptly initiate recall procedures consistent with the Recall Enforcement Policy Title 21 of Code of Federal Regulations Part 7 if the pathogens exceed tolerance levels.
	@.02.B.(5)	Add (5) When the Authority [Authority] determines that illegal harvesting is taking place, the Authority shall promptly initiate recall procedures consistent with the Recall Enforcement Policy Title 21 Code of federal Regulations Part 7 for all shellfish that may be falsely represented.
	@.05.B.(4)c	Add Require the original dealer to cool oysters to an internal temperature of 50°F (10°C) or below within 10 hours or less as determined by the Authority after placement into refrigeration during periods when the risk of <i>Vibrio parahaemolyticus</i> illness is reasonable likely to occur. The dealer's HACCP Plan shall include controls necessary to ensure, document and verify that the internal temperature of oysters has reached 50°F (10°C) or below within 10 hours or less as determined by the Authority of being placed into refrigeration. Oysters without proper HACCP records demonstrating compliance with this cooling requirement shall be diverted to PHP or labeled "for shucking only", or other means to allow the hazard to be addressed by further processing.
	@.05.B.(4)c	Change to @.05.B.(4)(d)
	@.05.B.(4)(d)	Change to @.05.B.(4)(e)
	@.05.B.(4)(e)	Change to @.05.B.(4)(f)
Chapter IV	@.02.G.(2)	Substitute Fecal Coliform Standard for Adverse Pollution Conditions. The fecal coliform median or geometric mean MPN or MF (mTEC) of the water sample results shall not exceed 88 per 100 ml and the estimated 90th percentile shall not exceed an MPN or MF (mTEC) of: (b) 300 MPN per 100 ml for a three tube decimal dilution test; (c) 173 MPN per 100 ml for a twelve tube single dilution test; or (d) 163 CFU per 100 ml for a MF (mTEC) test.
	@.02.H.(4)	Substitute Fecal Coliform Standard for Systematic Random Sampling. The fecal coliform median or geometric mean MPN or MF (mTEC) of the water sample results shall not exceed 88 per 100 ml and the estimated 90th percentile shall not exceed an MPN or MF (mTEC) of: (a) 300 MPN per 100 ml for a three tube decimal dilution test; (b) 173 MPN per 100 ml for a twelve tube single dilution test; or (c) 163 CFU per 100 ml for a MF (mTEC) test.
	@.03.A.(5)(b)	Add (iii) (sic) The requirements for biotoxins or conditional area management plans as established in §.04 and §.03 respectively, are met; and (iv) (sic) Supporting information is documented by a written record in the central file.
	@.03.A.(5)(c)	Add (iv) Supporting information is documented by a written record in the central file.

Chapter IX	@.03.A.(3)	Add after "shellfish" temperature or the internal body temperature of in-shell product
	@.04.B.(2)	Add after "temperature" or the internal body temperature of in-shell product
	Requirements for the Harvester/Dealer .04.B	Add as (3) In-shell product shipments shall be shipped on pallets
	Requirements for the Harvester/Dealer .04.B.(3)	Change to .04.B.(4)
Chapter X	.01.C.(2)	Add c Critical control points shall be designed to ensure that shellstock received with restricted use tags is processed consistent with the stated purpose. For Shellstock tagged for restricted use, critical control points shall be included in the Certified Dealer's HACCP plan to ensure that the shellstock is shipped to another Certified dealer with the restricted use tag or processed consistent with the stated purpose.
	.03 Other Model Ordinance Requirements	Add Dialogue Box which contains Additional Guidance - Section IV Guidance Documents Chapter V. Illness Outbreak Investigation and Recall, .02 Guidance for a Time-Temperature Evaluation of a Shellfish Implicated Outbreak
	.05 Shellstock Identification	Add E. All restricted use shellstock shall include a tag containing all information required in §.05 of Model Ordinance Chapter X. In addition the tag will include specific language detailing the intended use of the shellstock.
	.05 Shellstock Identification	Change .05.E to .05.F
	.06 Shucked Shellfish Labeling	Change .06.A.(5) to read The dealer shall assure that the shucker-packer's or repacker's certification number is on the label of each package of fresh or frozen shellfish
	.07 In-Shell Product or Post Harvest Processed In-Shell Labeling	Add .07.B.(4) When in-shell product intended for retail sale are packed in containers of 5 pounds or less and shipped in a master container which includes a tag in compliance with Chapter X.05.B.(1), the individual containers of 5 pounds or less shall not require tags as specified in Chapter X.05.B.(1) but may be labeled in some other manner with indelible, legible, information which at a minimum is adequate to trace the in-shell shellfish back to the lot of in-shell product it is part of. Consumer advisory information identified in Chapter X.07.B.(1)(j) shall be included on each retail package.
Chapter XI	.01.A.	Add .01.A.(3) In-shell product obtained from a dealer who has: (a) Shipped the in-shell product adequately iced; or in a conveyance at or below 45°F (7.2°C) ambient air temperature; or 45°F (7.2°C) internal temperature or less; and [C] (b) Identified the in-shell product with a tag on each container [C]
	.01	Add .01.C In-shell Product Storage Critical Control Point - Critical Limits. The dealer shall ensure that in-shell product shall be: (1) Iced; or [C] (2) Placed and stored in a storage area or conveyance [conveyance] maintained at 45°F (7.2°C) or less [C]
	.01.C	Change to .01.D
	.01.D	Add .01.D.(5) For in-shell [in-shell] product the internal temperature of meats does not exceed 45°F (7.2°C) for more than 2 hours during processing [C]
	.01.D	Change to .01.E

	.01	Add .01.F Shellstock Shipping Critical Control Point. (1) The dealer shall ensure that Shellstock that is received bearing a restricted use tag shall only be shipped to a certified dealer and shall include specific language detailing the intended use of the shellstock.
	.02.B.(2)(d)	Add (1) Fabricated from food grade materials; and [K] (ii) Stored in a manner which assures their protection from contamination. [K]
	.03.F.(9)	Change to read During storage frozen shellfish shall be maintained frozen. [S k/o]
Chapter XII	.03.F.(1)(g)	Change to read During storage frozen shellfish shall be maintained frozen. [S k/o]
Chapter XIII	.01.A.	Add .01.A.(3) In-shell product obtained from a dealer who has: (a) Shipped the in-shell product adequately iced; or in a conveyance at or below 45°F (7.2°C) ambient air temperature; or 45°F (7.2°C) internal temperature or less; and [C] (b) Identified the in-shell product with a tag on each container [C]
	.01	Add .01.C In-shell Product Storage Critical Control Point - Critical Limits. The dealer shall ensure that in-shell product shall be: (1) Iced; or [C] (2) Placed and stored in a storage area or conveyance [conveyance] maintained at 45°F (7.2°C) or less [C]
	.01	Add .01.F Shellstock Shipping Critical Control Point. (1) The dealer shall ensure that Shellstock that is received bearing a restricted use tag shall only be shipped to a certified dealer and shall include specific language detailing the intended use of the shellstock.
	.03.F.(1)	Eliminate .03.F.(1)(b)
Chapter XIV	.01.A.(1)(b)	Add after "shellfish" and/or in-shell product
	.01.A.(1)c	Add after "Chapter X.05," identified the in-shell product with a tag as outlined in Chapter X.07, and/or identified the shucked shellfish with a label as outlined in Chapter X.06 [C]
	.01.C	Add .01.C In-shell Product Storage Critical Control Point - Critical Limits. The dealer shall ensure that in-shell product shall be: (1) Iced; or [C] (2) Placed and stored in a storage area or conveyance [conveyance] maintained at 45°F (7.2°C) or less [C]
	.01.C	Change to .01.D
	.01	Add .01.F Shellstock Shipping Critical Control Point. (1) The dealer shall ensure that Shellstock that is received bearing a restricted use tag shall only be shipped to a certified dealer and shall include specific language detailing the intended use of the shellstock.
	.02.C.(1)(b)	Change to Shellfish shall be protected from contamination [Sc/k]
	.03.F.(1)	Change to The dealer shall buy shellfish only from sources certified by the Authority or listed in the ICSSL. [K]
Chapter XV	.02.C.(3)(b)	Eliminate (i), (ii), (iii), (iv) and move (v) up to become (b)
Chapter XVI	A.	Eliminate A.(1)(a), A.(1)(b), A.(1)c, A.(1)(d), make A.(1)(e) follow "process." in A.(1), change (i) to (a) and (ii) to (b), and add A.(1)c Analytical results used for validation of a PHP shall come from an analytical laboratory that is evaluated by the State and/or FDA and found to be in compliance with applicable NSSP laboratory requirements.

- A. Insert (2) Validate the process by demonstrating that the process will reliably achieve the appropriate reduction in the target pathogen(s). The process shall be validated by a study as outlined in Guidance Documents Chapter IV, Naturally Occurring Pathogens, Section .04 and be approved by the Authority, with concurrence of FDA. (a) The dealer must demonstrate that the process reduces the level of *Vibrio vulnificus* and/or *Vibrio parahaemolyticus* in the process to non-detectable (<30 MPN/gram) and the process achieves a minimum 3.52 log reduction. Determination of *V. vulnificus* and/or *V. parahaemolyticus* levels must be done using the MPN protocols described in Guidance documents, Chapter IV, Naturally Occurring Pathogens, Section .04 followed by confirmation using methods approved for use in the NSSP. (b) For processes that target other pathogens the dealer must demonstrate that the level of those pathogens in processed product has been reduced to levels below the appropriate FDA action level [level], or in the absence of such a level, below the appropriate level as determined by the ISSC.
- A.(2) Add Dialogue Box which contains Additional Guidance - Section IV Guidance Documents Chapter II. Growing Areas. 10 Approved NSSP Laboratory Tests
- A. Add A.(3) Conduct verification sampling to verify that the validated process is working properly. Verification sampling shall be at least equivalent to the verification protocol found in Guidance Documents, Chapter IV, Naturally Occurring pathogens, Section .04 as determined by the Authority and shall be reviewed annually by the Authority.
- A.(2) Change to A.(4)
- A. Add A.(5) Keep records in accordance with Chapter X.07.

Reasons Supporting Proposal: The FDA oversees a cooperative program between the shellfish producing states and shellfish industry for the production and processing of shellfish in a manner specified by the NSSP. The FDA evaluates each states' shellfish sanitation control program to ensure compliance with NSSP. An update to WAC 246-282-005 is needed to assure Washington state remains compliant with the NSSP.

Statutory Authority for Adoption: RCW 69.30.030.

Statute Being Implemented: RCW 69.30.030.

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

Name of Proponent: State board of health, governmental.

Name of Agency Personnel Responsible for Drafting: Brandy Brush, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-3342; Implementation and Enforcement: Rick Porso, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-3302.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(c), a small business economic impact statement is not required for proposed rules that adopt or incorporate by reference - without material change - federal statutes or regulations, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference without

material change federal statutes or regulations, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

May 25, 2011
Gregg L. Grunenfelder
Deputy Secretary
for Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 09-08-116, filed 3/31/09, effective 5/1/09)

WAC 246-282-005 Minimum performance standards. (1) Any person engaged in a shellfish operation or possessing a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must comply with and is subject to:

(a) The requirements of the ~~((2007))~~ 2009 National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish, published by the United States Department of Health and Human Services, Public Health Service, Food and Drug Administration (copies available through the U.S. Food and Drug Administration, Shellfish Sanitation Branch, and the Washington state department of health, office of ~~((food safety and))~~ shellfish ~~((programs))~~ and water protection);

(b) The provisions of 21 Code of Federal Regulations (CFR), Part 123 - Fish and Fishery Products, adopted December 18, 1995, by the United States Food and Drug Adminis-

tration, regarding Hazard Analysis Critical Control Point (HACCP) plans (copies available through the U.S. Food and Drug Administration, Office of Seafood, and the Washington state department of health, office of food safety and shellfish programs); and

(c) All other provisions of this chapter.

(2) If a requirement of the NSSP Guide for the Control of Molluscan Shellfish or a provision of 21 CFR, Part 123, is inconsistent with a provision otherwise established under this chapter or other state law or rule, then the more stringent provision, as determined by the department, will apply.

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

WAC 246-282-032 Relay permit. (1) The department will issue a relay permit to a person to move shellfish from a harvest site in a growing area classified as "restricted" or "conditionally approved" in closed status meeting the criteria for "restricted" classification, if all of the following conditions are met.

(a) The person possesses a valid shellfish operation license.

(b) The person possesses a valid harvest site certificate listing both the initial harvest site and the grow-out site.

(c) The initial harvest site and grow-out site meet the requirements for relay specified in this chapter and the NSSP Model Ordinance.

(d) The person submits a completed written application and plan of operations approved by the department completely describing the procedures and conditions of the relay operation.

(e) The person conducts and documents a separate validation study approved by the department for each of the following periods of time when shellfish will be relayed:

(i) May 1 through October 31; and

(ii) November 1 through April 30.

(f) The person pays the department a relay permit application fee or renewal fee as required by this chapter.

(2) Each validation study for a relay permit must demonstrate that shellfish harvested from a specified initial site do not contain excessive levels of fecal coliform bacteria and when relayed to a specified grow-out site for a specified time period consistently purge themselves of bacteria to approved levels. Each validation study must meet all of the following conditions.

(a) It must document that the geometric mean fecal coliform bacteria level in a minimum of five 100-gram tissue samples, representative of shellfish of the same species in the entire initial harvest site, is equal to or less than 1300, with no sample having more than 2300.

(b) It must document that specified relay procedures, times, and environmental conditions reduce fecal coliform bacteria in a minimum of five 100-gram tissue samples, representative of the entire lot of shellfish relayed, to levels that are equal to or less than:

(i) 330, with no more than two samples having greater than 230; or

(ii) Ten percent greater than the geometric mean of a minimum of five 100-gram tissue samples representative of

the same shellfish species grown continuously for a minimum of six months at the grow-out site.

(c) It must be repeated a minimum of once every twelve years for a continuing operation and whenever relay conditions change.

(d) All samples must be analyzed by an approved laboratory.

(3) A person operating under a relay permit must follow all procedures in the plan of operations approved by the department, including:

(a) Staking or marking the grow-out site to be easily identified by the person until the minimum relay period of time is passed;

(b) Considering the beginning of the minimum relay time period for a lot to be the moment that the last part of the lot is added to the grow-out site;

(c) Relaying shellfish to a designated grow-out site for a minimum of seven days, or longer period of time as approved by the department; and

(d) Keeping records for each relayed lot of shellfish that show a lot identification number; the species, location, date, and quantity moved from the initial harvest site; the grow-out location; and the date of first harvest of any of those shellfish from the grow-out site.

(4) For each lot of shellfish relayed to a site for a grow-out period of less than fourteen days, a person must:

~~((+))~~ (a) Collect at least one sample from the shellfish lot at the initial harvest site and have it analyzed by an approved laboratory to demonstrate that the lot contains no more than 2300 fecal coliform bacteria per 100 grams of shellfish tissue; and

~~((+))~~ (b) Collect at least one sample from the shellfish lot at the grow-out site at the end of the relay period and have it analyzed by an approved laboratory to demonstrate that the lot contains fecal coliform bacteria within the maximum limits determined by a validation study, as described in subsection (2)(b) of this section, before releasing control of the shellfish lot.

(5) A person is exempt from any fees for an initial application and a validation study conducted by the department for a relay permit for the purpose of relaying shellfish from a growing area that the department downgraded from a classification of "approved" or "conditionally approved" to "restricted" within the previous twenty-four months.

(6) A person's relay permit expires on the same date as the person's shellfish operation license.

(7) A person is exempt from the provisions of subsection (1) (e) of this section for the purpose of relaying shellfish to an approved grow-out site for a minimum of six months.

(8) A person possessing a valid shellfish operation license may act as an agent for another person possessing a valid shellfish relay permit for the purpose of harvesting shellfish from the initial harvest site specified in the permit, provided that the agent conducting the harvest is:

(a) Documented in the permit;

(b) In possession of a copy of the permit at the time of harvest; and

(c) Conducting activities described in the written plan of operations approved by the department for the agent's shellfish operation.

WSR 11-12-068
PROPOSED RULES
OFFICE OF
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2010-11—Filed May 31, 2011, 7:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-18-085.

Title of Rule and Other Identifying Information: Medicare supplement policy replacement.

Hearing Location(s): OIC Tumwater Office, Training Room 120, 5000 Capitol Boulevard, Tumwater, WA, <http://www.insurance.wa.gov/about/directions.shtml>, on July 18, 2011, at 10:00 a.m.

Date of Intended Adoption: July 25, 2011.

