

**WSR 11-13-081**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Medicaid Purchasing Administration)

[Filed June 17, 2011, 8:24 a.m., effective June 17, 2011, 8:24 a.m.]

Effective Date of Rule: Immediately.

Purpose: Upon order of the governor, the medicaid purchasing administration (MPA) must reduce its budget expenditures for the current fiscal year ending June 30, 2011, by 6.3 percent. To achieve this expenditure reduction, MPA is eliminating optional medical services from program benefit packages for clients twenty-one years of age and older. These medical services include vision, hearing, and dental. Chapter 388-531 WAC is being amended to include medical services previously listed in the programs to be eliminated that are necessary to, and included within, appropriate mandatory medical services under federal statutes and rules.

Citation of Existing Rules Affected by this Order: Amending WAC 388-531-0100, 388-531-0150, 388-531-0200, 388-531-0250, 388-531-0400, 388-531-1000, and 388-531-1300.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: Section 209(1), chapter 37, Laws of 2010 (ESSB 6444).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: Governor Gregoire issued Executive Order 10-04 on September 13, 2010, under the authority of RCW 43.88.110(7). In the executive order, the governor required DSHS and all other state agencies to reduce their expenditures in state fiscal year 2011 by approximately 6.3 percent. As a consequence of the executive order, funding is no longer available as of January 1, 2011, for the benefits that are being eliminated as part of these regulatory amendments. Delaying the adoption of these cuts to optional services could jeopardize the state's ability to maintain the mandatory medicaid services for the majority of DSHS clients. This CR-103E extends the emergency adoption for these rules currently in place and is necessary to reestablish WAC 388-531-0150 (1)(n) which was erroneously struck out under WSR 11-10-029, filed April 27, 2011.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 7, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 7, Repealed 0.

Date Adopted: June 15, 2011.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-12-030, filed 5/29/08, effective 7/1/08)

**WAC 388-531-0100 Scope of coverage for physician-related and healthcare professional services—General and administrative.** (1) The department covers healthcare services, equipment, and supplies listed in this chapter, according to department rules and subject to the limitations and requirements in this chapter, when they are:

(a) Within the scope of an eligible client's medical assistance program. Refer to WAC 388-501-0060 and 388-501-0065; and

(b) Medically necessary as defined in WAC 388-500-0005.

(2) The department evaluates a request for a service that is in a covered category under the provisions of WAC 388-501-0165.

(3) The department evaluates requests for covered services that are subject to limitations or other restrictions and approves such services beyond those limitations or restrictions as described in WAC 388-501-0169.

(4) The department covers the following physician-related services and healthcare professional services, subject to the conditions in subsections (1), (2), and (3) of this section:

- (a) Allergen immunotherapy services;
- (b) Anesthesia services;
- (c) Dialysis and end stage renal disease services (refer to chapter 388-540 WAC);
- (d) Emergency physician services;
- (e) ENT (ear, nose, and throat) related services;
- (f) Early and periodic screening, diagnosis, and treatment (EPSDT) services (refer to WAC 388-534-0100);
- (g) (~~Family planning~~) Reproductive health services (refer to chapter 388-532 WAC);
- (h) Hospital inpatient services (refer to chapter 388-550 WAC);
- (i) Maternity care, delivery, and newborn care services (refer to chapter 388-533 WAC);
- (j) Office visits;
- (k) Vision-related services(;) (refer to chapter 388-544 WAC for vision hardware for clients twenty years of age and younger);
- (l) Osteopathic treatment services;
- (m) Pathology and laboratory services;

(n) Psychiatry and other rehabilitation services (refer to chapter 388-550 WAC);

(o) Foot care and podiatry services (refer to WAC 388-531-1300);

(p) Primary care services;

(q) Psychiatric services, provided by a psychiatrist;

(r) Psychotherapy services for children as provided in WAC 388-531-1400;

(s) Pulmonary and respiratory services;

(t) Radiology services;

(u) Surgical services;

(v) Cosmetic, reconstructive, or plastic surgery, and related services and supplies to correct physiological defects from birth, illness, or physical trauma, or for mastectomy reconstruction for post cancer treatment; ~~((and))~~

(w) Oral healthcare services for emergency conditions for clients twenty-one years of age and older, except for clients of the division of developmental disabilities (refer to WAC 388-531-1025); and

(x) Other outpatient physician services.

(5) The department covers physical examinations for medical assistance clients only when the physical examination is one or more of the following:

(a) A screening exam covered by the EPSDT program (see WAC 388-534-0100);

(b) An annual exam for clients of the division of developmental disabilities; or

(c) A screening pap smear, mammogram, or prostate exam.

(6) By providing covered services to a client eligible for a medical assistance program, a provider who has signed an agreement with the department accepts the department's rules and fees as outlined in the agreement, which includes federal and state law and regulations, billing instructions, and department issuances.

AMENDATORY SECTION (Amending WSR 10-19-057, filed 9/14/10, effective 10/15/10)

**WAC 388-531-0150 Noncovered physician-related and healthcare professional services—General and administrative.** (1) Except as provided in WAC 388-531-0100 and subsection (2) of this section, the department does not cover the following:

(a) Acupuncture, massage, or massage therapy;

(b) Any service specifically excluded by statute;

(c) Care, testing, or treatment of infertility, frigidity, or impotency. This includes procedures for donor ovum, sperm, womb, and reversal of vasectomy or tubal ligation;

(d) Cosmetic treatment or surgery, except for medically necessary reconstructive surgery to correct defects attributable to trauma, birth defect, or illness;

(e) Experimental or investigational services, procedures, treatments, devices, drugs, or application of associated services, except when the individual factors of an individual client's condition justify a determination of medical necessity under WAC 388-501-0165;

(f) Hair transplantation;

(g) Marital counseling or sex therapy;

(h) More costly services when the department determines that less costly, equally effective services are available;

(i) Vision-related services (~~((listed)) as ((nonecovered in chapter 388-544 WAC;))~~) follows:

(i) Services for cosmetic purposes only;

(ii) Group vision screening for eyeglasses; and

(iii) Refractive surgery of any type that changes the eye's refractive error. The intent of the refractive surgery procedure is to reduce or eliminate the need for eyeglass or contact lens correction. This refractive surgery does not include intraocular lens implantation following cataract surgery.

(j) Payment for body parts, including organs, tissues, bones and blood, except as allowed in WAC 388-531-1750;

(k) Physician-supplied medication, except those drugs administered by the physician in the physician's office;

(l) Physical examinations or routine checkups, except as provided in WAC 388-531-0100;

(m) ~~((Routine foot care. This does not include clients who have a medical condition that affects the feet, such as diabetes or arteriosclerosis obliterans. Routine foot care includes, but is not limited to:~~

~~(i) Treatment of mycotic disease;~~

~~(ii) Removal of warts, corns, or calluses;~~

~~(iii) Trimming of nails and other hygiene care; or~~

~~(iv) Treatment of flat feet)) Foot care, unless the client meets criteria and conditions outlined in WAC 388-531-1300, as follows:~~

~~(i) Routine foot care, such as but not limited to:~~

~~(A) Treatment of tinea pedis;~~

~~(B) Cutting or removing warts, corns and calluses; and~~

~~(C) Trimming, cutting, clipping, or debriding of nails.~~

~~(ii) Nonroutine foot care, such as, but not limited to treatment of:~~

~~(A) Flat feet;~~

~~(B) High arches (cavus foot);~~

~~(C) Onychomycosis;~~

~~(D) Bunions and tailor's bunion (hallux valgus);~~

~~(E) Hallux malleus;~~

~~(F) Equinus deformity of foot, acquired;~~

~~(G) Cavovarus deformity, acquired;~~

~~(H) Adult acquired flatfoot (metatarsus adductus or pes planus);~~

~~(I) Hallux limitus.~~

~~(iii) Any other service performed in the absence of localized illness, injury, or symptoms involving the foot;~~

(n) Except as provided in WAC 388-531-1600, weight reduction and control services, procedures, treatments, devices, drugs, products, gym memberships, equipment for the purpose of weight reduction, or the application of associated services.

(o) Nonmedical equipment; ~~((and))~~

(p) Nonemergent admissions and associated services to out-of-state hospitals or noncontracted hospitals in contract areas;

(q) Bilateral cochlear implantation; and

(r) Routine or nonemergency medical and surgical dental services provided by a doctor of dental medicine or dental surgery for clients twenty one years of age and older, except for clients of the division of developmental disabilities.

(2) The department covers excluded services listed in (1) of this subsection if those services are mandated under and provided to a client who is eligible for one of the following:

- (a) The EPSDT program;
- (b) A medicaid program for qualified **medicare** beneficiaries (QMBs); or
- (c) A waiver program.

AMENDATORY SECTION (Amending WSR 10-19-057, filed 9/14/10, effective 10/15/10)

**WAC 388-531-0200 Physician-related and health-care professional services requiring prior authorization.**

(1) The department requires **prior authorization** for certain services. Prior authorization includes **expedited prior authorization (EPA)** and **limitation extension (LE)**. See WAC 388-501-0165.

(2) The EPA process is designed to eliminate the need for telephone prior authorization for selected admissions and procedures.

(a) The provider must create an authorization number using the process explained in the department's physician-related billing instructions.

(b) Upon request, the provider must provide supporting clinical documentation to the department showing how the authorization number was created.

(c) Selected (~~(nonemergent)~~) nonemergency admissions to contract hospitals require EPA. These are identified in the department billing instructions.

(d) Procedures (~~(requiring)~~) allowing expedited prior authorization include, but are not limited to, the following:

- (i) ~~(Bladder repair;~~
- (ii) ~~Hysterectomy for clients age forty five and younger, except with a diagnosis of cancer(s) of the female reproductive system;~~
- (iii) ~~Outpatient magnetic resonance imaging (MRI) and magnetic resonance angiography (MRA);~~
- (iv) ~~Reduction mammoplasties/mastectomy for (~~gynecomastia~~) gynecomastia; (~~and~~)~~
- (v) ~~Strabismus surgery for clients eighteen years of age and older;~~
- (vi) Meningococcal vaccine;
- (vii) Placement of drug eluting stent and device;
- (viii) Cochlear implants for clients twenty years of age and younger;
- (ix) Hyperbaric oxygen therapy;
- (x) Visual exam/refraction for clients twenty-one years of age and older;
- (xi) Blepharoplasties; and
- (xii) Neuropsychological testing for clients sixteen years of age and older.

(3) The department evaluates new technologies under the procedures in WAC 388-531-0550. These require prior authorization.

(4) Prior authorization is required for the following:

- (a) Abdominoplasty;
- (b) All inpatient hospital stays for **acute physical medicine and rehabilitation (PM&R)**;
- (c) Unilateral cochlear implants(~~(, which also~~

~~(i) For coverage, must be performed in an ambulatory surgery center (ASC) or an inpatient or outpatient hospital facility; and~~

~~(ii) For reimbursement, must have the invoice attached to the claim)) for clients twenty years of age and younger (refer to WAC 388-531-0375);~~

(d) Diagnosis and treatment of eating disorders for clients twenty-one years of age and older;

(e) Osteopathic manipulative therapy in excess of the department's published limits;

(f) Panniculectomy;

(g) Bariatric surgery (see WAC 388-531-1600); and

(h) Vagus nerve stimulator insertion, which also:

(i) For coverage, must be performed in an inpatient or outpatient hospital facility; and

(ii) For reimbursement, must have the invoice attached to the claim.

(i) Osseointegrated/bone anchored hearing aids (BAHA) for clients twenty years of age and younger;

(j) Removal or repair of previously implanted BAHA or cochlear device for clients twenty one years of age and older when medically necessary.

(5) The department may require a second opinion and/or consultation before authorizing any elective surgical procedure.

(6) Children six (~~(year)~~) years of age and younger do not require authorization for hospitalization.

AMENDATORY SECTION (Amending WSR 08-12-030, filed 5/29/08, effective 7/1/08)

**WAC 388-531-0250 Who can provide and bill for physician-related and healthcare professional services.**

(1) The following enrolled providers are eligible to provide and bill for physician-related and healthcare professional services which they provide to eligible clients:

- (a) Advanced registered nurse practitioners (ARNP);
- (b) Federally qualified health centers (FQHCs);
- (c) Health departments;
- (d) Hospitals currently licensed by the department of health;
- (e) Independent (outside) laboratories **CLIA** certified to perform tests. See WAC 388-531-0800;
- (f) Licensed marriage and family therapists, only as provided in WAC 388-531-1400;
- (g) Licensed mental health counselors, only as provided in WAC 388-531-1400;
- (h) Licensed radiology facilities;
- (i) Licensed social workers, only as provided in WAC 388-531-1400 and 388-531-1600;
- (j) Medicare-certified ambulatory surgery centers;
- (k) Medicare-certified rural health clinics;
- (l) Providers who have a signed agreement with the department to provide screening services to eligible persons in the EPSDT program;
- (m) Registered nurse first assistants (RNFA); and
- (n) Persons currently licensed by the state of Washington department of health to practice any of the following:
  - (i) Dentistry (refer to chapter 388-535 WAC);
  - (ii) Medicine and osteopathy;

- (iii) Nursing;
  - (iv) Optometry; or
  - (v) Podiatry.
- (2) The department does not pay for services performed by any of the following practitioners:
- (a) Acupuncturists;
  - (b) Christian Science practitioners or theological healers;
  - (c) Counselors, except as provided in WAC 388-531-1400;
  - (d) Herbalists;
  - (e) Homeopaths;
  - (f) Massage therapists as licensed by the Washington state department of health;
  - (g) Naturopaths;
  - (h) Sanipractors;
  - (i) Social workers, except those who have a master's degree in social work (MSW), and:
    - (i) Are employed by an FQHC;
    - (ii) Who have prior authorization to evaluate a client for bariatric surgery; or
    - (iii) As provided in WAC 388-531-1400.
  - (j) Any other licensed or unlicensed practitioners not otherwise specifically provided for in WAC (~~388-502-0010~~) 388-502-0002; or
  - (k) Any other licensed practitioners providing services which the practitioner is not:
    - (i) Licensed to provide; and
    - (ii) Trained to provide.
- (3) The department pays practitioners listed in subsection (2) of this section for physician-related services if those services are mandated by, and provided to, clients who are eligible for one of the following:
- (a) The EPSDT program;
  - (b) A medicaid program for qualified medicare beneficiaries (QMB); or
  - (c) A waiver program.

#### NEW SECTION

- WAC 388-531-0375 Audiology services.** (1) The department covers, with prior authorization, the implantation of a unilateral cochlear device for clients twenty years of age and younger with the following limitations:
- (a) The client meets one of the following:
    - (i) Has a diagnosis of profound to severe bilateral, sensorineural hearing loss;
    - (ii) Has stimulable auditory nerves but has limited benefit from appropriately fitted hearing aids (e.g., fail to meet age-appropriate auditory milestones in the best-aided condition for young children, or score of less than ten or equal to forty percent correct in the best-aided condition on recorded open-set sentence recognition tests);
    - (iii) Has the cognitive ability to use auditory clues;
    - (iv) Is willing to undergo an extensive rehabilitation program;
    - (v) Has an accessible cochlear lumen that is structurally suitable for cochlear implantation;
    - (vi) Does not have lesions in the auditory nerve and/or acoustic areas of the central nervous system; or
    - (vii) Has no other contraindications to surgery; and

- (b) The procedure is performed in an inpatient hospital setting or outpatient hospital setting.
- (2) The department covers osseointegrated bone anchored hearing aids (BAHA) for clients twenty years of age and younger with prior authorization.
- (3) The department covers replacement parts for BAHA and cochlear devices for clients twenty years of age and younger only. See WAC 388-547-0800.
- (4) The department considers requests for removal or repair of previously implanted bone anchored hearing aids (BAHA) and cochlear devices for clients twenty one years of age and older only when medically necessary. Prior authorization from the department is required.
- (5) For audiology, the department limits:
- (a) Caloric vestibular testing to four units for each ear; and
  - (b) Sinusoidal vertical axis rotational testing to three units for each direction.

AMENDATORY SECTION (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

**WAC 388-531-0400 Client responsibility for reimbursement for physician-related services.** Clients may be responsible to reimburse the provider, as described under WAC 388-501-0100, for noncovered services (~~(that are not covered under the client's medical care program)~~) as defined in WAC 388-501-0050 or for services excluded from the client's benefits package as defined under WAC 388-501-0060. Clients whose care is provided under CHIP may be responsible for copayments as outlined in chapter 388-542 WAC. Also, see WAC 388-502-0160, Billing the client.

AMENDATORY SECTION (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

**WAC 388-531-1000 Ophthalmic (~~(physician-related)~~) services.** Refer to chapter 388-544 WAC for (~~(ophthalmic and)~~) vision-related ((services)) hardware coverage for clients twenty years of age and younger.

(1) The department covers, without prior authorization, eye examinations, refraction and fitting services with the following limitations:

- (a) Once every twenty four months for asymptomatic clients twenty one years of age and older;
- (b) Once every twelve months for asymptomatic clients twenty years of age and younger; or
- (c) Once every twelve months, regardless of age, for asymptomatic clients of the division of developmental disabilities.

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

- (a) The provider is diagnosing or treating the client for a medical condition that has symptoms of vision problems or disease;
- (b) The client is on medication that affects vision; or
- (c) The service is necessary due to lost or broken eye-glasses/contacts. In this case:

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

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

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

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

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

(a) The extent of the testing;

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

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

(4) The department covers orthoptics and vision training therapy. Providers must obtain prior authorization from the department.

(5) The department covers ocular prosthetics for clients when provided by any of the following:

(a) An ophthalmologist;

(b) An ocularist; or

(c) An optometrist who specializes in prosthetics.

(6) The department covers cataract surgery, without prior authorization when the following clinical criteria are met:

(a) Correctable visual acuity in the affected eye at 20/50 or worse, as measured on the Snellen test chart; or

(b) One or more of the following conditions:

(i) Dislocated or subluxated lens;

(ii) Intraocular foreign body;

(iii) Ocular trauma;

(iv) Phacogenic glaucoma;

(v) Phacogenic uveitis;

(vi) Phacoanaphylactic endophthalmitis; or

(vii) Increased ocular pressure in a person who is blind and is experiencing ocular pain.

(7) The department covers strabismus surgery as follows:

(a) For clients seventeen years of age and younger. The provider must clearly document the need in the client's record. The department does not require authorization for clients seventeen years of age and younger; and

(b) For clients eighteen years of age and older, when the clinical criteria are met. To receive payment, providers must follow the expedited prior authorization process. The clinical criteria are:

(i) The client has double vision; and

(ii) The surgery is not being performed for cosmetic reasons.

(8) The department covers blepharoplasty or blepharoptosis surgery for clients when all of the clinical criteria are met. To receive payment, providers must follow the department's expedited prior authorization process. The clinical criteria are:

(a) The client's excess upper eyelid skin is blocking the superior visual field; and

(b) The blocked vision is within ten degrees of central fixation using a central visual field test.

#### NEW SECTION

**WAC 388-531-1025 Oral healthcare services provided by dentists for clients age twenty-one and older—General.** This section does not apply to clients of the division of developmental disabilities. Refer to WAC 388-535-1099.

(1) Clients age twenty-one and older are eligible for the oral healthcare services listed in this section, subject to coverage limitations. The department pays for oral healthcare services provided by a dentist to clients age twenty-one and older when the services provided:

(a) Are within the scope of the eligible client's medical care program;

(b) Are medically necessary as defined in WAC 388-500-0005;

(c) Are emergency services and meet the criteria of coverage for emergency oral healthcare benefit listed in subsection (7) of this section;

(d) Are documented in the client's record in accordance with chapter 388-502 WAC;

(e) Meet the department's prior authorization requirements, if there are any;

(f) Are within prevailing standard of care accepted practice standards;

(g) Are consistent with a diagnosis of teeth, mouth and jaw disease or condition;

(h) Are reasonable in amount and duration of care, treatment, or service;

(i) Are billed using only the allowed procedure codes listed in the department's published billing instructions and fee schedules; and

(j) Are documented with a comprehensive description of the client's presenting symptoms, diagnosis and services provided, in the client's record, including the following, if applicable:

(i) Client's blood pressure, when appropriate;

(ii) A surgical narrative;

(iii) A copy of the post-operative instructions; and

(iv) A copy of all pre- and post-operative prescriptions.

(2) An appropriate consent form, if required, signed and dated by the client or the client's legal representative must be in the client's record.

(3) An anesthesiologist providing oral healthcare under this section must have a current provider's permit on file with the department.

(4) A healthcare provider providing oral or parenteral conscious sedation, or general anesthesia, must meet:

(a) The provider's professional organization guidelines;

(b) The department of health (DOH) requirements in chapter 246-817 WAC; and

(c) Any applicable DOH medical, dental, and nursing anesthesia regulations.

(5) Department-enrolled dental providers who are not specialized to perform oral and maxillofacial surgery (see WAC 388-535-1070(3)) must use only the current dental terminology (CDT) codes to bill claims for services that are listed in this section.

(6) Oral healthcare services must be provided in a clinic setting, with the exception of trauma related services.

(7) Emergency oral healthcare benefit.

(a) Medical and surgical services provided by a doctor of dental medicine or dental surgery, which, if provided by a physician, are considered a physician service, are included in the emergency oral healthcare benefit when the services are done on an emergency basis. All services are subject to prior authorization when indicated.

(b) The following set of services are covered under the emergency oral healthcare benefit when provided by a dentist to assess and treat pain, infection or trauma of the mouth, jaw, or teeth, including treatment of post-surgical complications, such as dry socket and services that are part of a cancer treatment regimen or part of a pre-transplant protocol:

(i) One emergency examination, per presenting problem, performed as a limited oral evaluation to:

(A) Evaluate the client's symptom of pain;

(B) Make a diagnosis; and

(C) Develop or implement a treatment plan, including a referral to another healthcare professional, such as an oral surgeon; or

(D) A second evaluation if the treatment initiated is conservative, such as prescribed antibiotics, and a subsequent visit is necessary for definitive treatment, such as tooth extraction. The treatment plan must be documented in the client's record.

(ii) Diagnostic radiographs (x-rays).

(A) Radiographs include:

(I) Periapical; and

(II) Panoramic films, limited to one every three years.

(B) Radiographs must:

(I) Be required to make the diagnosis;

(II) Support medical necessity;

(III) Be of diagnostic quality, dated and labeled with the client's name;

(IV) Be retained by the provider as part of the client's record. The retained radiograph must be the original.

(C) Duplicate radiographs must be submitted with prior authorization requests or when the department requests a copy of the client's dental record.

(iii) Pulpal debridement. One gross pulpal debridement per client, per tooth, within a twelve-month period.

(iv) Extractions and surgical extractions for symptomatic teeth, limited to:

(A) Extraction of a nearly-erupted or fully erupted tooth or exposed root;

(B) Surgical removal of an erupted tooth only;

(C) Surgical removal of residual tooth roots; and

(D) Extraction of an impacted wisdom tooth when the tooth is not erupted.

(v) Palliative (emergency) treatment for the treatment of dental pain, one per client, per six-month period, during a limited oral evaluation appointment.

(vi) Local anesthesia and regional blocks as part of the global fee for any procedure being provided to a client.

(vii) Inhalation of nitrous oxide, once per day.

(viii) House or extended care facility visits, for emergency care as defined in this section.

(ix) Emergency office visits after regularly scheduled hours. The department limits coverage to one emergency visit per day, per provider.

(x) Therapeutic drug injections including drugs and/or medicaments (pharmaceuticals) only when used with general anesthesia.

(xi) Treatment of post-surgical complications, such as dry socket.

(c) Emergency healthcare benefit services provided by dentists specialized in oral maxillofacial surgery. Services that are covered under the emergency oral healthcare benefit to assess and treat pain, infection or trauma of the mouth, jaw, or teeth, including treatment of post-surgical complications, such as dry socket and services that are part of a cancer treatment regimen or part of a pre-transplant protocol:

(i) May be provided by dentists specialized in oral maxillofacial surgery; and

(ii) Are billed using only the allowed procedure codes listed in the department's published billing instructions and fee schedules.

(8) Prior Authorization for oral healthcare services provided by dentists for clients age twenty-one and older.

(a) The department uses the determination process described in WAC 388-501-0165 for covered oral healthcare services for clients age twenty-one and older for an emergency condition that requires prior authorization.

(b) The department requires a dental provider who is requesting prior authorization to submit sufficient objective clinical information to establish medical necessity. The request must be submitted in writing on the DSHS 13-835 general information for authorization form which may be obtained at <http://dshs.wa.gov/msa/forms/eforms.html>.

(c) The department may request additional information as follows:

(i) Additional radiographs (X rays);

(ii) Study models;

(iii) Photographs; and

(iv) Any other information as determined by the department.

(d) The department may require second opinions and/or consultations before authorizing any procedure.

(e) When the department authorizes an oral healthcare service for a client, that authorization indicates only that the specific service is medically necessary and an emergency, it is not a guarantee of payment. The authorization is valid for six months and only if the client is eligible and the service is covered in the client's healthcare benefit package on the date of service.

(f) The department denies a request for an oral healthcare service when the requested service:

(i) Is not covered in the client's healthcare benefit package;

(ii) Is covered by another department program;

(iii) Is covered by an agency or other entity outside the department; or

(iv) Fails to meet the clinical criteria, limitations, or restrictions in this section.

(9) Refer to chapter 388-535 WAC and WAC 388-531-1850 and 388-531-1900 for the payment methodologies used for the services listed in this section.

AMENDATORY SECTION (Amending WSR 10-19-057, filed 9/14/10, effective 10/15/10)

**WAC 388-531-1300 (~~Podiatric physician related services~~) Foot care services for clients twenty-one years of age and older.** (1) ~~((The department covers podiatric services as listed in this section when provided by any of the following:~~

- ~~(a) A medical doctor;~~
- ~~(b) A doctor of osteopathy; or~~
- ~~(c) A podiatric physician.~~

~~(2) The department reimburses for the following:~~

~~(a) Nonroutine foot care when a medical condition that affects the feet (such as diabetes or arteriosclerosis obliterans) requires that any of the providers in subsection (1) of this section perform such care;~~

~~(b) One treatment in a sixty-day period for debridement of nails. The department covers additional treatments in this period if documented in the client's medical record as being medically necessary;~~

~~(c) Impression casting. The department includes ninety-day follow-up care in the reimbursement;~~

~~(d) A surgical procedure performed on the ankle or foot, requiring a local nerve block, and performed by a qualified provider. The department does not reimburse separately for the anesthesia, but includes it in the reimbursement for the procedure; and~~

~~(e) Custom fitted and/or custom molded orthotic devices:~~

~~(i) The department's fee for the orthotic device includes reimbursement for a biomechanical evaluation (an evaluation of the foot that includes various measurements and manipulations necessary for the fitting of an orthotic device); and~~

~~(ii) The department includes an E&M fee reimbursement in addition to an orthotic fee reimbursement if the E&M services are justified and well documented in the client's medical record.~~

~~(3) The department does not reimburse podiatrists for any of the following radiology services:~~

- ~~(a) X rays for soft tissue diagnosis;~~
- ~~(b) Bilateral X rays for a unilateral condition;~~
- ~~(c) X rays in excess of two views;~~
- ~~(d) X rays that are ordered before the client is examined;~~

~~or~~

~~(e) X rays for any part of the body other than the foot or ankle.)~~ This section addresses care of the lower extremities (foot and ankle) referred to as foot care and applies to clients twenty-one years of age and older.

(2) The department covers the foot care services listed in this section when those services are provided by any of the following healthcare providers and billed to the department using procedure codes and diagnosis codes that are within their scope of practice:

- (a) Physicians or physician's assistants-certified (PA-C);
- (b) Osteopathic physicians, surgeons, or physician's assistant-certified (PA-C);
- (c) Podiatric physicians and surgeons; or
- (d) Advanced registered nurse practitioners (ARNP).

(3) The department covers evaluation and management visits to assess and diagnose conditions of the lower extremi-

ties. Once diagnosis is made, the department covers treatment if the criteria in subsection (4) of this section are met.

(4) The department pays for:

(a) Treatment of the following conditions of the lower extremities only when there is an acute condition, an exacerbation of a chronic condition, or presence of a systemic condition such as metabolic, neurologic, or peripheral vascular disease and evidence that the treatment will prevent, cure or alleviate a condition in the client that causes pain resulting in the inability to perform activities of daily living, acute disability, or threatens to cause the loss of life or limb, unless otherwise specified:

(i) Acute inflammatory processes such as, but not limited to tendonitis;

(ii) Circulatory compromise such as, but are not limited to:

(A) Lymphedema;

(B) Raynaud's disease;

(C) Thromboangiitis obliterans; and

(D) Phlebitis.

(iii) Injuries, fractures, sprains, and dislocations;

(iv) Gout;

(v) Lacerations, ulcerations, wounds, blisters;

(vi) Neuropathies (e.g., reflex sympathetic dystrophy, secondary to diabetes, charcot arthropathy);

(vii) Osteomyelitis;

(viii) Post-op complications;

(ix) Warts, corns, or calluses in the presence of an acute condition such as infection and pain effecting the client's ability to ambulate as a result of the warts, corns, or calluses and meets the criteria in subsection (4) of this section;

(x) Soft tissue conditions, such as, but are not limited to:

(A) Rashes;

(B) Infections (fungal, bacterial);

(C) Gangrene;

(D) Cellulitis of lower extremities;

(E) Soft tissue tumors; and

(F) Neuroma.

(xi) Nail bed infections (paronychia); and

(xii) Tarsal tunnel syndrome.

(b) Trimming and/or debridement of nails to treat, as applicable, conditions from the list in subsection (4)(a) of this section. The department pays for one treatment in a sixty-day period. The department covers additional treatments in this period if documented in the client's medical record as being medically necessary;

(c) A surgical procedure to treat one of the conditions in subsection (4) of this section performed on the lower extremities, and performed by a qualified provider;

(d) Impression casting to treat one of the conditions in subsection (4) of this section. The department includes ninety-day follow-up care in the reimbursement;

(e) Custom fitted and/or custom molded orthotic devices to treat one of the conditions in subsection (4) of this section.

(i) The department's fee for the orthotic device includes reimbursement for a biomechanical evaluation (an evaluation of the foot that includes various measurements and manipulations necessary for the fitting of an orthotic device); and

(ii) The department includes an evaluation and management (E&M) fee reimbursement in addition to an orthotic fee

reimbursement if the E&M services are justified and well documented in the client's medical record.

(5) The department does not pay for:

(a) The following radiology services:

(i) Bilateral X-rays for a unilateral condition; or

(ii) X-rays in excess of three views; or

(iii) X-rays that are ordered before the client is examined.

(b) Podiatric physicians or surgeons for X-rays for any part of the body other than the foot or ankle.

### WSR 11-14-001

#### EMERGENCY RULES

#### SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed June 22, 2011, 12:44 p.m., effective September 1, 2011]

Effective Date of Rule: September 1, 2011.

Purpose: To amend WAC 392-121-182 to comply with the new legislative requirements in ESHB 2065, which was passed by the 2011 legislature and signed by the governor on June 15, 2011.

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-182.

Statutory Authority for Adoption: ESHB 2065, section 2(5).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The 2011 legislature passed ESHB 2065, which the governor signed on June 15, 2011. ESHB 2065 states, "the superintendent of public instruction shall adopt rules defining minimum requirements and accountability for alternative learning experience programs." The office of superintendent of public instruction has been charged with implementing the requirements of the new legislation by the beginning of the 2011-12 school year.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: June 22, 2011.

Randy Dorn  
State Superintendent

AMENDATORY SECTION (Amending WSR 11-12-022, filed 5/24/11, effective 9/1/11)

**WAC 392-121-182 Alternative learning experience requirements.** (1) **Purposes:** The purposes of this section are the following:

(a) To ensure that students enrolled in an alternative learning experience offered by a school district have available to them educational opportunities designed to meet their individual needs;

(b) To provide general program requirements for alternative learning experiences offered by or through school districts;

(c) To provide a method for determining full-time equivalent enrollment and a process school districts must use when claiming state funding for alternative learning experiences.

(2) **General requirements:** A school district must meet the requirements of this section to count an alternative learning experience as a course of study pursuant to WAC 392-121-107. This section applies solely to school districts claiming state funding pursuant to WAC 392-121-107 for an alternative learning experience, including an alternative learning experience on-line program as defined in RCW 28A.150.262. It is not intended to apply to alternative learning experiences funded exclusively with federal or local resources.

(3) **Definitions:** For the purposes of this section the following definitions apply:

(a)(i) "Alternative learning experience" means:

((+)) (A) A course or a set of courses developed by a certificated teacher and documented in an individual written student learning plan for any student who meets the definition for enrollment specified by WAC 392-121-106. A student may enroll part-time in an alternative learning experience. Such enrollment is subject to the provisions of RCW 28A.150.350 and chapter 392-134 WAC; and

((+)) (B) The student pursues the requirements of the written student learning plan in whole or in part independently from a regular (~~attendance-based instructional~~) classroom setting or schedule, (~~although the learning plan~~) but may include some components of direct (~~instructional components~~) instruction; and

((+)) (C) The student's learning is supervised, monitored, assessed, evaluated, and documented by a certificated teacher.

(ii) The broad categories of alternative learning experience programs include, but are not limited to:

(A) On-line programs as defined in RCW 28A.150.262;

(B) Parent partnership programs that include significant participation and partnership by parents and families in the design and implementation of a student's learning experience; and

(C) Contract based learning programs.

(b) "Certificated teacher" means an employee of a school district, or of a school district contractor pursuant to WAC 392-121-188, who is assigned and endorsed according to the provisions of chapter 181-82 WAC;

(c) "Written student learning plan" means a written plan for learning that is developed by a certificated teacher that defines the requirements of an individual student's alternative learning experience. The written student learning plan must include at least the following elements:

(i) A beginning and ending date for the student's alternative learning experience;

(ii) An estimate by a certificated teacher of the average number of hours per week the student will engage in learning activities to meet the requirements of the written student learning plan. This estimate must consider only the time the student will engage in learning activities necessary to accomplish the learning goals and performance objectives specified in the written student learning plan(-);

(iii) A description of how weekly direct personal contact requirements will be fulfilled;

(iv) A description of each alternative learning experience course included as part of the learning plan, including specific learning goals, performance objectives, and learning activities for each course, written in a manner that facilitates monthly evaluation of student progress. This requirement may be met through the use of individual course syllabi or other similarly detailed descriptions of learning requirements. The description must clearly identify the requirements a student must meet to successfully complete the course or program. Courses must be identified using course names, codes, and designators specified in the most recent *Comprehensive Education Data and Research System* data manual published by the office of superintendent of public instruction;

(v) Identification of the certificated teacher responsible for each course included as part of the plan;

(vi) Identification of all instructional materials that will be used to complete the learning plan; and

(vii) A description of the timelines and methods for evaluating student progress toward the learning goals and performance objectives specified in the learning plan;

(viii) Identification of whether each alternative learning experience course meets one or more of the state essential academic learning requirements or grade-level expectations and any other academic goals, objectives, and learning requirements defined by the school district. For each high school alternative learning experience course, the written student learning plan must specify whether the course meets state and district graduation requirements.

(d) "Direct personal contact" means a one-to-one meeting between a certificated teacher and the student, or, where appropriate, between the certificated teacher, the student, and the student's parent. Direct personal contact can be accomplished in person or through the use of telephone, e-mail, instant messaging, interactive video communication, or other means of digital communication. Direct personal contact must be for the purposes of instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan, and must at minimum include a two-way exchange of information between a certificated teacher and the student. All required direct personal contact must be documented.

(e) "Satisfactory progress" means a certificated teacher has determined that a student's progress toward achieving the specific learning goals and performance objectives specified in the written student learning plan is satisfactory. The evaluation of satisfactory progress is conducted in a manner consistent with school district student evaluation or grading procedures, and is based on the professional judgment of a certificated teacher;

(f) "Intervention plan" means a plan designed to improve the progress of students determined to be not making satisfactory progress. An intervention plan must be developed, documented, and implemented by a certificated teacher in conjunction with the student and, for students in grades K-8, the student's parent(s). At minimum, the intervention plan must include at least one of the following interventions:

(i) Increasing the frequency or duration of direct personal contact for the purposes of enhancing the ability of the certificated teacher to improve student learning;

(ii) Modifying the manner in which direct personal contact is accomplished;

(iii) Modifying the student's learning goals or performance objectives;

(iv) Modifying the number of or scope of courses or the content included in the learning plan.

(g) "Substantially similar experiences and services" means that for each purchased or contracted instructional or cocurricular course, lesson, trip, or other experience, service, or activity identified on an alternative learning experience written student learning plan, there is an identical or similar experience, service, or activity made available to students enrolled in the district's regular instructional program:

(i) At the same grade level;

(ii) At an equivalent level of frequency, intensity, and duration including, but not limited to, consideration of individual versus group instruction;

(iii) At an equivalent level of costs to the student with regard to any related club, group, or association memberships; admission, enrollment, registration, rental or other participation fees; or any other expense associated with the experience or service;

(iv) In accordance with district adopted content standards or state defined grade level standards; and

(v) That is supervised, monitored, assessed, evaluated, and documented by a certificated teacher.

(h) "Synchronous digital instructional contact" means real-time communication between a certificated teacher and the student using interactive on-line, voice, or video communication technology.

(i) "Parent" has the same definition as "parent" in WAC 392-172A-01125.

**(4) Alternative learning experience program requirements:**

(a) Each student participating in an alternative learning experience must have a written student learning plan developed by a certificated teacher that is designed to meet the student's individual educational needs. A certificated teacher must have responsibility and accountability for each course specified in the plan, including supervision and monitoring, and evaluation and documentation of the student's progress. The written student learning plan may be developed with

assistance from the student, the student's parents, or other interested parties.

(b) Each student enrolled in an alternative learning experience must have direct personal contact with a certificated teacher at least once a week, until the student completes all course objectives or otherwise meets the requirements of the learning plan.

(c) The educational progress of each student enrolled in an alternative learning experience must be evaluated at least once each calendar month of enrollment by a certificated teacher and the results of each evaluation must be communicated to the student or, if the student is in grades K-8, both the student and the student's parent. Educational progress must be evaluated according to the following requirements:

(i) Each student's educational progress evaluation must be based on the learning goals and performance objectives defined in the written student learning plan.

(ii) The progress evaluation conducted by a certificated teacher must include direct personal contact with the student.

(iii) Based on the progress evaluation, a certificated teacher must determine and document whether the student is making satisfactory progress reaching the learning goals and performance objectives defined in the written student learning plan.

(iv) If it is determined that the student failed to make satisfactory progress or that the student failed to follow the written student learning plan, an intervention plan must be developed for the student.

(v) If after no more than three consecutive calendar months in which it is determined the student is not making satisfactory progress despite documented intervention efforts, a course of study designed to more appropriately meet the student's educational needs must be developed and implemented by a certificated teacher in conjunction with the student and where possible, the student's parent. This may include removal of the student from the alternative learning experience and enrollment of the student in another educational program offered by the school district.

**(5) Required school district board policies for alternative learning experiences:** The board of directors of a school district claiming state funding for alternative learning experiences must adopt and annually review written policies authorizing such alternative learning experiences, including each alternative learning experience program and program provider. The policy must designate, by title, one or more school district official(s) responsible for overseeing the district's alternative learning experience courses or programs, including monitoring compliance with this section, and reporting at least annually to the school district board of directors on the program. This annual report shall include at least the following:

(a) Documentation of alternative learning experience student headcount and full-time equivalent enrollment claimed for basic education funding;

(b) Identification of the overall ratio of certificated instructional staff to full-time equivalent students enrolled in each alternative learning experience program;

(c) A description of how the program supports the district's overall goals and objectives for student academic achievement; and

(d) Results of any self-evaluations conducted pursuant to subsection ~~((9))~~ (10) of this section.

**(6) Alternative learning experience implementation requirements:**

(a) School districts that offer alternative learning experiences must ensure that they are accessible to all students, including students with disabilities. Alternative learning experiences for special education students must be provided in accordance with chapter 392-172A WAC.

(b) Contracting for alternative learning experiences is subject to the provisions of WAC 392-121-188.

(c) It is the responsibility of the school district or school district contractor to ensure that students have all curricula, course content, instructional materials and learning activities that are identified in the alternative learning experience written student learning plan.

(d) School districts must ensure that no student or parent is provided any compensation, reimbursement, gift, reward, or gratuity related to the student's enrollment or participation in, or related to another student's recruitment or enrollment in, an alternative learning experience unless otherwise required by law. This prohibition includes, but is not limited to, funds provided to parents or students for the purchase of educational materials, supplies, experiences, services, or technological equipment.

(e) School district employees are prohibited from receiving any compensation or payment as an incentive to increase student enrollment of out-of-district students in an alternative learning experience program.

(f) Curricula, course content, instructional materials, learning activities, and other learning resources for alternative learning experiences must be consistent in quality with those available to the district's overall student population.

~~((f))~~ (g) Instructional materials used in alternative learning experiences must be approved pursuant to school board policies adopted in accordance with RCW 28A.320.-230.

~~((g))~~ (h) A district may purchase educational materials, equipment, or other nonconsumable supplies for students' use in alternative learning experience programs if the purchase is consistent with the district's approved instructional materials or curriculum, conforms to applicable laws and rules, and is made in the same manner as such purchases are made for students in the district's regular instructional program. Items so purchased remain the property of the school district upon program completion.

(i) School districts are prohibited from purchasing or contracting for instructional or cocurricular experiences and services that are included in an alternative learning experience written student learning plan including, but not limited to, lessons, trips, and other activities, unless substantially similar experiences or services are also made available to students enrolled in the district's regular instructional program. This prohibition extends to a district's contracted providers of alternative learning experience programs, and each district shall be responsible for monitoring the compliance of its contracted providers. However, nothing in this subsection prohibits school districts from contracting with on-line providers pursuant to chapter 28A.250 RCW.

~~(j)~~(i) A school district that provides one or more alternative learning experiences to a student must provide the parent(s) of the student, prior to the student's enrollment, with a description of the difference between home-based instruction pursuant to chapter 28A.200 RCW and the enrollment option selected by the student. The parent must sign documentation attesting to his or her understanding of the difference. Such documentation must be retained by the district and made available for audit.

(ii) In the event a school district cannot locate a student's parent within three days of a student's request for enrollment in an alternative learning experience, the school district may enroll the student for a conditional period of no longer than thirty calendar days. The student must be disenrolled from the alternative learning experience if the school district does not obtain the documentation required under this subsection before the end of the thirty day conditional enrollment period.

~~((h))~~ (k) The school district or school district contractor is prohibited from advertising, marketing, and otherwise providing unsolicited information about learning programs offered by the school district including, but not limited to, digital learning programs, part-time enrollment opportunities, and other alternative learning programs, to students and their parents who have filed a declaration of intent to cause a child to receive home-based instruction under RCW 28A.200.010. School districts may respond to requests for information that are initiated by a parent. This prohibition does not apply to general mailings, newsletters, or other general communication distributed by the school district or the school district contractor to all households in the district.

~~((i))~~ (l) Work-based learning as a component of an alternative learning experience course of study is subject to the provisions of WAC 392-410-315 and 392-121-124.

~~((j))~~ (m) The school district must institute reliable methods to verify a student is doing his or her own work. The methods may include proctored examinations or projects, including the use of web cams or other technologies. "Proctored" means directly monitored by an adult authorized by the school district.

~~((k))~~ (n) State funded alternative learning experience on-line programs must be accredited by the Northwest Accreditation Commission or another national, regional, or state accreditation program listed by the office of superintendent of public instruction on its web site.

~~((l))~~ (o) School districts may accept nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and chapter 392-137 WAC for enrollment in alternative learning experiences. School districts enrolling such students in alternative learning experiences are subject to all school district duties and liabilities pertaining to such students for the full school year, including ensuring the student's compulsory attendance pursuant to chapter 28A.225 RCW, until such time as the student has actually enrolled in another school district, or has otherwise met the mandatory attendance requirements specified by RCW 28A.225.010.

~~((m))~~ (p) The alternative learning experience must satisfy the office of superintendent of public instruction's requirements for courses of study and equivalencies as provided in chapter 392-410 WAC(~~(:)~~).

~~((n))~~ (q) Alternative learning experience courses offering credit or alternative learning experience programs issuing a high school diploma must satisfy the state board of education's high school credit and graduation requirements as provided in chapter 180-51 WAC.

(7) **Enrollment reporting procedures:** Effective the 2011-12 school year, the full-time equivalency of students enrolled in an alternative learning experience must be determined as follows:

(a) The school district must use the definition of full-time equivalent student in WAC 392-121-122 and the number of hours the student is expected to engage in learning activities as follows:

(i) On the first enrollment count date on or after the start date specified in the written student learning plan, subject to documented evidence of student participation as required by WAC 392-121-106(4), the student's full-time equivalent must be based on the estimated average weekly hours of learning activity described in the student's written student learning plan.

(ii) On any subsequent monthly count date, the student's full-time equivalent must be based on the estimated average weekly hours of learning activity described in the written student learning plan if:

(A) The student's progress evaluation pursuant to subsection (4)(c) of this section indicates satisfactory progress; or

(B) The student's prior month progress evaluation pursuant to subsection (4)(c) of this section indicates a lack of satisfactory progress, and an intervention plan designed to improve student progress has been developed, documented, and implemented within five school days of the date of the prior month's progress evaluation.

(iii) On any subsequent monthly count date if an intervention plan has not been developed, documented, and implemented within five days of the prior month's progress evaluation, the student's full-time equivalent must not be included by the school district in that month's enrollment count.

(iv) Enrollment of part-time students is subject to the provisions of RCW 28A.150.350, and generates a pro rata share of full-time funding.

(b) The enrollment count must exclude students meeting the definition of enrollment exclusions in WAC 392-121-108 or students who have not had direct personal contact with a certificated teacher for twenty consecutive school days. Any such student must not be counted as an enrolled student until the student has met with a certificated teacher and resumed participation in their alternative learning experience or is participating in another course of study as defined in WAC 392-121-107;

(c) The enrollment count must exclude students who are not residents of Washington state as defined by WAC 392-137-115(~~(:)~~);

(d) The enrollment count must exclude students who as of the enrollment count date have completed the requirements of the written student learning plan prior to ending date specified in the plan and who have not had a new written student learning plan established with a new beginning and ending date that encompasses the count date;

(e) School districts providing alternative learning experiences to nonresident students must document the district of the student's physical residence, and shall establish procedures that address, at a minimum, the coordination of student counting for state funding so that no student is counted for more than one full-time equivalent in the aggregate including, but not limited to:

(i) When a resident district and one or more nonresident district(s) will each be claiming basic education funding for a student in the same month or months, the districts shall execute a written agreement that at minimum identifies the maximum aggregate basic education funding each district may claim for the duration of the agreement. A nonresident district may not claim funding for a student until after the effective date of the agreement.

(ii) When a district is providing alternative learning experiences to nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and 392-137 WAC the district may not claim funding for the student until after the release date documented by the resident district.

(8) **Differentiated funding:** For the 2011-12 school year, school districts reporting student enrollment pursuant to the requirements of this section shall generate and receive funding at eighty percent of the formula funding that would have been generated under the state basic education formula for such enrollment unless the following conditions are met, in which case school districts shall generate and receive funding at ninety percent of the formula funding:

(a) For alternative learning experience on-line programs under RCW 28A.150.262, in addition to the direct personal contact requirements specified in subsection (4) of this section, each student receives on average either:

(i) At least one hour per week of face-to-face, in-person instructional contact time from a certificated teacher during each month of reported enrollment for the student; or

(ii) At least one hour per week of synchronous digital instructional contact time from a certificated teacher during each month of reported enrollment if the student's written student learning plan includes only on-line courses as defined by RCW 28A.250.010;

(b) For all other types of alternative learning experience programs, in addition to the direct personal contact requirements specified in subsection (4) of this section, each student receives on average at least one hour per week of face-to-face, in-person instructional contact time from a certificated teacher during each month of reported enrollment for the student;

(c) The instructional contact time must be for the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan;

(d) The district certifies monthly to the superintendent of public instruction that the alternative learning experience program is designed and implemented in a manner that will accomplish such contact requirements.

**(9) Assessment requirements:**

(a) All students enrolled in alternative learning experiences must be assessed at least annually, using, for full-time students, the state assessment for the student's grade level and

using any other annual assessments required by the school district. Part-time students must also be assessed at least annually. However, part-time students who are either receiving home-based instruction under chapter 28A.200 RCW or who are enrolled in an approved private school under chapter 28A.195 RCW are not required to participate in the assessments required under chapter 28A.655 RCW.

(b) Any student whose alternative learning experience enrollment is claimed as greater than 0.8 full-time equivalent in any one month through the January count date must be included by the school district in any required state or federal accountability reporting for that school year, subject to existing state and federal accountability rules and procedures.

(c) Students enrolled in nonresident alternative learning experience schools, programs, or courses who are unable to participate in required annual state assessments at the nonresident district must have the opportunity to participate in such required annual state assessments at the district of physical residence, subject to that district's planned testing schedule. It is the responsibility of the nonresident enrolling district to establish a written agreement with the district of physical residence that facilitates all necessary coordination between the districts and with the student and, where appropriate, the student's parent(s) to fulfill this requirement. Such coordination may include arranging for appropriate assessment materials, notifying the student of assessment administration schedules, arranging for the forwarding of completed assessment materials to the enrolling district for submission for scoring and reporting, and other steps as may be necessary. The agreement may include rates and terms for payment of reasonable fees by the enrolling district to the district of physical residence to cover costs associated with planning for and administering the assessments to students not enrolled in the district of physical residence. Assessment results for students assessed according to these provisions must be included in the enrolling district's accountability measurements, and not in the district of physical residence's accountability measurements.

~~((9))~~ **(10) Program evaluation requirements:** School districts offering alternative learning experiences must engage in periodic self-evaluation of these learning experiences in a manner designed to objectively measure their effectiveness, including the impact of the experiences on student learning and achievement. Self-evaluation must follow a continuous improvement model, and may be implemented as part of the school district's school improvement planning efforts.

~~((10))~~ **(11) Reporting requirements:**

(a) Each school district offering alternative learning experiences must report monthly to the superintendent of public instruction accurate monthly headcount and full-time equivalent enrollment for students enrolled in alternative learning experiences as well as information about the resident and serving districts of such students.

(b) Each school district offering alternative learning experiences must submit an annual report to the superintendent of public instruction detailing the costs and purposes of any expenditure made pursuant to subsection (6)(i) of this section, along with the substantially similar experiences or

services made available to students enrolled in the district's regular instructional program.

(c) Each school district offering alternative learning experiences must (~~(also)~~) report annually to the superintendent of public instruction on the types of programs and course offerings subject to this section. The annual report shall identify the ratio of certificated instructional staff to full-time equivalent students enrolled in alternative learning experience courses or programs. The annual report shall separately identify alternative learning experience enrollment of students provided under contract pursuant to RCW 28A.150.305 and WAC 392-121-188.

~~((+))~~ **(12) Documentation and record retention requirements:** School districts claiming state funding for alternative learning experiences must retain all documentation required in this section in accordance with established records retention schedules and must make such documentation available upon request for purposes of state monitoring and audit. School districts must maintain the following written documentation:

(a) School board policy for alternative learning experiences pursuant to this section;

(b) Annual reports to the school district board of directors as required by subsection (5) of this section;

(c) Monthly and annual reports to the superintendent of public instruction as required by subsection ~~((+))~~ **(11)** of this section;

(d) The written student learning plans required by subsection (4) of this section;

(e) Evidence of direct personal contact required by subsection (4) of this section;

(f) Student progress evaluations and intervention plans required by subsection (4) of this section;

(g) The results of any assessments required by subsection ~~((8))~~ **(9)** of this section;

(h) Student enrollment detail substantiating full-time equivalent enrollment reported to the state; ~~(and)~~

(i) Signed parent enrollment disclosure documents required by subsection (6)~~((9))~~**(j)** of this section~~(-)~~; and

**(j) Evidence of face-to-face contact required in subsection (8)(a) of this section.**

**WSR 11-14-007  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 11-134—Filed June 23, 2011, 9:45 a.m., effective June 23, 2011,  
9:45 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 220-56-25500G; and amending WAC 220-56-255.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or

general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: There is sufficient halibut quota remaining in Marine Areas 3 and 4 to reopen the recreational halibut fishery for one day. This rule conforms state rules to federal action taken by the National Marine Fisheries Service and approved by the International Pacific Halibut Commission. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

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

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

Date Adopted: June 23, 2011.

Philip Anderson  
Director

NEW SECTION

**WAC 220-56-25500H Halibut—Seasons—Daily and possession limits.** Notwithstanding the provisions of WAC 220-56-250 and WAC 220-56-255, effective immediately until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(1) **Catch Record Card Area 1** - Closed.

(2) **Catch Record Card Area 2** - Closed.

**(i) Catch Record Card Area 2 (Northern Nearshore fishery)** Those waters from 47° 31.70'N. latitude south to 46°58.00'N latitude and east of a line approximating the 30 fathom depth contour as defined by the following coordinates, open seven days per week until further notice:

47° 31.70 N. lat, 124° 37.03 W. long

47° 25.67 N. lat, 124° 34.79 W. long

47° 12.82 N. lat, 124° 29.12 W. long

46° 58.00 N. lat, 124° 24.24 W. long

**(ii) Lingcod** may be taken, retained, and possessed seaward of the 30 fathom line on any day open to the primary halibut fishery as described in (2) above.

(3) **Catch Record Card Areas 3 and 4** - Open 12:01 a.m. through 11:59 p.m. June 30, 2011. The following area southwest of Cape Flattery is closed to fishing for halibut at all times:

Beginning at 48°18'N., 125°18'W.; thence to

48°18'N., 124°59'W.; thence to

48°11'N., 124°59'W.; thence to

48°11'N., 125°11'W.; thence to

48°04'N., 125°11'W.; thence to

48°04'N., 124°59'W.; thence to

48°N., 124°59'W.; thence to

48°N., 125°18'W.; thence to point of origin.

(4) **Catch Record Card Areas 5, 6, 7, 8, 9 and 10** - Closed.

(5) Daily limit one halibut, no minimum size limit. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

(7) All other permanent rules remain in effect.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-25500G Halibut—Seasons—Daily and possession limits. (11-123)

#### **WSR 11-14-009 EMERGENCY RULES**

#### **BUILDING CODE COUNCIL**

[Filed June 23, 2011, 10:53 a.m., effective June 23, 2011, 10:53 a.m.]

Effective Date of Rule: Immediately.

Purpose: To further extend the emergency declaration filed under WSR 11-06-030.

Citation of Existing Rules Affected by this Order: Amending WAC 51-50-0903 and 51-54-0900.

Statutory Authority for Adoption: Chapter 19.27 RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This amendment would provide a square foot threshold (5000 sq. ft.) above which sprinklers would be required in Occupancy Group M where upholstered furniture is sold, including mattresses. Under the current provisions there is no threshold; as currently written sprinklers would be required whenever a piece of upholstered furniture is present for sale, regardless of the square footage; this is essentially unenforceable by local officials. This was not intended to apply to all furniture stores, and could result in extreme economic impacts to small businesses, if this editorial error is not corrected. The change would make the code consistent with the most current life safety code for firefighters.

**The council has adopted a permanent rule to be effective after the 2011 legislative session per RCW 19.27.074.**

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: June 23, 2011.

Kristyn Clayton  
Chair

AMENDATORY SECTION (Amending WSR 10-03-097, filed 1/20/10, effective 7/1/10)

#### **WAC 51-50-0903 Section 903—Automatic sprinkler systems.**

**903.2.1.6 Nightclub.** An automatic sprinkler system shall be provided throughout Group A-2 nightclubs as defined in this code. ~~((An existing nightclub constructed prior to July 1, 2006, shall be provided with automatic sprinklers not later than December 1, 2009.))~~

**903.2.3 Group E.** An automatic sprinkler system shall be provided for Group E Occupancies.

EXCEPTIONS:

1. Portable school classrooms, provided aggregate area of any cluster or portion of a cluster of portable school classrooms does not exceed 5,000 square feet (1465 m<sup>2</sup>); and clusters of portable school classrooms shall be separated as required by the building code.
2. Group E occupancies with an occupant load of 50 or less, calculated in accordance with Table 1004.1.1.

**903.2.7 Group M.** An automatic sprinkler system shall be provided throughout buildings containing a Group M occupancy, where one of the following conditions exists:

1. A Group M fire area exceeds 12,000 square feet (1115 m<sup>2</sup>).
2. A Group M fire area is located more than three stories above grade plane.
3. The combined area of all Group M fire areas on all floors, including any mezzanines, exceeds 24,000 square feet (2230 m<sup>2</sup>).
4. Where a Group M occupancy that is used for the display and sale of upholstered furniture or mattresses exceeds 5000 square feet (464 m<sup>2</sup>).

**903.2.8 Group R.** An automatic fire sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

EXCEPTION:

Group R-1 if all of the following conditions apply:

1. The Group R fire area is no more than 500 square feet and is used for recreational use only.
2. The Group R fire area is only one story.
3. The Group R fire area does not include a basement.
4. The Group R fire area is no closer than 30 feet from another structure.
5. Cooking is not allowed within the Group R fire area.
6. The Group R fire area has an occupant load of no more than 8.
7. A hand held (portable) fire extinguisher is in every Group R fire area.

AMENDATORY SECTION (Amending WSR 10-03-100, filed 1/20/10, effective 7/1/10)

**WAC 51-54-0900 Chapter 9—Fire protection systems.**

**902.1 Definitions.**

**ALERT SIGNAL.** See Section 402.1.

**ALERTING SYSTEM.** See Section 402.1.

**PORTABLE SCHOOL CLASSROOM.** A structure, transportable in one or more sections, which requires a chassis to be transported, and is designed to be used as an educational space with or without a permanent foundation. The structure shall be trailerable and capable of being demounted and relocated to other locations as needs arise.

**903.2.3 Group E.** An automatic sprinkler system shall be provided for Group E Occupancies.

**EXCEPTIONS:**

1. Portable school classrooms, provided aggregate area of any cluster or portion of a cluster of portable school classrooms does not exceed 5,000 square feet (1465 m<sup>2</sup>); and clusters of portable school classrooms shall be separated as required by the building code.
2. Group E Occupancies with an occupant load of 50 or less, calculated in accordance with Table 1004.1.1.

**903.2.7 Group M.** An automatic sprinkler system shall be provided throughout buildings containing a Group M occupancy, where one of the following conditions exists:

1. A Group M fire area exceeds 12,000 square feet (1115 m<sup>2</sup>).
2. A group M fire area is located more than three stories above grade plane.
3. The combined area of all Group M fire areas on all floors, including any mezzanines, exceeds 24,000 square feet (2230 m<sup>2</sup>).
4. Where a Group M occupancy that is used for the display and sale of upholstered furniture or mattresses exceeds 5000 square feet (464 m<sup>2</sup>).

**903.2.8 Group R.** An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

**EXCEPTION:**

Group R-1 if all of the following conditions apply:

1. The Group R fire area is no more than 500 square feet and is used for recreational use only.
2. The Group R fire area is on only one story.
3. The Group R fire area does not include a basement.
4. The Group R fire area is no closer than 30 feet from another structure.
5. Cooking is not allowed within the Group R fire area.
6. The Group R fire area has an occupant load of no more than 8.
7. A hand held (portable) fire extinguisher is in every Group R fire area.

**903.6.3 Nightclub.** Existing nightclubs constructed prior to July 1, 2006, shall be provided with automatic sprinklers not later than December 1, 2009.

**SECTION 906—PORTABLE FIRE EXTINGUISHERS**

**906.1 Where required.** Portable fire extinguishers shall be installed in the following locations:

1. In new and existing Group A, B, E, F, H, I, M, R-1, R-2, R-4 and S occupancies.
2. Within 30 feet (9144 mm) of commercial cooking equipment.
3. In areas where flammable or combustible liquids are stored, used or dispensed.
4. On each floor of structures under construction, except Group R-3 occupancies, in accordance with Section 1415.1.
5. Where required by the sections indicated in Table 906.1.
6. Special-hazard areas, including, but not limited to, laboratories, computer rooms and generator rooms, where required by the fire code official.

**SECTION 907—FIRE ALARM AND DETECTION SYSTEMS**

**[F] 907.2.8 Group R-1.** Fire alarm systems, smoke alarms and carbon monoxide alarms shall be installed in Group R-1 occupancies as required in this section and Section 907.2.8.4.

**[F] 907.2.8.4. Carbon monoxide alarms.** For new construction, an approved carbon monoxide alarm shall be installed by January 1, 2011, outside of each separate sleeping area in the immediate vicinity of the bedroom in sleeping units. In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries.

**[F] 907.2.8.4.1 Existing sleeping units.** Existing sleeping units shall be equipped with carbon monoxide alarms by July 1, 2011.