Submit Written Comments to: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, e-mail kacys@oic.wa.gov, fax (360) 586-3109, by July 15, 2011.

Assistance for Persons with Disabilities: Contact Lorrie [Lorie] Villaflores by July 15, 2011, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Current WAC 284-66-063 allows, but does not require, a medicare supplement issuer to allow a medicare supplement policyholder or certificate holder to replace his or her pre-2010 standardized plan with a 2010 standardized plan without evidence of insurability. This is in conflict with RCW 48.66.045, which specifically requires a medicare supplement issuer to issue specified replacement coverage to a policyholder or certificate holder without evidence of insurability and without regard to whether the original standardized plan was issued before or after 2010. The proposed amendments to WAC 284-66-063 and 284-66-064 would eliminate any inconsistency between the regulation and the underlying statute by clearly stating that medicare supplement issuers must allow such policy replacement, as set forth in RCW 48.66.045, without regard to whether or not the original standardized policy was issued prior to 2010.

Reasons Supporting Proposal: These proposed rules would eliminate inconsistency between RCW 48.66.045 and WAC 284-66-063 and 284-66-064.

Statutory Authority for Adoption: RCW 48.02.060(3) and 48.66.165.

Statute Being Implemented: RCW 48.66.045.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7041; Implementation: Beth Berendt, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7117; and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. None of the domestic carriers affected by the proposed rule qualify as small business entities.

A cost-benefit analysis is not required under RCW 34.05.328. The existing WAC 284-66-06 is in direct conflict with RCW 48.66.045, allowing but not requiring a medicare supplement issuer to allow a medicare supplement policyholder or certificate holder to replace his or her pre-2010 standardized plan with a 2010 standardized plan without evidence of insurability. The proposed amendments to WAC 284-66-063 and 284-66-064 would eliminate any inconsistency between the regulation and the underlying statute by clearly stating that medicare supplement issuers must allow such policy replacement, as set forth in RCW 48.66.045, without regard to whether or not the original standardized policy was issued prior to 2010.

Eliminating a direct conflict between the rules and the law by amending the rules to be compliant with the law clearly fits under the provisions of RCW 34.05.328 (5)(b) (iii) "this section (requiring a cost-benefit analysis) does not apply to ... rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes ..." The rule amendments that are proposed for adoption in this case effectively adopt "without material change" appropriate language from a Washington state statute and therefore do not require a cost-benefit analysis.

May 31, 2011

Mike Kreidler

Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2009-08, filed 11/24/09, effective 1/19/10)

WAC 284-66-063 Benefit standards for policies or certificates issued or delivered after June 30, 1992 and before June 1, 2010. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this state as a medicare supplement policy or certificate unless it complies with these benefit standards.

(1) General standards. The following standards apply to medicare supplement policies and certificates and are in addition to all other requirements of this regulation.

(a) A medicare supplement policy or certificate may not exclude or limit benefits for losses incurred more than three months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within three months before the effective date of coverage.

(b) A medicare supplement policy or certificate must provide that benefits designed to cover cost sharing amounts under medicare will be changed automatically to coincide with any changes in the applicable medicare deductible, copayment or coinsurance amounts. Premiums may be modified to correspond with such changes.

(c) A medicare supplement policy or certificate may not provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(d) Each medicare supplement policy must be guaranteed renewable and:

(i) The issuer may not cancel or nonrenew the policy solely on the ground of health status of the individual; and

(ii) The issuer may not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

(iii) If the medicare supplement policy is terminated by the group policyholder and is not replaced as provided under (d)(v) of this subsection, the issuer must offer certificate holders an individual medicare supplement policy that (at the option of the certificate holder) provides for continuation of the benefits contained in the group policy, or provides for benefits that otherwise meet the requirements of this subsection.

(iv) If an individual is a certificate holder in a group medicare supplement policy and the individual terminates membership in the group, the issuer must offer the certificate holder the conversion opportunity described in (c)(iii) of this subsection, or at the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

(v) If a group medicare supplement policy is replaced by another group medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy must offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy may not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(e) Termination of a medicare supplement policy or certificate must be without prejudice to any continuous loss that began while the policy was in force, but the extension of benefits beyond the period that the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of medicare Part D benefits will not be considered in determining a continuous loss.

(f) If a medicare supplement policy or certificate eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug Improvement and Modernization Act of 2003, the modified policy or certificate is deemed to satisfy the guaranteed renewal requirements of this section.

(g)(i) A medicare supplement policy or certificate must provide that benefits and premiums under the policy or certificate must be suspended at the request of the policyholder or certificate holder for the period (not to exceed twenty-four months) that the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificate holder notifies the issuer of the policy or certificate within ninety days after the date the individual becomes entitled to the assistance.

(ii) If the suspension occurs and if the policyholder or certificate holder loses entitlement to medical assistance, the policy or certificate must be automatically reinstated effective as of the date of termination of the entitlement if the policyholder or certificate holder provides notice of loss of the entitlement within ninety days after the date of the loss and

pays the premium attributable to the period, effective as of the date of termination of entitlement.

(ii) Each medicare supplement policy must provide that benefits and premiums under the policy will be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan (as defined in Section 1862 (b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy must be automatically reinstated (effective as of the date of loss of coverage within ninety days after the date of the loss).

(h) Reinstitution of the coverages:

(i) May not provide for any waiting period with respect to treatment of preexisting conditions;

(ii) Must provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of the suspension. If the suspended medicare supplement policy or certificate provided coverage for outpatient prescription drugs, reinstatement of the policy for medicare Part D enrollees must be without coverage for outpatient prescription drugs and must otherwise provide substantially equivalent coverage to the coverage in effect before the date of suspension; and

(iii) Must provide for classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended.

(2) If an issuer makes a written offer to the medicare supplement policyholders or certificate holders of one or more of its plans, to exchange his or her standardized plan to a 2010 standardized plan during a specified period, the offer and subsequent exchange must comply with the following requirements:

(a) An issuer need not provide justification to the commissioner if the insured (~~replaces~~) exchanges a 1990 standardized policy or certificate with a 2010 standardized policy or certificate.

(b) An issuer may not apply new preexisting condition limitations or a new incontestability period to the (~~replacement~~) new 2010 standardized policy for those benefits contained in the former exchanged policy or certificate of the insured, but may apply preexisting condition limitations of no more than three months to any benefits contained in the new 2010 standardized policy or certificate that were not contained in the former exchanged policy.

(c) The new policy or certificate must be offered to all policyholders or certificate holders within a given plan, except where the offer or issue would be in violation of state or federal law.

(3) Standards for basic ("core") benefits common to benefit plans A-J. Every issuer must make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other medicare supplement insurance benefit plans in addition to the basic "core" package, but not in place of the basic "core" package.

(a) Coverage of Part A medicare eligible expenses for hospitalization to the extent not covered by medicare from the sixty-first day through the ninetieth day in any medicare benefit period;

(b) Coverage of Part A medicare eligible expenses incurred for hospitalization to the extent not covered by medicare for each medicare lifetime inpatient reserve day used;

(c) Upon exhaustion of the medicare hospital inpatient coverage including the lifetime reserve days, coverage of one hundred percent of the medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate or other appropriate medicare standard of payment, subject to a lifetime maximum benefit of an additional three hundred sixty-five days. The provider must accept the issuer's payment as payment in full and may not bill the insured for any balance;

(d) Coverage under medicare Parts A and B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations;

(e) Coverage for the coinsurance amount, or in the case of hospital; outpatient department services paid under a prospective payment system, the copayment amount, of medicare eligible expenses under Part B regardless of hospital confinement, subject to the medicare Part B deductible;

(4) Standards for additional benefits. The following additional benefits must be included in medicare supplement benefit plans "B" through "J" only as provided by WAC 284-66-066.

(a) Medicare Part A deductible: Coverage for all of the medicare Part A inpatient hospital deductible amount per benefit period.

(b) Skilled nursing facility care: Coverage for the actual billed charges up to the coinsurance amount from the twenty-first day through the one hundredth day in a medicare benefit period for posthospital skilled nursing facility care eligible under medicare Part A;

(c) Medicare Part B deductible: Coverage for all of the medicare Part B deductible amount per calendar year regardless of hospital confinement.

(d) Eighty percent of the medicare Part B excess charges: Coverage for eighty percent of the difference between the actual medicare Part B charge as billed, not to exceed any charge limitation established by the medicare program or state law, and the medicare-approved Part B charge.

(e) One hundred percent of the medicare Part B excess charges: Coverage for all of the difference between the actual medicare Part B charge as billed, not to exceed any charge limitation established by the medicare program or state law, and the medicare-approved Part B charge.

(f) Basic outpatient prescription drug benefit: Coverage for fifty percent of outpatient prescription drug charges, after a two hundred fifty dollar calendar year deductible, to a maximum of one thousand two hundred fifty dollars in benefits received by the insured per calendar year, to the extent not covered by medicare. The outpatient prescription drug benefit may not be included for sale or issuance in a medicare supplement policy after December 31, 2005.

(g) Extended outpatient prescription drug benefit: Coverage for fifty percent of outpatient prescription drug charges, after a two hundred fifty dollar calendar year deductible to a maximum of three thousand dollars in benefits received by the insured per calendar year, to the extent not covered by medicare. The outpatient prescription drug benefit may not be included for sale or issuance in a medicare supplement policy after December 31, 2005.

(h) Medically necessary emergency care in a foreign country: Coverage to the extent not covered by medicare for eighty percent of the billed charges for medicare-eligible expenses for medically necessary emergency hospital, physician, and medical care received in a foreign country, that would have been covered by medicare if provided in the United States and that began during the first sixty consecutive days of each trip outside the United States, subject to a calendar year deductible of two hundred fifty dollars, and a lifetime maximum benefit of fifty thousand dollars. For purposes of this benefit, "emergency care" means care needed immediately because of an injury or an illness of sudden and unexpected onset.

(i) Preventive medical care benefit: Coverage for the following preventive health services not covered by medicare:

(i) An annual clinical preventive medical history and physical examination that may include tests and services from (ii) of this subsection and patient education to address preventive health care measures.

(ii) Preventive screening tests or preventive services, the selection and frequency that is determined to be medically appropriate by the attending physician.

Reimbursement must be for the actual charges up to one hundred percent of the medicare-approved amount for each service, as if medicare were to cover the service as identified in *American Medical Association Current Procedural Terminology (AMA CPT)* codes, to a maximum of one hundred twenty dollars annually under this benefit. This benefit may not include payment for any procedure covered by medicare.

(j) At-home recovery benefit: Coverage for services to provide short term, at-home assistance with activities of daily living for those recovering from an illness, injury, or surgery.

(i) For purposes of this benefit, the following definitions apply:

(A) "Activities of daily living" include, but are not limited to bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

(B) "Care provider" means a duly qualified or licensed home health aide/homemaker, personal care aide, or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

(C) "Home" means any place used by the insured as a place of residence, provided that the place would qualify as a residence for home health care services covered by medicare. A hospital or skilled nursing facility is not considered the insured's place of residence.

(D) "At-home recovery visit" means the period of a visit required to provide at home recovery care, without limit on the duration of the visit, except each consecutive four hours

in a twenty-four hour period of services provided by a care provider is one visit.

(ii) Coverage requirements and limitations.

(A) At-home recovery services provided must be primarily services that assist in activities of daily living.

(B) The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by medicare.

(C) Coverage is limited to:

(I) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits may not exceed the number of medicare approved home health care visits under a medicare approved home care plan of treatment.

(II) The actual charges for each visit up to a maximum reimbursement of forty dollars per visit.

(III) One thousand six hundred dollars per calendar year.

(IV) Seven visits in any one week.

(V) Care furnished on a visiting basis in the insured's home.

(VI) Services provided by a care provider as defined in this section.

(VII) At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded.

(VIII) At-home recovery visits received during the period the insured is receiving medicare approved home care services or no more than eight weeks after the service date of the last medicare approved home health care visit.

(iii) Coverage is excluded for: Home care visits paid for by medicare or other government programs; and care provided by family members, unpaid volunteers, or providers who are not care providers.

(5) Standardized medicare supplement benefit plan "K" must consist of the following:

(a) Coverage of one hundred percent of the Part A hospital coinsurance amount for each day used from the sixty-first through the ninetieth day in any medicare benefit period;

(b) Coverage of one hundred percent of the Part A hospital coinsurance amount for each medicare lifetime inpatient reserve day used from the ninety-first through the one hundred fiftieth day in any medicare benefit period;

(c) Upon exhaustion of the medicare hospital inpatient coverage, including the lifetime reserve days, coverage of one hundred percent of the medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate medicare standard of payment, subject to a lifetime maximum benefit of an additional three hundred sixty-five days. The provider must accept the issuer's payment as payment in full and may not bill the insured for any balance;

(d) Medicare Part A deductible: Coverage for fifty percent of the medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in (j) of this subsection;

(e) Skilled nursing facility care: Coverage for fifty percent of the coinsurance amount for each day used from the twenty-first day through the one hundredth day in a medicare

benefit period for post-hospital skilled nursing facility care eligible under medicare Part A until the out-of-pocket limitation is met as described in (j) of this subsection;

(f) Hospice care: Coverage for fifty percent of cost sharing for all Part A medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in (j) of this subsection;

(g) Coverage for fifty percent, under medicare Part A or B, of the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulation) unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in (j) of this subsection;

(h) Except for coverage provided in (i) of this subsection, coverage for fifty percent of the cost sharing otherwise applicable under medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in (j) of this subsection;

(i) Coverage of one hundred percent of the cost sharing for medicare Part B preventive services after the policyholder pays the Part B deductible; and

(j) Coverage of one hundred percent of all cost sharing under medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under medicare Parts A and B of four thousand dollars in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services.

(6) Standardized medicare supplement benefit plan "L" must consist of the following:

(a) The benefits described in subsection (4)(a), (b), (c) and (i) of this section;

(b) The benefit described in subsection (4)(d), (e), (f) and (h) of this section but substituting seventy-five percent for fifty percent; and

(c) The benefit described in subsection (4)(j) of this section but substituting two thousand dollars for four thousand dollars.

AMENDATORY SECTION (Amending Matter No. R 2009-08, filed 11/24/09, effective 1/19/10)

WAC 284-66-064 Benefit standards for policies or certificates issued or delivered on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this state as a medicare supplement policy or certificate unless it complies with these benefit standards. Benefit standards applicable to medicare supplement policies or certificates issued before June 1, 2010, remain subject to the requirements of WAC 284-66-060 and 284-66-063.

(1) General standards. The following standards apply to medicare supplement policies and certificates and are in addition to all other requirements of this regulation.

(a) A medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than three months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment

was recommended by or received from a physician within three months before the effective date of coverage.

(b) A medicare supplement policy or certificate must provide that benefits designed to cover cost sharing amounts under medicare will be changed automatically to coincide with any changes in the applicable medicare deductible, copayment or coinsurance amounts. Premiums may be modified to correspond with such changes.

(c) No medicare supplement policy or certificate may provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured other than the nonpayment of premium.

(d) Each medicare supplement policy shall be guaranteed renewable and:

(i) The issuer may not cancel or nonrenew the policy solely on the ground of health status of the individual; and

(ii) The issuer may not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

(iii) If the medicare supplement policy is terminated by the group policyholder and is not replaced as provided under (d)(v) of this subsection, the issuer shall offer certificate holders an individual medicare supplement policy which, at the option of the certificate holder:

(A) Provides for continuation of the benefits contained in the group policy; or

(B) Provides for benefits that otherwise meet the requirements of this subsection.

(iv) If an individual is a certificate holder in a group medicare supplement policy and the individual terminates membership in the group, the issuer must:

(A) Offer the certificate holder the conversion opportunity described in (d)(iii) of this subsection; or

(B) At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

(v) If a group medicare supplement policy is replaced by another group medicare supplement policy purchased by the same policyholder, the issue of the replacement policy must offer coverage to all persons covered under the old group policy on its date of termination.

(vi) Termination of a medicare supplement policy or certificate must be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of medicare Part D benefits will not be considered in determining a continuous loss.

(vii)(A) A medicare supplement policy or certificate must provide that benefits and premiums under the policy or certificate are suspended at the request of the policyholder or certificate holder for the period not to exceed twenty-four months in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificate holder notifies the issuer of the

policy or certificate within ninety days after the date the individual becomes entitled to assistance.

(B) If suspension occurs and if the policyholder or certificate holder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstated, effective as of the date of termination of entitlement within ninety days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

(C) Each medicare supplement policy must provide that benefits and premiums under the policy must be suspended for any period that may be provided by federal regulation at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan as defined in Section 1862 (b)(1)(A)(v) of the Social Security Act. If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy must be automatically reinstated effective as of the date of loss of coverage if the policyholder provides notice of loss of coverage within ninety days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of enrollment in the group health plan.