**[F] 907.2.8.4.2 Alarm requirements.** Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

**[F] 907.2.9 Group R-2.** Fire alarm systems, smoke alarms and carbon monoxide alarms shall be installed in Group R-2 occupancies as required in Sections 907.2.9.1 through 907.2.9.3.

**907.2.9.1 Group R-2 boarding homes.** A manual fire alarm system shall be installed in Group R-2 occupancies where the building contains a boarding home licensed by the state of Washington.

**EXCEPTION:**

In boarding homes licensed by the state of Washington, manual fire alarm boxes in resident sleeping areas shall not be required at exits if located at all constantly attended staff locations, provided such staff locations are visible, continuously accessible, located on each floor, and positioned so no portion of the story exceeds a horizontal travel distance of 200 feet to a manual fire alarm box.

**[F] 907.2.9.3 Carbon monoxide alarms.** For new construction, an approved carbon monoxide alarm shall be installed by January 1, 2011, outside of each separate sleeping area in the immediate vicinity of the bedroom in dwelling units. In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries.

**[F] 907.2.9.3.1 Existing dwelling units.** Existing dwelling units shall be equipped with carbon monoxide alarms by July 1, 2011.

**[F] 907.2.10 Group R-3.** Carbon monoxide alarms shall be installed in Group R-3 occupancies as required in Sections 907.2.10.1 through 907.2.10.3.

**[F] 907.2.10.1 Carbon monoxide alarms.** For new construction, an approved carbon monoxide alarm shall be installed by January 1, 2011, outside of each separate sleeping area in the immediate vicinity of the bedroom in dwelling units. In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries.

**[F] 907.2.10.2 Existing dwelling units.** Existing dwelling units shall be equipped with carbon monoxide alarms by July 1, 2011.

EXCEPTION: Owner-occupied Group R-3 residences legally occupied prior to July 1, 2010.

**[F] 907.2.10.3 Alarm requirements.** Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

**909.6.3 Elevator shaft pressurization.** Where elevator shaft pressurization is required to comply with Exception 6 of IBC Section 708.14.1, the pressurization system shall comply with and be maintained in accordance with IBC 708.14.2.

**909.6.3.1 Activation.** The elevator shaft pressurization system shall be activated by a fire alarm system which shall include smoke detectors or other approved detectors located near the elevator shaft on each floor as approved by the building official and fire code official. If the building has a fire alarm panel, detectors shall be connected to, with power supplied by, the fire alarm panel.

**909.6.3.2 Power system.** The power source for the fire alarm system and the elevator shaft pressurization system shall be in accordance with Section 909.11.

#### SECTION 915 ALERTING SYSTEMS

**915.1 General.** An approved alerting system shall be provided in buildings and structures as required in chapter 4 and this section, unless other requirements are provided by another section of this code.

EXCEPTION: Approved alerting systems in existing buildings, structures or occupancies.

**915.2 Power source.** Alerting systems shall be provided with power supplies in accordance with Section 4.4.1 of NFPA 72 and circuit disconnecting means identified as "EMERGENCY ALERTING SYSTEM."

EXCEPTION: Systems which do not require electrical power to operate.

**915.3 Duration of Operation.** The alerting system shall be capable of operating under nonalarm condition (quiescent load) for a minimum of 24 hours and then shall be capable of operating during an emergency condition for a period of 15 minutes at maximum connected load.

**915.4 Combination system.** Alerting system components and equipment shall be allowed to be used for other purposes.

**915.4.1 System priority.** The alerting system use shall take precedence over any other use.

**915.4.2 Fire alarm system.** Fire alarm systems sharing components and equipment with alerting systems must be in accordance with Section 6.8.4 of NFPA 72.

**915.4.2.1 Signal priority.** Recorded or live alert signals generated by an alerting system that shares components with a fire alarm system shall, when actuated, take priority over fire alarm messages and signals.

**915.4.2.2 Temporary deactivation.** Should the fire alarm system be in the alarm mode when such an alerting system is actuated, it shall temporarily cause deactivation of all fire alarm-initiated audible messages or signals during the time period required to transmit the alert signal.

**915.4.2.3 Supervisory signal.** Deactivation of fire alarm audible and visual notification signals shall cause a supervisory signal for each notification zone affected in the fire alarm system.

**915.5 Audibility.** Audible characteristics of the alert signal shall be in accordance with Section 7.4.1 of NFPA 72 throughout the area served by the alerting system.

EXCEPTION: Areas served by approved visual or textual notification, where the visible notification appliances are not also used as a fire alarm signal, are not required to be provided with audibility complying with Section 915.6.

**915.6 Visibility.** Visible and textual notification appliances shall be permitted in addition to alert signal audibility.

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

#### WSR 11-14-010

#### EMERGENCY RULES

#### BUILDING CODE COUNCIL

[Filed June 23, 2011, 11:21 a.m., effective June 23, 2011, 11:21 a.m.]

Effective Date of Rule: Immediately.

Purpose: To further extend emergency rule making as filed on February 28, 2011, as WSR 11-06-031.

Citation of Existing Rules Affected by this Order: Amending WAC 51-50-1005 and 51-54-1000.

Statutory Authority for Adoption: Chapter 19.27 RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The council finds that enforcement of the 2009 IBC section 1005 Egress Width would be extremely problematic and cause extensive confusion in the application of the building code statewide. The exception provided in the emergency rule makes the requirement consistent with the latest standard for health and safety. Enforcing the code as published in 2009 would require building

designs to meet a significantly expanded prescriptive width requirement. The design changes would result in a period of time in which buildings use a radically different egress system, resulting in major economic impacts for building owners and designers and confusion resulting in a lack of compliance compromising public health and safety. The latest code as adopted by the International Code Council for publication in 2012 requires alternative safety systems which provide greater safety without radical and costly design changes. The council has adopted a permanent rule to be effective after the 2011 legislative session per RCW 19.27.074.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: June 23, 2011.

Kristyn Clayton  
Chair

## NEW SECTION

### **WAC 51-50-1005 Section 1005—Egress width.**

**1005.1 Minimum required egress width.** The means of egress width shall not be less than required by this section. The total width of means of egress in inches (mm) shall not be less than the total occupant load served by the means of egress multiplied by 0.3 inches (7.62 mm) per occupant for stairways and by 0.2 inches (5.08 mm) per occupant for other egress components. The width shall not be less than specified elsewhere in this code. Multiple means of egress shall be sized such that the loss of any one means of egress shall not reduce the available capacity to less than 50 percent of the required capacity. The maximum capacity required from any story of a building shall be maintained to the termination of the means of egress.

**EXCEPTIONS:**

1. Means of egress complying with Section 1028.
2. For other than H and I-2 occupancies, the total width of means of egress in inches (mm) shall not be less than the total occupant load served by the means of egress multiplied by 0.2 inches (5.1 mm) per occupant for stairways and by 0.15 inches (3.8 mm) per occupant for other egress components in buildings that are provided with sprinkler protection in accordance with 903.3.1.1 or 903.3.1.2 and an emergency voice/alarm communication system in accordance with 907.5.2.2.

**AMENDATORY SECTION** (Amending WSR 09-04-027, filed 1/28/09, effective 7/1/10)

### **WAC 51-54-1000 Chapter 10—Means of egress.**

#### **Section 1005-Egress width.**

**1005.1 Minimum required egress width.** The means of egress width shall not be less than required by this section. The total width of means of egress in inches (mm) shall not be less than the total occupant load served by the means of egress multiplied by 0.3 inches (7.62 mm) per occupant for stairways and by 0.2 inches (5.08 mm) per occupant for other egress components. The width shall not be less than specified elsewhere in this code. Multiple means of egress shall be sized such that the loss of any one means of egress shall not reduce the available capacity to less than 50 percent of the required capacity. The maximum capacity required from any story of a building shall be maintained to the termination of the means of egress.

**EXCEPTIONS:**

1. Means of egress complying with Section 1028.
2. For other than H and I-2 occupancies, the total width of means of egress in inches (mm) shall not be less than the total occupant load served by the means of egress multiplied by 0.2 inches (5.1 mm) per occupant for stairways and by 0.15 inches (3.8 mm) per occupant for other egress components in buildings that are provided with sprinkler protection in accordance with 903.3.1.1 or 903.3.1.2 and an emergency voice/alarm communication system in accordance with 907.5.2.2.

**1007.1 Accessible means of egress required.** Accessible means of egress shall comply with this section. Accessible spaces shall be provided with not less than one accessible means of egress. Where more than one means of egress are required by Section 1015.1 or 1021.1 from any accessible space, each accessible portion of the space shall be served by not less than two accessible means of egress.

**EXCEPTIONS:**

1. Accessible means of egress are not required in alterations to existing buildings.
2. One accessible means of egress is required from an accessible mezzanine level in accordance with Section 1007.3, 1007.4 or 1007.5.
3. In assembly areas with sloped or stepped aisles, one accessible means of egress is permitted where the common path of travel is accessible and meets the requirements in Section 1028.8.
4. In parking garages, accessible means of egress are not required to serve parking areas that do not contain accessible parking spaces.

**1007.8 Two-way communication.** A two-way communication system shall be provided at the elevator landing on each accessible floor that is one or more stories above or below the story of exit discharge complying with Sections 1007.8.1 and 1007.8.2.

**EXCEPTIONS:**

1. Two-way communication systems are not required at the elevator landing where two-way communication is provided within the areas of refuge in accordance with Section 1007.6.3.
2. Two-way communication systems are not required on floors provided with exit ramps conforming to provisions of Section 1010.

**1007.8.1 System requirements.** Two-way communication systems shall provide communication between each required

location and the fire command center or a central control point location approved by the fire department. Where the central control point is not constantly attended, a two-way communication system shall have a timed automatic telephone dial-out capability to a monitoring location. The two-way communication system shall include both audible and visible signals. The two-way communication system shall have a battery backup or an approved alternate source of power that is capable of 90 minutes use upon failure of the normal power source.

**1008.1.2 Door swing.** Egress doors shall be side-hinged swinging.

EXCEPTIONS:

1. Private garages, office areas, factory and storage areas with an occupant load of 10 or less.
2. Group I-3 Occupancies used as a place of detention.
3. Critical or intensive care patient rooms within suites of health care facilities.
4. Doors within or serving a single dwelling unit in Groups R-2 and R-3 as applicable in Section 101.2.
5. In other than Group H Occupancies, revolving doors complying with Section 1008.1.3.1.
6. In other than Group H Occupancies, horizontal sliding doors complying with Section 1008.1.3.3 are permitted in a means of egress.
7. Power-operated doors in accordance with Section 1008.1.3.2.
8. Doors serving a bathroom within an individual sleeping unit in Group R-1.
9. In other than Group H Occupancies, manually operated horizontal sliding doors are permitted in a means of egress from spaces with an occupant load of 10 or less.

Doors shall swing in the direction of egress travel where serving an occupant load of 50 or more persons or a Group H Occupancy.

The opening force for interior side-swinging doors with-out closers shall not exceed a 5-pound (22 N) force. For other side-swinging, sliding, and folding doors, the door latch shall release when subjected to a 15-pound (67 N) force. The door shall be set in motion when subjected to a 30-pound (133 N) force. The door shall swing to a full-open position when subjected to a 15-pound (67 N) force. Forces shall be applied to the latch side.

~~((1008.1.8.3 Locks and latches. Locks and latches shall be permitted to prevent operation of doors where any of the following exists:~~

- ~~1. Places of detention or restraint.~~
- ~~2. In buildings in occupancy Group A having an occupant load of 300 or less, Group B, F, M and S, and in places of religious worship, the main exterior door or doors are permitted to be equipped with key-operated locking devices from the egress side provided:~~
  - ~~2.1 The locking device is readily distinguishable as locked.~~
  - ~~2.2 A readily visible durable sign is posted on the egress side on or adjacent to the door stating: THIS DOOR TO REMAIN UNLOCKED WHEN BUILDING IS OCCUPIED. The sign shall be in letters 1 inch (25 mm) high on a contrasting background; and~~
  - ~~2.3 The use of the key-operated locking device is revocable by the fire code official for due cause.~~
- ~~3. Where egress doors are used in pairs, approved automatic flush bolts shall be permitted to be used, provided that~~

~~the door leaf having the automatic flush bolts has no door knob or surface-mounted hardware.~~

~~4. Doors from individual dwelling or sleeping units of Group R occupancies having an occupant load of 10 or less are permitted to be equipped with a night latch, dead bolt or security chain, provided such devices are openable from the inside without the use of a key or tool.~~

~~5. Approved, listed locks without delayed egress shall be permitted in nursing homes or portions of nursing homes, and boarding homes licensed by the state of Washington, provided that:~~

~~5.1 The clinical needs of one or more patients require specialized security measures for their safety;~~

~~5.2 The doors unlock upon actuation of the automatic sprinkler systems or automatic fire detection system;~~

~~5.3 The doors unlock upon loss of electrical power controlling the lock or lock mechanism;~~

~~5.4 The lock shall be capable of being deactivated by a signal from a switch located in an approved location; and~~

~~5.5 There is a system, such as a keypad and code, in place that allows visitors, staff persons and appropriate residents to exit. Instructions for exiting shall be posted within six feet of the door.~~

~~**1009.12 Stairways in individual dwelling units.** Stairs or ladders within an individual dwelling unit used for access to areas of 200 square feet (18.6 m<sup>2</sup>) or less, and not containing the primary bathroom or kitchen, are exempt from the requirements of Section 1009.~~

~~**1014.2.2 Group I-2.** Habitable rooms or suites in Group I-2 Occupancies shall have an exit access door leading directly to a corridor.~~

EXCEPTION: Rooms with exit doors opening directly to the outside at ground level.

~~**1014.2.2.1 Definition.** For the purposes of this section, a suite is defined as a cluster of rooms or spaces sharing common circulation. Partitions within a suite are not required to have smoke or fire resistance-rated construction unless required by another section of this Code.~~

~~**1014.2.3 Suites in patient sleeping areas.** Patient sleeping areas in Group I-2 Occupancies shall be permitted to be divided into suites if one of the following conditions is met:~~

~~1. The intervening room within the suite is not used as an exit access for more than eight patient beds.~~

~~2. The arrangement of the suite allows for direct and constant visual supervision by nursing personnel.~~

~~**1014.2.3.1 Area.** Suites of sleeping rooms shall not exceed 5,000 square feet (465 m<sup>2</sup>).~~

~~**1014.2.3.2 Exit access.** Any patient sleeping room, or any suite that includes patient sleeping rooms, of more than 1,000 square feet (93 m<sup>2</sup>) shall have at least two exit access doors remotely located from each other.~~

~~**1014.2.3.3 Travel distance.** The travel distance between any point in a suite of sleeping rooms and an exit access door of that suite shall not exceed 100 feet (30,480 mm).~~

**1014.2.4 Suites in areas other than patient sleeping areas.** Areas other than patient sleeping areas in Group I-2 Occupancies shall be permitted to be divided into suites.

**1014.2.4.1 Area.** Suites of rooms, other than patient rooms, shall not exceed 10,000 square feet (929 m<sup>2</sup>).

**1014.2.4.2 Exit access.** Any rooms or suite of rooms, other than patient sleeping rooms, of more than 2,500 square feet (232 m<sup>2</sup>) shall have at least two exit access doors remotely located from each other.

**1014.2.4.3 One intervening room.** For rooms other than patient sleeping rooms, suites of rooms are permitted to have one intervening room if the travel distance within the suite is not greater than 100 feet (30,480 mm).

**1014.2.4.4 Two intervening rooms.** For rooms other than patient sleeping rooms located within a suite, exit access travel from within the suite shall be permitted through two intervening rooms where the travel distance to the exit access door is not greater than 50 feet (15,240 mm).

**1014.2.5 Travel distance.** The travel distance between any point in a Group I-2 Occupancy patient room and an exit access door in that room shall not exceed 50 feet (15,240 mm).

**1014.2.6 Separation.** Suites in Group I-2 Occupancies shall be separated from other portions of the building by a smoke partition complying with Section 710.

**1015.1 Exits or exit access doorways from spaces.** Two exits or exit access doorways from any space shall be provided where one of the following conditions exists:

1. The occupant load of the space exceeds one of the values in Table 1015.1.

**EXCEPTION:** One means of egress is permitted within and from dwelling units with a maximum occupant load of 20 where the dwelling unit is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1.

2. The common path of egress travel exceeds one of the limitations of Section 1014.3.

3. Where required by Sections 1015.3, 1015.4, 1015.5, 1015.6 or 1015.6.1.

**EXCEPTION:** Group I-2 Occupancies shall comply with Section 1014.2.2.

**TABLE 1015.1  
SPACES WITH ONE MEANS OF EGRESS**

OCCUPANCY	MAXIMUM OCCUPANT-LOAD
A, B, E <sup>a</sup> , F, M, U	49
H-1, H-2, H-3	3
H-4, H-5, I-1, I-3, I-4, R	10
S	29

a. Day care maximum occupant load is 10.

**1015.1.1 Three or more exits or exit access doorways.** Three exits or exit access doorways shall be provided from any space with an occupant load of 501-1,000. Four exits or exit access doorways shall be provided from any space with an occupant load greater than 1,000.

**1019.1 Exits from stories.** All spaces within each story shall have access to the minimum number of exits as specified in Table 1019.1 based on the occupant load of the story, except as modified in Section 1019.2. For the purposes of this chapter, occupied roofs shall be provided with exits as required for stories. The required number of exits from any story, including basements, shall be maintained until arrival at grade or the public way.

**EXCEPTION:** One means of egress is permitted within and from dwelling units with a maximum occupant load of 20 where the dwelling unit is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1.

**TABLE 1019.1  
MINIMUM NUMBER OF EXITS FOR OCCUPANT-LOAD**

OCCUPANT LOAD (persons per story)	MINIMUM NUMBER OF EXITS (per story)
1-500	2
501-1,000	3
More than 1,000	4

**1019.2 Buildings with one exit.** Only one exit shall be required in buildings as specified below:

1. Buildings meeting the limitations of Table 1019.2, provided the building has not more than one level below the first story above grade plane.

2. Buildings of Group R-3 Occupancy.

3. Single-level buildings with occupied spaces at the level of exit discharge provided each space complies with Section 1015.1 as a space with one exit or exit access doorway.

**TABLE 1019.2  
BUILDINGS WITH ONE EXIT**

OCCUPANCY	MAXIMUM HEIGHT OF BUILDING ABOVE GRADE PLANE	MAXIMUM OCCUPANTS (OR DWELLING UNITS) PER FLOOR AND TRAVEL DISTANCE
A, B <sup>d</sup> , E <sup>e</sup> , F, M, U	1 Story	49 occupants and 75 feet travel distance
H-2, H-3	1 Story	3 occupants and 25 feet travel distance
H-4, H-5, I, R	1 Story	10 occupants and 75 feet travel distance
S <sup>a</sup>	1 Story	29 occupants and 100 feet travel distance
B <sup>b</sup> , F, M, S <sup>a</sup>	2 Stories	30 occupants and 75 feet travel distance
R-2	2 Stories <sup>c</sup>	4 dwelling units and 50 feet travel distance

For SI: 1 foot = 304.8 mm.

a. For the required number of exits for open parking structures, see Section 1019.1.1.

b. For the required number of exits for air traffic control towers, see Section 412.1.

e. Buildings classified as Group R-2 equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2 and provided with emergency escape and rescue openings in accordance with Section 1026 shall have a maximum height of three stories above grade plane.

d. Buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 with an occupancy in Group B shall have a maximum travel distance of 100 feet.

e. Day care maximum occupant load is 10.)

**1008.1.9.3 Locks and latches.** Locks and latches shall be permitted to prevent operation of doors where any of the following exists:

1. Places of detention or restraint.

2. In buildings in occupancy Group A having an occupant load of 300 or less, Groups B, F, M and S, and in places of religious worship, the main exterior door or doors are permitted to be equipped with key-operated locking devices from the egress side provided:

2.1 The locking device is readily distinguishable as locked;

2.2 A readily visible sign is posted on the egress side on or adjacent to the door stating: THIS DOOR TO REMAIN UNLOCKED WHEN BUILDING IS OCCUPIED. The sign shall be in letters 1 inch (25 mm) high on a contrasting background; and

2.3 The use of the key-operated locking device is revocable by the building official for due cause.

3. Where egress doors are used in pairs, approved automatic flush bolts shall be permitted to be used, provided that the door leaf having the automatic flush bolts has no door-knob or surface-mounted hardware.

4. Doors from individual dwelling or sleeping units of Group R occupancies having an occupant load of 10 or less are permitted to be equipped with a night latch, dead bolt, or security chain, provided such devices are openable from the inside without the use of a key or a tool.

5. Fire doors after the minimum elevated temperature has disabled the unlatching mechanism in accordance with listed fire door test procedures.

6. Approved, listed locks without delayed egress shall be permitted in Group R-2 boarding homes licensed by Washington state, provided that:

6.1. The clinical needs of one or more patients require specialized security measures for their safety.

6.2. The doors unlock upon actuation of the automatic sprinkler system or automatic fire detection system.

6.3. The doors unlock upon loss of electrical power controlling the lock or lock mechanism.

6.4. The lock shall be capable of being deactivated by a signal from a switch located in an approved location.

6.5. There is a system, such as a keypad and code, in place that allows visitors, staff persons and appropriate residents to exit. Instructions for exiting shall be posted within six feet of the door.

**1008.1.9.6 Special locking arrangements in Group I-2.** Approved locks shall be permitted in a Group I-2 Occupancy where the clinical needs of persons receiving care require such locking. Locks shall be permitted in such occupancies

where the building is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or an approved automatic smoke or heat detection system installed in accordance with Section 907, provided that the doors unlock in accordance with Items 1 through 6 below.

1. The doors unlock upon actuation of the automatic sprinkler system or automatic fire detection system.

2. The doors unlock upon loss of power controlling the lock or lock mechanism.

3. The door locks shall have the capability of being unlocked by a signal from the fire command center, a nursing station or other approved location.

4. The procedures for the operation(s) of the unlocking system shall be described and approved as part of the emergency planning and preparedness required by Chapter 4 of the International Fire Code.

5. There is a system, such as a keypad and code, in place that allows visitors, staff persons and appropriate residents to exit. Instructions for exiting shall be posted within six feet of the door.

6. Emergency lighting shall be provided at the door.

EXCEPTION: Items 1, 2, 3, and 5 shall not apply to doors to areas where persons which because of clinical needs require restraint or containment as part of the function of a Group I-2 mental hospital provided that all clinical staff shall have the keys, codes or other means necessary to operate the locking devices.

**1009.15 Stairways in individual dwelling units.** Stairs or ladders within an individual dwelling unit used for access to areas of 200 square feet (18.6 m<sup>2</sup>) or less, and not containing the primary bathroom or kitchen, are exempt from the requirements of Section 1009.

**1010.1 Scope.** The provisions of this section shall apply to ramps used as a component of a means of egress.

EXCEPTIONS:

1. Other than ramps that are part of the accessible routes providing access in accordance with Sections 1108.2 through 1108.2.4 and 1108.2.6, ramped aisles within assembly rooms or spaces shall conform with the provisions in Section 1028.11.
2. Curb ramps shall comply with ICC A117.1.
3. Vehicle ramps in parking garages for pedestrian exit access shall not be required to comply with Sections 1010.3 through 1010.9 when they are not an accessible route serving accessible parking spaces or other required accessible elements.
4. In a parking garage where one accessible means of egress serving accessible parking spaces or other accessible elements is provided, a second accessible means of egress serving that area may include a vehicle ramp that does not comply with Sections 1010.4 through 1010.8.

**1014.2.2 Group I-2. General.** Habitable spaces and suites in Group I-2 Occupancies are permitted to comply with this Section 1014.2.2.

**1014.2.2.1 Exit access doors.** Habitable spaces and suites in Group I-2 Occupancies shall have an exit access door leading directly to a corridor.

EXCEPTION: Rooms with exit doors opening directly to the outside at ground level.

**1014.2.2.2 Exit access through suites.** Exit access from areas not classified as a Group I-2 Occupancy suite shall not

pass through a suite. In a suite required to have more than one exit, one exit access may pass through an adjacent suite if all other requirements of Section 1014.2 are satisfied.

**1014.2.2.3 Separation.** Suites in Group I-2 Occupancies shall be separated from other portions of the building by a smoke partition complying with Section 711. Partitions within suites are not required to be smoke-resistant or fire-resistance-rated unless required by another section of this Code.

**1014.2.2.4 Suites containing patient sleeping areas.** Patient sleeping areas in Group I-2 Occupancies shall be permitted to be divided into suites with one intervening room if one of the following conditions is met:

1. The intervening room within the suite is not used as an exit access for more than eight patient beds.
2. The arrangement of the suite allows for direct and constant visual supervision by nursing personnel.

**1014.2.2.4.1 Area.** Suites of sleeping rooms shall not exceed 5,000 square feet (465 m<sup>2</sup>).

**1014.2.2.4.2 Exit access.** Any patient sleeping room, or any suite that includes patient sleeping rooms, of more than 1,000 square feet (93 m<sup>2</sup>) shall have at least two exit access doors located in accordance with Section 1015.2.

**1014.2.2.4.3 Travel distance.** The travel distance between any point in a suite of sleeping rooms and an exit access door of that suite shall not exceed 100 feet (30,480 mm). The travel distance between any point in a Group I-2 Occupancy patient sleeping room and an exit access door in that room shall not exceed 50 feet (15,240 mm).

**1014.2.2.5 Suites not containing patient sleeping areas.** Areas other than patient sleeping areas in Group I-2 Occupancies shall be permitted to be divided into suites that comply with Sections 1014.2.2.5.1 through 1014.2.2.5.4.

**1014.2.2.5.1 Area.** Suites of rooms, other than patient sleeping rooms, shall not exceed 10,000 square feet (929 m<sup>2</sup>).

**1014.2.2.5.2 Exit access.** Any room or suite of rooms, other than patient sleeping rooms, of more than 2,500 square feet (232 m<sup>2</sup>) shall have at least two exit access doors located in accordance with Section 1015.2.

**1014.2.2.5.3 One intervening room.** For rooms other than patient sleeping rooms, suites of rooms are permitted to have one intervening room if the travel distance within the suite to the exit access door is not greater than 100 feet (30,480 mm).

**1014.2.2.5.4 Two intervening rooms.** For rooms other than patient sleeping rooms located within a suite, exit access travel from within the suite shall be permitted through two intervening rooms where the travel distance to the exit access door is not greater than 50 feet (15,240 mm).

**1018.5 Air movement in corridors.** Corridors shall not serve as supply, return, exhaust, relief or ventilation air ducts.

**EXCEPTIONS:**

1. Use of a corridor as a source of makeup air for exhaust systems in rooms that open directly onto such corridors, including toilet rooms, bathrooms, dressing rooms, smoking lounges and janitor closets, shall be permitted, provided that each such corridor is directly

supplied with outdoor air at a rate greater than the rate of makeup air taken from the corridor.

2. Where located within a dwelling unit, the use of corridors for conveying return air shall not be prohibited.

3. Where located within tenant spaces of one thousand square feet (93 m<sup>2</sup>) or less in area, utilization of corridors for conveying return air is permitted.

4. Incidental air movement from pressurized rooms within health care facilities, provided that a corridor is not the primary source of supply or return to the room.

5. Where such air is part of an engineered smoke control system.

6. Air supplied to corridors serving residential occupancies shall not be considered as providing ventilation air to the dwelling units subject to the following:

6.1 The air supplied to the corridor is one hundred percent outside air; and

6.2 The units served by the corridor have conforming ventilation air independent of the air supplied to the corridor; and

6.3 For other than high-rise buildings, the supply fan will automatically shut off upon activation of corridor smoke detectors which shall be spaced at no more than thirty feet (9,144 mm) on center along the corridor; or

6.4 For high-rise buildings, corridor smoke detector activation will close required smoke/fire dampers at the supply inlet to the corridor at the floor receiving the alarm.

**1018.6 Corridor continuity.** Fire-resistance-rated corridors shall be continuous from the point of entry to an exit, and shall not be interrupted by intervening rooms.

**EXCEPTIONS:**

1. Foyers, lobbies or reception rooms constructed as required for corridors shall not be construed as intervening rooms.

2. In Group R-2 boarding homes and residential treatment facilities licensed by Washington state, seating areas shall be allowed to be open to the corridor provided:

2.1 The seating area is constructed as required for the corridor;

2.2 The floor is separated into at least two compartments complying with Section 407.4;

2.3 Each individual seating area does not exceed 150 square feet, excluding the corridor width;

2.4 The combined total space of seating areas per compartment does not exceed 300 square feet, excluding the corridor width;

2.5 Combustible furnishings located within the seating area shall be in accordance with the International Fire Code Section 805; and

2.6 Emergency means of egress lighting is provided as required by Section 1006 to illuminate the area.

## WSR 11-14-011

### EMERGENCY RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed June 23, 2011, 11:37 a.m., effective July 1, 2011]

Effective Date of Rule: July 1, 2011.

Purpose: The department has filed these emergency rules to comply with section 403 of ESHB 1277, Oversight of licensed or certified long-term care settings for vulnerable adults. Section 403 of the newly passed legislation requires licensing fees to be established by the legislature in the State

Omnibus Appropriations Act effective July 1, 2011. This does not allow the department enough time to adopt rules through the regular rule adoption process.

Citation of Existing Rules Affected by this Order: Amending WAC 388-76-10025, 388-76-10070, and 388-76-10073.

Statutory Authority for Adoption: RCW 70.128.040.

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

Reasons for this Finding: Emergency adoption of these rules is necessary in order to comply with state law which now requires licensing fees to be established in the State Omnibus Appropriations Act effective July 1, 2011.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: June 17, 2011.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-21-075, filed 10/16/09, effective 11/16/09)

**WAC 388-76-10025 License annual fee.** (1) The adult family home must pay an annual license fee as ~~((required in chapter 70.128 RCW))~~ established in the state omnibus appropriations act and any amendment or additions made to that act.

(2) The home must send the annual license fee to the department upon receipt of notice of fee due.

(3) If the home does not pay the fee when due, the department will impose sanctions.

AMENDATORY SECTION (Amending WSR 09-21-075, filed 10/16/09, effective 11/16/09)

**WAC 388-76-10070 Application—Fees required.** (1) The applicant must pay all processing and license fees established ~~((by chapter 70.128 RCW))~~ in the state omnibus appropriations act and any amendment or additions made to that act.

(2) The applicant must submit the required fees with the application form.

~~((The processing fee will be returned as required by chapter 70.128 RCW.~~

~~(4))~~ The license fee will be returned to the applicant if the application is withdrawn, voided or the license is denied.

AMENDATORY SECTION (Amending WSR 09-21-075, filed 10/16/09, effective 11/16/09)

**WAC 388-76-10073 Application—Processing fees required.** The processing fee, required in ~~((chapter 70.128 RCW))~~ the state omnibus appropriations act and any amendment or additions made to that act, applies to any application submitted to the department, including but not limited to an application for licensure, change of ownership, or a change of location.

## WSR 11-14-012

### EMERGENCY RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed June 23, 2011, 11:48 a.m., effective July 1, 2011]

Effective Date of Rule: July 1, 2011.

Purpose: The department is amending these rules to comply with and be consistent with section 401 of ESHB 1277, Oversight of licensed or certified long-term care settings for vulnerable adults. Section 401 of this new law requires that nursing home license fees be set in the State Omnibus Appropriations Act. It also requires that the license must be issued only to the person who applied for the license and provides details on the expiration date of a license. The law directs that the effective date of these changes is July 1, 2011. This does not allow the department enough time to adopt rules through the regular rule adoption process.

Citation of Existing Rules Affected by this Order: Amending WAC 388-97-4160, 388-97-4180, and 388-97-4280.

Statutory Authority for Adoption: Chapters 18.51 and 74.42 RCW.

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

Reasons for this Finding: The legislature has passed ESHB 1277 which requires the license fee to be set in the State Omnibus Appropriations Act. It also requires that the license must be issued only to the person who applied for the license and provides details on the expiration date of a license. The effective date of this change is July 1, 2011. This does not allow the department enough time to adopt rules through the regular rule adoption process.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: June 16, 2011.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-21-037, filed 10/12/10, effective 10/29/10)

**WAC 388-97-4160 Initial nursing home license.** (1) A complete nursing home license application must be:

(a) Submitted at least sixty days prior to the proposed effective date of the license on forms designated by the department;

(b) Signed by the proposed licensee or the proposed licensee's authorized representative;

(c) Notarized; and

(d) Reviewed by the department in accordance with this chapter.

(2) All information requested on the license application must be provided. At minimum, the nursing home license application will require the following information:

(a) The name and address of the proposed licensee, and any partner, officer, director, managerial employee, or owner of five percent or more of the proposed licensee;

(b) The names of the administrator, director of nursing services, and, if applicable, the management company;

(c) The specific location and the mailing address of the facility for which a license is sought;

(d) The number of beds to be licensed; and

(e) The name and address of all nursing homes that the proposed licensee or any partner, officer, director, managerial employee, or owner of five percent or more of the proposed licensee has been affiliated with in the past ten years.

(3) The proposed licensee must be:

(a) The individual or entity responsible for the daily operation of the nursing home;

(b) Denied the license if any individual or entity named in the application is found by the department to be unqualified.

(4) For initial licensure of a new nursing home, the proposed licensee must submit the annual license fee with the initial license application. ~~((The nonrefundable nursing home license fee is three hundred twenty seven dollars per bed per year))~~ The per bed license fee is established in the omnibus appropriations act and any amendment or additions made to that act.

(5) If any information submitted in the initial license application changes before the license is issued, the proposed licensee must submit a revised application containing the changed information.

(6) If a license application is pending for more than six months, the proposed licensee must submit a revised application containing current information about the proposed

licensee or any other individuals or entities named in the application.

(7) A license may not exceed twelve months in duration and expires on a date set by the department.

(8) A license must be issued only to the person who applied for the license.

AMENDATORY SECTION (Amending WSR 10-21-037, filed 10/12/10, effective 10/29/10)

**WAC 388-97-4180 Nursing home license renewal.** (1) All nursing home licenses must be renewed annually.

(2) License renewals must be:

(a) Submitted at least thirty days prior to the licensee's expiration date on forms designated by the department;

(b) Signed by the current licensee; and

(c) Reviewed by the department in accordance with this chapter.

(3) The current licensee must provide all information on the license renewal form or other information requested by the department.

(4) The application for a nursing home license renewal must be made by the individual or entity currently licensed and responsible for the daily operation of the nursing home.

(5) The nursing home license renewal fee must be submitted at the time of renewal. ~~((The nonrefundable nursing home license renewal fee is three hundred twenty seven dollars per bed per year))~~ The per bed license fee is established in the omnibus appropriations act and any amendment or additions made to that act.

(6) In unusual circumstances, the department may issue an interim nursing home license for a period not to exceed three months. The current licensee must submit the prorated nursing home license fee for the period covered by the interim license. The annual date of license renewal does not change when an interim license is issued.

(7) A change of nursing home ownership does not change the date of license renewal and fee payment.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

**WAC 388-97-4280 Change of ownership.** (1) A change of ownership occurs when there is a substitution, elimination, or withdrawal of the licensee or a substitution of control of the licensee. "**Control**," as used in this section, means the possession, directly or indirectly, of the power to direct the management, operation, and policies of the licensee, whether through ownership, voting control, by agreement, by contract or otherwise. Events which constitute a change of ownership include, but are not limited to, the following:

(a) The form of legal organization of the licensee is changed (e.g., a sole proprietor forms a partnership or corporation);

(b) The licensee transfers ownership of the nursing home business enterprise to another party regardless of whether ownership of some or all of the real property and/or personal property assets of the facility is also transferred;

(c) Dissolution or consolidation of the entity;

(d) Merger unless the licensee survives the merger and there is not a change in control of the licensee;

(e) If, during any continuous twenty-four month period, fifty percent or more of the entity is transferred, whether by a single transaction or multiple transactions, to:

(i) A different party (e.g., new or former shareholders); or

(ii) An individual or entity that had less than a five percent ownership interest in the nursing home at the time of the first transaction; or

(f) Any other event or combination of events that the department determines results in a:

(i) Substitution, elimination, or withdrawal of the licensee; or

(ii) Substitution of control of the licensee responsible for the daily operational decisions of the nursing home.

(2) Ownership does not change when the following, without more, occur:

(a) A party contracts with the licensee to manage the nursing home enterprise in accordance with the requirements of WAC 388-97-4260; or

(b) The real property or personal property assets of the nursing home are sold or leased, or a lease of the real property or personal property assets is terminated, as long as there is not a substitution or substitution of control of the licensee.

(3) When a change of ownership is contemplated, the current licensee must notify the department and all residents and their representatives at least sixty days prior to the proposed date of transfer. The notice must be in writing and contain the following information as specified in RCW 18.51.530:

(a) Name of the proposed licensee;

(b) Name of the managing entity;

(c) Names, addresses, and telephone numbers of department personnel to whom comments regarding the change may be directed;

(d) Names of all officers and the registered agent in the state of Washington if proposed licensee is a corporation; and

(e) Names of all general partners if proposed licensee is a partnership.

(4) The proposed licensee must comply with license application requirements. The operation or ownership of a nursing home must not be transferred until the proposed licensee has been issued a license to operate the nursing home.

(5) In the event of a change of ownership, the previously established license expiration date must not change.

which was recently signed by the governor. ESHB 1548 postpones implementation of Initiative Measure 1029 (codified in chapters 18.88B and 74.39A RCW) which mandates increased training and background check requirements for long-term care workers. These rules become effective immediately upon filing. This does not allow the department enough time to adopt rules through the regular rule adoption process.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-101-3253; and amending WAC 388-101-3000, 388-101-3050, 388-101-3220, 388-101-3245, 388-101-3250, 388-101-3255, 388-101-3258, and 388-101-3302.

Statutory Authority for Adoption: RCW 71A.12.080.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: Emergency adoption of these rules is necessary in order to comply with ESHB 1548 which delays implementation of increased training and background check requirements for long-term care workers. These rules become effective immediately upon filing.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 8, Repealed 1.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 8, Repealed 1.

Date Adopted: June 17, 2011.

Katherine I. Vasquez  
Rules Coordinator

### WSR 11-14-013

#### EMERGENCY RULES DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed June 23, 2011, 12:07 p.m., effective June 23, 2011, 12:07 p.m.]

Effective Date of Rule: Immediately.

Purpose: The department has filed these emergency rules for chapter 388-101 WAC to comply with ESHB 1548

AMENDATORY SECTION (Amending WSR 10-16-084, filed 7/30/10, effective 1/1/11)

**WAC 388-101-3000 Definitions. "Abandonment"** means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

**"Abuse"** means:

(1) The willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult;

(2) In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish; and

(3) Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) **"Sexual abuse"** means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.

(b) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints unless the restraints are consistent with licensing and certification requirements, and includes restraints that are otherwise being used inappropriately.

(c) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(d) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

**"Associated with the applicant"** means any person listed on the application as a partner, officer, director, or majority owner of the applying entity, or who is the spouse or domestic partner of the applicant.

**"Case manager"** means the division of developmental disabilities case resource manager or social worker assigned to a client.

**"Certification"** means a process used by the department to determine if an applicant or service provider complies with the requirements of this chapter and is eligible to provide certified community residential services and support to clients.

**"Chaperone agreement"** means a plan or agreement that describes who will supervise a community protection program client when service provider staff is not present. This plan or agreement is negotiated with other agencies and individuals who support the client, including the client's legal representative and family.

**"Chemical restraint"** means the use of psychoactive medications for discipline or convenience and not prescribed to treat the client's medical symptoms.

**"Client"** means a person who has a developmental disability as defined in RCW 71A.10.020(3) and who also has been determined eligible to receive services by the division of developmental disabilities under chapter 71A.16 RCW. For purposes of informed consent and decision making requirements, the term "client" includes the client's legal representative to the extent of the representative's legal authority.

**"Client services"** means instruction and support services that service providers are responsible to provide as identified in the client's individual support plan.

**"Crisis diversion"** means temporary crisis residential services and supports provided to clients at risk of psychiatric hospitalization and authorized by the division of developmental disabilities.

**"Crisis diversion bed services"** means crisis diversion that is provided in a residence maintained by the service provider.

**"Crisis diversion support services"** means crisis diversion that is provided in the client's own home.

**"Department"** means the Washington state department of social and health services.

**"Financial exploitation"** means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage other than the vulnerable adult's profit or advantage.

**"Functional assessment"** means a comprehensive evaluation of a client's challenging behavior(s). This evaluation is the basis for developing a positive behavior support plan.

**"Group home"** means a residence that is licensed as either a boarding home or an adult family home by the department under chapters 388-78A or 388-76 WAC. Group homes provide community residential instruction, supports, and services to two or more clients who are unrelated to the provider.

**"Group training home"** means a certified nonprofit residential facility that provides full-time care, treatment, training, and maintenance for clients, as defined under RCW 71A.22.020(2).

**"Immediate"** or **"immediately"** means within twenty-four hours for purposes of reporting abandonment, abuse, neglect, or financial exploitation of a vulnerable adult.

**"Individual financial plan"** means a plan describing how a client's funds will be managed when the service provider is responsible for managing any or all of the client's funds.

**"Individual instruction and support plan"** means a plan developed by the service provider and the client. The individual instruction and support plan:

(1) Uses the information and assessed needs documented in the individual support plan to identify areas the client would like to develop;

(2) Includes client goals for instruction and support that will be formally documented during the year; and

(3) Must contain or refer to other applicable support or service information that describes how the client's health and welfare needs are to be met (e.g. individual financial plan, positive behavior support plan, cross system crisis plan, indi-

vidual support plan, individual written plan, client-specific instructions).

**"Individual support plan"** means a document that authorizes and identifies the division of developmental disabilities paid services to meet a client's assessed needs.

**"Instruction"** means goal oriented teaching that is designed for acquiring and enhancing skills.

**"Instruction and support services staff"** means long-term care workers of the service provider whose primary job function is the provision of instruction and support services to clients. Instruction and support services staff shall include employees of the service provider whose primary job function is the supervision of instruction and support services staff. In addition, both applicants, prior to initial certification, and administrators, prior to assuming duties, who may provide instruction and support services to clients shall be considered instruction and support services staff for the purposes of the applicable training requirements ((of chapter 388-112 WAC)).

**"Legal representative"** means a person's legal guardian, a person's limited guardian when the subject matter is within the scope of the limited guardianship, a person's attorney at law, a person's attorney in fact, or any other person who is authorized by law to act for another person.

**"Managing client funds"** means that the service provider:

- (1) Has signing authority for the client;
- (2) Disperses the client's funds; or
- (3) Limits the client's access to funds by not allowing funds to be spent.

**"Mechanical restraint"** means a device or object, which the client cannot remove, applied to the client's body that restricts his/her free movement.

**"Medication administration"** means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the body of the client by an individual legally authorized to do so.

**"Medication assistance"** means assistance with self administration of medication rendered by a nonpractitioner to a client receiving certified community residential services and supports in accordance with chapter 69.41 RCW and chapter 246-888 WAC.

**"Medication service"** means any service provided by a certified community residential services and support provider related to medication administration or medication assistance provided through nurse delegation and medication assistance.

**"Neglect"** means:

- (1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or
- (2) An act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

**"Physical intervention"** means the use of a manual technique intended to interrupt or stop a behavior from occur-

ring. This includes using physical restraint to release or escape from a dangerous or potentially dangerous situation.

**"Physical restraint"** means physically holding or restraining all or part of a client's body in a way that restricts the client's free movement. This does not include briefly holding, without undue force, a client in order to calm him/her, or holding a client's hand to escort the client safely from one area to another.

**"Psychoactive"** means possessing the ability to alter mood, anxiety level, behavior, cognitive processes, or mental tension, usually applied to pharmacological agents.

**"Psychoactive medications"** means medications prescribed to improve or stabilize mood, mental status or behavior. Psychoactive medications include anti-psychotics/neuroleptics, atypical antipsychotics, antidepressants, stimulants, sedatives/hypnotics, and antimania and antianxiety drugs.

**"Qualified professional"** means a person with at least three years' experience working with individuals with developmental disabilities and as required by RCW 71A.12.-220(12).

**"Restrictive procedure"** means any procedure that restricts a client's freedom of movement, restricts access to client property, requires a client to do something which he/she does not want to do, or removes something the client owns or has earned.

**"Risk assessment"** means an assessment done by a qualified professional and as required by RCW 71A.12.230.

**"Service provider"** means a person or entity certified by the department who delivers services and supports to meet a client's identified needs. The term includes the state operated living alternative (SOLA) program.

**"Support"** means assistance a service provider gives a client based on needs identified in the individual support plan.

**"Supported living"** means instruction, supports, and services provided by service providers to clients living in homes that are owned, rented, or leased by the client or their legal representative.

**"Treatment team"** means the program participant and the group of people responsible for the development, implementation, and monitoring of the person's individualized supports and services. This group may include, but is not limited to, the case manager, therapist, the service provider, employment/day program provider, and the person's legal representative and/or family, provided the person consents to the family member's involvement.

**"Vulnerable adult"** includes a person:

- (1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or
- (2) Found incapacitated under chapter 11.88 RCW; or
- (3) Who has a developmental disability as defined under RCW 71A.10.020; or
- (4) Admitted to any facility; or
- (5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or
- (6) Receiving services from an individual provider.

**"Willful"** means the deliberate, or nonaccidental, action or inaction by an individual that he/she knew or reasonably

should have known could cause a negative outcome, including harm, injury, pain, or anguish.

**AMENDATORY SECTION** (Amending WSR 10-16-084, filed 7/30/10, effective 1/1/11)

**WAC 388-101-3050 Application for initial certification.** (1) To apply for initial certification an applicant must submit to the department:

- (a) A letter of intent that includes:
  - (i) Contact information;
  - (ii) Geographical area of service; and
  - (iii) Type of service provided, including group home, supported living, community protection, or group training home.
- (b) A completed and signed application on forms designated by the department;
- (c) All attachments specified in the application and any other information the department may request including but not limited to:
  - (i) Administrator resumes;
  - (ii) Statements of financial stability;
  - (iii) Professional references;
  - (iv) Relevant experiences and qualifications of the individual or agency; and
  - (v) ~~((On or after January 1, 2011, a certificate of completion of the instruction and support services staff training required under chapter 388-112 WAC, if the applicant may provide instruction and support services to a client or may supervise staff who provide such services; and~~
  - (vi) Assurances the applicant will not discriminate against any client or employee.
- (d) A copy of the license if applying for certification as a group home;
- (e) The name of the administrator of the program; and
- (f) The department background authorization form for:
  - (i) The applicant;
  - (ii) Anyone associated with the applicant; and
  - (iii) The individual or individuals designated to serve as administrator of the proposed program.
- (2) The applicant must submit a revised application, if any information on the application changes before the initial certification is issued.
- (3) The department will only process a completed application.
- (4) Each person named in the application for initial certification is considered separately and jointly by the department.
- (5) Based on the documentation received, the department will notify the applicant in writing regarding the department's certification decision.
- (6) The applicant must comply with additional requirements identified in this chapter if intending to support community protection clients.

**AMENDATORY SECTION** (Amending WSR 10-16-084, filed 7/30/10, effective 1/1/11)

**WAC 388-101-3220 Administrator responsibilities and training.** (1) The service provider must ensure that the administrator delivers services to clients consistent with this

chapter, and the department's residential services contract. This includes but is not limited to:

- (a) Overseeing all aspects of staffing, such as recruitment, staff training, and performance reviews;
  - (b) Developing and maintaining policies and procedures that give staff direction to provide appropriate services and support as required by this chapter and the department contract; and
  - (c) Maintaining and securely storing client, personnel, and financial records.
- (2) Before assuming duties, an administrator (~~hired on or after January 1, 2011,~~) must complete ~~((the))~~ required instruction and support services staff training ~~((requirements under chapter 388-112 WAC))~~ if the administrator may provide instruction and support services to clients or may supervise instruction and support services staff.

**AMENDATORY SECTION** (Amending WSR 10-16-084, filed 7/30/10, effective 1/1/11)

**WAC 388-101-3245 Background check—General.**

- (1) Background checks conducted by the department and required in this chapter include but are not limited to (~~(:~~
- ~~(a))~~ Washington state background checks including:
    - ~~((+))~~ (a) Department and department of health findings; and
    - ~~((+))~~ (b) Criminal background check information from the Washington state patrol and Washington state courts(~~;~~ and
  - ~~(b)~~ After January 1, 2012, a national fingerprint-based check in accordance with RCW 74.39A.055).
- (2) Nothing in this chapter should be interpreted as requiring the employment of a person against the better judgment of the service provider.

**AMENDATORY SECTION** (Amending WSR 10-16-084, filed 7/30/10, effective 1/1/11)

**WAC 388-101-3250 Background checks—Washington state.** (1) Service providers must follow the background check requirements described in chapter 388-06 WAC and in this chapter. In the event of an inconsistency, this chapter applies. ~~((The service provider must also follow background check requirements under WAC 388-101-3253.))~~

- (2) The service provider must obtain background checks from the department for all administrators, employees, volunteers, students, and subcontractors who may have unsupervised access to clients.
- (3) The service provider must not allow the following persons to have unsupervised access to clients until the service provider receives the department's background check results, verifying that the person does not have any convictions, pending criminal charges, or findings described in WAC 388-101-3090:
  - (a) Administrators;
  - (b) Employees;
  - (c) Volunteers or students; and
  - (d) Subcontractors.
- (4) If the background check results show that the individual has a conviction, pending criminal charge, or finding that is not disqualifying under WAC 388-101-3090, then the ser-

vice provider must conduct a character, suitability, and competence review as described in WAC 388-06-0190.

(5) The service provider must:

(a) Inform the person of the results of the background check;

(b) Inform the person that they may request a copy in writing of the results of the background check. If requested, a copy of the background check results must be provided within ten working days of the request;

(c) Notify the department and other appropriate licensing or certification agency of any person resigning or terminated as a result of having a conviction record.

(6) The service provider must renew the Washington state background check at least every thirty-six months and keep current background check results for each administrator, employee, volunteer, student, or subcontractor of a service provider.

(7) Licensed boarding homes or adult family homes must adhere to the current regulations in this chapter and in the applicable licensing laws.

(8) Service providers must prevent unsupervised access to clients by any administrator, employee, subcontractor, student, or volunteer who has a disqualifying conviction, pending criminal charge, or finding described in WAC 388-101-3090.

(9) All applicants for certification must have a background check.

AMENDATORY SECTION (Amending WSR 10-16-084, filed 7/30/10, effective 1/1/11)

**WAC 388-101-3255 Background checks—Provisional hire—Pending results.** ~~((1))~~ Persons identified in WAC 388-101-3250(2) ~~((who are hired on or before January 1, 2012))~~ and who have lived in Washington state less than three years, or who are otherwise required to complete a fingerprint-based background check, may be hired for a one hundred twenty-day provisional period when:

~~((a))~~ (1) The person is not disqualified based on the initial results of the background check from the department; and

~~((b))~~ (2) A national fingerprint-based background check is pending.

~~((2))~~ Persons identified in WAC 388-101-3250(2) who are hired after January 1, 2012, may be hired for a one hundred twenty-day provisional period when:

(a) The person is not disqualified based on the initial result of the background check from the department; and

(b) A national fingerprint-based background check is pending.)

AMENDATORY SECTION (Amending WSR 10-16-084, filed 7/30/11, effective 1/1/11)

**WAC 388-101-3258 Training requirements for staff** ~~((hired before January 1, 2011))~~. The service provider must ensure that staff ~~((hired before January 1, 2011))~~ have met the training requirements under WAC 388-101-3260 through 388-101-3300.

AMENDATORY SECTION (Amending WSR 10-16-084, filed 7/30/10, effective 1/1/11)

**WAC 388-101-3302 Certified community residential services and supports—General training requirements.**

(1) ~~((On or after January 1, 2011,))~~ The service provider must ensure the following instruction and support services staff meet the training requirements ~~((under))~~ of this chapter ~~((388-112 WAC, including orientation and safety training, and basic training))~~:

(a) Administrators ~~((, hired on or after the effective date,))~~ who may provide instruction and support services to clients or may supervise instruction and support services staff; and

(b) Instruction and support services staff including their supervisors ~~((, who are hired on or after the effective date))~~.

(2) ~~((On or after January 1, 2011,))~~ Applicants for initial certification and applicants for change of ownership that are not current providers, who may provide instruction and support services to clients or may supervise instruction and support services staff must meet the training requirements of this chapter ~~((388-112 WAC, including orientation and safety training, and basic training))~~.

~~((3))~~ Under RCW 18.88B.040 and chapter 246-980 WAC, certain persons including registered nurses, licensed practical nurses, certified nursing assistants or persons who are in an approved certified nursing assistant program are exempt from long term care worker training requirements.)

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-101-3253	National fingerprint-based background checks—Required.
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#### **WSR 11-14-014**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed June 23, 2011, 12:12 p.m., effective June 23, 2011, 12:12 p.m.]

Effective Date of Rule: Immediately.

Purpose: The department is amending or repealing the boarding home rules to comply with ESHB 1548, Long-term care worker requirements, which was recently signed by the governor. ESHB 1548 postpones long-term care worker training and certification requirements and fingerprint background check requirements until January 1, 2014. This bill becomes effective immediately. This does not allow the department enough time to adopt rules through the regular rule adoption process.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-78A-2463; and amending WAC 388-78A-2461, 388-78A-2467, and 388-78A-2474.

Statutory Authority for Adoption: Chapter 18.20 RCW.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: The legislature has passed ESHB 1548 which postpones long-term care worker training and certification requirements and fingerprint background check requirements until January 1, 2014. This bill becomes effective immediately. This does not allow the department enough time to adopt rules through the regular rule adoption process.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 1.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 1.

Date Adopted: June 17, 2011.

Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

**WAC 388-78A-2461 Background check—General.** Background checks conducted by the department and required in this chapter include but are not limited to:

(1) Washington state background checks including:

(a) Department and department of health findings;

(b) Criminal background check information from the Washington state patrol and the Washington state courts;

(2) ~~((After January 1, 2012, a national fingerprint-based check in accordance with RCW 74.39A.055.~~

~~((3))~~ Nothing in this chapter should be interpreted as requiring the employment of a person against the better judgment of the boarding home.

~~((4))~~ (3) In addition to chapter 18.20 RCW, these rules are authorized by RCW 43.20A.710, RCW 43.43.830 through 43.43.842 and RCW 74.39A.050(8).

**AMENDATORY SECTION** (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

**WAC 388-78A-2467 Background check—Sharing by health care facilities.** In accordance with RCW 43.43.832 a health care facility may share Washington state background check results with other health care facilities under certain circumstances. ~~((Results of the national fingerprint checks may not be shared.))~~ For the purposes of this section health care facility means a nursing home licensed under chapter 18.51 RCW, a boarding home license under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW.

(1) The health care facility may, upon request from another health care facility, share completed Washington state background check results only if:

(a) The health care facility sharing the background check information is reasonably known to be the person's most recent employer;

(b) No more than twelve months has elapsed between the date the individual was last employed at a licensed health care facility and the date of the individual's current employment application;

(c) The background check is no more than two years old; and

(d) The boarding home has no reason to believe the individual has or may have a disqualifying conviction or finding as described in WAC 388-78A-2470.

(2) The boarding home may also establish, maintain and follow a written agreement with home health, hospice, or home care agencies licensed under chapter 70.127 RCW or nursing pools registered under chapter 18.52C RCW in order to ensure that the agency or pool staff meet the requirements of WAC 388-78A-2470.

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

**AMENDATORY SECTION** (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

**WAC 388-78A-2474 Training ~~((and home care aide certification))~~ requirements.** (1) The boarding home must ensure staff persons ~~((hired before January 1, 2011))~~ meet training requirements in effect on the date hired, including requirements in chapter 388-112 WAC.

(2) The boarding home must ensure all boarding home administrators, or their designees, and caregivers ~~((hired on or after January 1, 2011))~~ meet the ~~((long-term care worker))~~ training requirements of chapter 388-112 WAC, including but not limited to:

(a) Orientation and safety;

(b) Basic;

(c) Specialty for dementia, mental illness and/or developmental disabilities when serving residents with any of those primary special needs;

(d) Cardiopulmonary resuscitation and first aid; and

(e) Continuing education.

(3) The boarding home must ensure ~~((all persons listed in subsection (2) of this section, obtain the home care aide certification required by chapter 246-980 WAC.~~

(4) Under RCW 18.88B.040 and chapter 246-980 WAC, certain persons including registered nurses, licensed practical nurses, certified nursing assistants, or persons who are in an approved certified nursing assistant program are exempt from long-term care worker training requirements.

(5) For the purpose of this section, the term "caregiver" has the same meaning as the term "long-term care worker" as defined in RCW 74.39A.009) that all staff receive appropriate training and orientation for their specific duties and responsibilities.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-78A-2463	Background check— National fingerprint checks—Who is required to have.
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#### WSR 11-14-015

#### EMERGENCY RULES DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed June 23, 2011, 12:14 p.m., effective July 1, 2011]

Effective Date of Rule: July 1, 2011.

Purpose: The department is amending the boarding home rules to comply with and be consistent with section 402 of ESHB 1277, Oversight of licensed or certified long-term care settings for vulnerable adults. The newly passed law requires a license be issued to the person who applied for the license, provides details on the expiration date of the license, and requires the boarding home license fee to be set in the State Omnibus Appropriations Act. The effective [date] of these changes are [is] July 1, 2011. This does not allow the department enough time to adopt rules through the regular rule adoption process.

Citation of Existing Rules Affected by this Order: Amending WAC 388-78A-2750, 388-78A-2800, and 388-78A-3230.

Statutory Authority for Adoption: Chapter 18.20 RCW.

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

Reasons for this Finding: The legislature has passed ESHB 1277 which requires the license fee to be set in the State Omnibus Appropriations Act. The effective date of this change is July 1, 2011. This does not allow the department enough time to adopt rules through the regular rule adoption process.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: June 17, 2011.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

**WAC 388-78A-2750 Application process.** To apply for a boarding home license, a person must:

(1) Submit to the department a complete license application on forms designated by the department at least ninety days prior to the proposed effective date of the license;

(2) Submit all relevant attachments specified in the application;

(3) Submit department background authorization forms as required in WAC 388-78A-2462 and 388-78A-2463;

(4) Sign the application;

(5) Submit the license fee as specified in WAC 388-78A-3230;

(6) Submit verification that construction plans have been approved by construction review services;

(7) Submit a revised application before the license is issued if any information has changed since the initial license application was submitted;

(8) Submit a revised application containing current information about the proposed licensee or any other persons named in the application, if a license application is pending for more than one year; and

(9) If the licensee's agent prepares an application on the licensee's behalf, the licensee must review, sign and attest to the accuracy of the information contained in the application.

(10) A license must be issued only to the person who applied for the license.

(11) A license may not exceed twelve months in duration and expires on a date set by the department.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

**WAC 388-78A-2800 Changes in licensed bed capacity.** To change the licensed bed capacity in a boarding home, the boarding home must:

(1) Submit a completed request for approval to the department at least one day before the intended change;

(2) Submit the prorated fee (~~required according to WAC 388-78A-3230~~); and

(3) Post an amended license obtained from the department, indicating the new bed capacity.

AMENDATORY SECTION (Amending WSR 10-21-036, filed 10/12/10, effective 10/29/10)

**WAC 388-78A-3230 Fees.** The boarding home must:

(1) Submit an annual per bed license fee ~~((of one hundred six dollars per bed of the licensed resident bed capacity as determined by and in accordance with RCW 18.20.050))~~ based on the licensed bed capacity and as established in the omnibus appropriation act and any amendment or addition made to that act;

(2) ~~((Submit an additional one hundred fifty dollars when billed by the department for:~~

~~(a) A third on-site visit required by the boarding home's failure to adequately correct problems identified in a statement of deficiencies; and~~

~~(b) A full out-of-sequence inspection resulting from information gathered during a complaint investigation.~~

~~((3))~~ Submit an additional late fee in the amount of ten dollars per day from the license renewal date until the date of mailing the fee, as evidenced by the postmark; and

~~((4))~~ (3) Submit to construction review services a fee for the review of the construction documents per the review fee schedule that is based on the project cost.

#### WSR 11-14-016

#### EMERGENCY RULES DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed June 23, 2011, 12:17 p.m., effective June 23, 2011, 12:17 p.m.]

Effective Date of Rule: Immediately.

Purpose: The department has filed these emergency rules to comply with ESHB 1548 which was recently signed by the governor. ESHB 1548 postpones Initiative Measure 1029 (codified in chapters 18.88B and 74.39A RCW) which requires that long-term care workers be certified and mandates increased training and background check requirements. This does not allow the department enough time to adopt rules through the regular rule adoption process.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-76-10162; and amending WAC 388-76-10146, 388-76-10160, and 388-76-10174.