(viii) Reinstatement of coverages as described in this section:

(A) Must not provide for any waiting period with respect to treatment of preexisting conditions;

(B) Must provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of suspension; and

(C) Must provide for classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended.

(2) Every issuer of medicare supplement insurance benefit plans A, B, C, D, F, F with high deductible, G, M, and N must make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other medicare supplement insurance plans in addition to the basic core package, but not in lieu of it.

(a) Coverage of Part A medicare eligible expenses for hospitalization to the extent not covered by medicare from the 61st day through the 90th day in any medicare benefit period.

(b) Coverage of Part A medicare eligible expenses incurred for hospitalization to the extent not covered by medicare for each medicare lifetime inpatient reserve day used;

(c) Upon exhaustion of the medicare hospital inpatient coverage, including the lifetime reserve days, coverage of one hundred percent of the medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system rate or other appropriate medicare standard of payment, subject to a lifetime maximum benefit of an additional three hundred sixty-five days. The provider must accept the issuer's payment as payment in full and may not bill the insured for any balance;

(d) Coverage under medicare Parts A and B for the reasonable cost of the first three pints of blood or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations;

(e) Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, of medicare eligible expenses under Part B regardless of hospital confinement, subject to the medicare Part B deductible.

(f) Coverage of cost sharing for all Part A Medicare eligible hospice care and respite care expenses.

(3) The following additional benefits must be included in medicare supplement benefit Plans B, C, D, F, F with high deductible, G, M, and N as provided by WAC 284-66-066:

(a) Coverage for one hundred percent of the medicare Part A inpatient hospital deductible amount per benefit period.

(b) Coverage for fifty percent of the medicare Part A inpatient hospital deductible amount per benefit period.

(c) Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a medicare benefit period for posthospital skilled nursing facility care eligible under medicare Part A.

(d) Coverage for one hundred percent of the medicare part B deductible amount per calendar year regardless of hospital confinement.

(e) Coverage for all of the difference between the actual medicare Part B charges as billed, not to exceed any charge limitation established by the medicare program or state law, and the medicare-approved Part B charge.

(f) Coverage to the extent not covered by medicare for eighty percent of the billed charges for medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by medicare if provided in the United States and which care began during the first sixty consecutive days of each trip outside the United States, subject to a calendar year deductible of two hundred fifty dollars and a lifetime maximum benefit of fifty thousand dollars. For purposes of this benefit, "emergency care" means care needed immediately because of an injury or an illness of sudden and unexpected onset.

(4)(a) Every issuer of a standardized medicare supplement plan B, C, D, F, F with high deductible, G, K, L, M, or N issued on or after June 1, 2010, must issue, without evidence of insurability, coverage under a 2010 plan B, C, D, F, F with high deductible, G, K, L, M, or N to any policyholder if the medicare supplement policy or certificate replaces another medicare supplement policy or certificate B, C, D, F, F with high deductible, G, K, L, M, or N or other more comprehensive coverage, including any standardized medicare supplement policy issued prior to June 1, 2010.

(b) Every issuer of a standardized medicare supplement plan A issued on or after June 1, 2010, must issue, without evidence of insurability, coverage under a 2010 plan A to any policyholder if the medicare supplement policy or certificate replaces another medicare supplement policy or certificate or other more comprehensive coverage, including any standardized medicare supplement policy issued prior to June 1, 2010.

**WSR 11-12-069
PROPOSED RULES
OFFICE OF
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2011-03—Filed May 31, 2011, 7:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-04-090.

Title of Rule and Other Identifying Information: Amendment to the mortality rules as set forth in chapter 284-74 WAC.

Hearing Location(s): Insurance Commissioner's Office, Room TR 120, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, <http://www.insurance.wa.gov/about/directions.shtml>, on July 13, 2011, at 10:00 a.m.

Date of Intended Adoption: July 18, 2011.

Submit Written Comments to: Donna Dorris, P.O. Box 40258, Olympia, WA 98504-0258, e-mail donnad@oic.wa.gov, fax (360) 586-3109, by July 12, 2011.

Assistance for Persons with Disabilities: Contact Lori [Lorie] Villafloros by July 12, 2011, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal adopts the NAIC model regulation number 815, permitting the recognition of preferred mortality tables for use in determining minimum reserve liabilities.

Reasons Supporting Proposal: Adopting this model provides uniformity with many other states who have already adopted the NAIC preferred mortality tables.

Statutory Authority for Adoption: RCW 48.02.060.

Statute Being Implemented: RCW 48.74.030 (1)(b) and 48.02.160(1).

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Donna Dorris, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7040; Implementation: Beth Berendt, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7117; and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This regulation is essentially permissive in nature; that is, it allows but does not require an insurer to utilize the CSO preferred tables as the minimum valuation standard for their life policies. Because this proposed regulation does not require insurers to use these tables it does not impose an unavoidable cost on insurers. Therefore no small business economic impact statement study is needed.

A cost-benefit analysis is not required under RCW 34.05.328. This regulation adopts NAIC model language and tables without any substantive change; allowance for such adoption is already provided in RCW 48.74.030. In addition, this proposed rule change is essentially permissive in nature in that it allows, but does not require, an insurer to utilize the CSO preferred tables as the minimum valuation standard for

their life policies. Because this proposed regulation does not require insurers to use these tables it does not impose an unavoidable cost on insurers. Therefore no cost-benefit analysis is needed.

May 31, 2011
Mike Kreidler
Insurance Commissioner

NEW SECTION

WAC 284-74-470 Purpose. The purpose of these rules, WAC 284-74-470 through 284-74-510, is to recognize, permit and prescribe the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities in accordance with RCW 48.74.030 (1)(a)(iii), and WAC 284-74-340 (1) and (2).

NEW SECTION

WAC 284-74-480 Definitions. (1) "2001 CSO mortality table" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO task force from the Valuation Basic Mortality Table developed by the society of actuaries individual life insurance valuation mortality task force, and adopted by the National Association of Insurance Commissioners (NAIC) in December of 2002. The 2001 CSO mortality table is included in the *Proceedings of the NAIC (2nd Quarter 2002)* and supplemented by the 2001 CSO preferred class structure mortality table defined in subsection (2) of this section. Unless the context indicates otherwise, the 2001 CSO mortality table includes both the ultimate form and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables. Mortality tables in the 2001 CSO mortality table include the following:

(a) "2001 CSO mortality table (F)" means that mortality table consisting of the rates of mortality for female lives from the 2001 CSO mortality table.

(b) "2001 CSO mortality table (M)" means that mortality table consisting of the rates of mortality for male lives from the 2001 CSO mortality table.

(c) "Composite mortality tables" means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

(d) "Smoker and nonsmoker mortality tables" means mortality tables with separate rates of mortality for smokers and nonsmokers.

(2) "2001 CSO preferred class structure mortality table" means mortality tables with separate rates of mortality for super preferred nonsmokers, preferred nonsmokers, residual standard nonsmokers, preferred smokers, and residual standard smoker splits of the 2001 CSO nonsmoker and smoker tables, as adopted by the NAIC at the September, 2006 national meeting and published in the *NAIC Proceedings (3rd Quarter 2006)*. Unless the context indicates otherwise, the 2001 CSO preferred class structure mortality table

includes both the ultimate form of that table and the select and ultimate form of that table. It includes both the smoker and nonsmoker mortality tables. It includes both the male and female mortality tables and the gender composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality table.

(3) "Statistical agent" means an entity with proven systems for protecting the confidentiality of individual insured and insurer information; demonstrated resources for and history of ongoing electronic communications and data transfer ensuring data integrity with insurers, which are its members or subscribers; and a history of and means for aggregation of data and accurate promulgation of the experience modifications in a timely manner.

NEW SECTION

WAC 284-74-490 2001 CSO preferred class structure table. (1) At the election of the company, for each calendar year of issue, for any one or more specific plans of insurance and subject to satisfying the conditions stated in this regulation, the 2001 CSO preferred class structure mortality table may be substituted in place of the 2001 CSO smoker or nonsmoker mortality table as the minimum valuation standard for policies issued on or after January 1, 2007.

(2) For policies issued on or after January 1, 2004, and prior to January 1, 2007, these tables may be substituted with the consent of the commissioner and subject to the conditions of WAC 284-74-500. In determining such consent, the commissioner may rely on the consent of the commissioner of the company's state of domicile. No such election shall be made until the company demonstrates at least twenty percent of the business to be valued on this table is in one or more of the preferred classes.

(3) A table from the 2001 CSO preferred class structure mortality table used in place of a 2001 CSO mortality table, pursuant to the requirements of this rule, will be treated as part of the 2001 CSO mortality table only for purposes of reserve valuation pursuant to the requirements of these rules, WAC 284-74-400 through 284-74-460.

NEW SECTION

WAC 284-74-500 Conditions. (1) For each plan of insurance with separate rates for preferred and standard nonsmoker lives, an insurer may use the super preferred nonsmoker, preferred nonsmoker, and residual standard nonsmoker tables to substitute for the nonsmoker mortality table found in the 2001 CSO mortality table to determine minimum reserves. At the time of election and annually thereafter, except for business valued under the residual standard nonsmoker table, the appointed actuary shall certify that:

(a) The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

(b) The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the

valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

(2) For each plan of insurance with separate rates for preferred and standard smoker lives, an insurer may use the preferred smoker and residual standard smoker tables to substitute for the smoker mortality table found in the 2001 CSO mortality table to determine minimum reserves. At the time of election and annually thereafter, for business valued under the preferred smoker table, the appointed actuary shall certify that:

(a) The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the preferred smoker valuation basic table corresponding to the valuation table being used for that class.

(b) The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the preferred smoker valuation basic table.

(3) Unless exempted by the commissioner, every authorized insurer using the 2001 CSO preferred class structure table must annually file with the commissioner, with the NAIC, or with a statistical agent designated by the NAIC and acceptable to the commissioner, statistical reports showing mortality and such other information as the commissioner may deem necessary or expedient for the administration of the provisions of this regulation. The form of the reports must be established by the commissioner or the commissioner may require the use of a form established by the NAIC or by a statistical agent designated by the NAIC and acceptable to the commissioner.

(4) The use of the 2001 CSO preferred class structure table for the valuation of policies issued prior to January 1, 2007, must not be permitted in any statutory financial statement in which a company reports, with respect to any policy or portion of a policy coinsured, either of the following:

(a) In cases where the mode of payment of the reinsurance premium is less frequent than the mode of payment of the policy premium, a reserve credit that exceeds, by more than the amount specified in this subsection as Y, the gross reserve calculated before reinsurance. Y is the amount of the gross reinsurance premium that:

(i) Provides coverage for the period from the next policy premium due date to the earlier of the end of the policy year and the next reinsurance premium due date; and

(ii) Would be refunded to the ceding entity upon the termination of the policy.

(b) In cases where the mode of payment of the reinsurance premium is more frequent than the mode of payment of the policy premium, a reserve credit that is less than the gross reserve, calculated before reinsurance, by an amount that is less than the amount specified in this subsection as Z. Z is the amount of the gross reinsurance premium that the ceding entity would need to pay the assuming company to provide reinsurance coverage from the period of the next reinsurance

premium due date to the next policy premium due date minus any liability established for the proportionate amount not remitted to the reinsurer.

(c) For purposes of this condition, the reserve:

(i) For the mean reserve method must be defined as the mean reserve minus the deferred premium asset; and

(ii) For the midterminal reserve method must include the unearned premium reserve. A company may estimate and adjust its accounting on an aggregate basis in order to meet the conditions to use the 2001 CSO preferred class structure table.

NEW SECTION

WAC 284-74-510 Effective date. The effective date of this regulation is September 1, 2011.

WSR 11-12-082
PROPOSED RULES
DEPARTMENT OF
EARLY LEARNING

[Filed June 1, 2011, 8:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-15-116.

Title of Rule and Other Identifying Information: Chapter 170-290 WAC, Working connections and seasonal child care programs, amending sections in Parts I and II of this chapter, and repealing WAC 170-290-0100.

Hearing Location(s): **Tuesday, July 12, 2011, at 6:00 p.m. to 8:30 p.m.**, at the Department of Early Learning Office, Nisqually Room, Point Plaza East, Building 2, 6860 Capitol Boulevard S.E., Tumwater, WA 98501; on **Thursday, July 14, 2011, at 6:00 p.m. to 8:30 p.m.**, at the Department of Early Learning Office, Downstairs Conference Room, 3600 South Graham Street, Seattle, WA 98118; and on **Saturday, July 16, 2011, at 11:00 a.m. to 1:30 p.m.**, at the Spokane Public Library, Downtown Branch, Room 1-A, 906 West Main Avenue, Spokane, WA 99201.

The deadline for sending written comments on this [these] proposed rules is midnight on Sunday, July 17, 2011. Comments may be sent at the DEL online rules comment web page <https://apps.del.wa.gov/PolicyProposalComment/Detail.aspx>, by e-mail to Rules@del.wa.gov, by fax to (360) 725-4459, or mail to DEL Rules Coordinator, P.O. Box 40972, Olympia, WA 98504-0972.

Everyone who comments on the proposed rules, either in writing or at a public hearing, will receive the department's combined written response, called a concise explanatory statement. This statement is also available to anyone who requests it, by contacting the DEL rules coordinator at the address above, or by e-mail at Rules@del.wa.gov.

DEL encourages public use of the department's Facebook and Blog pages on the internet to review and give input on department programs and initiatives. But in order to have a comment become part of the public record for these proposed rules, and to receive the department's concise explanatory statement, the comment must be received by the com-

ment deadline at the on-line comment web page, e-mail, fax or mailing address listed in the "Send written comments to" section of this notice.

Date of Intended Adoption: After July 18, 2011.

Submit Written Comments to: DEL Rules Coordinator, P.O. Box 40972, Olympia, WA 98504-0972, DEL On-line Comment Web Site <https://apps.del.wa.gov/PolicyProposalComment/Detail.aspx>, e-mail Rules@del.wa.gov, or fax (360) 725-4459, by 11:59 p.m., July 17, 2011.

Assistance for Persons with Disabilities: Contact the DEL rules coordinator, by June 30, 2011, (360) 725-4397.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is revising rules in chapter 170-290 WAC, Parts I and II for the working connections child care (WCCC) and seasonal child care (SCC) programs. Many of the WCCC rules proposed for amendment are applied by reference in the SCC rules in Part III of chapter 170-290 WAC. In general, the proposed rules are intended to: Increase program effectiveness; address state budget cutbacks by increasing program cost effectiveness; address audit findings; reduce fraud; address concerns from the legislative temporary assistance for needy families (TANF) redesign and WorkFirst one-table discussions; and allow the department of early learning (DEL) and the department of social and health services (DSHS)* to more efficiently and effectively implement the child care subsidy programs. The proposal is also intended to permanently adopt provisions in emergency rules filed since September 24, 2010, revising consumer eligibility requirements, and emergency rules filed since February 15, 2011, limiting consumer entry into the WCCC and SCC programs.

Specifically, the proposed rules:

- Establish that DEL may limit entry into WCCC or SCC by limiting or closing enrollment, creating priority lists for receiving program benefits, and creating waiting lists when appropriate to keep the program within available funds.
- Change the family countable income limit to qualify for WCCC from two hundred percent of the federal poverty guidelines (FPG) to one hundred seventy-five percent of FPG. The one hundred seventy-five percent limit has been in effect by emergency rule since October 1, 2010. This provision also complies with chapter 5, Laws of 2011, Regular Session (ESHB 1086), section 612(16). A family becomes ineligible for child care subsidy benefits when their monthly income exceeds the limit.
- Increase monthly copayment amounts for families with income over eighty-two percent through one hundred seventy-five percent of the FPG. This increase has been in effect by emergency rules effective February 1 and March 1 of 2011. The \$15 per month copayment for families with income at or below eighty-two percent of the FPG remains unchanged.
- Clarify the WCCC eligibility process, including when the eligibility of parents and their child needing child care are considered separately. The proposed rules align terms and definitions regarding citizenship or legal resident status for children eligi-

ble to receive subsidy benefits with DSHS rules proposed by WSR 11-10-073 (see this web link <http://www.dshs.wa.gov/pdf/ms/rpau/102-11-10-073.pdf>).