Statutory Authority for Adoption: RCW 70.128.040.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: Emergency adoption of these rules is necessary in order to comply with ESHB 1548 which delays implementation of increased training and background check requirements for long-term care workers. These rules become effective immediately on filing.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 1.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 1.

Date Adopted: June 17, 2011.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

**WAC 388-76-10146 Qualifications—Training (~~and home care aide certification~~) requirements.** (1) The adult family home must ensure all adult family home caregivers, entity representatives, and resident managers (~~(hired on or after January 1, 2011,))~~) meet the ~~((long-term care worker))~~ training requirements of chapter 388-112 WAC, including but not limited to:

(a) Orientation and safety;

(b) Basic;

(c) Specialty for dementia, mental illness and/or developmental disabilities when serving residents with any of those primary special needs;

(d) Cardiopulmonary resuscitation and first aid; and

(e) Continuing education.

~~((2) (All persons listed in subsection (1) of this section, must obtain the home care aide certification required by chapter 246-980 WAC.~~

~~((3) All adult family home applicants on or after January 1, 2011, must meet the long-term care worker training requirements of chapter 388-112 WAC and obtain the home care aide certification required by chapter 246-980 WAC.~~

~~((4) Under RCW 18.88B.040 and chapter 246-980 WAC, certain persons including registered nurses, licensed practical nurses, certified nursing assistants or persons who are in an approved certified nursing assistant program are exempt from long-term care worker training requirements.~~

~~((5))~~ The adult family home must ensure that all staff receive the orientation and training necessary to perform their job duties.

AMENDATORY SECTION (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

**WAC 388-76-10160 Background check—General.** Background checks conducted by the department and required in this chapter include but are not limited to:

(1) Washington state background checks including:

(a) Department and department of health findings; and  
 (b) Criminal background check information from the Washington state patrol and the Washington state courts.

(2) ~~((After January 1, 2012, a national fingerprint-based check in accordance with RCW 74.39A.055.~~

~~(3))~~ Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the adult family home.

~~((4))~~ (3) In addition to chapter 70.128 RCW, these rules are authorized by RCW 43.20A.710, 43.43.830 through 43.43.842 and RCW 74.39A.050(8).

AMENDATORY SECTION (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

**WAC 388-76-10174 Background check—Disclosure of information—Sharing of background information by health care facilities.** In accordance with RCW 43.43.832 a health care facility may share Washington state background check results with other health care facilities under certain circumstances. ~~((Results of the national fingerprint-based background check may not be shared.))~~ For the purposes of this section health care facility means a nursing home licensed under chapter 18.51 RCW, a boarding home licensed under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW.

(1) A health care facility may, upon request from another health care facility, share completed Washington state background check results only if:

(a) The health care facility sharing the background check information is reasonably known to be the person's most recent employer;

(b) No more than twelve months has elapsed between the date the person was last employed at a licensed health care facility and the date of the person's current employment application; and

(c) The background check is no more than two years old.

(2) If background check information is shared, the health care facility employing the subject of the check must require the applicant to sign a disclosure statement indicating that there has been no conviction or finding as described in WAC 388-76-10180 since the completion date of the most recent background check.

(3) Any health care facility that knows or has reason to believe that an applicant has or may have a disqualifying conviction or finding as described in WAC 388-76-10180, after the completion date of their most recent background check:

(a) Cannot rely on the applicant's previous employer's background check information; and

(b) Must request a new background check as required by this chapter.

(4) Health care facilities that share background check information shall be immune from any claim of defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of this information in accordance with this section.

(5) Health care facilities must send and receive the background check information in a manner that reasonably protects the subject's rights to privacy and confidentiality.

(6) In accordance with RCW 74.39A.210, a home that discloses information about a former or current employee to certain types of prospective employers is presumed to act in good faith and is immune from civil and criminal liability for such disclosure or its consequences.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-76-10162	Background check— National fingerprint checks—Who is required to have.
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**WSR 11-14-018**

**EMERGENCY RULES**

**DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 11-133—Filed June 23, 2011, 2:55 p.m., effective July 1, 2011]

Effective Date of Rule: July 1, 2011.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900L; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: High, turbid flow in May and June and a late return of spring chinook to the Yakima River has extended the run timing past Roza Dam. A significant number of hatchery salmon are expected to be available for harvest below Roza Dam well into July. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

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

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

Date Adopted: June 23, 2011.

Philip Anderson  
Director

### NEW SECTION

**WAC 232-28-61900L Exceptions to statewide rules—Yakima River.** Notwithstanding the provisions of WAC 232-28-619:

(1) Effective July 1 through July 31, 2011, a person may fish for salmon in waters of the Yakima River from the Interstate 82 bridge at Union Gap (river mile 107.1) to the BNRR bridge approximately 500 feet downstream of Roza Dam (river mile 127.8). Daily limit of two hatchery Chinook, minimum size 12 inches in length. Only one, single (point), barbless hook with a hook gap from point to shank of 3/4 inch or less is permitted. During the salmon fishery, the Selective Gear Rules requirement prohibiting use of bait and knotted nets is temporarily suspended for all species, but only in the river section open to salmon fishing. Use of boats equipped with an internal combustion engine is allowed only from the Interstate 82 bridge at Union Gap upstream to the east-bound (upstream) Interstate 82 bridge at Selah Gap. Night closure in effect.

(2) The upper "closed water" boundary line is moved upstream to the railroad bridge downstream of Roza Dam.

(3) The Columbia River Salmon/Steelhead Endorsement is required to participate in this fishery, in addition to a freshwater fishing license.

(4) The use of two (2) fishing poles is permitted during the salmon fishery provided the participating angler has purchased a "Two-Pole Endorsement" (in addition to the freshwater fishing license and Columbia River salmon/steelhead endorsement).

### REPEALER

The following section of the Washington Administrative Code is repealed effective August 1, 2011:

WAC 232-28-61900L      Exceptions to statewide  
rules—Yakima River.

**WSR 11-14-022**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 11-136—Filed June 24, 2011, 1:31 p.m., effective June 27, 2011,  
6:00 a.m.]

Effective Date of Rule: June 27, 2011, 6:00 a.m.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100Z; and amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Puget Sound Gillnetters Ass'n v. Moos*, 92 Wn.2d 939, 603 P.2d 819 (1979); *State v. James*, 72 Wn.2d 746, 435 P.2d 521 (1967); 40 Stat. 515 (Columbia River compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Sets the third weekly gillnet fishing period for the 2011 summer season. Allows sales of legal-size sturgeon during the gillnet fishery. Allowable sales include legal-size sturgeon from platform/hook and line in the area above Bonneville Dam if caught during the open gillnet period. Specific gillnet gear regulations are in place to limit the number of sturgeon handled. Continues to allow the sale of platform and hook and line caught fish from mainstem tribal fisheries (above and below Bonneville Dam) and fish caught in Yakama Nation tributary fisheries. Salmon, steelhead and sturgeon remain available for harvest based on harvest guidelines and management agreements. Fisheries are consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River compact on May 10 and June 23, 2011. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allow for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement. Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new

emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 1.

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

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

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

Date Adopted: June 24, 2011.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-32-05100A Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management Catch Reporting Areas (SMCRA) 1E, 1F, 1G, and 1H, and in the Wind River, White Salmon River, Klickitat River, and Drano Lake, except as provided in the following subsections. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

1. Open Area: SMCRA 1F, 1G, 1H (Zone 6):

a. Season: 6:00 AM June 27 through 6:00 PM June 30, 2011

b. Gear: Floating gill nets only. No diver gillnets are allowed.

c. Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John Day pools may be sold or retained for subsistence purposes. Live release of all oversize and under-size sturgeon is required.

d. River mouth sanctuaries (WAC 220-32-058) remain in effect, except the Spring Creek Hatchery sanctuary

2. Open Area: SMCRA 1F, 1G, 1H (Zone 6):

e. Season: Immediately until further notice.

f. Gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

g. Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon may be sold when sales are concurrently allowed in the mainstem gillnet

fishery. Legal size sturgeon are between 38-54 inches in fork length in the Bonneville Pool and between 43-54 inches in fork length in The Dalles and John Day pools Sturgeon within these pool-specific fork lengths may be retained for subsistence purposes. Live release of all oversize and under-size sturgeon is required.

h. River mouth sanctuaries (WAC 220-32-058) remain in effect, except the Spring Creek Hatchery sanctuary.

3. Open Area: SMCRA 1E; Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife regarding tribal fisheries in the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe.

a. Participants: Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2011 MOU with the Nez Perce Tribe. Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

b. Season: Immediately until further notice.

c. Gear: Hook and line, or as defined by each tribe's MOU or MOA.

d. Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon retention is prohibited, and sturgeon may not be sold or retained for ceremonial or subsistence purposes. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property.

4. Open Area: Columbia River Tributaries above Bonneville Dam:

a. Season: Immediately until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

b. Area: Drano Lake, and the Wind, White Salmon, and Klickitat rivers.

c. Gear: Hoop nets, dip bag nets, and rod and reel with hook-and-line. Gill nets may only be used in Drano Lake.

d. Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch.

5. 24- Hour quick reporting required for Washington wholesale dealers, WAC 220-69-240, for all areas. Commercial buyers may only purchase sturgeon in the round

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. June 27, 2011:

WAC 220-32-05100Z Columbia River salmon seasons above Bonneville Dam. (11-126)

**WSR 11-14-023**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 11-138—Filed June 24, 2011, 1:44 p.m., effective June 29, 2011, 8:00 a.m.]

Effective Date of Rule: June 29, 2011, 8:00 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900M [232-28-61900N]; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The Reiter Ponds Hatchery has collected enough summer steelhead broodstock to meet production needs. Opening of the closed area will provide additional recreational fishing opportunity. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

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

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

Date Adopted: June 24, 2011.

Philip Anderson  
Director

NEW SECTION

**WAC 232-28-61900N Exceptions to statewide rules—Skykomish River (Reiter Ponds) (Skykomish Co.)** Notwithstanding the provisions of WAC 232-28-619, effective

8:00 a.m. June 29, through July 31, 2011, a person may fish for and possess gamefish in those waters of the Skykomish Rearing Ponds (Reiter Ponds) area from 1500 feet upstream to 1000 feet downstream of the pond's outlet. Night closure and anti-snagging rule in effect. Also, fishing from a floating device is prohibited. Dolly Varden/bull trout minimum size is 20 inches in length, and these may be retained as part of the trout, daily limit. All other trout daily limit of two, minimum size 14 inches in length. All other game fish statewide size and daily limits apply.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 1, 2011:

WAC 232-28-61900N Exceptions to statewide rules—Skykomish River (Reiter Ponds) (Skykomish Co.)

**WSR 11-14-024**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 10-138—Filed June 24, 2011, 1:47 p.m., effective July 1, 2011]

Effective Date of Rule: July 1, 2011.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25000M; and amending WAC 220-56-250.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Yelloweye rockfish are one of seven overfished species managed under rebuilding plans by the Pacific Fishery Management Council. Yelloweye rockfish may be caught incidentally when anglers target lingcod in deeper waters. Management measures, including depth restrictions, have been effective at reducing the incidental catch of overfished species including yelloweye rockfish while anglers are targeting lingcod. This rule conforms to federal action taken by Pacific Fishery Management Council and the National Marine Fisheries Service. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

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

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

Date Adopted: June 24, 2011.

Philip Anderson  
Director

### NEW SECTION

#### **WAC 220-56-25000M Lingcod—Areas and seasons.**

Notwithstanding the provisions of WAC 220-56-250, effective July 1 through August 31, 2011, it is unlawful to fish for, retain or possess lingcod seaward of a line approximating the 30 fathom depth contour south of 46°58' N. Lat. on Fridays and Saturdays in waters of Marine Area 2, Westport.

### REPEALER

The following section of the Washington Administrative Code is repealed effective September 1, 2011:

WAC 220-56-25000M Lingcod—Areas and seasons.

**WSR 11-14-025  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 11-135—Filed June 24, 2011, 2:15 p.m., effective June 27, 2011]

Effective Date of Rule: June 27, 2011.

Purpose: The purpose of this rule making is to allow nontreaty recreational fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900X; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The estuary sturgeon fishery was originally scheduled to close June 27, 2011, and then reopen for four more days of fishing from July 1 through July 4, 2011. Angling effort and catch have been less than expected, with a balance of four thousand three hundred sixty fish expected by the end of the previously adopted season. This action sets additional fishing time to catch the remaining balance. The regulation is consistent with Washington fish and wildlife commission guidance for 2011 lower Columbia River sturgeon management. The Bonneville Pool harvest guideline of two thousand white sturgeon was not reached during the regular season, which closed February 19, 2011. A balance of three hundred seventy-three fish remains on the guideline. This action sets additional fishing time to catch the remaining balance. The dates for retention of white sturgeon are based on actions adopted at the joint Washington-Oregon public hearing on June 23, 2011. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

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

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

Date Adopted: June 24, 2011.

Philip Anderson  
Director

### NEW SECTION

**WAC 232-28-61900M Exceptions to statewide rules—Columbia River sturgeon.** Notwithstanding the provisions of WAC 232-28-619:

(1) Effective immediately until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from John Day Dam upstream to McNary Dam.

(2) Effective immediately until August 31, 2011, it is unlawful to fish for or possess sturgeon in those waters of the Columbia River upstream from a line crossing the Columbia from Navigation Marker 82 on the Oregon shore through the upstream exposed end of Skamania Island, continuing in a straight line to a boundary marker on the Washington shore.

(3) Effective June 27, 2011, until further notice, it is unlawful to retain white sturgeon caught in those waters of the Columbia River from the mouth upstream to the Wauna powerlines, and all adjacent Washington tributaries, except a person may retain white sturgeon from June 27 through July 31, 2011. Minimum size when open to retain white sturgeon in this area is 41 inches fork length through July 31, 2011.

(4) Effective immediately until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from Bonneville Dam upstream to The Dalles Dam, except a person may retain white sturgeon from June 30 through July 2 and from July 7 through July 9, 2011.

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900X	Exceptions to statewide rules—Columbia River sturgeon. (11-59)
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**WSR 11-14-027**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Medicaid Purchasing Administration)

[Filed June 27, 2011, 9:08 a.m., effective June 29, 2011]

Effective Date of Rule: June 29, 2011.

Purpose: The legislature passed ESHB 1086, which reduces funding for maternity support services and mandates medicaid purchasing administration (MPA) to prioritize evidence-based practices for delivery of maternity support services and to target funding for maternity support services by leveraging local public funding for those services. In addition, upon order of the governor, the MPA must reduce its budget expenditures for the current fiscal year ending June 30, 2011, by 6.3 percent.

Citation of Existing Rules Affected by this Order: Amending WAC 388-533-0300, 388-533-0320, 388-533-0325, 388-533-0370, and 388-533-0380.

Statutory Authority for Adoption: Chapter 5, Laws of 2011, ESHB 1086 and HB 1248 which extends the allowance of emergency rule filing through fiscal year 2013.

Other Authority: RCW 74.08.090.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: See Purpose above. This emergency rule is necessary to continue the emergency rule

that is currently in effect under WSR 11-06-040 while the permanent rule-making process initiated under WSR 10-20-165 is completed.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 5, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Date Adopted: June 27, 2011.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-12-011, filed 5/21/10, effective 6/21/10)

**WAC 388-533-0300 Services under First Steps. (1)**

Under the 1989 Maternity Care Access Act, and RCW 74.09.760 through 74.09.910, the department established First Steps to provide access to services for eligible women and their infants.

(2) The rules for the:

(a) Maternity support services (MSS) component of First Steps are found in WAC 388-533-0310 through 388-533-0345.

(b) Infant case management (ICM) component of First Steps are found in WAC 388-533-0360 through 388-533-0386.

(c) Childbirth education (CBE) component of First Steps are found in WAC 388-533-0390.

(3) Other services under First Steps include:

(a) Medical services, including full medical coverage, prenatal care, delivery, post-pregnancy follow-up, (~~(dental vision))~~) and twelve months family planning services post-pregnancy;

(b) Ancillary services, including but not limited to, expedited medical eligibility determination(~~(case finding and outreach))~~); and

(c) Alcohol and drug assessment and treatment services for pregnant women available statewide and administered by the division of behavioral health and recovery (see WAC 388-533-0701).

AMENDATORY SECTION (Amending WSR 10-12-011, filed 5/21/10, effective 6/21/10)

**WAC 388-533-0320 Maternity support services—Client eligibility. (1)** To receive maternity support services (MSS), a client must:

(a) Be covered under one of the following medical assistance programs:

- (i) Categorically needy program (CNP);
- (ii) CNP—Children's health insurance program;
- (iii) Medically needy program (MNP); or
- (iv) A pregnancy medical program as described in WAC 388-462-0015.

(b) Be within the eligibility period of a maternity cycle as defined in WAC 388-533-0315; and

(c) Meet any other eligibility criteria as determined by the department and published in the department's current billing instructions and/or numbered memoranda.

(2) Clients who meet the eligibility criteria in this section may receive:

(a) An in-person screening by a provider who meets the criteria established in WAC 388-533-0325. Clients are screened for risk factors related to issues that may impact their birth outcomes.

(b) Up to the maximum number of MSS units of service allowed per client as determined by the department and published in the department's current billing instructions and/or numbered memoranda. The department may determine the maximum number of units allowed per client when directed by the legislature to achieve targeted expenditure levels for payment of maternity support services for any specific biennium.

(3) Clients meeting the eligibility criteria in this section who are enrolled in a department-contracted managed care plan, are eligible for MSS outside their plan.

(4) See chapter 388-534 WAC for clients eligible for coverage under the early periodic screening, diagnosis and treatment (EPSDT) program.

(5) Clients receiving MSS before ~~((July 1, 2009))~~ March 1, 2011, are subject to the transition plan as determined and published by the department in numbered memoranda.

(6) Clients who do not agree with a department decision regarding eligibility for MSS have a right to a fair hearing under chapter 388-02 WAC.

AMENDATORY SECTION (Amending WSR 10-12-011, filed 5/21/10, effective 6/21/10)

**WAC 388-533-0325 Maternity support services—Provider requirements.** (1) To be paid for providing maternity support services (MSS) and infant case management (ICM) services to eligible clients, an agency or entity must:

(a) Be currently approved as an MSS/ICM provider by the department of ~~((health (DOH)))~~ social and health services (department);

(b) Be enrolled as an eligible provider with the ~~((department of social and health services' (department's) health and recovery services administration (HRSA)))~~ department's medicare purchasing administration (see WAC 388-502-0010);

(c) Ensure that staff providing services meet the minimum regulatory and educational qualifications for the scope of services provided; and

(d) Meet the requirements in this chapter, chapter 388-502 WAC and the department's current published billing instructions and numbered memoranda.

(2) An individual or service organization that has a written agreement with an agency or entity that meets the requirements in subsection (1) of this section may also provide MSS and ICM services to eligible clients.

(a) The department requires the agency or entity to:

(i) Keep a copy of the written agreement on file;

(ii) Ensure that an individual or service organization staff member providing MSS/ICM services meets the minimum regulatory and educational qualifications required of an MSS/ICM provider;

(iii) Assure that the individual or service organization provides MSS/ICM services under the requirements of this chapter; and

(iv) Maintain professional, financial, and administrative responsibility for the individual or service organization.

(b) The agency or entity is responsible to:

(i) Bill for services using the agency's or entity's assigned provider number; and

(ii) Reimburse the individual or service organization for MSS/ICM services provided under the written agreement.

AMENDATORY SECTION (Amending WSR 10-12-010, filed 5/21/10, effective 6/21/10)

**WAC 388-533-0370 Infant case management—Eligibility.** (1) To receive infant case management (ICM), an infant must:

(a) Be covered under one of the medical assistance programs listed in WAC 388-533-0320(1);

(b) Meet the age requirement for ICM which is the day after the maternity cycle (defined in WAC 388-533-0315) ends, through the last day of the month of the infant's first birthday;

(c) Reside with at least one parent (see WAC 388-533-0315 for definition of parent);

(d) Have a parent(s) who needs assistance in accessing medical, social, educational and/or other services to meet the infant's basic health and safety needs; and

(e) Not be receiving any case management services funded through Title XIX medicaid that duplicate ICM services.

(2) Infants who meet the eligibility criteria in subsection (1) of this section, and the infant's parent(s), are eligible to receive:

(a) An in-person screening by a provider who meets the criteria established in WAC 388-533-0375. Infants and their parent(s) are screened for risk factors related to issues that may impact the infant's welfare, health, and/or safety.

(b) Up to the maximum number of ICM units of service allowed per client as determined by the department and published in the department's current billing instructions and/or numbered memoranda. The department may determine the maximum number of units allowed per client when directed by the legislature to achieve targeted expenditure levels for payment in any specific biennium.

(3) Clients meeting the eligibility criteria in subsection (1) of this section who are enrolled in a department-contracted managed care plan are eligible for ICM services outside their plan.

(4) See chapter 388-534 WAC for clients eligible for coverage under the early periodic screening, diagnosis and treatment (EPSDT) program.

(5) Clients receiving ICM before (~~July 1, 2009~~) March 1, 2011, are subject to the transition plan as determined and published by the department in numbered memoranda.

(6) Clients who do not agree with a department decision regarding eligibility for ICM have a right to a fair hearing under chapter 388-02 WAC.

**AMENDATORY SECTION** (Amending WSR 10-12-010, filed 5/21/10, effective 6/21/10)

**WAC 388-533-0380 Infant case management—Covered services.** (1) The department covers infant case management (ICM) services subject to the restrictions and limitations in this section and other applicable WAC.

(2) Covered services include:

(a) An initial in-person screening for ICM services which includes (~~an assessment~~) identification of risk factors, and the development of an individualized care plan;

(b) Case management services and care coordination;

(c) Linking and referring the infant and parent(s) to other services or resources;

(d) Advocating for the infant and parent(s);

(e) Follow-up contact(s) with the parent(s) to ensure the care plan continues to meet the needs of the infant and parent(s); and

(f) Additional services as determined and published in the maternity support services/infant case management (MSS/ICM) billing instructions.

(3) The department pays for covered ICM services according to WAC 388-533-0386.

### WSR 11-14-039

#### EMERGENCY RULES

#### DEPARTMENT OF HEALTH

[Filed June 28, 2011, 9:58 a.m., effective June 28, 2011, 9:58 a.m.]

Effective Date of Rule: Immediately.

Purpose: It is necessary to amend chapter 246-296 WAC, Drinking water state revolving fund loan program (WAC 246-296-020 Definitions and 246-296-185 Implementation of Public Law 112-10 making appropriations for the Department of Defense and other departments and agencies of the government for the fiscal year ending September 30, 2011 and for other purposes) to maintain federal primacy with the United States Environmental Protection Agency.

The 2011 federal appropriations bill under section 1452 of the Safe Drinking Water Act includes new criteria for water systems to obtain a drinking water state revolving fund (DWSRF) loan. To maintain federal primacy with the Environmental Protection Agency and continue the DWSRF loan program, these changes are necessary to establish eligibility requirements for Group A public drinking water systems for funding infrastructure improvements in the form of principal forgiveness, criteria for green projects, and for water systems that are restructuring which may include ownership changes, and consolidation of water systems.

Citation of Existing Rules Affected by this Order:  
Amending WAC 246-296-020 Definitions.

Statutory Authority for Adoption: RCW 70.119A.170.

Other Authority: Safe Drinking Water Act.

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

Reasons for this Finding: The Administrative Procedure Act allows the department of health (department) to adopt an emergency rule as follows:

(1) If an agency for good cause finds:

(a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest;

(b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; or

(c) In order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency,

The agency may dispense with those requirements and adopt, amend, or repeal the rule on an emergency basis. The agency's finding and a concise statement of the reasons for its finding shall be incorporated in the order for adoption of the emergency rule or amendment filed with the office of the code reviser under RCW 34.05.380 and with the rules review committee.

The 2011 federal appropriations bill, enacted January 5, 2011, funds section 1452 of Safe Drinking Water Act and includes criteria for Group A public water systems that obtain a DWSRF loan. To make these funds available in Washington state, the department must immediately adopt a rule for the state revolving fund program, as described below.

The enacted bill contains a number of new requirements that are not currently in rule. The state must assure that our requirements align with these requirements in order to receive this funding. Specifically, the bill requires at least thirty percent of the new federal award be given out as subsidy to eligible recipients and at least twenty percent of the federal award must be used for eligible green projects. The existing DWSRF rules do not identify any form of funding other than traditional loans with full repayment, nor do they address funding of green projects.

The necessary rule changes must be in place prior to awarding the appropriations funds. In order to award funding to eligible recipients within the current federal fiscal year, the department adopted an emergency rule that includes the appropriations funding criteria. The emergency rule became effective on March 1, 2011, and expires on June 28, 2011. As part of the funding award process, the department published the ranked intended use plan (IUP) that includes a list of fundable projects for public review and comment. The

department must provide the final ranked list to the public works board by May 25, 2011, for their project selection and funding award process to be complete by August 31, 2011.

To complete the process of awarding federal appropriations funds, the rules must be in place so that the public works board can process and award contracts to eligible water system improvement projects. The public works board will not have adequate time to award contracts before the current emergency rule expires. The short timeframe between the expirations of the current emergency rule and the deadline for awarding funds does not allow use of the normal rule-making process.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 1, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 1, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 1, Repealed 0.

Date Adopted: June 28, 2011.

Mary C. Selecky  
Secretary

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

**WAC 246-296-020 Definitions.** "Act" means the federal Safe Drinking Water Act (SDWA).

"Application" means a DWSRF loan application submitted to DOH for DWSRF assistance.

"Application package" means DWSRF loan application form(s), requirements, terms of assistance, and related information jointly developed and published by DOH, the board, and the board's agent, (~~CTED~~) COM.

"Binding commitment" means a legal obligation by the state to an assistance recipient that defines the terms and the timing for assistance under this chapter.

"Board" means the state of Washington public works board.

"Borrower" means the entity or individual that has the legal and financial responsibility for the loan.

"Certification/certify" means documentation signed by the loan recipient that specific requirements or standards have been or will be met.

"Change orders" means a formal document that alters specific conditions of the original construction contract document including a change in the scope of work, contract price, construction methods, construction schedule, change in location, size, capacity, or quality of major equipment.

"COM" means the department of commerce.

"Community water system" means any Group A public water system that regularly serves fifteen or more year-round residential connections, or twenty-five or more year-round residents for one hundred eighty or more days per year.

~~("Construction documents" means construction documents developed and approved under WAC 246-290-120.)~~

"Construction completion report" means a form provided by DOH to the applicant required to be completed for each specific construction project to document project construction in accordance with chapter 246-290 WAC and general standards of engineering practice. The completed form must be stamped with an engineer's seal, signed, and dated by a professional engineer.

"Construction documents" means construction documents developed and approved under WAC 246-290-120.

"Cross-cutting authorities" means federal or state laws and authorities that apply to projects or activities receiving federal or state assistance.

"CTED" means the department of community, trade and economic development.

"Debt obligation" means a legal obligation or liability to pay something to someone else.

"Default" means failure to meet a financial obligation such as a loan payment.

"Disadvantaged community" means the service area of a public water system ((where at least fifty one percent of the customers are at or below eighty percent of the county median household income as defined annually by the Federal Department of Housing and Urban Development)) in which the proposed project cost will result in water rates that exceed 1.5 percent of the median household income of the area; or one in which the proposed project will result in the restructuring of one or more water systems experiencing technical, financial, and managerial difficulties.

~~("Distressed county" means a county that is designated by the Washington state employment security department as distressed.)~~

"DOH" means the department of health.

"Drinking water state revolving fund (DWSRF)" means the program established to administer the federal funds and other funds deposited in the account authorized to finance water system infrastructure, drinking water program activities, and to meet the applicable requirements of RCW 70.119A.170.

"Eligible system" means Group A community water systems, both privately and publicly owned, and nonprofit Group A noncommunity water systems.

"EPA" means the United States Environmental Protection Agency.

"Group A system" means a public water system that regularly serves fifteen or more residential connections, or twenty-five or more people per day for sixty or more days per year.

"Group B system" means a public water system that serves less than fifteen residential connections and less than twenty-five people per day, or serves twenty-five or more people per day for sixty or fewer days per year.

"Individual water supply system" means any water system that is not subject to the state board of health drinking water regulations, chapter 246-290 WAC; or chapter 246-291

WAC, providing water to one single-family residence, or four or fewer connections all of which serve residences on the same farm.

**"Intended use plan (IUP)"** means the federally required document prepared each year by the state which identifies the intended uses of the funds in the DWSRF and describes how those uses support the goals of the DWSRF.

**"HUD"** means the United States Department of Housing and Urban Development.

**"Loan"** means an agreement between the DWSRF and the assistance recipient through which the DWSRF provides funds for eligible assistance and the recipient agrees to repay the ~~((principle))~~ principal sum to the DWSRF except when the funds are provided in the form of a loan on which all or some of the principal is forgiven.

**"Multiple benefit"** means project improvements that address more than one type of health risk.

**"Noncommunity water system"** means a Group A public water system that is not a community water system.

**"Nonprofit organization"** means a system that has a federal tax exempt status identification number.

**"Nontransient noncommunity system"** means a Group A noncommunity water system that serves twenty-five or more of the same people per day for one hundred eighty or more days per year.

**"Owner"** means any agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, person, or any other entity that holds as property a public water system.

**"Project report"** means a project report developed and approved under chapter 246-290 WAC.

**"Public water system"** means any system, providing water for human consumption through pipes or other constructed conveyances excluding systems serving only one single-family residence and systems with four or fewer connections all of which serve residences on the same farm.

**"Purveyor"** means an agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person, or other entity owning or operating a public water system. Purveyor also means the authorized agents of such entities.

**"Regional benefit"** means project improvements that affect more than one public water system.

**"Restructuring"** means changing system ~~((operation, management and/or))~~ ownership, including, but not limited to:

- (1) Mergers;
- (2) ~~((Voluntary))~~ Transfer of ownership; or
- (3) Receivership (involuntary transfer of operation and/or ownership).

**"Safe Drinking Water Act (SDWA)"** means the federal Safe Drinking Water Act, including all amendments.

**"Satellite management agency (SMA)"** means a person or entity that is approved by the department of health to own or operate public water systems on a regional or county-wide basis, without the necessity for a physical connection between such systems. SMA's are regulated under chapter 246-295 WAC.