- Clarify requirements for families to maintain current WCCC eligibility and reapply for benefits on time. A family must reapply before their current WCCC benefits end to avoid being dropped from the program and having to apply anew. The family may then risk being placed on a waiting list for WCCC.
- Limit payment of field trip fees (up to \$20 per WCCC child per month) to DEL licensed and certified family home child care providers, and eliminating the age restriction for receiving field trip fees. This change has been in effect by emergency rule since January 2011.
- Clarify the family income verification process to address concerns raised in audits and in administrative hearings.
- Address audit findings and fraud concerns by clarifying that child care subsidy benefits may be used only when the consumer is working or in approved activities outside of his or her home, by adding the following:
 - a. An in-home/relative child care provider who is paid child care subsidies to care for children receiving WCCC benefits may not receive those benefits for their own children during the hours in which they provide subsidized child care.
 - b. A consumer's spouse or partner may not receive WCCC payment for caring for the consumer's child. This provision exists in WAC currently for licensed family home child care and is needed to clearly include legal guardians and in-loco parentis caregivers to comply with federal rules.
- Revise WCCC requirements regarding relative caregivers, self-employed consumers, legal guardians and in loco parentis custodians, to streamline and clarify the rules and address audit findings.
- Eliminate differences regarding when program benefits begin for families receiving temporary assistance for needy families (TANF) and families not receiving TANF where appropriate. See amended WAC 170-290-0095 and repealed WAC 170-290-0100.
- Clarify when a WCCC consumer may use the 28-day "gap" period when the consumer is laid off temporarily or not currently in an approved activity.
- Update the WCCC "consumer's responsibilities" section to align with current practice.
- Move existing wording to different sections in the chapter for clarity and more logical placement.
- Update obsolete wording and cross references, and clarify existing wording where appropriate.

**DEL and DSHS jointly operate the WCCC program under chapter 265, Laws of 2006, section 501 (uncodified). DEL adopts rules and policy for WCCC. DSHS receives*

WCCC applications, determines eligibility, and processes payments to child care providers.

Reasons Supporting (the) Proposal: Since October 2010, DEL and DSHS have implemented directives to reduce expenditures in the WorkFirst program and child care subsidy programs to avoid a projected \$82 million WorkFirst budget deficit in state fiscal year 2011, and projected deficits in succeeding years. (WorkFirst is Washington state's various "welfare-to-work" programs and agencies, including WCCC and TANF). DEL has filed a series of emergency rules since September 24, 2011 [2010], intended to limit the number of families that may receive WCCC and SCC program benefits, thereby regulating program expenditures. Those emergency rules were extended on May 27, 2011, filing number WSR 11-12-053, while DEL completes the permanent rule-making process.

Under the current emergency rules, WCCC provides subsidy benefits to approximately thirty-five thousand two hundred eligible families per month. Additional families who apply are placed on a waiting list. As space becomes available, individual families are notified that they are eligible to move off the waiting list. The family must then update their application and be found eligible for WCCC benefits. At this time, families are on the waiting list from two to four weeks on average.

Changing the income limit to qualify for child care subsidies to one hundred seventy-five percent of the FPG reduced the number of families receiving WCCC by about two thousand five hundred compared to pre-October 2010 levels. Copayment levels (the share of monthly child care costs that parents must pay out-of-pocket) were increased in February and March 2011 by emergency rule. This reduced the amount of monthly state-paid assistance per child, and so reduced WCCC and WorkFirst program expenditures further.

These measures must be continued into the succeeding fiscal years as declining state revenues and federal supports to fund WorkFirst and WCCC are projected to fall short of increased WorkFirst caseloads and demand for child care subsidy assistance.

This filing complies with office of financial management guidance regarding Executive Order 10-06 suspending non-critical rule making, but allowing rules to proceed that are necessary: To "manage budget shortfalls;" and to "finalize permanent rule making that has previously been covered by emergency rules."

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070, chapter 43.215 RCW.

Statute Being Implemented: Chapter 43.215 RCW; section 612(16), chapter 5, Laws of 2011 regular session.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The 2011 legislature has passed two bills, ESSB 5921 and 2ESHB 1087, that may require revision of these proposed rules at the final adoption to align the rules with new statutory requirements. At the time this proposal was filed, the governor had not signed these bills.

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Mark Rosen and Shannon Blood, DEL, Lacey, Washington, (360) 725-4665; Implementation: DSHS field offices and call centers, statewide; and Enforcement: DSHS field offices, statewide.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not impose new compliance requirements on small child care businesses, nor any new reporting or recordkeeping requirement. Preparation of a comprehensive small business economic impact statement is not required. Implementation of certain rules (by emergency adoption) in this proposal has resulted in fewer families and children being found eligible for WCCC program benefits. This has resulted in reduced revenue for some child care businesses that provide care for children that is paid for with WCCC subsidy benefits. Impacts vary by provider. Businesses that provide care for children only on a private-pay basis would not likely be impacted by these rules.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not listed among the state agencies required to comply with RCW 34.05.328.

June 1, 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.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0005 ~~((Consumers.))~~ **Eligibility.** (1) ~~((H))~~ **Parents.** To be eligible for WCCC, ~~((an eligible consumer has))~~ the person applying for benefits must:

(a) Have parental control of one or more eligible children ~~((- lives));~~

(b) Live in the state of Washington ~~((- and is));~~

(c) Be the child's:

~~((a))~~ (i) Parent, either biological or adopted;

~~((b))~~ (ii) Stepparent;

~~((e))~~ (iii) Legal guardian verified by a legal or court document;

~~((d))~~ (iv) Adult sibling or step-sibling;

~~((e))~~ (v) Nephew or niece;

~~((f))~~ (vi) Aunt;

~~((g))~~ (vii) Uncle;

~~((h))~~ (viii) Grandparent; ~~((e))~~

(i) Any of the relatives in ~~((f), (g), or (h))~~ (c)(vi), (vii), or (viii) of this subsection with the prefix "great ~~((for example)),~~" such as 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));~~ or

(x) An approved in loco parentis custodian responsible for exercising day-to-day care and control of the child and who is not related to the child as described above;

(d) 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;

~~((e))~~ (e) Comply with any special circumstances that might affect WCCC eligibility under WAC 170-290-0020; ~~((and~~

~~((d))~~ (f) Have countable income at or below ~~((two))~~ one hundred seventy-five percent of the federal poverty guidelines (FPG) ~~((under WAC 170-290-0065)).~~

(3) 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). The consumer's eligibility shall end if the consumer's countable income is greater than one hundred seventy-five percent of the FPG;

(g) Not have a monthly copayment that is higher than the state will pay for all eligible children in care;

(h) Complete the WCCC application and DSHS verification process regardless of other program benefits or services received; and

(i) Meet eligibility requirements for WCCC described in Part II of this chapter.

(2) **Children.** To be eligible for WCCC, the child must:

(a) Belong to one of the following groups as defined in WAC 388-424-0001:

(i) A U.S. citizen;

(ii) A U.S. national;

(iii) A qualified alien; or

(iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005;

(b) Live in Washington state, and be:

(i) Less than age thirteen; or

(ii) Less than age nineteen, and:

(A) Have a verified special need, according WAC 170-290-0220; or

(B) Be under court supervision.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0012 **Verifying consumers' information.** (1) A consumer must complete the DSHS application for WCCC benefits and provide all required information to DSHS to determine eligibility when:

(a) The consumer initially applies for benefits;

(b) The consumer reapplies for benefits;

(c) The consumer reports a change of circumstances ~~((occurs, which is either reported by the consumer or determined by DSHS));~~

(d) DSHS finds out that the consumer's circumstances may have changed; or

(e) The information DSHS has is inconsistent, conflicting, or outdated.

(2) ~~((DSHS may accept any verification that the consumer can easily obtain when it reasonably supports the consumer's statement or circumstances.))~~ The verification that the consumer gives to DSHS must:

(a) Clearly relate to the information DSHS is requesting;

(b) Be from a reliable source; ~~((and))~~

(c) Be accurate, complete, and consistent; and

(d) As applicable, include, but not be limited to, the following:

(i) A current WorkFirst IRP for consumers receiving TANF;

(ii) Employer name, address, and phone number;

(iii) State business registration and license, if self-employed;

(iv) Work, school, or training schedule (when requesting child care for non-TANF activities);

(v) Hourly wage or salary;

(vi) Either the:

(A) Gross income for the last three months;

(B) Federal income tax return for the preceding calendar year; or

(C) DSHS employment verification form;

(vii) Monthly earned income the consumer receives, such as child support or Supplemental Security Income (SSI) benefits;

(viii) If the other parent is in the household, the same information for them;

(ix) Proof that the child belongs to one of the following groups as defined in WAC 388-424-0001:

(A) A U.S. citizen;

(B) A U.S. national;

(C) A qualified alien; or

(D) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005;

(x) Proof of child enrollment in a head start, early head start or early childhood education and assistance program for twelve-month eligibility;

(xi) Name and phone number of the licensed child care provider; and

(xii) For the in-home/relative child care provider, a:

(A) Completed and signed criminal background check form;

(B) Legible copy of the proposed provider's photo identification, such as a driver's license, Washington state identification, or passport;

(C) Legible copy of the proposed providers' valid Social Security card; and

(D) All other information required by WAC 170-290-0135.

(3) If DSHS requires verification from a consumer that costs money, DSHS must pay for the consumer's reasonable costs.

(4) If the verification that a consumer provides to DSHS is inconsistent, conflicting, or outdated, DSHS may:

(a) Ask the consumer to provide DSHS with more verification or provide a collateral contact (a "collateral contact" is a statement from someone outside of the consumer's residence that knows the consumer's situation); or

(b) Send an investigator from the division of fraud investigations (DFI) to make an unannounced visit to the consumer's home to verify the consumer's circumstances. See WAC 170-290-0025(9).

(5) If a consumer does not provide all of the verification requested, DSHS will determine if a consumer is eligible based on the information already available to DSHS.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0015 Eligibility—Family size. DSHS determines a consumer's family size as follows:

(1) If a consumer's family includes:	DSHS counts the following individuals as part of the family for WCCC eligibility:
(a) A single parent, including a minor parent living independently.	The consumer and the consumer's children.
(b) Unmarried parents who have at least one mutual child.	Both parents and all their children living in the household.
(c) Unmarried parents with no mutual children.	Unmarried parents and their respective children living in the household as separate WCCC families.
(d) Married parents.	Both parents and all their children living in the household.

(e) ((Undocumented)) Parents who are undocumented aliens as defined in WAC 388-424-0001.	Parents and children, documented and undocumented, as long as the child needing care ((is a)) belongs to one of the following groups as defined in WAC 388-414-0001: (i) A U.S. citizen ((or legally residing in the United States-)); (ii) A U.S. national; (iii) A qualified alien; or (iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005. All other family rules in this section apply.
(f) A legal guardian verified by a legal or court document; adult sibling or step-sibling; nephew, niece, aunt, uncle, grandparent; or great-nephew, great-niece, great-aunt, great-uncle, or great-grandparent.	The children only (the children and their income are counted).
(g) A minor parent with children and lives with a parent/guardian.	Only the minor parent and their children.
(h) A parent who is out of the household because of employer requirements, such as the military or training, and is expected to return to the household.	The consumer, the absent parent, and the children. Subsection (1)(b) and (d) of this section apply.
(i) A parent who is voluntarily out of the household for reasons other than requirements of the employer, such as unapproved schooling and visiting family members, and is expected to return to the household.	The consumer, the absent parent, and the children. Subsection (1)(b) and (d) of this section apply as well as WAC 170-290-0020.
(j) An incarcerated parent.	The incarcerated individual is not part of the household count in determining income and eligibility. DSHS counts all remaining household members. All other family rules in this section apply.

(2) If the consumer's household includes:	DSHS counts the following individuals as part of the family for WCCC eligibility:
(a) Eighteen year old siblings of the children who require care and are enrolled in high school or general equivalency diploma (GED) program.	The eighteen year olds (unless they are a parent themselves), until they turn nineteen or complete high school/GED, whichever comes first. All other family rules in this section apply.
(b) Siblings of the children requiring care who are up to twenty-one years of age and who are participating in an approved program through the school district's special education department under RCW 28A.155.020.	The individual participating in an approved program through RCW 28A.155.020 up to twenty-one years of age (unless they are a parent themselves). All other family rules in this section apply.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0020 Eligibility—Special circumstances. ~~((1) A consumer may be eligible for WCCC if he or she is:~~

~~(a) An employee at a child care center where the consumer's child receives care and the consumer does not provide direct care to his or her own children during the time WCCC is requested;~~

~~(b) A sanctioned WorkFirst participant or an applicant who was terminated by a sanction review panel and in an activity needed to remove a sanction penalty or to reopen his or her case;~~

~~(c) A parent in a two-parent family and one parent is not able or available to provide care for the children while the other is working, looking for work, or preparing for work;~~

~~(i) "Able" means physically and mentally capable of caring for a child in a responsible manner. If a consumer claims one parent is unable to care for the children, the consumer must provide written documentation from a licensed professional (see WAC 388-448-0020) that states the:~~

- ~~(A) Reason the parent is unable to care for the children;~~
- ~~(B) Expected duration and severity of the condition that keeps the parent from caring for the children; and~~
- ~~(C) Treatment plan if the parent is expected to improve enough to be able to care for the children. The parent must provide evidence from a medical professional showing he or she is cooperating with treatment and is still unable to care for the children.~~

~~(ii) "Available" means free to provide care when not participating in an approved work activity under WAC 170-290-0040, 170-290-0045, 170-290-0050, or 170-290-0055 during the time child care is needed; or~~

~~(d) A married consumer described under WAC 170-290-0005 (1)(d) through (i). Only the consumer or the consumer's spouse must be participating in activities under WAC 170-290-0040, 170-290-0045, 170-290-0050, or 170-290-0055.~~

(2) A consumer might be eligible for WCCC if his or her children are legally residing in the country, are living in Washington state, and are:

- (a) Less than age thirteen; or
- (b) Less than age nineteen, and:
 - (i) Have a verified special need, according to WAC 170-290-0220; or
 - (ii) Are under court supervision.

(3) Any of a consumer's children who receive care at the same place where the consumer works (other than (1)(a) of this section) are not eligible for WCCC payments but may be included in the consumer's household if they meet the requirements of WAC 170-290-0015. This includes if a consumer works:

(a) In a family home child care in any capacity and his or her children are receiving care at the same home during the consumer's hours of employment; or

(b) In their own home or another location and his or her children receive care at the same location during the consumer's hours of employment.) **(1) Child care provided at the consumer's place of work.** A consumer is not eligible for WCCC benefits for his or her children when child care is provided at the same location where the consumer works.

(2) Consumer's child care employment.

(a) A consumer may be eligible for WCCC benefits during the time she or he works in a child care center but does not provide direct care in the same classroom to his or her children during work hours.

(b) A consumer is not eligible for WCCC benefits during the time she or he works in a family home child care where his or her children are also receiving subsidized child care.

(c) In-home/relative providers who are paid child care subsidies to care for children receiving WCCC benefits may not receive those benefits for their own children during the hours in which they provide subsidized child care.

(d) A child care provider who receives TANF benefits on behalf of a dependent child may not bill the state for subsidized child care for that same child.

(3) Two-parent family.

(a) A consumer may be eligible for WCCC if he or she is a parent in a two-parent family and one parent is not able or available as defined in WAC 170-290-0003 to provide care for the children while the other parent is working or participating in approved activities.

(b) If a consumer claims one parent is not able to care for the children the consumer must provide written documentation from a licensed professional (see WAC 388-448-0020) that states the:

- (i) Reason the parent is not able to care for the children;
- (ii) Expected duration and severity of the condition that keeps the parent from caring for the children; and
- (iii) Treatment plan if the parent is expected to improve enough to be able to care for the children. The parent must provide evidence from a medical professional showing he or she is cooperating with treatment and is still not able to care for the children.

(4) **Single-parent family.** A consumer is not eligible for WCCC benefits when he or she is the only parent in the family and will be away from the home for more than thirty days in a row.

(5) Legal guardians.

(a) A legal guardian under WAC 170-290-0005 may receive WCCC benefits for his or her work or approved activities without his or her spouse or live-in partner's availability to provide care being considered unless his or her spouse or live-in partner is also named on the permanent custody order.

(b) Eligibility for WCCC benefits is based on the consumer's work or approved activities schedule, the child's need for care, and the child's income eligibility and family size of one.

(c) The consumer's spouse or live-in partner is not eligible to receive subsidized child care payments as a child care provider for the child.

(6) In loco parentis custodians.

(a) An in loco parentis custodian may be eligible for WCCC benefits when he or she cares for an eligible child in the absence of the child's legal guardian or biological, adoptive or step-parents.

(b) An in loco parentis custodian who is not related to the child as described in WAC 170-290-0005(1) may be eligible for WCCC benefits if he or she has:

(i) A written, signed agreement between the parent and the caregiver assuming custodial responsibility; or

(ii) Receives a TANF grant on behalf of the eligible child.