**"Set-aside"** means the use of a portion of DWSRF funds allotted to the state for a range of specific SDWA-related

activities as authorized in Section 1452 of the SDWA, to fund new programs, and other drinking water program activities.

**"Significant noncomplier (SNC)"** means a water system that is violating or has violated department rules and the violations may create or have created an imminent or a significant risk to human health.

**"Small water system management program (SWSMP)"** means a small water system management program developed and approved under WAC 246-290-105.

**"State environmental review process (SERP)"** means the environmental review process conducted on all DWSRF projects that ensures compliance with state and federal environmental review through a National Environmental Policy Act (NEPA)-like process.

**"State match"** means funds equaling at least twenty percent of the amount of the federal capitalization grants the state must deposit into the DWSRF loan fund including the necessary match for set-asides.

**"Surface water"** means a body of water open to the atmosphere and subject to surface runoff.

**"System capacity"** means the system's operational, technical, managerial and financial capability to achieve and maintain compliance with all relevant local, state, and federal plans and regulations.

**"Transfer of ownership"** means to convey ownership of a water system from one person or entity to another.

**"Transient noncommunity system"** means a Group A noncommunity water system that serves:

- (1) Twenty-five or more different people per day during sixty or more days per year;
- (2) Twenty-five or more of the same people per day for less than one hundred eighty days per year and during more than fifty-nine days per year; or
- (3) One thousand or more people for two or more consecutive days.

**"Water facilities inventory form (WFI)"** means the DOH form summarizing each public water system's characteristics.

**"Water right"** means a permit, claim, or other authorization, on record with or accepted by the department of ecology, authorizing the beneficial use of water in accordance with all applicable state laws.

**"Water system plan (WSP)"** means a water system plan developed and approved under WAC 246-290-100.

## NEW SECTION

**WAC 246-296-185 Implementation of Public Law 112-10 Making Appropriations for the Department of Defense and Other Departments and Agencies of the Government for the Fiscal Year Ending September 30, 2011, and for Other Purposes.** (1) Purpose and intent.

(a) The purpose of this section is to implement the requirements of Public Law (P.L.) 112-10 Making Appropriations for the Department of Defense and Other Departments and Agencies of the Government for the Fiscal Year Ending September 30, 2011, and for Other Purposes.

(b) The DWSRF rules in this chapter apply to the federal fiscal year 2011 DWSRF funds except as otherwise provided

in this section. If a conflict exists between the rules in this chapter and P.L. 112-10, P.L. 112-10 shall control.

(2) Provision of funds.

(a) Notwithstanding the requirements of section 1452(f) of the Safe Drinking Water Act, 42 U.S.C. Sec. 300j-12(f), the state will provide at least thirty percent of the amount of the 2011 federal grant to provide additional subsidization to eligible recipients in the form of forgiveness of principal.

(b) To the extent there are sufficient eligible applications, the state will provide at least twenty percent of the amount of the 2011 federal grant for green projects to address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities.

(c) In addition to the prioritization criteria listed in WAC 246-296-130, DOH may consider the requirements in (a) or (b) of this subsection for additional subsidies or green projects when ranking projects.

(d) In addition to the criteria identified in WAC 246-296-140, the board, in consultation with DOH, may consider the requirements in (a) or (b) of this subsection for additional subsidies or green projects in the final project selection.

(3) Qualification for principal forgiveness.

(a) If the water system is located in a disadvantaged community, a project may be awarded a loan with principal forgiveness for at least fifty percent of the loan amount.

(b) If the project results in restructuring of a water system that involves a change of ownership prior to loan execution, the project may be awarded a loan with principal forgiveness for at least fifty percent of the loan amount.

(c) If the project does not fall under (a) or (b) of this subsection, it may be awarded a low interest loan.

(4) Loan fee. A loan fee of one percent will be charged on all loans including those loans on which all, some or none of the principal is forgiven.

state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: 2E2SHB 1738, section 53(10) states that the authority "shall adopt any rules it deems necessary to implement this section" dealing with hearing rights. Further, in section 130, the bill states that "this act is necessary for the *immediate* preservation of the public peace, health, or safety of the state government and its existing public institution, and takes effect July 1, 2011. Delaying this adoption, could jeopardize the department's ability to provide general hearing rules and procedures that apply to the resolution of disputes between medical assistance clients and the various medical services programs established under chapter 74.09 RCW.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 137, Amended 0, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 137, Amended 0, Repealed 1.

Date Adopted: June 20, 2011.

Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 11-16 issue of the Register.

**WSR 11-14-040**

**EMERGENCY RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Medicaid Purchasing Administration)

[Filed June 28, 2011, 11:16 a.m., effective July 1, 2011]

Effective Date of Rule: July 1, 2011.

Purpose: To establish hearing rules related to medicaid funded services to implement the requirements of 2E2SHB 1738, section 53, effective July 1, 2011, for the transition of the single state medicaid agency to the Washington health care authority.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-526-2610.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: 2E2SHB 1738, section 53.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that

**WSR 11-14-047**

**EMERGENCY RULES**

**STATE BOARD FOR COMMUNITY  
AND TECHNICAL COLLEGES**

[Filed June 28, 2011, 1:42 p.m., effective July 1, 2011]

Effective Date of Rule: July 1, 2011.

Purpose: To adopt rules implementing legislation (ESH [ESHB] 1981) adopted by the 2011 legislative affecting higher education retirement plans.

Citation of Existing Rules Affected by this Order: Amending WAC 131-16-010 through 131-16-066.

Statutory Authority for Adoption: Chapter 28B.50 RCW.

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

Reasons for this Finding: Current rules conflicted with statute language adopted by the 2011 legislature and effective July 1, 2011.

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

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

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

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

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

Date Adopted: June 23, 2011.

DelRae Oderman  
Executive Assistant

**AMENDATORY SECTION** (Amending WSR 10-22-073, filed 10/29/10, effective 11/29/10)

**WAC 131-16-011 Definitions.** For the purpose of WAC 131-16-010 through 131-16-066, the following definitions shall apply:

(1) "Participant" means any employee who is eligible to participate in the plan (~~and who, as a condition of employment, on and after January 1, 1997, shall participate in the plan upon initial eligibility~~).

(2) "Supplemental retirement benefit" means payments, as calculated in accordance with WAC 131-16-061, to an eligible retired participant in the plan prior to July 1, 2011, or designated beneficiary whose retirement benefits provided by the plan do not attain the level of the retirement benefit goal established by WAC 131-16-015.

(3) "Year of full-time service" means retirement credit based on full-time employment or the equivalent thereof based on part-time employment in an eligible position for a period of not less than five months in any fiscal year during which contributions to TIAA-CREF were made by both the participant and a participating employer or a Washington public higher education institution or any year or fractional year of prior service in a Washington public retirement system while employed at a participating employer or a Washington public higher education institution: Provided, That the participant will receive a pension benefit from such other retirement system and that not more than one year of full-time service will be credited for service in any one fiscal year.

(4) "Fiscal year" means the period beginning on July 1 of any calendar year and ending on June 30 of the succeeding calendar year.

(5) "Average annual salary" means the amount derived when the salary received during the two consecutive highest salaried fiscal years of full-time service for which contributions to TIAA-CREF were made by both the participant and a participating employer or a Washington public higher education institution is divided by two.

(6) "Plan retirement benefit" means the amount of annual retirement income derived from a participant's accumulated

balances including dividends at the time of retirement: Provided, That solely for the purpose of calculating a potential supplemental retirement benefit, such amount shall be adjusted to meet the assumptions set forth in WAC 131-16-061(2).

(7) "Salary" means all remuneration received by the participant from the participating employer, including summer quarter compensation, extra duty pay, leave stipends, and grants made by or through the participating employer; but not including any severance pay, early retirement incentive payment, remuneration for unused sick or personal leave, or remuneration for unused annual or vacation leave in excess of the amount payable for thirty days or two hundred forty hours of service.

(8) "Designated beneficiary" means the surviving spouse of the retiree or, with the consent of such spouse, if any, such other person or persons as shall have an insurable interest in the retiree's life and shall have been nominated by written designation duly executed and filed with the retiree's participating employer.

(9) "State board" means the state board for community and technical colleges as created in RCW 28B.50.050.

(10) "Appointing authority" means a participating employer's governing board or the designees of such boards.

(11) "Plan" means the retirement plan sponsored by the state board and funded by TIAA-CREF.

(12) "Participating employer" means an educational organization or agency operated by the state of Washington which is the employer of one or more eligible employees or former eligible employees and which is an employing entity designated by the state board to participate in the plan. The participating employers are listed in Appendix A of the plan document.

**AMENDATORY SECTION** (Amending WSR 05-24-051, filed 12/1/05, effective 1/1/06)

**WAC 131-16-015 Retirement benefit goal established.** A retirement benefit goal is established for use in calculating eligibility for a supplemental benefit. Subject to the provisions of WAC 131-16-061, the retirement benefit goal for participants in the plan prior to July 1, 2011, is to provide participants at age sixty-five having twenty-five years of full-time service a minimum annual retirement income, exclusive of Federal Old Age Survivors Insurance benefits, equivalent to fifty percent of their average annual salary.

**AMENDATORY SECTION** (Amending WSR 10-22-073, filed 10/29/10, effective 11/29/10)

**WAC 131-16-021 Employees eligible to participate in the retirement plan.** (1) Eligibility to participate in the plan is limited to persons who hold appointments to participating employer staff positions as full-time or part-time faculty members, administrators or professional staff exempt from the provisions of chapter 41.06 RCW and, effective July 1, 1999, are assigned a cumulative total of at least fifty percent of a full-time workload as defined by the collective bargaining agreement and/or the appointing authority at one or more participating employers for at least two consecutive college quarters or its equivalent. (Part-time faculty workload is cal-

culated in accordance with RCW 28B.50.489 and 28B.50.-4891.) Effective July 1, 2011, otherwise eligible employees who have retired or are eligible to retire from a public employees' retirement system listed in RCW 41.50.030 are prohibited from participation in the plan.

(2) Participation in the plan is also permitted for current and former employees of participating employers who are on leave of absence or who have terminated employment by reason of permanent disability and who are receiving a salary continuation insurance benefit through a plan made available by the state of Washington: Provided, That such noncontributory participation shall not be creditable toward the number of years of full-time service utilized in calculating eligibility for supplemental retirement benefits pursuant to WAC 131-16-061.

(3) Optional participation in tax-deferred annuities other than this qualified plan as offered by participating employers is permitted consistent with the Internal Revenue Code: Provided, That the provisions of WAC 131-16-015, 131-16-050, and 131-16-061 shall not apply in such cases. Optional tax-deferred annuities are provided through a salary reduction agreement between the employee and employer. There is no employer contribution for optional tax-deferred annuities.

(4) An employee who moves from an ineligible to an eligible position for the same appointing authority may become a participant by so electing in writing within ~~((six months))~~ thirty days following such move.

(5) A participant who moves from an eligible position to a classified position for the same appointing authority may continue to be a participant by so electing within ~~((six months))~~ thirty days following such move.

(6) As specified in RCW 28B.10.400, participation in the plan by employees of the higher education coordinating board is limited to eligible employees who have contributed premiums to a similar qualified plan and who are not receiving or accruing a retirement allowance under Title 41 RCW or chapter 43.43 RCW.

(7) Participants shall continue participation regardless of the proportion of full-time duties assigned, except as otherwise provided in this section, as long as continuously employed by a participating employer. The participating employer shall notify, in writing, all newly hired employees of their potential right to participate. A participating employee, who changes employers without a break in service, shall have the responsibility to notify in writing the new participating employer of his or her eligibility. In no case will there be a requirement for retroactive contributions if an employee fails to inform his or her participating employer about eligibility previously established with another participating employer. For the purposes of determining eligibility, spring and fall quarters shall be considered as consecutive periods of employment.

~~((8) As a condition of employment, all employees who become eligible on and after January 1, 1997, shall participate in this plan upon initial eligibility. Notwithstanding this provision, all eligible new employees who at the time of employment are members of the Washington state teachers retirement system or the Washington public employees retirement system may participate as provided in WAC 131-16-031.))~~

AMENDATORY SECTION (Amending WSR 10-22-073, filed 10/29/10, effective 11/29/10)

**WAC 131-16-031 Participation in the plan.** (1) Except as provided in this chapter, participation in the plan is required of all otherwise eligible new employees(~~(= Provided, That))~~, provided that:

(a) Any such new employee, who at the time of employment is a member of the Washington state teachers retirement system (TRS) or the Washington public employees retirement system (PERS), and whose employment meets the requirements of an "eligible position" as defined by such plan, may irrevocably elect to retain such membership ((~~or, if not vested in that system, retain membership until vesting occurs and then irrevocably elect to participate in the plan~~)) within thirty days of meeting the plans eligibility criteria. Failure to make an election after thirty days will result in such new employee being placed into the state board retirement plan.

(b) Any such new employee, not already a member of TRS or PERS, may irrevocably elect to establish membership in TRS Plan 3 or PERS Plan 3 provided the employee's position meets the requirements of an "eligible position" as defined by such plan. Failure to make an election after thirty days will result in such new employee being placed into the state board retirement plan.

(2) Employees who establish plan eligibility in accordance with WAC 131-16-021 and who, through concurrent employment with another employer, are active Washington public employee retirement system (PERS) members are required to so advise the participating employer and shall be given the following options:

(a) To participate in the state board retirement plan in accordance with chapter 131-16 WAC, forgoing active PERS membership (contributions and service credit) with their other employer; or

(b) To continue active participation in PERS based upon their employment with the other public employer; forgoing participation in the state board retirement plan.

Failure to make an election within thirty days of notification results in the employee being placed in the plan. The participating employer is required to advise the department of retirement systems (DRS) of a PERS member's participation in the plan, whether through election or default. It shall be the employee's responsibility to notify the other employer if he or she elects to participate in the plan. The employee will notify his or her participating employer should the employee cease to be an active PERS member. This irrevocable election remains in effect as long as the employee is actively participating in a PERS plan and is required because RCW 41.40.-023(4) prohibits PERS members from simultaneously participating in two state retirement plans.

(3) Any current active participant of the plan who becomes an active member of PERS based on employment with another PERS employer is required to notify his or her participating employer. The employee will be provided the options listed in subsection (2) of this section and the participating employer will follow through accordingly.

AMENDATORY SECTION (Amending WSR 10-22-073, filed 10/29/10, effective 11/29/10)

**WAC 131-16-061 Supplemental retirement benefits.**

(1) A participant is eligible to receive supplemental retirement benefit payments, provided the amount of the supplemental retirement benefit as calculated in accordance with this section is a positive amount, if at the time of retirement the participant ((is):

(a) Participated in the plan prior to July 1, 2011; and

(b) Is at least age sixty-two; and

(c) Has ten years of full-time service in the plan at a Washington public institution of higher education(~~(= Provided, That the amount of the supplemental retirement benefit, as calculated in accordance with the provisions of this section, is a positive amount))~~.

(2) Subject to the provisions of subdivisions (c), (d), and (e) of this subsection, the annual amount of supplemental retirement benefit payable to a participant upon retirement is the excess, if any, when the value determined in subdivision (b) is subtracted from the value determined in subdivision (a), as follows:

(a) The lesser of fifty percent of the participant's average annual salary or two percent of the average annual salary multiplied by the number of years of full-time service; provided that if the participant did not elect to contribute ten percent of salary beginning July 1, 1974, or if later, after attainment of age fifty, service for such periods shall be calculated at the rate of one and one-half percent instead of two percent.

(b) The combined retirement benefit from the TIAA-CREF annuity and any other Washington state sponsored retirement plan that the participant would receive in the first month of retirement multiplied by twelve: Provided, That the state board retirement plan benefit shall be calculated on the following assumptions:

(i) After July 1, 1974, fifty percent of the combined contributions were made to the TIAA traditional annuity and fifty percent to the CREF stock account during each year of full-time service: Provided, That benefit calculations related to contributions made prior to July 1, 1974, shall be computed on the basis of actual allocations between TIAA and CREF; and

(ii) The full TIAA-CREF annuity accumulations, including all dividends payable by TIAA Traditional Annuity and further including the amounts, if any, paid in a single sum under the retirement transition benefit option, were fully settled on a joint and two-thirds survivorship option with a ten-year guarantee, using actual ages of retiree and spouse, but not exceeding a five-year difference; except that for unmarried participants the TIAA Traditional Annuity accumulations, including dividends, were settled on an installment refund option and the CREF Stock Account accumulations were settled on a life annuity with ten-year guarantee option, all to be based on TIAA-CREF estimates at the time of retirement; and

(iii) Annuity benefits purchased by premiums paid other than as a participant in a Washington public institution of higher education retirement plan shall be excluded.

(iv) For the purposes of this calculation, the assumptions applied to the plan accumulation settlement shall also apply to settlement of the benefit from any other retirement plan.

(c) The amount of supplemental retirement benefit for a participant who has not attained age sixty-five at retirement is the amount calculated in subsection (2) of this section reduced by one-half of one percent for each calendar month remaining until age sixty-five: Provided, That the supplemental retirement benefit for an otherwise qualified participant retired for reason of health or permanent disability shall not be so reduced.

(d) Any portion of participant's plan accumulation paid to a participant's spouse upon dissolution of a marriage shall be included in any subsequent calculation of supplemental retirement benefits just as if these funds had remained in the participant's plan account.

(e) The selection of a retirement option other than the joint and two-thirds survivorship with ten-year guarantee shall not alter the method of calculating the supplemental retirement benefit; however, if the participant's combined plan retirement benefit and calculated supplemental retirement benefit exceeds fifty percent of the participant's average annual salary, the supplemental retirement benefit shall be reduced so that the total combined benefits do not exceed fifty percent of average annual salary.

(3) The payment of supplemental retirement benefits shall be consistent with the following provisions:

(a) Supplemental retirement benefits shall be paid in equal monthly installments, except that if such monthly installments should be less than ten dollars, such benefit payments may be paid at longer intervals as determined by the state board.

(b) Supplemental retirement benefit payments will continue for the lifetime of the retired participant; however, prior to retirement, a participant may choose to provide for the continuation of supplemental retirement benefit payments, on an actuarially equivalent reduced basis, to his or her spouse or designated beneficiary after the retiree's death. Notification of such choice shall be filed in writing with the state board and shall be irrevocable after retirement. If such option is chosen, the supplemental retirement benefit payments shall be in the same proportion as any plan survivor annuity option potentially payable to and elected by the participant. If a designation of a survivor's option is not made and the participant dies after attaining age sixty-two but prior to retirement, any supplemental benefit payable shall be based on the two-thirds benefit to survivor option.

(c) Prior to making any supplemental benefit payments, the state board shall obtain a document signed by the participant and spouse, if any, or designated beneficiary acknowledging the supplemental retirement benefit option chosen by the participant.

(4) A retired participant who is reemployed shall continue to be eligible to receive retirement income benefits, except that the supplemental retirement benefit shall not continue during periods of employment for more than forty percent of full-time or seventy hours per month or five months duration in any fiscal year. Retirement contributions shall not be made from the salary for such employment, unless the individual once again becomes eligible to participate under the provisions of WAC 131-16-021.

**WSR 11-14-057**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 11-144—Filed June 29, 2011, 4:39 p.m., effective July 1, 2011]

Effective Date of Rule: July 1, 2011.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:  
 Repealing WAC 232-28-61900P; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Two fish-marking programs are currently being conducted by Washington department of fish and wildlife and the Yakama Nation that will study survival and migration patterns within the Columbia River system. The success of these studies will be dependent upon the angler's ability to recognize these tags and to release the fish back into the river immediately. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

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

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

Date Adopted: June 29, 2011.

Joe Stohr  
 for Philip Anderson  
 Director

**NEW SECTION**

**WAC 232-28-61900P Exceptions to statewide rules—Columbia, Similkameen and Okanogan rivers.**

Notwithstanding the provisions of WAC 232-28-619, effective July 1 through October 15, 2011, all Chinook and sockeye salmon with external floy (anchor) tags must be released if caught in the following waters:

- (1) Columbia River from Priest Rapids Dam upstream to Highway 17 Bridge in Bridgeport.
- (2) Similkameen River.
- (3) Okanogan River.

**REPEALER**

The following section of the Washington Administrative Code is repealed effective October 16, 2011:

WAC 232-28-61900P	Exceptions to statewide rules—Columbia, Similkameen and Okanogan rivers.
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**WSR 11-14-058**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 11-139—Filed June 29, 2011, 5:04 p.m., effective September 1, 2011]

Effective Date of Rule: September 1, 2011.

Purpose: As a result of recently adopted Washington state legislation that amended RCW 77.32.350, repeal WAC 220-55-132 Migratory bird validations and stamps.

Citation of Existing Rules Affected by this Order:  
 Repealing WAC 220-55-132.

Statutory Authority for Adoption: Sections 2 and 7, chapter 339, Laws of 2011.

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: Among a variety of changes made to fees and licensing requirements for fishing and hunting, the 2011 legislature modified the licensing requirements for hunting waterfowl and purchasing collector stamps (RCW 77.32.350). These legislative changes (sections 2 and 7 of SSB 5385) become effective September 1, 2011. Included in these changes was a budget reduction associated with eliminating the sale and distribution of stamps (artwork).

This order repeals an existing rule that has been rendered obsolete by the adoption of new laws. The department will begin the normal rule-making process to repeal this rule within thirty days. This rule needs to be repealed on September 1, and there is insufficient time to adopt a permanent rule by September 1.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 1.

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

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



**WSR 11-14-061**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 11-143—Filed June 30, 2011, 9:01 a.m., effective June 30, 2011,  
9:01 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 220-52-03000J and 220-52-03000K; and  
amending WAC 220-52-030.

Statutory Authority for Adoption: RCW 77.12.047 and  
77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Based on historical catches and on-site inspection, there are adequate clams to support an extension for the commercial razor clam harvesters. Biotxin levels currently fall below the regulatory threshold. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

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

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

Date Adopted: June 30, 2011.

Joe Stohr  
for Philip Anderson  
Director

NEW SECTION

**WAC 220-52-03000K Commercial razor clams.** Notwithstanding the provisions of WAC 220-52-030, effective immediately through 11:59 p.m. July 19, 2011, a person may dig for and possess razor clams for commercial purposes only in those waters and detached beaches of Razor Clam Area 1 lying south of the Willapa Bay Ship Channel, west of Ellen Sands, and north of the tip of Leadbetter point; and in those waters and attached beaches north of the line of boundary markers consisting of four fluorescent orange posts near the northern tip of Leadbetter Point\*; all other areas remain closed.

\*The GPS coordinates for the eastern - and western most posts are:

East: N 46° 39.554

W 124° 03.588

West: N 46° 39.515

W 124° 03.830

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-03000J Commercial razor clams.  
(11-94)

The following section of the Washington Administrative Code is repealed effective July 20, 2011:

WAC 220-52-03000K Commercial razor clams.

**WSR 11-14-062**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Medicaid Purchasing Administration)  
[Filed June 30, 2011, 9:03 a.m., effective July 1, 2011]

Effective Date of Rule: July 1, 2011.

Purpose: Upon approval from the Centers for Medicare and Medicaid Services (CMS) of the department's state plan amendment, the department will implement a new alternative payment methodology for federally qualified health centers (FQHCs) and rural health clinics (RHCs) for services provided on and after July 1, 2011.

Citation of Existing Rules Affected by this Order:  
Amending WAC 388-548-1400 and 388-549-1400.

Statutory Authority for Adoption: RCW 74.08.090.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: The implementation of these emergency rules are necessitated by the level of appropriations made by the legislature in 2ESHB 1087, for services provided by FQHCs and RHCs as of July 1, 2011, and HB 1248 which extends the allowance of emergency rule filing through fiscal year 2013. Delaying this adoption could jeopardize

ardize the state's ability to provide mandatory medicaid services to a significant number of DSHS clients.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: June 30, 2011.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-09-002, filed 4/7/10, effective 5/8/10)

**WAC 388-548-1400 Federally qualified health centers—Reimbursement and limitations.** (1) ~~((Effective))~~ For services provided during the period beginning January 1, 2001, and ending December 31, 2008, the department's payment methodology for federally qualified health centers (FQHC) ((conforms to 42 U.S.C. 1396a(bb). As set forth in 42 U.S.C. 1396a (bb)(2) and (3), all FQHCs that provide services on January 1, 2001, and through December 31, 2008, are reimbursed on)) was a prospective payment system (PPS) as authorized by 42 U.S.C. 1396a (bb)(2) and (3).

(2) ~~((Effective))~~ For services provided beginning January 1, 2009, FQHCs have the choice to ((continue being)) be

$\text{Specific FQHC Base Encounter Rate} = \frac{(1999 \text{ Rate} \times 1999 \text{ Encounters}) + (2000 \text{ Rate} \times 2000 \text{ Encounters})}{(1999 \text{ Encounters} + 2000 \text{ Encounters}) \text{ for each FQHC}}$
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(c) Beginning in calendar year 2002 and any year thereafter, the encounter rate is increased by the MEI for primary care services, and adjusted for any increase or decrease within the ~~((center's))~~ FQHC's scope of services.

(5) The department calculates the FQHC's APM encounter rate for services provided during the period beginning January 1, 2009, and ending April 6, 2011, as follows:

(a) ~~((Beginning January 1, 2009;))~~ The APM utilizes the FQHC base encounter rates, as described in WAC 388-548-1400 (4)(b).

~~((i))~~ (b) The base rates are adjusted to reflect any valid changes in scope of service between years 2002 and 2009.

~~((ii))~~ (c) The adjusted base rates are then inflated by each annual percentage, from years 2002 through 2009, of the APM index. The result is the year 2009 APM rate for each FQHC that chooses to be reimbursed under the APM.

(6) Upon approval from the federal centers for medicare and medicaid services (CMS) of the department's state plan amendment, the department calculates the FQHC's APM encounter rate for services provided during the period begin-

reimbursed under the PPS or to be reimbursed under an alternative payment methodology (APM), as authorized by 42 U.S.C. 1396a (bb)(6). As required by 42 U.S.C. 1396a (bb)(6), payments made under the APM ~~((must))~~ will be at least as much as payments that would have been made under the PPS.

(3) The department calculates the FQHC's PPS encounter rate as follows:

(a) Until the FQHC's first audited cost report is available, the department pays an average encounter rate of other similar FQHCs within the state, otherwise known as an interim rate;

(b) Upon availability of the FQHC's first audited medicaid cost report, the department sets the ~~((clinic's))~~ FQHC's encounter rate at one hundred percent of its total reasonable costs as defined in the cost report. The FQHC receives this rate for the remainder of the calendar year during which the audited cost report became available. Thereafter, the encounter rate is then inflated each January 1 by the medicare economic index (MEI) for primary care services.

(4) For FQHCs in existence during calendar years 1999 and 2000, the department sets the payment prospectively using a weighted average of one hundred percent of the ~~((center's))~~ FQHC's total reasonable costs for calendar years 1999 and 2000 and adjusted for any increase or decrease in the scope of services furnished during the calendar year 2001 to establish a base encounter rate.

(a) The department adjusts a PPS base encounter rate to account for an increase or decrease in the scope of services provided during calendar year 2001 in accordance with WAC 388-548-1500.

(b) The PPS base encounter rates are determined using audited cost reports, and each year's rate is weighted by the total reported encounters. The department does not apply a capped amount to these base encounter rates. The formula used to calculate the base encounter rate is as follows:

ning April 7, 2011, and ending June 30, 2011, as described in this section. Pending state plan approval by CMS, the department will continue to pay FQHCs at the encounter rate described in subsection (5) of this section. For all payments made for services between April 7, 2011, and the date CMS approves the state plan amendment, the department will recoup from FQHCs any amount paid in excess of the encounter rate established in this section. The APM utilizes each FQHC's PPS rate for each calendar year and inflates it by five percent.

~~((b) The department will ensure that the APM pays an amount that is at least equal to the PPS, the annual inflator used to increase the APM rates is the greater of the APM index or the MEI.~~

~~((c) The department will periodically rebase the APM rates. The department will not rebase rates determined under the PPS.))~~

~~((6))~~ (7) Upon approval from CMS of the department's state plan amendment, for services provided on and after July 1, 2011, each FQHC will have the choice of receiving either

its PPS rate, as determined under the method described in subsection (3) of this section or a rate determined under a revised APM.

(a) For all payments made for services between July 1, 2011, and the date CMS approves the state plan amendment, the department will recoup from FQHCs any amount in excess of the encounter rate established in this section.

(b) The revised APM will be as follows:

(i) For FQHCs that rebased their rate effective January 1, 2010, their allowed cost per visit during the cost report year inflated by the cumulative percentage increase in the MEI between the cost report year and 2011.

(ii) For FQHCs that did not rebase in 2010, their rate is based on their PPS base rate from 2001 (or subsequent year for FQHCs receiving their initial FQHC designation after 2002) inflated by the cumulative percentage increase in the IHS Global Insight index from the base year through calendar year 2008 and the cumulative increase in the MEI from 2008 through 2011. The rates will be inflated by MEI effective January 1, 2012, and each January 1 thereafter.

(c) When the APM methodology is in effect, the state will periodically rebase the FQHC encounter rates using the FQHC cost reports and other relevant data. Rebasings will be done only for FQHCs that are reimbursed under the APM.

(d) The department will ensure that the payments made under the APM are at least equal to the payments that would be made under the PPS.

(8) The department limits encounters to one per client, per day except in the following circumstances:

(a) The visits occur with different healthcare professionals with different specialties; or

(b) There are separate visits with unrelated diagnoses.

((7)) (9) FQHC services and supplies incidental to the provider's services are included in the encounter rate payment.

((8)) (10) Payments for nonFQHC services provided in an FQHC are made on a fee-for-service basis using the department's published fee schedules. NonFQHC services are subject to the coverage guidelines and limitations listed in chapters 388-500 through 557 WAC.

((9)) (11) For clients enrolled with a managed care organization (MCO), covered FQHC services are paid for by that plan.

((10)) (12) Only clients enrolled in Title XIX (medicaid) or Title XXI (CHIP) are eligible for encounter or enhancement payments. The department does not pay the encounter rate or the enhancement rate for clients in state-only medical programs. Services provided to clients in state-only medical programs are considered fee-for-service regardless of the type of service performed.

((11)) (13) For clients enrolled with ~~(a managed care organization (MCO))~~ an MCO, the department pays each FQHC a supplemental payment in addition to the amounts paid by the MCO. The supplemental payments, called enhancements, are paid in amounts necessary to ensure compliance with 42 U.S.C. 1396a (bb)(5)(A).

(a) The FQHCs receive an enhancement payment each month for each managed care client assigned to them by an MCO.