(c) Eligibility for WCCC benefits is based on his or her work schedule, the child's need for care, and the child's income eligibility and family size of one.

(d) The consumer's spouse or live-in partner is not eligible to receive subsidized child care payments as a child care provider for the child.

(7) WorkFirst sanction.

(a) A consumer may be eligible for WCCC if he or she is a sanctioned WorkFirst participant and participating in an activity needed to remove a sanction penalty or to reopen his or her WorkFirst case.

(b) A WorkFirst participant who loses his or her TANF grant due to exceeding the federal time limit for receiving TANF may still be eligible for WCCC benefits under WAC 170-290-0055.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0025 Consumers' rights. When a consumer applies for or receives WCCC benefits, the consumer has the right to:

(1) Be free from discrimination in accordance with all applicable federal and state nondiscrimination laws, regulations, and policies;

(2) Have WCCC eligibility determined within thirty days from his or her application date per WAC ((170-290-0100(2))) 170-290-0095;

(3) Be informed, in writing, of his or her legal rights and responsibilities related to WCCC benefits;

(4) Receive a written notice at least ten days before DSHS makes changes to lower or stop benefits except as stated in WAC 170-290-0120;

(5) Ask for an administrative hearing if he or she does not agree with DSHS about a decision per WAC 170-290-0280;

(6) Ask a supervisor or administrator to review a decision or action affecting the consumer's benefits without affecting the right to an administrative hearing;

(7) Have an interpreter or translator service provided by DSHS within a reasonable amount of time and at no cost to the consumer;

(8) Choose a provider as long as the provider meets the requirements in WAC 170-290-0125;

(9) Ask the fraud early detection (FRED) investigator from the division of fraud investigations (DFI) to come back at another time. A consumer does not have to let an investigator into his or her home. This request will not affect the consumer's eligibility for benefits. If the consumer refuses to cooperate (provide the information requested) with the investigator, it could affect his or her benefits;

(10) Access his or her child at all times while the child is in child care;

(11) Terminate child care without cause and without notice to the provider. Notice must be given to DSHS within five days of termination;

(12) Not be charged by the consumer's licensed or certified provider, or be made to pay for:

(a) The difference between the provider's private rate and the state maximum rate, when the provider's private rate for child care or the registration fee is higher;

(b) Any day when the consumer's child is absent;

(c) Vacation days when the provider chooses to close;

(d) A higher amount than the state allows for field trips. If the consumer requests, and the provider has a policy in place, the consumer may voluntarily pay the difference between the amount that the state allows and the actual field trip cost;

(e) A preschool tuition fee in addition to regular child care services; or

(f) Child care services after the final day of care, when the provider chooses to stop caring for the consumer's children.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0030 Consumers' responsibilities.

When a consumer applies for or receives WCCC benefits, the consumer must:

(1) Give DSHS correct and current information so DSHS can determine eligibility and authorize child care payments correctly;

(2) Choose a provider who meets requirements of WAC 170-290-0125;

(3) Pay, or make a plan to have someone pay, the WCCC copayment directly to the child care provider;

(4) Only use WCCC benefits while the consumer is working or in WCCC approved activities outside the consumer's home. ~~((If the consumer is not in an approved activity and wants to use the provider, he or she must make a plan to pay the provider if the provider wants payment. The provider~~

~~may charge the consumer the same rate that the provider charges to other parents who are not in the WCCC program;))~~

~~(5) Pay the provider for child care services when he or she requests additional child care for personal reasons other than working or participating in WCCC approved activities that have been authorized by DSHS;~~

~~(6) Pay the provider for optional child care programs that he or she requests. The provider must have a written policy in place charging all families for these optional child care programs;~~

~~(7) Pay the provider the same late fees that are charged to other families, if the consumer pays a copayment late or picks up the child late;~~

~~((6)) (8) Ensure that care is provided in the correct home per WAC 170-290-130 if the consumer uses an in-home/relative provider, and monitor the in-home/relative provider's quality of care to ensure that the child's environmental, physical, nutritional, emotional, cognitive, safety, and social needs are being met;~~

~~((7)) (9) Cooperate (provide the information requested) with the quality assurance review process to remain eligible for WCCC. A consumer becomes ineligible for WCCC benefits upon a determination of noncooperation by quality assurance and remains ineligible until he or she meets quality assurance requirements. If DSHS determines that a consumer is not cooperating, the consumer will not be eligible for WCCC benefits. The consumer may become eligible again when he or she meets WCCC requirements in part II of this chapter;~~

~~((8)) (10) Provide the information requested by DSHS's WCCC staff or the fraud early detection (FRED) investigator. If the consumer refuses to provide the information requested within fourteen days, it could affect his or her benefits;~~

~~((9)) (11) Document the children's attendance as described in WAC 170-290-0138, 170-295-7030, 170-296-0520, or 170-151-460, as applicable, for that type of provider; and~~

~~((10)) (12) Provide to his or her in-home/relative provider the names, addresses, and telephone numbers of persons who are authorized to pick up the child from care.~~

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0035 DSHS's responsibilities to consumers. DSHS's WCCC staff is responsible to:

(1) Treat consumers in accordance with all applicable federal and state nondiscrimination laws, regulations, and policies;

(2) Determine a consumer's eligibility within thirty days from the date the consumer applied (application date as described in WAC ~~((170-290-0100(2)))~~ 170-290-0095);

(3) Allow a consumer to choose his or her provider as long as the provider meets the requirements in WAC 170-290-0125;

(4) Review a consumer's chosen in-home/relative provider's background check results;

(5) Authorize payments only to child care providers who allow a consumer to access his or her children whenever they are in care;

(6) Only authorize payment when no adult in a consumer's family (under WAC 170-290-0015) is ~~((able))~~ able ~~((available))~~ available (under WAC ~~((170-290-0020))~~ 170-290-0003) to care for the consumer's children;

(7) Inform a consumer of:

(a) His or her rights and responsibilities under the WCCC program at the time of application and reapplication;

(b) The types of child care providers DSHS can pay;

(c) The community resources that can help a consumer select child care when needed; and

(d) Any change in a consumer's copayment during the authorization period except under WAC 170-290-0120(5).

(8) Respond to a consumer within ten days if the consumer reports a change of circumstance that affects the consumer's:

(a) WCCC eligibility;

(b) Copayment; or

(c) Providers.

(9) Provide prompt child care payments to a consumer's child care provider; ~~((and))~~

(10) Provide an interpreter or translator service within a reasonable amount of time and at no cost to the consumer; and

(11) Ensure that Social Security cards, driver's licenses, or other government-issued identification for in-home/relative providers are valid and verified.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0040 Approved activities for TANF consumers. If a consumer receives a temporary assistance for needy families (TANF) grant, he or she may be eligible for WCCC benefits, for approved activities in his or her individual responsibility plan (IRP), for up to a maximum of sixteen hours per day ~~((for his or her hours of participation in the following)), including:~~

(1) An approved WorkFirst activity under WAC 388-310-0200, with the following exception: In-home/relative providers who are paid child care subsidies to care for children receiving WCCC benefits may not receive those benefits for their own children during the hours in which they provide subsidized child care. These consumers may be eligible for other approved activities in their IRPs;

(2) Employment ~~((or self employment. "Employment" or "work" means:~~

~~(a) Engaging in any legal, income generating activity that is taxable under the United States Tax Code or that would be taxable with or without a treaty between an Indian Nation and the United States; or~~

~~(b) Working in a federal or state paid work study program. The consumer may receive WCCC for paid work study and transportation hours (not for the time the consumer is in an unapproved activity);)) as defined in WAC 170-290-0003;~~

(3) Self-employment as defined in WAC 170-290-0003 and as described in the consumer's current WorkFirst IRP;

(4) Transportation time between the location of child care and the consumer's place of employment or approved activity;

~~((4))~~ (5) Up to ten hours per week of study time ~~((before or after regularly scheduled classes or up to three hours of study time per day when needed to cover time between))~~ for approved classes; and

~~((5))~~ (6) Up to eight hours per day of sleep time when it is needed, such as if the consumer works nights and sleeps days.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0045 Approved activities for consumers not receiving TANF. If a consumer does not receive TANF, he or she may be eligible for WCCC benefits for:

(1) Up to a maximum of sixteen hours per day, including travel, study, and sleep time, for the hours of his or her participation in the following:

(a) ~~((Full or part time))~~ Employment ~~((or))~~ as defined in WAC 170-290-0003;

(b) Self-employment ~~((under WAC 170-290-0050. "Employment" or "work" means:~~

(i) ~~Legal, income-generating activity taxable under the United States Tax Code or that would be taxable with or without a treaty between an Indian Nation and the United States; or~~

~~(ii) Federal or state paid work study.~~

(b) ~~VISTA volunteers, AmeriCorps, JobCorps, and Washington Service Corps (WSC if the income is taxed)) as defined in WAC 170-290-0003;~~

(c) High school (HS) or general equivalency diploma (GED) program until the consumer reaches his or her twenty-second birthday (the consumer may be enrolled in a HS or GED program without a minimum number of employment hours);

(d) Approved WorkFirst activities according to WAC 388-310-0200 or 388-310-0700 if the consumer is a TANF applicant; or

(e) Food stamp employment and training program under chapter 388-444 WAC.

(2) If a consumer is participating in an activity listed in subsections (3) through (8) of this section, he or she may be eligible for WCCC benefits as described in subsection (1) of this section if the consumer is actually working either:

(a) Twenty or more hours per week; or

(b) Sixteen or more hours per week in a paid federal or state work study program.

(3) Adult basic education (ABE).

(4) English as a second language (ESL).

(5) High school or GED completion if the consumer is twenty-two years of age or older.

(6) Vocational education (Voc Ed). The Voc Ed program must:

(a) Lead to a degree or certificate in a specific occupation;

(b) Cannot include prerequisite classes or programs; and

(c) Be offered by the following accredited entities only:

(i) Public and private technical college or school;

(ii) Community college; or

(iii) Tribal college.

(7) Job skills training: For no more than fourteen consecutive days. Job skills training is not tied to a specific occupation but is training in specific skills directly related to employment, such as CPR/First Aid, keyboarding, computer programs, project management, and oral and written communication skills. Training offered or required by a current employer, at or off the consumer's job site, may extend past the fourteen consecutive day limit.

(8) Post-employment services under WAC 388-310-1800.

(9) Child care for participation in Voc Ed is limited to thirty-six months regardless of the length of the educational program. The thirty-six months includes the months in which the following occurred at the same time:

(a) WCCC benefits were paid to support the consumer's participation in a Voc Ed program; or

(b) The consumer or someone in his or her household received TANF benefits.

(10) WCCC may be approved for activities listed in WAC 170-290-0040 ~~((2)(b) through (d))~~ (4), (5), and (6), when needed.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0050 Additional requirements for self-employed WCCC consumers. ~~((1) Consumers receiving TANF.~~ If a consumer receives TANF and is also self-employed:

(a) ~~The consumer must have an approved self-employment plan in the consumer's IRP under WAC 388-310-1700;~~

~~(b) The amount of WCCC a consumer receives for self-employment is equal to the number of hours in his or her approved plan; and~~

~~(c) Income from self-employment while the consumer is receiving TANF is determined by WAC 388-450-0085.~~

~~(2) Consumers not receiving TANF.~~ If a consumer does not receive TANF at the time of application for WCCC and is establishing a new self-employment business (established less than six months):

~~(a) The hours of care the consumer is eligible to receive for the first six months is based on his or her report of how many hours are needed, up to sixteen hours per day; and~~

~~(b) The consumer's self-employment income is based on WAC 170-290-0060.~~

~~(c) A consumer is eligible for the calculation discussed in (a) of this subsection one time only. If the consumer changes self-employment during the initial six-month period, any months left are covered by child care according to (a) of this subsection.~~

~~(d) After the first six months of self-employment, the number of hours of WCCC a consumer can receive each month is based on the lesser of (c)(i) or (ii) of this subsection.~~

~~(e) For an established self-employment business (established for six months or more) the number of hours of child care the consumer is eligible to receive is based on whichever is greater:~~

(i) The consumer's work hours reported in his or her business records; or

(ii) The average number of monthly hours equal to dividing the consumer's monthly self-employment income by the federal or state minimum wage (whichever minimum wage is lower); (1) **Self-employment generally.** To be considered self-employed, a WCCC consumer must:

(a) Earn income directly from his or her trade or business, not from wages paid by an employer;

(b) Be responsible to pay his or her self-employment Social Security and federal withholding taxes;

(c) Not have work schedule, activities or services controlled in an employee-employer relationship;

(d) Participate directly in the production of goods or services that generate the consumer's income; and

(e) Work outside of the home during the hours he or she requests WCCC benefits. If a consumer's self-employment activities are split between the home and outside of the home, only self-employment and other approved activities outside of the home will be eligible for child care benefits.

(2) **Self-employed consumers receiving TANF.** If a consumer receives TANF and is also self-employed, he or she may be eligible for WCCC benefits for up to sixteen hours in a twenty-four-hour period for self-employment activities outside of the consumer's home.

(a) The consumer must have an approved self-employment plan in the consumer's IRP under WAC 388-310-1700;

(b) The amount of WCCC benefits a consumer receives for self-employment is equal to the number of hours in his or her approved plan; and

(c) Income from self-employment while the consumer is receiving TANF is determined by WAC 388-450-0085.

(3) **Self-employed consumers not receiving TANF.** If a consumer does not receive TANF and requests WCCC benefits for his or her self-employment, he or she may be eligible for WCCC benefits for up to sixteen hours in a twenty-four-hour period for self-employment activities outside of the consumer's home.

(a) Consumers who do not receive TANF cash assistance and request WCCC benefits for self-employment must provide DSHS with his or her:

(i) Washington state business license, or a tribal, county, or city business or occupation license, as applicable;

(ii) Uniform business identification (UBI) number;

(iii) Completed self-employment plan that is written, signed, dated and includes, but is not limited to, a description of the self-employment business, proposed days and hours of work activity including time needed for transportation, and the location of work activity;

(iv) Profit and loss statement (or projected profit and loss statement, if starting a new business); and

(v) Either:

(A) Federal self-employment tax reporting forms for the most current reporting year; or

(B) DSHS self-employment income and expense declaration form.

(b) During the first six consecutive months of starting a new self-employment business, the hours of care the consumer is eligible to receive is based on his or her report of how many hours are needed, up to sixteen hours per day. A

consumer is eligible to receive this provision only once during his or her lifetime. The consumer must use the benefit provided by this provision within the consumer's authorization period.

(c) A consumer's need for care after she or he has received WCCC benefits for self-employment for six consecutive months as provided in (b) of this subsection is determined by DSHS in the following manner:

(i) Dividing the consumer's gross monthly self-employment income by the federal or state minimum wage (whichever is lower) to determine the average monthly hours of care needed by the consumer; and

(ii) Adding the consumer's additional child care needs for other approved employment, education, training, or travel to the total approved self-employment hours.

(d) If both parents in a two-parent family are self-employed, at the same or a different business, each parent must report his or her own self-employment earnings and self-employment plan. If the requested verification is not provided, then WAC 170-290-0012(5) applies to determining eligibility.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0055 Receipt of benefits when not engaged in approved activities. When care is approved in the situations described in subsections (1) and (2) of this section, the child needs to attend for the provider to bill.

(1) **Fourteen-day wait period.** DSHS may authorize WCCC payments for a child's attendance in child care for up to fourteen consecutive days when a consumer is waiting to enter an approved activity under WAC 170-290-0040 or 170-290-0045.

(2) **Twenty-eight-day gap period.** DSHS may authorize WCCC payments to ensure a child's continuing attendance in child care for up to twenty-eight consecutive days when a consumer experiences a gap in his or her employment or approved activity. The consumer may be eligible for this twenty-eight-day gap period:

(a) Twice in a calendar year; and

(b) For the same number of units open while the consumer is in the approved activity, not to exceed two hundred thirty hours a month.

(3) The twenty-eight-day gap period must be used within the consumer's authorization period.

(4) In order for a consumer to qualify for the twenty-eight-day gap period:

(a) The consumer must be currently receiving WCCC benefits;

(b) The consumer must report to DSHS within ten days the loss of his or her employment or approved activity; and

(c) The consumer must:

(i) Be looking for another job; or

(ii) Have verbal or written assurance from the consumer's employer or approved activity that the employment or approved activity will resume within the twenty-eight-day gap period.

~~((4))~~ (5) A consumer is eligible for the minimum copayment during the fourteen-day wait period or twenty-eight-day gap period.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0060 Countable income. DSHS counts income as money a consumer earns or receives from:

- (1) A TANF grant, except when the grant is for the first three consecutive calendar months after the consumer starts a new job. The first calendar month is the month in which he or she starts working;
- (2) Child support payments;
- (3) Supplemental Security Income (SSI);
- (4) Other Social Security payments, such as SSA and SSDI;
- (5) Refugee assistance payments;
- (6) Payments from the Veterans' Administration, disability payments, or payments from labor and industries (L&I);
- (7) Unemployment compensation;
- (8) Other types of income not listed in WAC 170-290-0070;
- (9) VISTA volunteers, AmeriCorps, and Washington Service Corps (WSC) if the income is taxed;
- (10) Gross wages from employment or self-employment as defined in WAC 170-290-0003. Gross wages includes any wages that are taxable (~~-"Self-employment income" means a consumer's gross income from self-employment minus allowable business expenses in WAC 388-450-0085~~);

(11) Corporate compensation received by or on behalf of the consumer, such as rent, living expenses, or transportation expenses;

(12) Lump sums as money a consumer receives from a one-time payment such as back child support, an inheritance, or gambling winnings; and

~~((12))~~ (13) Income for the sale of property as follows:

(a) If a consumer sold the property before application, DSHS considers the proceeds an asset and does not count as income;

(b) If a consumer sold the property in the month he or she applies or during his or her eligibility period, DSHS counts it as a lump sum payment as described in WAC 170-290-0065(2);

(c) Property does not include small personal items such as furniture, clothes, and jewelry.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0070 Excluded income and deductions. (1) The WCCC program does not count the following income types when determining a consumer's income eligibility and copayment:

(a) Income types as defined in WAC 388-450-0035, 388-450-0040, and 388-450-0055;

(b) Compensatory awards, such as an insurance settlement or court-ordered payment for personal injury, damage, or loss of property;

(c) Adoption support assistance and foster care payments;

- (d) Reimbursements, such as an income tax refund;
- (e) Diversion cash assistance;
- (f) ~~((Income in kind that is untaxed, such as working for rent;~~

~~((g))~~ Military housing and food allowance;

~~((h))~~ (g) The TANF grant for the first three consecutive calendar months after the consumer starts a new job. The first calendar month is the month in which he or she starts working;

~~((i))~~ (h) Payments to the consumer from his or her employer for benefits such as medical plans;

~~((j))~~ (i) Earned income of a WCCC family member defined under WAC 170-290-0015(2);

~~((k))~~ (j) Income of consumers described in WAC 170-290-0005 (1)(c) through (i);

~~((l))~~ (k) Earned income from a minor child who DSHS counts as part of the consumer's WCCC household; and

~~((m))~~ (l) Benefits received by children of Vietnam War veterans who are diagnosed with any forms of manifestations of spina bifida except spina bifida occulta.

(2) WCCC deducts the amount a consumer pays for child support under court order, division of child support administrative order, or tribal government order, from the consumer's other countable income when figuring his or her eligibility and copayment for the WCCC program.

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)) family 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 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

IF A CONSUMER'S INCOME IS:	THEN THE CONSUMER'S COPAYMENT IS:
(b) Above 82% of the FPG up to 137.5% of the FPG.	\$60
(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 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.	\$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.

AMENDATORY SECTION (Amending WSR 10-15-063 and 10-16-128, filed 7/15/10 and 8/3/10, effective 9/1/10)

WAC 170-290-0082 Eligibility period. (1) **Six-month eligibility.**

(a) A consumer who meets all of the requirements of part II of this chapter is eligible for WCCC subsidies for six months, except as provided in subsection (2) of this section.

(b) A consumer's eligibility may be for less than six months if:

- (i) Requested by the consumer; or
- (ii) A TANF consumer's individual responsibility plan indicates child care is needed for less than six months.

(c) A consumer's eligibility may end sooner than six months if:

- (i) The consumer no longer wishes to participate in WCCC; or
- (ii) DSHS terminates the consumer's eligibility as stated in WAC 170-290-0110.

(2) Twelve-month eligibility.

(a) A consumer who meets all of the requirements of part II of this chapter, and has a child receiving services from head start (HS), early head start (EHS), or an early childhood education and assistance program (ECEAP), is eligible for WCCC subsidies for twelve months.

(b) A consumer's eligibility may be for less than twelve months if:

- (i) Requested by the consumer; or
- (ii) A TANF consumer's individual responsibility plan indicates child care is needed for less than twelve months.

(c) The consumer's eligibility may end sooner than twelve months if:

- (i) The consumer no longer wishes to participate in WCCC; or
- (ii) DSHS terminates the consumer's eligibility as stated in WAC 170-290-0110.

(d) All children in the consumer's household under WAC 170-290-0015 are eligible for the twelve-month eligibility period.

(e) The twelve-month eligibility period begins:

(i)(A) When benefits begin under WAC 170-290-0095 ~~((for TANF consumers or WAC 170-290-0100 for consumers not receiving TANF));~~ or

(B) Upon reapplication under WAC 170-290-0109(4) ~~((for TANF consumers or WAC 170-290-0109(5) for consumers not receiving TANF));~~ and

(ii) When DSHS verifies that the child is receiving services from HS, EHS, or ECEAP.

(f) The twelve-month eligibility continues regardless of whether the child continues to receive services from HS, EHS, or ECEAP.

(g) During a consumer's twelve-month eligibility period, parent education and family development classes offered by HS, EHS, or ECEAP are approved activities. As funds are available, other DEL-approved parent education and family development classes may be authorized.

(h) Each child who is receiving services from HS, EHS, or ECEAP and is receiving WCCC subsidies will be assigned a unique early learning student identifier. Student information may be merged with information from the office of superintendent of public instruction, the education research and data center, or both, to measure the child's educational progress from preschool through grade twelve.

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, 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 170-290-0095 When WCCC benefits start ~~((for TANF consumers))~~. ~~((When a consumer receives TANF and is eligible for WCCC, his or her benefits begin when:~~

~~(1) The consumer's eligible provider (under WAC 170-290-0125) is caring for his or her children; and~~

~~(2) The consumer is participating in an approved activity under WAC 170-290-0040 or 170-290-0055.))~~ (1) WCCC benefits for an eligible consumer may begin when the following conditions are met:

(a) The consumer has completed the required WCCC application and verification process as described under WAC 170-290-0012 within thirty days of the date DSHS received the consumer's application or reapplication for WCCC benefits;

(b) The consumer is working or participating in an approved activity under WAC 170-290-0040, 170-290-0045, 170-290-0050 or 170-290-0055;

(c) The consumer needs child care for work or approved activities within at least thirty days of the date of application for WCCC benefits; and

(d) The consumer's eligible provider (under WAC 170-290-0125) is caring for his or her children.

(2) If a consumer fails to turn in all information within thirty days from his or her application date, the consumer must restart the application process.

(3) The consumer's application date is whichever is earlier:

(a) The date the consumer's application is entered into DSHS's automated system; or

(b) The date the consumer's application is date stamped as received.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0107 Denial of benefits—Date of re-determining eligibility. DSHS sends a consumer a denial letter when the consumer has applied for child care and the consumer:

- (1) Withdraws his or her request;
- (2) Is not eligible due to the consumer's:
 - (a) Family composition;
 - (b) Income; or
 - (c) Activity.
- (3) Did not provide information required to determine the consumer's eligibility according to WAC 170-290-0012;

(4) If a consumer turns in information or otherwise meets eligibility requirements after DSHS sends the consumer a denial letter, DSHS determines the consumer's benefit begin date ~~((by:~~

~~(a) WAC 170-290-0095 if the consumer is a TANF consumer; or~~

~~(b) WAC 170-290-0100 if the consumer is not receiving TANF))~~ as provided in WAC 170-290-0095(3).

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0109 New eligibility period. (1) If a consumer wants to receive child care benefits for another eligibility period, he or she must reapply for WCCC benefits before the end of the current eligibility period. To determine if a consumer is eligible, DSHS:

(a) Requests ~~((application))~~ reapplication information before the end date of the consumer's current WCCC eligibility period; and

(b) Verifies the requested information for completeness and accuracy.

(2) A consumer may be eligible for WCCC benefits for a new eligibility period if:

(a) DSHS receives the consumer's ~~((application))~~ reapplication information no later than the last day of the current eligibility period;

(b) The consumer's provider is eligible for payment under WAC 170-290-0125; and

(c) The consumer meets all WCCC eligibility requirements.

(3) If DSHS determines that a consumer is eligible for WCCC benefits based on his or her ~~((application))~~ reapplication information, DSHS notifies the consumer of the new eligibility period and copayment.

(4) When a ~~((TANF))~~ consumer submits ~~((an application))~~ a reapplication after the last day of his or her current eligibility period, the consumer's benefits begin ~~((when)):~~

~~((a) The consumer is participating in an approved TANF/WorkFirst activity; and~~

~~((b) The consumer's child is being cared for by his or her eligible WCCC provider.~~

~~((5) When a consumer who is not receiving TANF submits an application after the last day of his or her current eligibility period, his or her benefits begin:))~~

(a) On the date that the consumer's ~~((application))~~ reapplication is date-stamped as received in DSHS's community service office ~~((CSO))~~ or entered into the ~~((CSO))~~ DSHS automated system, whichever date is earlier;

(b) When the consumer is working or participating in an approved WorkFirst activity; and

(c) The consumer's child is being cared for by his or her eligible WCCC provider.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0120 When notice of payment changes is not required. DSHS does not give a consumer written notice ~~((in the following circumstances))~~ of changes to WCCC eligibility or provider payments when:

- (1) The consumer tells DSHS that he or she no longer wants WCCC; or
- (2) The ~~((consumer's whereabouts are unknown to DSHS;~~
- (3) ~~The consumer is receiving duplicate child care benefits;~~
- (4) ~~The consumer's current eligibility period is scheduled to end;~~
- (5) ~~The consumer's new eligibility period results in a change in child care benefits;~~
- (6) ~~The location where child care occurs does not meet requirements under WAC 170-290-0130; or~~
- (7) ~~DSHS determines that a consumer's in-home/relative provider:~~
- (a) ~~Is not of suitable character and competence;~~
- (b) ~~May cause a risk of harm to the consumer's children based on the provider's physical or mental health; or~~
- (c) ~~Has been convicted of, or has charges pending for crimes on the DEL director's list in WAC 170-06-0120)) consumer has not informed DSHS of his or her new mailing address.~~

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0130 In-home/relative providers—Eligibility. (1) To be eligible as an in-home/relative provider to care for children under WCCC, the applicant must be:

- (a) Eighteen years of age or older;
- (b) A citizen or legal resident of the U.S.; and
- (c) Meet all of the requirements listed in WAC 170-290-0135.
- (2) Additionally, eligible in-home/relative providers must:
- (a) Meet all applicable background check requirements in part II of this chapter;
- (b) Agree to provide care, supervision, and daily activities based on the child's developmental needs, including environmental, physical, nutritional, emotional, cognitive, safety, and social needs; and
- (c) Bill only for actual hours of care provided. Those hours must be authorized by DSHS, and used by the parent for his or her DSHS approved activities or work hours.
- (3) The following eligible in-home/relative providers, except those providers residing with a disqualified person, may provide care in either their home or the child's home:
- (a) Adult siblings that live outside the child's home;
- (b) Extended tribal family members;
- (c) Grandparent or great-grandparent; or
- (d) Aunt or uncle, or great-aunt or great-uncle.
- (4) All other eligible providers, including other family members, friends, neighbors, or nannies must provide care in the child's home only.
- (5) The following persons are not eligible to provide in-home/relative care under part II of this chapter:
- (a) The child's biological, adoptive, or step-parent;
- (b) The child's legal guardian or the guardian's spouse or live-in partner; or
- (c) Another adult acting in loco parentis or that adult's spouse or live-in partner.

(6) WCCC consumers may have up to two in-home/relative providers authorized for payment during the consumer's eligibility period, plus one back-up provider, either licensed or in-home/relative also authorized to care for the consumer's children.

(7) WCCC consumers who choose in-home/relative care are responsible to monitor the environment and child care services they receive from their provider. WCCC consumers must ensure that their children who receive subsidized child care outside of their own home are current on all Washington state immunizations, except in cases based on religious preference or medical conditions.

(8) In-home/relative providers who are paid child care subsidies to care for children receiving WCCC benefits may not receive those benefits for their own children during the hours in which they provide subsidized child care.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0190 WCCC authorized and additional payments—Determining units of care. (1) DSHS may authorize and pay for the following child care hours:

~~((a) Half-day care, which is less than one hundred ten hours per calendar month; and~~

~~(b) Full-day care, which is one hundred ten or more hours per calendar month.~~

~~(2) DSHS authorizes:))~~

(a) Full-day child care to licensed or certified facilities and DEL contracted seasonal day camps when a consumer's children need care ~~((for))~~ between five ~~((or more))~~ and ten hours per day;

(b) Half-day child care to licensed or certified facilities and DEL contracted seasonal day camps when a consumer's children need care for less than five hours per day;

(c) Hourly child care for in-home/relative child care;

(d) A registration fee (under WAC 170-290-0245);

(e) A field trip fee (under WAC 170-290-0247);

(f) Special needs care when the child has a documented need for a higher level of care (under WAC 170-290-0220, 170-290-0225, 170-290-0230, and 170-290-0235); and

(g) A nonstandard hours bonus under WAC 170-290-0249.

~~((3))~~ (2) DSHS may authorize up to the provider's private pay rate if:

(a) The parent is a WorkFirst participant; and

(b) Appropriate child care, at the state rate, is not available within a reasonable distance from the home or work (activity) site.

"Appropriate" means licensed or certified child care under WAC 170-290-0125, or an approved in-home/relative provider under WAC 170-290-0130.

"Reasonable distance" is determined by comparing what other local families must travel to access appropriate child care.

~~((4))~~ (3) DSHS authorizes an additional amount of care if:

(a) More than ten hours of care is provided per day (up to a maximum of sixteen hours a day); and

(b) The provider's written policy is to charge all families for these (~~extra~~) hours of care in excess of ten hours per day.

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.)~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 170-290-0100	When WCCC benefits start for consumers not receiving TANF.
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WSR 11-12-083

PROPOSED RULES

HEALTH CARE AUTHORITY

(Basic Health Plan)

[Order 11-01—Filed June 1, 2011, 8:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-08-060.

Title of Rule and Other Identifying Information: Basic health subsidized program rules contained in chapters 182-22 and 182-24 WAC.

Hearing Location(s): Health Care Authority, 676 Woodland Square Loop S.E., The Sue Crystal Center Conference Room, Olympia, WA, on July 7, 2011, at 2:00 p.m.

Date of Intended Adoption: July 8, 2011.

Submit Written Comments to: Alyson Chase, Basic Health Communications, P.O. Box 42683, Olympia, WA 98504-2683, e-mail alyson.chase@hca.wa.gov, fax (360) 923-2765, by July 7, 2011.

Assistance for Persons with Disabilities: Contact Nikki Johnson by June 21, 2011, TTY (888) 923-5622 or (360) 923-2805.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend basic health subsidized program rules contained in chapters 182-22

and 182-24 WAC to comply with federal rules concerning eligibility and a fair hearings process.

Reasons Supporting Proposal: The health care authority (HCA) intends to make changes to its appeals process and eligibility guidelines to provide clarification of new processes as required by the federal section 1115 waiver demonstration project.

Statutory Authority for Adoption: RCW 70.47.050.

Rule is necessary because of federal law, Title 8 United States Code (USC), Chapter 14, Subchapter I, Section 1613, Five-year limited eligibility of qualified aliens for federal means-tested public benefit.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Preston W. Cody, 676 Woodland Square Loop, Lacey, WA, (360) 412-4361.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative rules review committee has not requested the filing of a small business economic impact statement and there will be no costs to small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules [review] committee or applied voluntarily.

June 1, 2011

Jason Siems

Rules Coordinator

AMENDATORY SECTION (Amending Order 10-03, filed 11/30/10, effective 12/31/10)

WAC 182-22-110 Definitions. The definitions in this section apply throughout chapters 182-22, 182-23, 182-24, and 182-25 WAC.

"Administrator" means the administrator of the Washington state health care authority (HCA) or designee.

"Appeal procedure" means a formal written procedure for resolution of problems or concerns raised by enrollees or applicants which cannot be resolved in an informal manner to the appellant's satisfaction.

"Basic health plan" or "BHP" means the system of enrollment and payment for subsidized basic health care services administered by the HCA through managed health care systems.