(b) To ensure that the appropriate amounts are paid to each FQHC, the department performs an annual reconciliation of the enhancement payments. For each FQHC, the department will compare the amount actually paid to the amount determined by the following formula: ~~((Managed))~~ managed care encounters times encounter rate) less FFS equivalent of MCO services. If the ~~((center))~~ FQHC has been overpaid, the department will recoup the appropriate amount. If the ~~((center))~~ FQHC has been underpaid, the department will pay the difference.

AMENDATORY SECTION (Amending WSR 10-09-030, filed 4/13/10, effective 5/14/10)

**WAC 388-549-1400 Rural health clinics—Reimbursement and limitations.** (1) ~~((Effective))~~ For services provided during the period beginning January 1, 2001, and ending December 31, 2008, the department's payment methodology for rural health clinics (RHC) ~~((conforms to))~~ was a prospective payment system (PPS) as authorized by 42 USC 1396a (bb)(2) and (3). ~~((RHCs that provide services on January 1, 2001 through December 31, 2008 are reimbursed on a prospective payment system (PPS).))~~

~~((Effective))~~ (2) For services provided beginning January 1, 2009, RHCs have the choice to ~~((continue being))~~ be reimbursed under the PPS or be reimbursed under an alternative payment methodology (APM), as authorized by 42 USC 1396a (bb)(6). As required by 42 ~~((U.S.C.))~~ USC 1396a (bb)(6), payments made under the APM ~~((must))~~ will be at least as much as payments that would have been made under the PPS.

~~((2))~~ (3) The department calculates the RHC's PPS encounter rate for RHC core services as follows:

(a) Until the RHC's first audited medicare cost report is available, the department pays an average encounter rate of other similar RHCs (whether the RHC is classified as hospital-based or free-standing) within the state, otherwise known as an interim rate.

(b) Upon availability of the RHC's audited medicare cost report, the department sets the ~~((interim's))~~ RHC's encounter rate at one hundred percent of its costs as defined in the cost report divided by the total number of encounters the ~~((interim))~~ RHC has provided during the time period covered in the audited cost report. The RHC will receive this rate for the remainder of the calendar year during which the audited cost report became available. The encounter rate is then inflated each January 1 by the medicare economic index (MEI) for primary care services.

~~((3))~~ (4) For RHCs in existence during calendar years 1999 and 2000, the department sets the payment prospectively using a weighted average of one hundred percent of the ~~((interim's))~~ RHC's total reasonable costs for calendar years 1999 and 2000 and adjusted for any increase or decrease in the scope of services furnished during the calendar year 2001 to establish a base encounter rate.

(a) The department adjusts a PPS base encounter rate to account for an increase or decrease in the scope of services provided during calendar year 2001 in accordance with WAC 388-549-1500.

(b) The PPS base encounter rates are determined using medicare's audited cost reports and each year's rate is weighted by the total reported encounters. The department

does not apply a capped amount to these base encounter rates. The formula used to calculate the base encounter rate is as follows:

$$\text{Specific RHC Base Encounter Rate} = \frac{(1999 \text{ Rate} \times 1999 \text{ Encounters}) + (2000 \text{ Rate} \times 2000 \text{ Encounters})}{(1999 \text{ Encounters} + 2000 \text{ Encounters}) \text{ for each RHC}}$$

(c) Beginning in calendar year 2002 and any year thereafter, the encounter rate is increased by the MEI and adjusted for any increase or decrease in the ~~((clinic's))~~ RHC's scope of services.

~~((4))~~ (5) The department calculates the RHC's APM encounter rate for services provided during the period beginning January 1, 2009, and ending April 6, 2011, as follows:

(a) ~~((Beginning January 1, 2009;))~~ The APM utilizes the RHC base encounter rates as described in WAC 388-549-1400 ~~((3(b))~~(4)(b).

(b) The base rates are inflated by each annual percentage, from years 2002 through 2009, of the APM index.

(c) The result is the year 2009 APM rate for each RHC that chooses to be reimbursed under the APM.

(6) Upon approval from the federal centers for medicare and medicaid services (CMS) of the department's state plan amendment, the department calculates the RHC's APM encounter rate for services provided during the period beginning April 7, 2011, and ending June 30, 2011, as described in this section. Pending state plan approval by CMS, the department will continue to pay RHCs at the encounter rate described in subsection (5) of this section. For all payments made for services between April 7, 2011, and the date CMS approves the state plan amendment, the department will recoup from RHCs any amount paid in excess of the encounter rate established in this section. The APM utilizes each RHC's PPS rate for each calendar year and inflates it by five percent.

~~((b) To ensure that the APM pays an amount that is at least equal to the PPS in accordance with 42 USC 1396a (bb)(6), the annual inflator used to increase the APM rates is the greater of the APM index or the MEI.~~

(e) ~~The department periodically rebases the APM rates. The department does not rebase rates determined under the PPS.~~

~~((d) When rebasing the APM encounter rates, the department applies a productivity standard to the number of visits performed by each practitioner group (physicians and mid-levels) to determine the number of encounters to be used in each RHC's rate calculation. The productivity standards are determined by reviewing all available RHC cost reports for the rebasing period and setting the standards at the levels necessary to allow ninety five percent of the RHCs to meet the standards. The encounter rates of the clinics that meet the standards are calculated using each clinic's actual number of encounters. The encounter rates of the other five percent of clinics are calculated using the productivity standards. This process is applied at each rebasing, so the actual productivity standards may change each time encounter rates are rebased.))~~

~~((5))~~ (7) Upon approval from CMS of the department's state plan amendment, for services provided on and after July 1, 2011, each RHC will have the choice of receiving either its PPS rate, as determined under the method described in sub-

section (3) of this section, or a rate determined under a revised APM.

(a) For all payments made for services between July 1, 2011, and the date CMS approves the state plan amendment, the department will recoup from RHCs any amount paid in excess of the encounter rate established in this section.

(b) The revised APM will be as follows:

(i) For RHCs that rebased their rate effective January 1, 2010, their allowed cost per visit during the cost report year inflated by the cumulative percentage increase in the MEI between the cost report year and 2011.

(ii) For RHCs that did not rebase in 2010, their rate is based on their PPS base rate from 2002 (or subsequent year for RHCs receiving their initial RHC designation after 2002) inflated by the cumulative percentage increase in the IHS Global Insight index from the base year through calendar year 2008 and the cumulative increase in the MEI from 2008 through 2011. The rate will be inflated by the MEI effective January 1, 2012, and each January 1 thereafter.

(c) When the APM methodology is in effect, the state will periodically rebase the RHC encounter rate using the RHC cost reports and other relevant data. Rebasing will be done only for RHCs that are reimbursed under the APM.

(d) The department will ensure that the payments made under the APM are at least equal to the payments that would be made under the PPS.

(8) The department pays for one encounter, per client, per day except in the following circumstances:

(a) The visits occur with different healthcare professionals with different specialties; or

(b) There are separate visits with unrelated diagnoses.

~~((6))~~ (9) RHC services and supplies incidental to the provider's services are included in the encounter rate payment.

~~((7))~~ (10) Payments for non-RHC services provided in an RHC are made on a fee-for-service basis using the department's published fee schedules. Non-RHC services are subject to the coverage guidelines and limitations listed in chapters 388-500 through 388-557 WAC.

~~((8))~~ (11) For clients enrolled with a managed care organization (MCO), covered RHC services are paid for by that plan.

~~((9))~~ (12) The department does not pay the encounter rate or the enhancements for clients in state-only programs. Services provided to clients in state-only programs are considered fee-for-service, regardless of the type of service performed.

~~((10))~~ (13) For clients enrolled with ~~((a managed care organization (MCO)))~~ an MCO, the department pays each RHC a supplemental payment in addition to the amounts paid by the MCO. The supplemental payments, called enhancements, are paid in amounts necessary to ensure compliance with 42 USC 1396a (bb)(5)(A).

(a) The RHCs receive an enhancement payment each month for each managed care client assigned to them by an MCO.

(b) To ensure that the appropriate amounts are paid to each RHC, the department performs an annual reconciliation of the enhancement payments. For each RHC, the department will compare the amount actually paid to the amount determined by the following formula: (managed care encounters times encounter rate) less fee-for-service equivalent of MCO services. If the ~~((elimie))~~ RHC has been overpaid, the department will recoup the appropriate amount. If the ~~((elimie))~~ RHC has been underpaid, the department will pay the difference.

**WSR 11-14-064**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed June 30, 2011, 9:20 a.m., effective June 30, 2011, 9:20 a.m.]

Effective Date of Rule: Immediately.

Purpose: The division of child support (DCS) is filing this emergency amendment to strike subsection (4) of WAC 388-14A-4200 because we believe that subsection (4) goes beyond the intent of RCW 26.18.190, the statute which the rule is meant to implement. This amendment qualifies for emergency rule making because subsection (4) of the current rule does not allow DCS to give credit to a noncustodial parent (NCP) for dependent disability payments paid on the NCP's behalf for his or her children unless the payments are made to the custodial payment or the state. RCW 26.18.190 does not contain this limitation.

The rule-making hearing for the permanent rule is scheduled for June 21, 2011. DCS adopted an emergency rule under WSR 11-07-073 to make this change effective as of March 22, 2011. The emergency rule expires on July 20, 2011. Under RCW 34.05.380, a *Rule-making Order* is effective thirty-one days after it is filed, unless a later date is required by statute or specified in the order of adoption. DCS will need to file a second emergency rule because the CR-103P cannot be filed by the DSHS rules and policies assistance unit (RPAU) until June 22, 2011, the day after the scheduled rule-making hearing. The earliest possible date when the permanent rule can be final is July 22, and in our experience it can take several days to process the filing of the CR-103P.

Citation of Existing Rules Affected by this Order: Amending WAC 388-14A-4200.

Statutory Authority for Adoption: RCW 26.18.190, 26.23.035, 74.08.090, and 74.20A.055.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This amendment qualifies for emergency rule making because subsection (4) of the current rule does not allow DCS to give credit to a noncustodial parent for dependent disability payments paid on the NCP's behalf for his or her children unless the payments are made to the custodial payment or the state. RCW 26.18.190 does not contain this limitation.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: June 24, 2011.

Katherine I. Vasquez  
Rules Coordinator

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

**WAC 388-14A-4200 Do I get credit for dependent disability payments paid on my behalf to my children?** (1) When the department of labor and industries or a self-insurer pays compensation under chapter 51.32 RCW on behalf of or on account of the child or children of a noncustodial parent (NCP), the division of child support (DCS) treats the amount of compensation the department or self-insurer pays on behalf of the child or children as if the NCP paid the compensation toward the NCP's child support obligations.

(2) When the Social Security administration pays Social Security disability dependency benefits, retirement benefits, or survivors insurance benefits on behalf of or on account of the child or children of an NCP who is a disabled person, a retired person, or a deceased person, DCS treats the amount of benefits paid for the child or children as if the NCP paid the benefits toward the NCP's child support obligation for the period for which benefits are paid.

(3) Under no circumstances does the NCP have a right to reimbursement of any compensation paid under subsection (1) or (2) of this section.

~~((4) The NCP gets credit only for payments made to the custodial parent or the state. The NCP does not get credit for dependent payments made to the NCP.))~~

**WSR 11-14-066**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**EARLY LEARNING**

[Filed June 30, 2011, 9:56 a.m., effective July 1, 2011]

Effective Date of Rule: July 1, 2011.

Purpose: Amending sections of chapter 170-290 WAC, Working connections and seasonal child care subsidy programs, to comply with section 11 of recently enacted ESSB 5921, enrolled as chapter 42, Laws of 2011 1st sp. sess. that takes effect on July 1, 2011. As a result, rules for the working connections child care (WCCC) and seasonal child care (SCC) programs are revised to:

- As a condition of receiving the department of early learning (DEL) child care subsidy benefits, require individuals who apply for or receive WCCC or SCC subsidies to seek department of social and health services (DSHS) child support enforcement services, unless the individual has good cause not to; and
- Provide a six-month eligibility period before a family receiving WCCC or SCC benefits must recertify his or her income eligibility, although families must continue to report changes provided in the rules. The six-month provision will apply so long as enrollment in WCCC or SCC are capped. The change does not affect WCCC families with a twelve-month eligibility period due to having a child enrolled in a head start, early head start or early childhood education and assistance program (ECEAP).

Citation of Existing Rules Affected by this Order: Amending WAC 170-290-0030, 170-290-0060, 170-290-0082, 170-290-3565, 170-290-3610, and 170-290-3660.

Statutory Authority for Adoption: RCW 43.215.060; chapter 43.215 RCW; section 501 (uncodified), chapter 265, Laws of 2006.

Other Authority: ESSB 5921 (chapter 42, Laws of 2011 1st sp. sess.); 2ESHB 1087 (chapter 50, Laws of 2011 1st sp. sess.); EHB 1248 (chapter 2, Laws of 2011 1st sp. sess.).

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: The legislature enacted ESSB 5921 to maintain compliance with and accountability for the federal temporary assistance for needy families (TANF) block grant requirements under the Personal Responsibility and Work Opportunity Act of 1996, and to further reduce costs for the state's WorkFirst program. (WorkFirst is the state's "welfare-to-work" program encompassing several state agencies and programs, including certain DEL child care subsidy programs.)

ESSB 5921 was adopted as a WorkFirst "redesign" measure to restructure the program for better efficiency, to reduce

fraud and to lower overall costs. According to the legislature's "2011-13 Operating Budget Overview - Second Engrossed Substitute House Bill (2ESHB) 1087," *"During fiscal year 2012 (July 1, 2011 through June 30, 2012) the WorkFirst programs are to be restructured and become performance based ... The budget also increases the number and visibility of fraud detection in public assistance programs through more staff and increased technology."*

The overview document goes on to describe savings estimated at \$62.9 million through TANF, WorkFirst and child care subsidy changes contained in ESSB 5921 and 2ESHB 1087:

**"TANF REDUCTIONS - \$62.9 MILLION SAVINGS:** The proposed budget makes several changes to the cash benefits program including: (1) Implementing an income eligibility test for a caregiver who is providing for a child outside of the child's home; and (2) applying the sixty-month time limit to any family where the parent is in the home. *Major child care reductions include: (1) Reduced child care for those whose WorkFirst participation is suspended; (2) moving to six-month certifications; and (3) requiring child support for WCCC participants.* WorkFirst savings is found through suspension of services and moving to performance-based contracts. The budget estimates an \$11.8 million ending fund reserve to pay for any unforeseen costs."

Section 11 of ESSB 5921 enacts two of the provisions noted in the budget overview document, by adding the following new subsections (2) and (3) to DEL's RCW 43.215.135:

*"(2) As a condition of receiving a child care subsidy or a working connections child care subsidy, the applicant or recipient must seek child support enforcement services from the department of social and health services, division of child support, unless the department finds that the applicant or recipient has good cause not to cooperate."*

*"(3) Except as provided in subsection (4) of this section, an applicant or recipient of a child care subsidy or a working connections child care subsidy is eligible to receive that subsidy for six months before having to recertify his or her income eligibility. The six-month certification provisions applies only if enrollment in the child care subsidy or working connections child care program are capped."*

The legislature appropriated funding and adopted provisions specifically for implementation of ESSB 5921 in the 2011-2013 Operating Budget Act, 2ESHB 1087. Also, under EHB 1248 (chapter 2, Laws of 2011 1st sp. sess.), the legislature extended the authority for agencies to adopt emergency rules to *"... implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012, or 2013 ..."*

This rule meets the requirements of office of financial management guidance regarding Executive Order 10-06 suspending noncritical rule making, but allowing rules to proceed that are *"required by state or federal law or required to maintain federally delegated or authorized programs;"* and *"necessary to manage budget shortfalls, maintain fund solvency, or for revenue generating activities."*

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or

Recently Enacted State Statutes: New 0, Amended 6, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 6, Repealed 0.

Date Adopted: June 30, 2011.

Elizabeth M. Hyde  
Director

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-0030 Consumers' responsibilities.**

When a ~~((consumer))~~ person applies for or receives WCCC benefits, the applicant or consumer must, as a condition of receiving those benefits:

(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 in WCCC approved activities. 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 the same late fees that are charged to other families, if the consumer pays a copayment late or picks up the child late;

(6) 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) 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) 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) 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) 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; and

(11) Seek child support enforcement services from the DSHS division of child support, unless DSHS finds that the applicant or consumer has good cause not to cooperate as defined under WAC 388-422-0020 or as provided in (a) of this subsection.

(a) For the purposes of this subsection, "good cause" also includes the following:

(i) The applicant or consumer has a current court order showing the child support amount ordered on behalf of the child who will receive the child care subsidy benefits;

(ii) The applicant or consumer already complies with child support enforcement services, either voluntarily or to meet other public assistance benefits requirements;

(iii) The applicants or consumers are married parents, or unmarried two-parent families with a child in common needing child care living in the same household;

(iv) The applicant or consumer is a single-parent family when the other parent is deceased;

(v) The applicant or consumer is a single-parent family when the other parent is incarcerated for one year or longer;

(vi) The applicants or consumers are both minor parents;

or  
(vii) The DSHS division of child support does not have jurisdiction over the child support case, such as for tribal child support cases or cases outside of the United States.

(b) Child support ordered on behalf of a child who will receive child care subsidy benefits does not affect the other children in the family who are not receiving child support. All other family size rules in WAC 170-290-0015 apply.

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))~~ an applicant or 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) The following child support payment~~((s))~~ amounts:

(a) For applicants or consumers who are not receiving DSHS division of child support services because they are exempt for good cause under WAC 170-290-0030 (11)(a)(i), the amount as shown on a current court order; or

(b) For applicants or consumers who are receiving DSHS division of child support services, the amount as verified by the DSHS division of child support;

(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. 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) Lump sums as money a consumer receives from a one-time payment such as back child support, an inheritance, or gambling winnings; and
- (12) 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 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))~~ to receive WCCC subsidies for six months before having to redetermine his or her income eligibility, except as provided in subsection (2) of this section. The six-month eligibility period in this subsection applies only if enrollments in the WCCC program are capped as provided in WAC 170-290-0001(1). Regardless of the length of eligibility, consumers are still required to report changes of circumstances to DSHS as provided in WAC 170-290-0031.

(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 11-12-078, filed 5/31/11, effective 7/1/11)

**WAC 170-290-3565 Consumers' responsibilities.**

When a ~~((consumer))~~ person applies for or receives SCC program subsidies, ~~((he or she))~~ the applicant or consumer must, as a condition of receiving those benefits:

(1) Give DSHS correct and current information so that DSHS can determine the consumer's eligibility and authorize child care payments correctly;

(2) Choose a licensed or certified child care provider who meets requirements of WAC 170-292-3750;

(3) Leave the consumer's children with his or her provider while the consumer is in SCC approved activities outside of the consumer's home;

(4) Pay the provider for child care services when the consumer requests additional child care for personal reasons other than working or participating in SCC approved activities that have been authorized by DSHS;

(5) Pay the provider for optional child care programs for the child that the consumer requests. The provider must have a written policy in place charging all families for these optional child care programs;

(6) Pay, or make arrangements for someone to pay, the consumer's SCC copayment directly to the child care provider;

(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;

(8) Sign his or her children in and out of child care as provided in WAC 170-295-7030, 170-296-0520, or 170-151-460, as applicable, for that type of provider; ~~((and))~~

(9) Provide the information requested by the DSHS fraud early detection (FRED) investigator. If the consumer refuses to provide the information requested within fourteen days, it could affect his or her SCC program subsidies. If DSHS determines a consumer is not cooperating by supplying the requested information, the consumer will not be eligible for SCC program subsidies. The consumer may become eligible again when he or she meets SCC program requirements in part III of this chapter; and

(10) Seek child support enforcement services from the DSHS division of child support, unless DSHS finds that the applicant or consumer has good cause not to cooperate as defined under WAC 388-422-0020 or as provided in subsection (10)(a) of this section.

(a) For the purposes of this subsection, "good cause" also includes the following:

(i) The applicant or consumer has a current court order showing the child support amount ordered on behalf of the child who will receive the child care subsidy benefits;

(ii) The applicant or consumer already complies with child support enforcement services, either voluntarily or to meet other public assistance benefits requirements;

(iii) The applicants or consumers are married parents, or unmarried two-parent families with a child in common needing child care living in the same household;

(iv) The applicant or consumer is a single-parent family when the other parent is deceased;

(v) The applicant or consumer is a single-parent family when the other parent is incarcerated for one year or longer;

(vi) The applicants or consumers are both minor parents;  
or

(vii) The DSHS division of child support does not have jurisdiction over the child support case, such as for tribal child support cases or cases outside of the United States.

(b) Child support ordered on behalf of a child who will receive child care subsidy benefits does not affect the other children in the family who are not receiving child support. All other family size rules in WAC 170-290-0015 apply.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

**AMENDATORY SECTION** (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

**WAC 170-290-3610 Countable income.** DSHS counts income as money a consumer earns or receives from:

- (1) Wages and commissions earned from employment;
- (2) Unemployment compensation;
- (3) A TANF or other welfare grant;

(4) The following child support ~~((payments received))~~ payment amounts:

(a) For applicants or consumers who are not receiving DSHS division of child support services because they are exempt for good cause under WAC 170-290-3565 (10)(a)(i), the amount as shown on a current court order; or

(b) For applicants or consumers who are receiving DSHS division of child support services, the amount as verified by the DSHS division of child support;

(5) Supplemental Security Income (SSI);

(6) Other Social Security payments, such as Social Security Administration (SSA) and Social Security disability insurance (SSDI);

(7) Refugee assistance payments;

(8) Payments from the Veterans' Administration;

(9) Pensions or retirement income;

(10) Payments from labor and industries (L&I), or disability payments;

(11) Lump sums as money a consumer receives from a one-time payment such as back child support, an inheritance, or gambling winnings;

(12) Other types of income not listed in WAC 170-290-3630; and

(13) Gross wages from employment or self-employment income as defined in WAC 170-290-0003. Gross wages include any wages that are taxable.

**AMENDATORY SECTION** (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

**WAC 170-290-3660 Eligibility period.** (1) A consumer who meets all of the requirements of part III of this chapter is eligible ~~((to))~~ to receive SCC subsidies for six months before having to redetermine his or her income eligibility. The six-month eligibility period applies only if enrollments in the SCC program are capped as provided in WAC 170-290-0001(1) and WAC 170-290-3501. Regardless of the length of eligibility, consumers are still required to report changes of circumstances to DSHS as provided in WAC 170-290-3570.

(2) A consumer's eligibility may be for less than six months if requested by the consumer.

(3) A consumer's eligibility may end sooner than six months if:

(a) The consumer no longer wishes to participate in SCC; or

(b) DSHS terminates the consumer's eligibility as stated in WAC 170-290-3855.

#### WSR 11-14-069

#### EMERGENCY RULES

#### DEPARTMENT OF LICENSING

[Filed June 30, 2011, 10:28 a.m., effective July 1, 2011]

Effective Date of Rule: July 1, 2011.

Purpose: Amend chapter 308-330 WAC, the model traffic ordinance (MTO), to include violations enacted by the legislature in the 2011 legislative session, and to update sec-

tion citations to sections of law recodified or replaced during the 2010 and 2011 legislative sessions.

Citation of Existing Rules Affected by this Order: Amending WAC 308-330-197, 308-330-200, 308-330-300, 308-330-305, 308-330-425, 308-330-464, and 308-330-700.

Statutory Authority for Adoption: RCW 46.90.010.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Avoiding the delay resulting from permanent rule adoption will enable local law enforcement to hold drivers accountable for the public safety hazard presented in violating traffic laws by enabling them to cite the MTO which has been adopted by many local authorities, rather than state statute, since many are accustomed to cite to the MTO. The proposal for a permanent rule, with an opportunity for comment, is forthcoming.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 7, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 7, Repealed 0.

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

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

Date Adopted: June 29, 2011.

Ben T. Shomshor  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-18-058, filed 8/30/10, effective 9/30/10)

**WAC 308-330-197 RCW sections adopted—Off-road and nonhighway vehicles.** The following sections of the Revised Code of Washington (RCW) pertaining to off road and nonhighway vehicles as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW ((~~46.09.020, 46.09.040, 46.09.050, 46.09.085, 46.09.115, 46.09.117, 46.09.120, 46.09.130, 46.09.140, 46.09.180, and 46.09.190~~)) 46.09.310, 46.09.330, 46.09.350, 46.09.360, 46.09.420, 46.09.440, 46.09.450, 46.09.460, 46.09.470, 46.09.480, and 46.09.490.

AMENDATORY SECTION (Amending WSR 97-10-068, filed 5/5/97, effective 6/5/97)

**WAC 308-330-200 RCW sections adopted—Snowmobiles.** The following sections of the Revised Code of

Washington (RCW) pertaining to snowmobiles as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW ((~~46.10.010, 46.10.020, 46.10.090, 46.10.100, 46.10.110, 46.10.120, 46.10.130, 46.10.140, and 46.10.190~~)) 46.10.300, 46.10.310, 46.10.330, 46.10.460, 46.10.470, 46.10.480, 46.10.490, 46.10.495, and 46.10.500.

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

AMENDATORY SECTION (Amending WSR 99-04-070, filed 2/1/99, effective 3/4/99)

**WAC 308-330-300 RCW sections adopted—Certificates of ownership and registration.** The following sections of the Revised Code of Washington (RCW) pertaining to vehicle certificates of ownership and registrations as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW ((~~46.12.005, 46.12.070, 46.12.080, 46.12.101, 46.12.102, 46.12.103, 46.12.160, 46.12.210, 46.12.215, 46.12.220, 46.12.250, 46.12.260, 46.12.270, 46.12.300, 46.12.310, 46.12.320, 46.12.330, 46.12.340, 46.12.350, and 46.12.380~~)) 46.12.550, 46.12.590, 46.12.600, 46.12.635, 46.12.650, 46.12.655, 46.12.660, 46.12.720, 46.12.725, 46.12.730, 46.12.735, 46.12.740, 46.12.745, 46.12.750, and 46.12.755.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 04-18-061, filed 8/27/04, effective 9/27/04)

**WAC 308-330-305 RCW sections adopted—Vehicle licenses.** The following sections of the Revised Code of Washington (RCW) pertaining to vehicle licenses as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW ((~~46.16.010, 46.16.011, 46.16.022, 46.16.023, 46.16.025, 46.16.028, 46.16.030, 46.16.048, 46.16.068, 46.16.088, 46.16.090, 46.16.135, 46.16.140, 46.16.145, 46.16.160, 46.16.180, 46.16.240, 46.16.260, 46.16.290, 46.16.307, 46.16.30901, 46.16.30903, 46.16.30905, 46.16.316, 46.16.350, 46.16.381, 46.16.385, 46.16.390, 46.16.500, 46.16.505, 46.16.560, 46.16.585, 46.16.595, 46.16.630, 46.16.640, and 46.16.680~~)) 46.12.695, 46.16A.030, 46.16A.140, 46.16A.160, 46.16A.175, 46.16A.180, 46.16A.200, 46.16A.320, 46.16A.350, 46.16A.405, 46.16A.420, 46.16A.425, 46.16A.450, 46.16A.500, 46.16A.520, 46.16A.530, 46.16A.540, 46.16A.545, 46.18.200, 46.18.205, 46.18.215, 46.18.220, 46.18.235, 46.18.275, 46.18.277, 46.18.285, 46.19.050, and 46.19.070.

AMENDATORY SECTION (Amending WSR 99-04-070, filed 2/1/99, effective 3/4/99)

**WAC 308-330-425 RCW sections adopted—Reckless driving, negligent driving, vehicular homicide and**

**assault.** The following sections of the Revised Code of Washington (RCW) pertaining to reckless driving, driving while under the influence of intoxicating liquor or any drug, vehicular homicide and assault as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.61.500, 46.61.502, 46.61.503, 46.61.504, 46.61.5054, 46.61.5055, 46.61.50571, 46.61.5058, 46.61.506, 46.61.513, 46.61.517, 46.61.519, 46.61.5191, 46.61.5195, 46.61.5249, 46.61.525, 46.61.527, 46.61.530, 46.61.535, 2011 c 372 s 1, and 46.61.540.

AMENDATORY SECTION (Amending WSR 10-18-058, filed 8/30/10, effective 9/30/10)

**WAC 308-330-464 RCW sections adopted—Operation and restrictions.** The following sections of the Revised Code of Washington (RCW) pertaining to the operation of vehicles and the restriction of certain acts and practices of vehicle operators and passengers as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.61.600, 46.61.605, 46.61.606, 46.61.608, 46.61.610, 46.61.611, 46.61.612, 46.61.614, 46.61.615, 46.61.620, 46.61.625, 46.61.630, 46.61.635, 46.61.640, 46.61.645, 46.61.655, 46.61.660, 46.61.665, 46.61.667, 46.61.668, 46.61.670, 46.61.675, 46.61.680, 46.61.685, 46.61.687, 46.61.688, 46.61.690, 46.61.700, 46.61.710, 46.61.720, 46.61.723, 46.61.725, 46.61.730, 46.61.735, 2011 c 121 s 2, 2011 c 121 s 4, and 46.61.740.

AMENDATORY SECTION (Amending WSR 10-18-058, filed 8/30/10, effective 9/30/10)

**WAC 308-330-700 RCW sections adopted—Disposition of traffic infractions.** The following sections of the Revised Code of Washington (RCW) pertaining to the disposition of traffic infractions as now or hereafter amended are hereby adopted by such reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.63.010, 46.63.020, 46.63.030, 46.63.040, 46.63.060, 46.63.070, 46.63.073, 46.63.075, 46.63.080, 46.63.090, 46.63.100, 46.63.110, 46.63.120, 46.63.130, 46.63.140, 46.63.151, 46.63.160, 2011 c 375 s 2, and 46.63.170.

#### WSR 11-14-071

#### EMERGENCY RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed June 30, 2011, 11:00 a.m., effective July 1, 2011]

Effective Date of Rule: July 1, 2011.

Purpose: Chapter 7, Laws of 2011 1st sp. sess. (the act) imposes a safety net assessment (SNA) on nonexempt nursing facilities in Washington state.

Citation of Existing Rules Affected by this Order: Amending [new section] WAC 388-96-910.

Statutory Authority for Adoption: Chapter 74.46 RCW.

Other Authority: Chapter 7, Laws of 2011 1st sp. sess.

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: Effective July 1, 2011, the department will implement the new safety net assessment on Washington nursing facilities. Emergency rules are necessary in order to provide additional direction for implementation of this new regulation.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: June 30, 2011.