"BHP Plus" means the program of expanded benefits available to children through coordination between the department of social and health services (DSHS) and BHP. Eligibility for BHP Plus is determined by the department of social and health services, based on medicaid eligibility criteria. To be eligible for the program children must be under age nineteen, with a family income at or below two hundred percent of federal poverty level, as defined by the United States Department of Health and Human Services. They must be Washington state residents, not eligible for medicare, and may be required to meet additional DSHS eligibility requirements.

"Copayment" means a payment indicated in the schedule of benefits which is made by an enrollee to a health care provider or to the managed health care system.

"Covered services" means those services and benefits in the applicable BHP or WHP schedule of benefits (as outlined in the member handbook), which an enrollee shall be entitled to receive from a managed health care system in exchange for payment of premium and applicable copayments, coinsurance and deductible.

"Dependent," as it applies to BHP or WHP, means:

(a) The subscriber's lawful spouse, not legally separated, who resides with the subscriber; or

(b) The child of the subscriber or the subscriber's dependent spouse, whether by birth, adoption, legal guardianship, or placement pending adoption, who is younger than age twenty-six, and who has not been relinquished for adoption by the subscriber or the subscriber's dependent spouse; or

(c) A person of any age who is incapable of self-support due to disability, and who is the unmarried child of the subscriber or the subscriber's dependent spouse, whether by birth, adoption, or legal guardianship; or

(d) A child younger than age twenty-six who is residing with the subscriber under an informal guardianship agreement. For a child to be considered a dependent of the subscriber under this provision:

(i) The guardianship agreement must be signed by the child's parent;

(ii) The guardianship agreement must authorize the subscriber to obtain medical care for the child;

(iii) The subscriber must be providing at least fifty percent of the child's support (~~and~~

~~(iv) The child must be on the account for coverage~~).

"Disenrollment" means the termination of coverage for an enrollee.

"Effective date of enrollment" means the first date, as established by BHP or WHP, on which an enrollee is entitled to receive covered services from the enrollee's respective managed health care system.

"Eligible full-time employee" means an employee who meets all applicable eligibility requirements and who is regularly scheduled to work thirty or more hours per week for an employer. The term includes a self-employed individual (including a sole proprietor or a partner of a partnership, and may include an independent contractor) if the individual:

(a) Is regularly scheduled to work thirty hours or more per week; and

(b) Derives at least seventy-five percent of his or her income from a trade or business that is licensed to do business in Washington state.

Persons covered under a health benefit plan pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1986 shall not be considered eligible employees for purposes of minimum participation requirements.

"Eligible part-time employee" means an employee who meets all the criteria in definition "eligible full-time employee" of this section, but who is regularly scheduled to work fewer than thirty hours per week for an employer.

"Employee" means one who is in the employment of an employer, as defined under RCW 50.04.080.

"Employer" means an enterprise licensed to do business in Washington state, as defined under RCW 50.04.080, with employees in addition to the employer, whose wages or salaries are paid by the employer.

"Enrollee" means a person who meets all applicable eligibility requirements, who is enrolled in BHP or WHP, and for whom applicable premium payments have been made.

"Family" means an individual or an individual and eligible spouse and dependents. For purposes of eligibility determination and enrollment, an individual cannot be a member of more than one family.

"Financial sponsor" means a person, organization or other entity, approved by the administrator, that is responsible for payment of all or a designated portion of the monthly premiums on behalf of a subscriber and any dependents.

"Health care authority" or "HCA" means the Washington state health care authority.

"Home care agency" means a private or public agency or organization that administers or provides home care services directly or through a contract arrangement to ill, disabled, or infirm persons in places of temporary or permanent residence, and is licensed by the department of social and health services (DSHS) as a home care agency. In order to qualify, the agency must be under contract with one of the following DSHS programs: Chore, medicaid personal care, community options program entry system (COPES) or respite care (up to level three).

"Institution" means a federal, state, county, city or other government correctional or detention facility or government-funded facility where health care historically has been provided and funded through the budget of the operating agency, and includes, but is not limited to: Washington state department of corrections institutions; federal, county and municipal government jail and detention institutions; Washington state department of veterans affairs soldiers' and veterans' homes; department of social and health services state hospitals and facilities and juvenile rehabilitation institutions and group homes. An institution does not include: Educational institutions, government-funded acute health care or mental health facilities except as provided above, chemical dependency facilities, and nursing homes.

"Institutionalized" means to be confined, voluntarily or involuntarily, by court order or health status, in an institution, as defined in this section. This does not include persons on work release or who are residents of higher education institutions, acute health care facilities, alcohol and chemical dependency facilities, or nursing homes.

"Insurance broker" or "agent" means a person who is currently licensed as a disability insurance broker or agent, according to the laws administered by the office of the insurance commissioner under chapter 48.17 RCW.

"Managed health care system" or "MHCS" means:

(a) Any health care organization (including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof) which has entered into a contract with the HCA to provide health care services; or

(b) A self-funded or self-insured method of providing insurance coverage to subsidized enrollees provided under RCW 41.05.140 and subject to the limitations under RCW 70.47.100(7).

"Maternity benefits through medical assistance," also known as S-Medical, means the coordinated program between BHP and DSHS for eligible pregnant women. This

program includes all medicaid benefits, including maternity coverage. Eligible members must be at or below one hundred eighty-five percent of the federal poverty level. Eligibility for this program is determined by DSHS, based on medicaid eligibility criteria.

"Medicaid" means the Title XIX medicaid program administered by the department of social and health services, and includes the medical care programs provided to the "categorically needy" and the "medically needy" as defined in chapter 388-503 WAC.

"Medicare" means programs established by Title XVIII of Public Law 89-97, as amended, "Health Insurance for the Aged and Disabled."

"Nonparticipating provider" means a person, health care provider, practitioner, facility, or entity, acting within their scope of practice, that does not have a written contract to participate in a managed health care system's provider network, but provides health care services to enrollees of programs authorized under this chapter whose health care services are provided by the managed health care system.

"Open enrollment" means a time period designated by the administrator during which enrollees may enroll additional dependents or apply to transfer their enrollment from one managed health care system to another.

"Participating employee" means an employee of a participating employer or home care agency who has met all the eligibility requirements and has been enrolled for coverage.

"Participating employer" means an employer who has been approved for enrollment as an employer group.

"Participating provider" means a person, health care provider, practitioner, facility, or entity, acting within their scope of practice, that has a written contract to participate in a managed health care system's provider network.

"Preexisting condition" means any illness, injury or condition for which, in the six months immediately preceding an enrollee's effective date of enrollment:

(a) Treatment, consultation or a diagnostic test was recommended for or received by the enrollee; or

(b) Medication was prescribed or recommended for the enrollee; or

(c) Symptoms existed which would ordinarily cause a reasonably prudent individual to seek medical diagnosis, care or treatment.

"Premium" means a periodic payment, determined under RCW 70.47.060(2), which an individual, an employer, a financial sponsor, or other entity makes for enrollment in BHP or WHP.

"Program" means BHP, WHP, BHP Plus, maternity benefits through medical assistance, or other such category of enrollment specified within chapters 182-22 through 182-24 WAC.

"Provider" or "health care provider" means a health care professional or institution duly licensed and accredited to provide covered services in the state of Washington.

"Rate" means the amount, including administrative charges and any applicable premium and prepayment tax imposed under RCW 48.14.0201, negotiated by the administrator with and paid to a managed health care system, to provide BHP or WHP health care benefits to enrollees.

"Schedule of benefits" means the health care services adopted and from time to time amended by the administrator for BHP or WHP, as applicable, which an enrollee shall be entitled to receive from a managed health care system in exchange for payment of premium and applicable copayments, as described in the member handbook.

"Service area" means the geographic area served by a managed health care system as defined in its contract with HCA.

"Subscriber" is a person who applies for coverage on his/her own behalf or on behalf of his/her dependents, if any, who is responsible for payment of premiums and to whom the administrator sends notices and communications. The subscriber may be an enrollee or the spouse, parent, or guardian of an enrolled dependent and may or may not be enrolled for coverage. Notices to a subscriber and, if applicable, a financial sponsor or employer shall be considered notice to the subscriber and his/her enrolled dependents.

"Washington health program" means the system of enrollment and payment for nonsubsidized basic health care services administered by the HCA through managed health care systems.

"Washington state resident" or "resident" means a person who physically resides and maintains a residence in the state of Washington.

(a) To be considered a Washington resident, enrollees who are temporarily out of Washington state for any reason:

(i) May be required to demonstrate their intent to return to Washington state; and

(ii) May not be out of Washington state for more than three consecutive calendar months.

(b) Dependent children who are attending school out-of-state may be considered to be residents if they are out-of-state during the school year, provided their primary residence is in Washington state and they return to Washington state during holidays and scheduled breaks. Dependent children attending school out-of-state may also be required to provide proof that they pay out-of-state tuition at an accredited secondary school, college, university, technical college, or school of nursing, vote in Washington state and file their federal income taxes using a Washington state address.

(c) "Residence" may include, but is not limited to:

(i) A home the person owns or is purchasing or renting;

(ii) A shelter or other physical location where the person is staying in lieu of a home; or

(iii) Another person's home.

AMENDATORY SECTION (Amending Order 10-03, filed 11/30/10, effective 12/31/10)

WAC 182-22-330 How to appeal a managed health care system (MHCS) decision nonsubsidized enrollees. (1) Nonsubsidized enrollees who are appealing an MHCS decision, including decisions related to coverage disputes; denial of claims; benefits interpretation; or resolution of complaints must follow their MHCS's complaint/appeals process.

(2) Each MHCS must maintain a complaint/appeals process for enrollees and must provide enrollees with instructions for filing a complaint and/or appeal. This com-

plaint/appeals process must comply with the requirements of chapters 48.43 RCW and 284-43 WAC.

(3) On the request of the enrollee, the HCA may assist an enrollee by:

(a) Attempting to informally resolve complaints against the enrollee's MHCS;

(b) Investigating and resolving MHCS contractual issues; and

(c) Providing information and assistance to facilitate review of the decision by an independent review organization.

NEW SECTION

WAC 182-22-340 How to appeal a managed health care system (MHCS) decision—Subsidized enrollees and federal Health Coverage Tax Credit enrollees. (1) Subsidized enrollees or federal Health Coverage Tax Credit enrollees who are appealing an MHCS decision, including decisions related to coverage disputes; denial of claims; benefits interpretation; or resolution of complaints; may voice a grievance or appeal an action by an MHCS to the MHCS either orally or in writing. For the purposes of this section "managed care organization" (MCO) has the same meaning as "managed health care system" (MHCS).

(2) Each MHCS must maintain a complaint/appeals process for enrollees and must provide enrollees with instructions for filing a complaint and/or appeal. This complaint/appeals process must comply with the requirements of chapters 48.43 RCW and 284-43 WAC.

(3) On the request of the enrollee, the HCA may assist an enrollee by:

(a) Attempting to informally resolve complaints against the enrollee's MHCS;

(b) Investigating and resolving MHCS contractual issues; and

(c) Providing information and assistance to facilitate review of the decision by an independent review organization.

(4) MHCSs must maintain records of subsidized enrollees' grievances and appeals and must review the information as part of the MHCS's quality strategy.

(5) MHCSs must provide information describing the MHCS's grievance system to all providers and subcontractors.

(6) Each MHCS must have a grievance system in place for subsidized enrollees. The system must comply with the requirements of this section and the regulations of the state office of the insurance commissioner (OIC). If a conflict exists between the requirements of this chapter and OIC regulations, the requirements of this chapter take precedence. The MHCS grievance system must include all of the following:

(a) A grievance process for complaints about any matter other than an action, as defined in WAC 388-538-050. See subsection (7) of this section for this process;

(b) An appeal process for an action, as defined in WAC 388-538-050. See subsection (8) of this section for the standard appeal process and subsection (9) of this section for the expedited appeal process;

(c) Access to the HCA's hearing process for actions as defined in WAC 388-538-050. The HCA's hearing process described in chapter 388-02 WAC applies to this chapter. Where conflicts exist, the requirements in this chapter take precedence. See WAC 388-538-112 for the HCA's hearing process for subsidized enrollees;

(d) Access to an independent review (IR) as described in RCW 48.43.535, for actions as defined in WAC 388-538-050; and

(e) Access to the board of appeals (BOA) for actions as defined in WAC 388-538-050.

(7) The MHCS grievance process:

(a) Only a subsidized enrollee may file a grievance with an MHCS; a provider may not file a grievance on behalf of an enrollee.

(b) To ensure the rights of MHCS enrollees are protected, each MHCS's grievance process must be approved by the HCA.

(c) MHCSs must inform enrollees in writing within fifteen days of enrollment about enrollees' rights and how to use the MHCS's grievance process, including how to use the HCA's hearing process. The MHCSs must have HCA approval for all written information the MHCS sends to enrollees.

(d) The MHCS must give enrollees any assistance necessary in taking procedural steps for grievances (e.g., interpreter services and toll-free numbers).

(e) The MHCS must acknowledge receipt of each grievance either orally or in writing, and each appeal in writing, within five working days.

(f) The MHCS must ensure that the individuals who make decisions on grievances are individuals who:

(i) Were not involved in any previous level of review or decision making; and

(ii) If deciding any of the following, are health care professionals who have appropriate clinical expertise in treating the enrollee's condition or disease:

(A) A grievance regarding denial of an expedited resolution of an appeal; or

(B) A grievance involving clinical issues.

(g) The MHCS must complete the disposition of a grievance and notice to the affected parties within ninety days of receiving the grievance.

(8) The MHCS appeal process:

(a) An enrollee, or the enrollee's representative with the enrollee's written consent, may appeal an MHCS action.

(b) To ensure the rights of enrollees are protected, each MHCS's appeal process must be approved by the HCA.

(c) MHCSs must inform enrollees in writing within fifteen days of enrollment about enrollees' rights and how to use the MHCS's appeal process and the HCA's hearing process. The MHCSs must have HCA approval for all written information the MHCS sends to enrollees.

(d) For standard service authorization decisions, an enrollee must file an appeal, either orally or in writing, within ninety calendar days of the date on the MHCS's notice of action. This also applies to an enrollee's request for an expedited appeal.

(e) For appeals for termination, suspension, or reduction of previously authorized services, if the enrollee is requesting

continuation of services, the enrollee must file an appeal within ten calendar days of the date of the MHCS mailing the notice of action. Otherwise, the time frames in (d) of this subsection apply.

(f) The MHCS's notice of action must:

- (i) Be in writing;
- (ii) Be in the enrollee's primary language and be easily understood as required in 42 CFR 438.10(c) and (d);
- (iii) Explain the action the MHCS or its contractor has taken or intends to take;
- (iv) Explain the reasons for the action;
- (v) Explain the enrollee's or the enrollee's representative's right to file an MHCS appeal;
- (vi) Explain the procedures for exercising the enrollee's rights;
- (vii) Explain the circumstances under which expedited resolution is available and how to request it (also see subsection (9) of this section);
- (viii) Explain the enrollee's right to have benefits continue pending resolution of an appeal, how to request that benefits be continued, and the circumstances under which the enrollee may be required to pay the costs of these services (also see subsection (10) of this section); and
- (ix) Be mailed as expeditiously as the enrollee's health condition requires, and as follows:
 - (A) For denial of payment, at the time of any action affecting the claim. This applies only when the client can be held liable for the costs associated with the action.
 - (B) For standard service authorization decisions that deny or limit services, not to exceed fourteen calendar days following receipt of the request for service, with a possible extension of up to fourteen additional calendar days if the enrollee or provider requests extension. If the request for extension is granted, the MHCS must:
 - (I) Give the enrollee written notice of the reason for the decision for the extension and inform the enrollee of the right to file a grievance if the enrollee disagrees with that decision; and
 - (II) Issue and carry out the determination as expeditiously as the enrollee's health condition requires and no later than the date the extension expires.
 - (C) For termination, suspension, or reduction of previously authorized services, ten days prior to such termination, suspension, or reduction, except if the criteria stated in 42 CFR 431.213 and 431.214 are met. The notice must be mailed by a method which certifies receipt and assures delivery within three calendar days.
 - (D) For expedited authorization decisions, in cases where the provider indicates or the MHCS determines that following the standard time frame could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function, no later than three calendar days after receipt of the request for service.
- (g) The MHCS must give enrollees any assistance necessary in taking procedural steps for an appeal (e.g., interpreter services and toll-free numbers).
- (h) The MHCS must acknowledge receipt of each appeal.
- (i) The MHCS must ensure that the individuals who make decisions on appeals are individuals who:

(i) Were not involved in any previous level of review or decision making; and

(ii) If deciding any of the following, are health care professionals who have appropriate clinical expertise in treating the enrollee's condition or disease:

(A) An appeal of a denial that is based on lack of medical necessity; or

(B) An appeal that involves clinical issues.

(j) The process for appeals must:

(i) Provide that oral inquiries seeking to appeal an action are treated as appeals (to establish the earliest possible filing date for the appeal), and must be confirmed in writing, unless the enrollee or provider requests an expedited resolution. Also see subsection (9) of this section for information on expedited resolutions;

(ii) Provide the enrollee a reasonable opportunity to present evidence, and allegations of fact or law, in person as well as in writing. The MHCS must inform the enrollee of the limited time available for this in the case of expedited resolution;

(iii) Provide the enrollee and the enrollee's representative opportunity, before and during the appeals process, to examine the enrollee's case file, including medical records, and any other documents and records considered during the appeal process; and

(iv) Include as parties to the appeal, the enrollee and the enrollee's representative, or the legal representative of the deceased enrollee's estate.

(k) MHCSs must resolve each appeal and provide notice, as expeditiously as the enrollee's health condition requires, within the following time frames:

(i) For standard resolution of appeals and notice to the affected parties, no longer than forty-five calendar days from the day the MHCS receives the appeal. This time frame may not be extended.

(ii) For expedited resolution of appeals, including notice to the affected parties, no longer than three calendar days after the MHCS receives the appeal.

(iii) For appeals for termination, suspension, or reduction of previously authorized services, no longer than forty-five calendar days from the day the MHCS receives the appeal.

(l) The notice of the resolution of the appeal must:

(i) Be in writing. For notice of an expedited resolution, the MHCS must also make reasonable efforts to provide oral notice (also see subsection (9) of this section).

(ii) Include the results of the resolution process and the date it was completed.

(iii) For appeals not resolved wholly in favor of the enrollee:

(A) Include information on the enrollee's right to request an HCA hearing and how to do so (also see WAC 388-538-112);

(B) Include information on the enrollee's right to receive services while the hearing is pending and how to make the request (also see subsection (10) of this section); and

(C) Inform the enrollee that the enrollee may be held liable for the cost of services received while the hearing is pending, if the hearing decision upholds the MHCS's action (also see subsection (11) of this section).

(m) If an enrollee does not agree with the MHCS's resolution of the appeal, the enrollee may file a request for an HCA hearing within the following time frames (see WAC 388-538-112 for the HCA's hearing process for enrollees):

(i) For hearing requests regarding a standard service, within ninety days of the date of the MHCS's notice of the resolution of the appeal.

(ii) For hearing requests regarding termination, suspension, or reduction of a previously authorized service, within ten days of the date on the MHCS's notice of the resolution of the appeal.

(n) The enrollee must exhaust all levels of resolution and appeal within the MHCS's grievance system prior to requesting a hearing with the HCA.

(9) The MHCS expedited appeal process:

(a) Each MHCS must establish and maintain an expedited appeal review process for appeals when the MHCS determines (for a request from the enrollee) or the provider indicates (in making the request on the enrollee's behalf or supporting the enrollee's request), that taking the time for a standard resolution could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function.

(b) When approving an expedited appeal, the MHCS will issue a decision as expeditiously as the enrollee's health condition requires, but not later than three business days after receiving the appeal.

(c) The MHCS must ensure that punitive action is not taken against a provider who requests an expedited resolution or supports an enrollee's appeal.

(d) If the MHCS denies a request for expedited resolution of an appeal, it must:

(i) Transfer the appeal to the time frame for standard resolution; and

(ii) Make reasonable efforts to give the enrollee prompt oral notice of the denial, and follow up within two calendar days with a written notice.

(10) Continuation of previously authorized services:

(a) The MHCS must continue the enrollee's services if all of the following apply:

(i) The enrollee or the provider files the appeal on or before the later of the following:

(A) Unless the criteria in 42 CFR 431.213 and 431.214 are met, within ten calendar days of the MHCS mailing the notice of action, which for actions involving services previously authorized, must be delivered by a method which certifies receipt and assures delivery within three calendar days; or

(B) The intended effective date of the MHCS's proposed action.

(ii) The appeal involves the termination, suspension, or reduction of a previously authorized course of treatment;

(iii) The services were ordered by an authorized provider;

(iv) The original period covered by the original authorization has not expired; and

(v) The enrollee requests an extension of services.

(b) If, at the enrollee's request, the MHCS continues or reinstates the enrollee's services while the appeal is pending,

the services must be continued until one of the following occurs:

(i) The enrollee withdraws the appeal;

(ii) Ten calendar days pass after the MHCS mails the notice of the resolution of the appeal and the enrollee has not requested an HCA hearing (with continuation of services until the HCA hearing decision is reached) within the ten days;

(iii) Ten calendar days pass after the state office of administrative hearings (OAH) issues a hearing decision adverse to the enrollee and the enrollee has not requested an independent review (IR) within the ten days (see WAC 388-538-112);

(iv) Ten calendar days pass after the IR mails a decision adverse to the enrollee and the enrollee has not requested a review with the board of appeals within the ten days (see WAC 388-538-112);

(v) The board of appeals issues a decision adverse to the enrollee (see WAC 388-538-112); or

(vi) The time period or service limits of a previously authorized service has been met.

(c) If the final resolution of the appeal upholds the MHCS's action, the MHCS may recover the amount paid for the services provided to the enrollee while the appeal was pending, to the extent that they were provided solely because of the requirement for continuation of services.

(11) Effect of reversed resolutions of appeals:

(a) If the MHCS or OAH reverses a decision to deny, limit, or delay services that were not provided while the appeal was pending, the MHCS must authorize or provide the disputed services promptly, and as expeditiously as the enrollee's health condition requires.

(b) If the MHCS or OAH reverses a decision to deny authorization of services, and the enrollee received the disputed services while the appeal was pending, the MHCS must pay for those services.

AMENDATORY SECTION (Amending Order 10-03, filed 11/30/10, effective 12/31/10)

WAC 182-22-450 MHCS duties. (1) When an MHCS assists applicants in the enrollment process, it must provide them with the toll-free number for BHP or WHP and information on all MHCS available within the applicant's county of residence and the estimated premiums for each available MHCS.

(2) An MHCS shall pay a nonparticipating provider no more than the lowest amount paid for that service under the MHCS's contracts with similar providers in the state.

(a) For services provided to plan enrollees on or after the effective date of this section, nonparticipating providers must accept as payment in full the amount paid by the managed health care system under RCW 70.47.100(2) in addition to any deductible, coinsurance, or copayment that is due from the enrollee under the terms and conditions set forth in the MHCS contract with the administrator.

(b) A plan enrollee is not liable to any nonparticipating provider for covered services, except for amounts due for any deductible, coinsurance, or copayment under the terms and

conditions set forth in the managed health care system contract with the administrator.

(3) Pursuant to federal managed care access standards, 42 CFR Sec. 438, MHCS's must maintain a network of appropriate providers that is supported by written agreements sufficient to provide adequate access to all services covered under the contract with the authority, including hospital-based physician services.

AMENDATORY SECTION (Amending Order 10-03, filed 11/30/10, effective 12/31/10)

WAC 182-24-010 Definitions. The following definitions apply throughout this chapter.

"BHP enrollee," "subsidized enrollee," or "reduced premium enrollee" means: An individual who is not a full-time student who has received a temporary visa to study in the United States and who otherwise meets the criteria in (a), (b), or (c) of this subsection.

(a) An individual who enrolls in BHP, either as the subscriber or an eligible dependent, whose current gross family income does not exceed ~~((twice))~~ two hundred percent the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, ~~((and))~~ who receives a premium subsidy from the HCA, and who is transition eligible, as determined by the administrator in coordination with the Center for Medicaid Service, with countable income at or below one hundred thirty-three percent of the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services.

(b) An individual who enrolls in BHP, either as the subscriber or an eligible dependent, and who is a foster parent licensed under chapter 74.15 RCW and whose current gross family income does not exceed three hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, and who receives a premium subsidy from the HCA.

(c) To the extent that state funds are specifically appropriated for this purpose, with a corresponding federal match, "subsidized enrollee" also means an individual who enrolls in BHP, either as the subscriber or an eligible dependent, whose current gross family income is more than two hundred percent, but less than two hundred fifty-one percent, of the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, and who receives a premium subsidy from the HCA.

"Subsidy" means the difference between the amount of periodic payment the HCA makes to a managed health care system on behalf of a subsidized enrollee, and the amount determined to be the subsidized enrollee's responsibility under RCW 70.47.060(2).

AMENDATORY SECTION (Amending Order 10-03, filed 11/30/10, effective 12/31/10)

WAC 182-24-020 Eligibility. (1) To be eligible for enrollment in BHP, unless otherwise specified elsewhere in

this chapter, an individual must be a Washington state resident, age nineteen to sixty-four, who:

- (a) Is not eligible for free or purchased medicare;
- (b) Is not eligible for or receiving medical assistance from the department of social and health services (DSHS);
- (c) Is not enrolled in WHP;
- (d) Is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator;
- (e) Is not a full-time student who has received a temporary visa to study in the United States;

(f) Is a U.S. citizen; or a qualified alien who meets the eligibility requirements in Title 8 United States Code (USC), Chapter 14, Subchapter I, Section 1613, five-year limited eligibility of qualified aliens for federal means-tested public benefit;

(g) Resides in an area of the state served by a managed health care system participating in the plan;

~~((g))~~ (h) Chooses to obtain coverage from a particular managed health care system;

~~((h))~~ (i) Pays or has paid on their behalf their portion of the costs for participation in the plan; and

~~((i))~~ (j) Whose gross family income at the time of enrollment meets the definition of a subsidized enrollee.

(2) Persons not meeting these criteria, as evidenced by information submitted on the application for enrollment or otherwise obtained by BHP, will not be enrolled. An enrollee who is no longer a Washington resident or who is later determined to have failed to meet BHP's eligibility criteria at the time of enrollment, will be disenrolled.

(3) Eligibility for BHP Plus and maternity benefits through medical assistance is determined by DSHS, based on medicaid eligibility criteria.

(4)(a) An individual otherwise eligible for enrollment in BHP may be denied enrollment if the administrator has determined that acceptance of additional enrollment would exceed limits established by the legislature, would jeopardize the orderly development of BHP, or would result in an overexpenditure of BHP funds. An individual otherwise eligible for enrollment in BHP also may be denied enrollment if no managed health care system(s) is accepting new enrollment in that program or from the geographic area where the applicant lives.

(b) If the administrator closes or limits enrollment, to the extent funding is available, BHP will continue to accept and process applications for enrollment from:

(i) Children eligible for BHP, who were referred to DSHS for BHP Plus coverage, but were found ineligible for BHP Plus for reasons other than noncompliance;

(ii) Employees of a home care agency group enrolled or applying for coverage under WAC 182-22-220;

(iii) Eligible individual home care providers;

(iv) Licensed foster care workers;

(v) Persons who disenrolled from BHP in order to enroll in medicaid, and subsequently became ineligible for medicaid;

(vi) Limited enrollment of new employer groups;

(vii) Members of the Washington National Guard and Reserves who served in Operation Enduring Freedom, Oper-

ation Iraqi Freedom, or Operation Noble Eagle, and their spouses and dependents; and

(viii) Subject to availability of funding, additional space for enrollment may be reserved for other applicants as determined by the administrator, in order to ensure continuous coverage and service for current individual and group accounts. (For example: Within established guidelines, processing routine income changes that may affect subsidy eligibility for current enrollees; adding new family members to an existing account; transferring enrollees between group and individual accounts; restoring coverage for enrollees who are otherwise eligible for continued enrollment under WAC 182-24-070 (7)(b) after a limited suspension of coverage due to late payment or other health care coverage; adding newly hired employees to an existing employer group; or adding new or returning members of federally recognized Native American tribes to that tribe's currently approved financial sponsor group.)

(c) If the administrator has closed or limited enrollment, applicants for BHP who are not in any of the categories in (b) of this subsection may reserve space on a waiting list to be processed according to the date the waiting list request or application is received by BHP. When enrollment is reopened by the administrator, applicants whose names appear on the waiting list will be notified by BHP of the opportunity to enroll. BHP may require new application forms and documentation from applicants on the waiting list, or may contact applicants to verify continued interest in applying, before determining their eligibility.

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

WSR 11-12-088

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed June 1, 2011, 11:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-03-081.

Title of Rule and Other Identifying Information: WAC 388-106-0125 In-home personal care hours.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on July 5, 2011, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 6, 2011.

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

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by June 21, 2011, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending rules in chapters 388-71 and 388-106 WAC to implement Governor's Executive Order 10-04 to reduce current year spending by 6.287 percent. Amendments may include rate reductions, personal care hour reductions, and changes in eligibility for agency managed personal care.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: ESSB 6444.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Susan Engels, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2554.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a small business economic impact statement is not required, as no new costs will be imposed on small businesses or nonprofits as a result of this rule amendment.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

May 26, 2011

Katherine I. Vasquez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-11-050, filed 5/12/10, effective 6/12/10)

WAC 388-106-0125 If I am age twenty-one or older, how does CARE use criteria to place me in a classification group for in-home care? CARE uses the criteria of cognitive performance score as determined under WAC 388-106-0090, clinical complexity as determined under WAC 388-106-0095, mood/behavior and behavior point score as determined under WAC 388-106-0100, ADLS as determined under WAC 388-106-0105, and exceptional care as determined under WAC 388-106-0110 to place you into one of the following seventeen in-home groups. CARE classification is determined first by meeting criteria to be placed into a group, then you are further classified based on ADL score or behavior point score into a classification sub-group following a classification path of highest possible base hours to lowest qualifying base hours.

(1) If you meet the criteria for exceptional care, then CARE will place you in **Group E**. CARE then further classifies you into:

(a) **Group E High** with ((416)) 393 base hours if you have an ADL score of 26-28; or

(b) **Group E Medium** with ((346)) 327 base hours if you have an ADL score of 22-25.

(2) If you meet the criteria for clinical complexity and have cognitive performance score of 4-6 or you have cognitive performance score of 5-6, then you are classified in **Group D** regardless of your mood and behavior qualification or behavior points. CARE then further classifies you into:

(a) **Group D High** with ~~((277))~~ 260 base hours if you have an ADL score of 25-28; or

(b) **Group D Medium-High** with ~~((234))~~ 215 base hours if you have an ADL score of 18-24; or

(c) **Group D Medium** with ~~((185))~~ 168 base hours if you have an ADL score of 13-17; or

(d) **Group D Low** with ~~((138))~~ 120 base hours if you have an ADL score of 2-12.

(3) If you meet the criteria for clinical complexity and have a CPS score of less than 4, then you are classified in **Group C** regardless of your mood and behavior qualification or behavior points. CARE then further classifies you into:

(a) **Group C High** with ~~((194))~~ 176 base hours if you have an ADL score of 25-28; or

(b) **Group C Medium-High** with ~~((174))~~ 158 base hours if you have an ADL score of 18-24; or

(c) **Group C Medium** with ~~((132))~~ 115 base hours if you have an ADL score of 9-17; or

(d) **Group C Low** with ~~((87))~~ 73 base hours if you have an ADL score of 2-8.

(4) If you meet the criteria for mood and behavior qualification and do not meet the classification for C, D, or E groups, then you are classified into **Group B**. CARE further classifies you into:

(a) **Group B High** with ~~((147))~~ 129 base hours if you have an ADL score of 15-28; or

(b) **Group B Medium** with ~~((82))~~ 69 base hours if you have an ADL score of 5-14; or

(c) **Group B Low** with ~~((47))~~ 39 base hours if you have an ADL score of 0-4; or

(5) If you meet the criteria for behavior points and have a CPS score of greater than 2 and your ADL score is greater than 1, and do not meet the classification for C, D, or E groups, then you are classified in **Group B**. CARE further classifies you into:

(a) **Group B High** with ~~((147))~~ 129 base hours if you have a behavior point score 12 or greater; or

(b) **Group B Medium-High** with ~~((101))~~ 84 base hours if you have a behavior point score greater than 6; or

(c) **Group B Medium** with ~~((82))~~ 69 base hours if you have a behavior point score greater than 4; or

(d) **Group B Low** with ~~((47))~~ 39 base hours if you have a behavior point score greater than 1.

(6) If you are not clinically complex and your CPS score is less than 5 and you do not qualify under either mood and behavior criteria, then you are classified in **Group A**. CARE further classifies you into:

(a) **Group A High** with ~~((71))~~ 59 base hours if you have an ADL score of 10-28; or

(b) **Group A Medium** with ~~((56))~~ 47 base hours if you have an ADL score of 5-9; or

(c) **Group A Low** with ~~((26))~~ 22 base hours if you have an ADL score of 0-4.

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.