Katherine I. Vasquez  
Rules Coordinator

#### NEW SECTION

**WAC 388-96-910 Safety net assessment.** (1) Chapter 7, Laws of 2011 1st sp. sess. (the Act) imposes a safety net assessment (SNA) on nonexempt nursing facilities in Washington. Categories of facilities exempt from the SNA are described in section 17 of the Act. For state fiscal year (SFY) 2012 beginning July 1, 2011, nonexempt facilities will pay the SNA at two different levels: eleven dollars and one dollar per resident day. Facilities paying at the level of one dollar per resident day are those which reported thirty-two thousand or more medicaid resident days on their 2010 cost report, or which have more than two hundred and three licensed beds. All other nonexempt facilities pay at the level of eleven dollars per resident day.

(2) The status of each nursing facility under the Act will be determined based on the facility's characteristics as of July 1, 2011, but using the information on resident days from the 2010 cost report. The status of facilities will not be altered thereafter during SFY 2012.

(3) The office of rates management (ORM) of the aging and disability services administration (ADSA) of the department of social and health services (the department) will inform each nursing facility of its status under the Act. A facility wishing to contest its status under the Act as deter-

mined by ORM may seek review of such determination under WAC 388-96-904.

(4) Beginning July 1, 2011, an add-on to each nonexempt facility's medicaid daily rate will be paid to reimburse the facility for the SNA it owes in relation to residents whose care is provided by medicaid.

(5) The SNA is assessed and payable on a monthly basis. The SNA owed for each month must be received by the 25th day of the following month. The SNA will be reported on a form supplied by ORM. Payments of the SNA are subject to an interest penalty of one percent per month for any payment which is delinquent for any portion of a month. The department may withhold any medical assistance reimbursement payments from a facility until such time as any delinquent SNA payments, and any related penalties, are paid, or may offset such delinquent SNA payments and related penalties against the facility's medical assistance reimbursement payments.

(6) Enforcement and collection of the SNA provided by the Act is subject to successful application for a related waiver from the federal centers for medicare and medicaid services (CMS). In the review process for the waiver, it may be necessary for DSHS to modify the levels of the SNA, the standard for designating facilities that pay the SNA at the lower level, and/or the categories of fully exempt facilities described in section 17 of the Act. In that case, the obligation of each facility to pay the SNA is subject to amendment retroactive to July 1, 2011, based on the standards for the SNA contained in the waiver as eventually issued by CMS.

sp. sess., the previously-given rate enhancement for training is removed from the boarding home rate until such a time that the new training requirements are reinstated. The effective date of these changes is July 1, 2011. This does not allow the department enough time to adopt rules through the regular rule adoption process.

Citation of Existing Rules Affected by this Order: Amending WAC 388-105-0005.

Statutory Authority for Adoption: RCW 74.39A.030 (3)(a).

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: See above.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: June 30, 2011.

Katherine I. Vasquez  
Rules Coordinator

**WSR 11-14-072  
EMERGENCY RULES  
DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed June 30, 2011, 11:01 a.m., effective July 1, 2011]

Effective Date of Rule: July 1, 2011.

Purpose: Effective July 1, 2011, the department will increase the daily medicaid payment rates for clients assessed using the comprehensive assessment reporting evaluation (CARE) tool and who reside in adult family homes or who reside in boarding homes contracted to provide assisted living (AL), adult residential care (ARC), and enhanced adult residential care (EARC) services. Under ESSB [2ESHB] 1087, the 2011/13 biennial operating budget, 2011 1st sp. sess., adult family home rates are enhanced to compensate for the licensing fee increase. Boarding home rates are restored to March 31, 2011, levels. However, because new training requirements are delayed pursuant to ESHB 1548, 2011 1st

AMENDATORY SECTION (Amending WSR 10-21-035, filed 10/12/10, effective 10/29/10)

**WAC 388-105-0005 The daily medicaid payment rates for clients assessed using the comprehensive assessment reporting evaluation (CARE) tool and that reside in adult family homes (AFH) and boarding homes contracted to provide assisted living (AL), adult residential care (ARC), and enhanced adult residential care (EARC) services.** For contracted AFH and boarding homes contracted to provide AL, ARC, and EARC services, the department pays the following daily rates for care of a medicaid resident:

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
KING COUNTY					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Low	<del>\$(66.65)</del>	<del>\$(72.07)</del>	<del>\$(47.19)</del>	<del>\$(47.19)</del>	<del>\$(46.39)</del>
	<u>66.52</u>	<u>71.94</u>	<u>47.06</u>	<u>47.06</u>	<u>46.61</u>

CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Med	\$((72.15)) <u>72.02</u>	\$((77.57)) <u>77.44</u>	\$((53.52)) <u>53.39</u>	\$((53.52)) <u>53.39</u>	\$((52.64)) <u>52.86</u>
A High	\$((80.94)) <u>80.81</u>	\$((86.36)) <u>86.23</u>	\$((58.76)) <u>58.63</u>	\$((58.76)) <u>58.63</u>	\$((58.90)) <u>59.12</u>
B Low	\$((66.65)) <u>66.52</u>	\$((72.07)) <u>71.94</u>	\$((47.19)) <u>47.06</u>	\$((47.19)) <u>47.06</u>	\$((46.62)) <u>46.84</u>
B Med	\$((74.35)) <u>74.22</u>	\$((79.77)) <u>79.64</u>	\$((59.85)) <u>59.72</u>	\$((59.85)) <u>59.72</u>	\$((59.19)) <u>59.41</u>
B Med-High	\$((84.18)) <u>84.05</u>	\$((89.60)) <u>89.47</u>	\$((63.63)) <u>63.50</u>	\$((63.63)) <u>63.50</u>	\$((63.42)) <u>63.64</u>
B High	\$((88.64)) <u>88.48</u>	\$((94.03)) <u>93.90</u>	\$((72.71)) <u>72.58</u>	\$((72.71)) <u>72.58</u>	\$((72.51)) <u>72.73</u>
C Low	\$((72.15)) <u>72.02</u>	\$((77.57)) <u>77.44</u>	\$((53.52)) <u>53.39</u>	\$((53.52)) <u>53.39</u>	\$((52.64)) <u>52.86</u>
C Med	\$((80.94)) <u>80.81</u>	\$((86.36)) <u>86.23</u>	\$((67.13)) <u>67.00</u>	\$((67.13)) <u>67.00</u>	\$((67.22)) <u>67.44</u>
C Med-High	\$((100.71)) <u>100.58</u>	\$((106.13)) <u>106.00</u>	\$((89.42)) <u>89.29</u>	\$((89.42)) <u>89.29</u>	\$((88.06)) <u>88.28</u>
C High	\$((101.71)) <u>101.58</u>	\$((107.13)) <u>107.00</u>	\$((90.27)) <u>90.14</u>	\$((90.27)) <u>90.14</u>	\$((89.29)) <u>89.51</u>
D Low	\$((74.35)) <u>74.22</u>	\$((79.77)) <u>79.64</u>	\$((72.27)) <u>72.14</u>	\$((72.27)) <u>72.14</u>	\$((68.52)) <u>68.74</u>
D Med	\$((82.59)) <u>82.46</u>	\$((88.01)) <u>87.88</u>	\$((83.70)) <u>83.57</u>	\$((83.70)) <u>83.57</u>	\$((83.87)) <u>84.09</u>
D Med-High	\$((106.74)) <u>106.61</u>	\$((112.16)) <u>112.03</u>	\$((106.39)) <u>106.26</u>	\$((106.39)) <u>106.26</u>	\$((100.92)) <u>101.14</u>
D High	\$((115.01)) <u>114.88</u>	\$((120.43)) <u>120.30</u>	\$((115.01)) <u>114.88</u>	\$((115.01)) <u>114.88</u>	\$((114.90)) <u>115.12</u>
E Med	\$((138.95)) <u>138.82</u>	\$((144.37)) <u>144.24</u>	\$((138.95)) <u>138.82</u>	\$((138.95)) <u>138.82</u>	\$((138.84)) <u>139.06</u>
E High	\$((162.89)) <u>162.76</u>	\$((168.31)) <u>168.18</u>	\$((162.89)) <u>162.76</u>	\$((162.89)) <u>162.76</u>	\$((162.79)) <u>163.01</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE METROPOLITAN COUNTIES*					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Low	\$((61.15)) <u>61.02</u>	\$((66.07)) <u>65.94</u>	\$((47.19)) <u>47.06</u>	\$((47.19)) <u>47.06</u>	\$((46.39)) <u>46.61</u>
A Med	\$((64.46)) <u>64.33</u>	\$((69.38)) <u>69.25</u>	\$((51.41)) <u>51.28</u>	\$((51.41)) <u>51.28</u>	\$((50.55)) <u>50.77</u>
A High	\$((78.74)) <u>78.61</u>	\$((83.66)) <u>83.53</u>	\$((56.04)) <u>55.91</u>	\$((56.04)) <u>55.91</u>	\$((55.76)) <u>55.98</u>

CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
B Low	\$((61.15)) <u>61.02</u>	\$((66.07)) <u>65.94</u>	\$((47.19)) <u>47.06</u>	\$((47.19)) <u>47.06</u>	\$((46.62)) <u>46.84</u>
B Med	\$((69.94)) <u>69.81</u>	\$((74.86)) <u>74.73</u>	\$((56.69)) <u>56.56</u>	\$((56.69)) <u>56.56</u>	\$((56.04)) <u>56.26</u>
B Med-High	\$((79.20)) <u>79.07</u>	\$((84.12)) <u>83.99</u>	\$((60.27)) <u>60.14</u>	\$((60.27)) <u>60.14</u>	\$((60.10)) <u>60.32</u>
B High	\$((86.42)) <u>86.29</u>	\$((91.34)) <u>91.21</u>	\$((70.66)) <u>70.53</u>	\$((70.66)) <u>70.53</u>	\$((70.46)) <u>70.68</u>
C Low	\$((64.46)) <u>64.33</u>	\$((69.38)) <u>69.25</u>	\$((51.62)) <u>51.49</u>	\$((51.62)) <u>51.49</u>	\$((50.93)) <u>51.15</u>
C Med	\$((78.74)) <u>78.61</u>	\$((83.66)) <u>83.53</u>	\$((66.27)) <u>66.14</u>	\$((66.27)) <u>66.14</u>	\$((65.58)) <u>65.80</u>
C Med-High	\$((97.40)) <u>97.27</u>	\$((102.32)) <u>102.19</u>	\$((83.09)) <u>82.96</u>	\$((83.09)) <u>82.96</u>	\$((81.82)) <u>82.04</u>
C High	\$((98.37)) <u>98.24</u>	\$((103.29)) <u>103.16</u>	\$((88.37)) <u>88.24</u>	\$((88.37)) <u>88.24</u>	\$((86.81)) <u>87.03</u>
D Low	\$((69.94)) <u>69.81</u>	\$((74.86)) <u>74.73</u>	\$((71.28)) <u>71.15</u>	\$((71.28)) <u>71.15</u>	\$((67.01)) <u>67.23</u>
D Med	\$((80.34)) <u>80.21</u>	\$((85.26)) <u>85.13</u>	\$((82.03)) <u>81.90</u>	\$((82.03)) <u>81.90</u>	\$((81.61)) <u>81.83</u>
D Med-High	\$((103.24)) <u>103.11</u>	\$((108.16)) <u>108.03</u>	\$((103.76)) <u>103.63</u>	\$((103.76)) <u>103.63</u>	\$((97.84)) <u>98.06</u>
D High	\$((111.85)) <u>111.72</u>	\$((116.77)) <u>116.64</u>	\$((111.85)) <u>111.72</u>	\$((111.85)) <u>111.72</u>	\$((111.16)) <u>111.38</u>
E Med	\$((134.64)) <u>134.51</u>	\$((139.56)) <u>139.43</u>	\$((134.64)) <u>134.51</u>	\$((134.64)) <u>134.51</u>	\$((133.95)) <u>134.17</u>
E High	\$((157.43)) <u>157.30</u>	\$((162.35)) <u>162.22</u>	\$((157.43)) <u>157.30</u>	\$((157.43)) <u>157.30</u>	\$((156.74)) <u>156.96</u>

\*Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, and Yakima counties.

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE NONMETROPOLITAN COUNTIES**					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Low	\$((60.07)) <u>59.94</u>	\$((65.31)) <u>65.18</u>	\$((47.19)) <u>47.06</u>	\$((47.19)) <u>47.06</u>	\$((46.39)) <u>46.61</u>
A Med	\$((64.46)) <u>64.33</u>	\$((69.70)) <u>69.57</u>	\$((50.36)) <u>50.23</u>	\$((50.36)) <u>50.23</u>	\$((49.52)) <u>49.74</u>
A High	\$((78.74)) <u>78.61</u>	\$((83.98)) <u>83.85</u>	\$((55.14)) <u>55.01</u>	\$((55.14)) <u>55.01</u>	\$((54.73)) <u>54.95</u>
B Low	\$((60.07)) <u>59.94</u>	\$((65.31)) <u>65.18</u>	\$((47.19)) <u>47.06</u>	\$((47.19)) <u>47.06</u>	\$((46.62)) <u>46.84</u>
B Med	\$((69.94)) <u>69.81</u>	\$((75.18)) <u>75.05</u>	\$((55.64)) <u>55.51</u>	\$((55.64)) <u>55.51</u>	\$((55.00)) <u>55.22</u>

CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
B Med-High	\$((79.20)) <u>79.07</u>	\$((84.44)) <u>84.31</u>	\$((59.14)) <u>59.01</u>	\$((59.14)) <u>59.01</u>	\$((58.92)) <u>59.14</u>
B High	\$((86.42)) <u>86.29</u>	\$((91.66)) <u>91.53</u>	\$((66.84)) <u>66.71</u>	\$((66.84)) <u>66.71</u>	\$((66.64)) <u>66.86</u>
C Low	\$((64.46)) <u>64.33</u>	\$((69.70)) <u>69.57</u>	\$((50.36)) <u>50.23</u>	\$((50.36)) <u>50.23</u>	\$((49.52)) <u>49.74</u>
C Med	\$((78.74)) <u>78.61</u>	\$((83.98)) <u>83.85</u>	\$((62.65)) <u>62.52</u>	\$((62.65)) <u>62.52</u>	\$((63.07)) <u>63.29</u>
C Med-High	\$((97.40)) <u>97.27</u>	\$((102.64)) <u>102.51</u>	\$((79.92)) <u>79.79</u>	\$((79.92)) <u>79.79</u>	\$((78.70)) <u>78.92</u>
C High	\$((98.37)) <u>98.24</u>	\$((103.61)) <u>103.48</u>	\$((83.54)) <u>83.41</u>	\$((83.54)) <u>83.41</u>	\$((82.10)) <u>82.32</u>
D Low	\$((69.94)) <u>69.81</u>	\$((75.18)) <u>75.05</u>	\$((67.39)) <u>67.26</u>	\$((67.39)) <u>67.26</u>	\$((63.37)) <u>63.59</u>
D Med	\$((80.34)) <u>80.21</u>	\$((85.58)) <u>85.45</u>	\$((77.55)) <u>77.42</u>	\$((77.55)) <u>77.42</u>	\$((77.17)) <u>77.39</u>
D Med-High	\$((103.24)) <u>103.11</u>	\$((108.48)) <u>108.35</u>	\$((98.08)) <u>97.95</u>	\$((98.08)) <u>97.95</u>	\$((92.52)) <u>92.74</u>
D High	\$((105.73)) <u>105.60</u>	\$((110.97)) <u>110.84</u>	\$((105.73)) <u>105.60</u>	\$((105.73)) <u>105.60</u>	\$((105.10)) <u>105.32</u>
E Med	\$((127.27)) <u>127.14</u>	\$((132.51)) <u>132.38</u>	\$((127.27)) <u>127.14</u>	\$((127.27)) <u>127.14</u>	\$((126.64)) <u>126.86</u>
E High	\$((148.81)) <u>148.68</u>	\$((154.05)) <u>153.92</u>	\$((148.81)) <u>148.68</u>	\$((148.81)) <u>148.68</u>	\$((148.19)) <u>148.41</u>

\*\* Nonmetropolitan counties: Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Orielle, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla and Whitman.

**WSR 11-14-073  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 11-146—Filed June 30, 2011, 2:09 p.m., effective July 1, 2011]

Effective Date of Rule: July 1, 2011.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-24-04000C; and amending WAC 220-24-040.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: It is projected that there remains sufficient harvestable quota of salmon for the troll fleet that remains to be caught. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

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

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

Date Adopted: June 30, 2011.

Joe Stohr  
for Philip Anderson  
Director

### NEW SECTION

**WAC 220-24-04000C All-citizen commercial salmon troll.** Notwithstanding the provisions of WAC 220-24-040, effective immediately until further notice, it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons provided for in this section:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude, open:

July 1 through July 5, 2011.  
July 8 through July 12, 2011.  
July 15 through July 19, 2011.  
July 22 through July 26, 2011  
July 29 through August 2, 2011.  
August 5 through August 9, 2011.  
August 12 through August 16, 2011.  
August 19 through August 23, 2011.  
August 26 through August 30, 2011.  
September 2 through September 6, 2011.  
September 9 through September 13, 2011.

(2) Landing and possession limit of 50 Chinook and 50 coho per boat per each entire open period for the entire catch areas 1, 2, 3 and 4 through September 13.

(3) The Cape Flattery and Columbia River Control Zones are closed. Mandatory Yelloweye Rockfish Conservation Area is closed.

(4) Minimum size for Chinook salmon is 28 inches in length. Minimum size for coho salmon is 16 inches in length. No minimum size for pink, sockeye, or chum salmon, except no chum retention north of Cape Alava, Washington, in August and September. It is unlawful to possess wild coho salmon and halibut.

(5) Lawful troll gear is restricted to all legal troll gear with single point, single shank barbless hooks.

(6) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section, and vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and North of Leadbetter point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point.

(7) The Cape Flattery Control Zone is defined as the area from Cape Flattery (48°23'00" N latitude) to the northern boundary of the U.S. Exclusive Economic Zone, and the area from Cape Flattery south to Cape Alava, 48°10'00" N latitude, and west of 125°05'00" W longitude.

(8) The Columbia Control Zone is defined as the area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13'35" N. Lat., 124°06'50" W. long.) and the green lighted Buoy #7 (46°15'09" N. lat., 124°06'16" W. long.); on the east, by the Buoy #10 line, which bears north/south at

357° true from the south jetty at 46°14'00" N. lat., 124°03'07" W. long, to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°14'48" N. lat., 124°05'20" W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat., 124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

(9) The Mandatory Yelloweye Rockfish Conservation Area is defined as the area in Washington Marine Catch Area 3 from 48°00.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°16.50' W longitude to 48°00.00' N latitude; 125°16.50' W longitude and connecting back to 48°00.00' N latitude; 125°14.00' W longitude.

(10) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2, 3 or 4 with fish on board taken south of Cape Falcon, Oregon; and all fish taken from Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 must be landed before fishing south of Cape Falcon, Oregon.

(11) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279, or faxing the information to (360) 902-2949, or e-mailing to trollfishtickets@dfw.wa.gov. Report the dealer name, the dealer license number, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

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

### REPEALER

The following section of the Washington Administrative Code is repealed effective September 15, 2011:

WAC 220-24-04000C All-citizen commercial salmon troll.

### **WSR 11-14-077**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Financial Services Administration)

[Filed June 30, 2011, 3:14 p.m., effective July 1, 2011]

Effective Date of Rule: July 1, 2011.

Purpose: The amendment to WAC 388-02-0005 is intended to direct our customers to a new rule chapter adopted in order to implement a statute that is effective July 1, 2011. The new section WAC 388-02-0387 is intended to implement the governor's "no wrong door" policy and allow petitions for review filed with DSHS in matters in which an

applicant or recipient of medical services programs set forth in chapter 74.09 RCW seeks review of decisions made by more than one agency to go forward.

Citation of Existing Rules Affected by this Order: Amending WAC 388-02-0005.

Statutory Authority for Adoption: Section 53, chapter 15, Laws of 2011, effective July 1, 2011; RCW 34.05.020.

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

Reasons for this Finding: The amendment to WAC 388-02-0005 is intended to direct our customers to a new rule chapter adopted in order to implement a statute that is effective July 1, 2011. The new section WAC 388-02-0387 is intended to implement the governor's "no wrong door" policy and allow petitions for review filed with DSHS in matters in which an applicant or recipient of medical services programs set forth in chapter 74.09 RCW seeks review of decisions made by more than one agency to go forward.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 0, Repealed 0.

Date Adopted: June 29, 2011.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

**WAC 388-02-0005 What is the purpose and scope of this chapter?** This chapter describes the general procedures that apply to the resolution of disputes between you and the various programs within the department of social and health services (DSHS). The rules of this chapter are intended to supplement for DSHS both the Administrative Procedure Act (APA), chapter 34.05 RCW, and the model rules, chapter 10-08 WAC, adopted by the office of administrative hearings (OAH).

(1) This chapter:

(a) Establishes rules encouraging informal dispute resolution between DSHS and persons or entities who disagree with its actions;

(b) Regulates all hearings involving DSHS; and

(c) Consolidates most DSHS hearing procedural rules into one chapter.

(2) Nothing in this chapter is intended to affect the constitutional rights of any person or to limit or change additional requirements imposed by statute or other rule. Other laws or rules determine if you have a hearing right, including the APA and DSHS program rules or laws.

(3) Specific DSHS program hearing rules prevail over the rules in this chapter.

(4) Rules encouraging informal dispute resolution between the health care authority and persons or entities who disagree with its actions, and regulating hearings for the medical services programs established under chapter 74.09 RCW are governed by chapter 388-526 WAC.

#### NEW SECTION

**WAC 388-02-0387 How may you request that a hearing be consolidated or severed when multiple agencies are parties to the proceeding?** The following requirements apply only to adjudicative proceedings in which an applicant or recipient of medical services programs set forth in chapter 74.09 RCW seeks review of decisions made by more than one agency.

(1) When you file a single application for an adjudicative proceeding seeking review of decisions by more than one agency, this review shall be conducted initially in one adjudicative proceeding. The administrative law judge (ALJ) may sever the proceeding into multiple proceedings on the motion of any of the parties, when:

(a) All parties consent to the severance; or

(b) Either party requests severance without another party's consent, and the ALJ finds there is good cause for severing the matter and that the proposed severance is not likely to prejudice the rights of an appellant who is a party to any of the severed proceedings.

(2) If there are multiple adjudicative proceedings involving common issues or parties where there is one appellant and both the health care authority and the department are parties, upon motion of any party or upon his or her own motion, the ALJ may consolidate the proceedings if he or she finds that the consolidation is not likely to prejudice the rights of the appellant who is a party to any of the consolidated proceedings.

(3) If the ALJ grants the motion to sever the hearing into multiple proceedings or consolidate multiple proceedings into a single proceeding, the ALJ will send out an order and a new notice of hearing to the appropriate parties in accordance with WAC 388-02-0250.

#### **WSR 11-14-078**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed June 30, 2011, 3:16 p.m., effective June 30, 2011, 3:16 p.m.]

Effective Date of Rule: Immediately.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The United States Department of Health and Human Services

Administration for Children and Families enforces provisions as enacted in the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312). The law includes a provision that disregards tax refunds received after December 31, 2009, as income and resources (for a period of twelve months) in programs funded in whole or part with federal funds.

**Purpose:** These amendments are necessary to comply with the United States Department of Health and Human Services instructions dated January 28, 2011, and the United States Department of Agriculture Food and Nutrition Service memo dated February 1, 2011, requiring states to disregard federal income tax refunds received after December 31, 2009, as income and resources for a period of twelve months when determining eligibility for federal funded programs.

**Citation of Existing Rules Affected by this Order:** Amending WAC 388-450-0015, 388-455-0005, 388-470-0045, 388-470-0055, 388-475-0550, and 388-475-0860.

**Statutory Authority for Adoption:** RCW 74.04.050, 74.04.055, 74.04.57 [74.04.057].

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

**Reasons for this Finding:** The department already disregards tax refunds received after December 31, 2009, as income and resources (for a period of twelve months) in programs funded in whole or part with federal funds income. This amendment is already in place via an emergency adoption by WSR 11-07-001 dated March 2, 2011, which expires on June 30, 2011. The department continues the permanent rule-making process. The department has filed a preproposal statement of inquiry as WSR 11-08-071 on April 6, 2011, and plans to file a proposed rule-making notice in early July.

**Number of Sections Adopted in Order to Comply with Federal Statute:** New 0, Amended 0, Repealed 0; **Federal Rules or Standards:** New 0, Amended 0, Repealed 0; or **Recently Enacted State Statutes:** New 0, Amended 1, Repealed 0.

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

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

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

**Number of Sections Adopted Using Negotiated Rule Making:** New 0, Amended 0, Repealed 0; **Pilot Rule Making:** New 0, Amended 0, Repealed 0; or **Other Alternative Rule Making:** New 0, Amended 1, Repealed 0.

**Date Adopted:** June 30, 2011.

Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 11-15 issue of the Register.

**WSR 11-14-080**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed July 1, 2011, 8:25 a.m., effective July 1, 2011, 8:25 a.m.]

**Effective Date of Rule:** Immediately.

**Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule:** ESSB 5921, section 14, directs the department to incorporate new prohibitions on the use of electronic benefit transfer (EBT) cards by public assistance recipients, and also directs the department to assign a protective payee if a public assistance recipient violates EBT restrictions two or more times.

**Purpose:** The department is creating new WAC 388-412-0046 What is the purpose of DSHS cash and food assistance benefits and how can I use my benefits? and amending WAC 388-460-0035 When is a protective payee assigned for mismanagement of funds?

These changes are necessary to update existing regulations to conform with increased EBT use restrictions and protective payee assignments required by ESSB 5921 that go into effect July 1, 2011. Only the recipient, an eligible member of the household, or the recipient's authorized representative can use the card and use is limited to benefit program purposes.

**Citation of Existing Rules Affected by this Order:** Amending WAC 388-460-0035.

**Statutory Authority for Adoption:** RCW 74.04.050, 74.04.500, 74.08.090, 74.08A.010, 74.08A.340.

**Other Authority:** ESSB 5921, section 14.

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

**Reasons for this Finding:** ESSB 5921, section 14, as signed by the governor on June 15, 2011, goes into effect July 1, 2011.

**Number of Sections Adopted in Order to Comply with Federal Statute:** New 0, Amended 0, Repealed 0; **Federal Rules or Standards:** New 0, Amended 0, Repealed 0; or **Recently Enacted State Statutes:** New 1, Amended 1, Repealed 0.

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

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

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

**Number of Sections Adopted Using Negotiated Rule Making:** New 0, Amended 0, Repealed 0; **Pilot Rule Making:** New 0, Amended 0, Repealed 0; or **Other Alternative Rule Making:** New 1, Amended 1, Repealed 0.

**Date Adopted:** July 1, 2011.

Katherine I. Vasquez  
Rules Coordinator

NEW SECTION**WAC 388-412-0046 What is the purpose of DSHS cash and food assistance benefits and how can I use my benefits?** (1) What is the purpose of DSHS cash benefits?

(a) DSHS cash assistance benefits are provided to low-income residents who qualify for public assistance programs. These benefits are intended to help pay for basic living expenses as described under RCW 74.04.770. TANF cash grants must be used for the sole benefit of the children, and we may require proof that you are using your TANF cash assistance to benefit your children as allowed under RCW 74.12.260.

(b) Your electronic benefit transfer (EBT) card or cash assistance benefits may only be used by you, an eligible member of your household, or an authorized representative/protective payee for the purposes of your cash assistance program. You are not allowed to sell, attempt to sell, exchange, or donate your EBT card or benefits to any other person or entity.

(c) You may use your cash benefits to pay a reasonable amount of basic living expenses such as:

- (i) Shelter;
- (ii) Utilities such as heating, telephone, water, sewer, garbage, and recycling;
- (iii) Food;
- (iv) Transportation;
- (v) Clothing;
- (vi) Household maintenance;
- (vii) Personal hygiene;
- (viii) Employment or school related items; and
- (ix) Other necessary incidentals and items.

(d) It is not legal to use electronic benefit transfer (EBT) cards or cash obtained with EBT cards to:

- (i) Gamble. Gambling includes:
  - (A) The purchase of lottery tickets;
  - (B) The purchase of pull tabs;
  - (C) Use of punch boards;
  - (D) Purchase of bingo cards;
  - (E) Betting on horse racing;
  - (F) Participating in casino games; and
  - (G) Participating in other games of chance as found in chapters 9.46, 67.16 and 67.70 RCW.
- (ii) Participate in or purchase any activities located in a tattoo, body piercing, or body art shop licensed under chapter 18.300 RCW;
- (iii) Purchase cigarettes as defined in RCW 82.24.010 or tobacco products as defined in RCW 82.26.010;
- (iv) Purchase any alcoholic items regulated under Title 66 RCW;
- (v) Purchase or participate in any activities in any of the following locations:
  - (A) Taverns licensed under RCW 66.24.330;
  - (B) Beer/wine specialty stores licensed under RCW 66.24.371;
  - (C) Nightclubs licensed under RCW 66.24.600;
  - (D) Contract liquor stores defined under RCW 66.04.010;
  - (E) Bail bond agencies regulated under chapter 18.185 RCW;

(F) Gambling establishments licensed under chapter 9.46 RCW;

(G) Adult entertainment venues with performances that contain erotic material where minors under the age of eighteen are prohibited under RCW 9.68A.150;

(H) Any establishments where persons under the age of eighteen are not permitted.

(e) If you use your electronic benefit transfer (EBT) card or cash obtained from your EBT card illegally we may:

(i) Assign a protective payee to manage your cash assistance benefits under WAC 388-460-0035;

(ii) For households receiving TANF, require proof that your benefits are being used for the benefit of the children in the household;

(iii) Terminate your cash benefits; or

(iv) Pursue legal action, including criminal prosecution.

(2) What is the purpose of DSHS food assistance benefits?

(a) DSHS food assistance benefits including those from the Basic Food program, state funded basic food program for legal immigrants (FAP), Washington state combined application project (WASHCAP), and transitional food assistance (TFA) help low-income individuals and families have a more nutritious diet by providing food assistance benefits through EBT cards for eligible households to buy groceries.

(b) You, members of your household, or an authorized representative may use your food assistance benefits to buy food items for your household from food retailer authorized to accept supplemental nutrition assistance program (SNAP) benefits by the U.S. Department of Agriculture Food and Nutrition Service (FNS).

(c) You can use your food assistance benefits to buy items such as:

- (i) Breads and cereals;
- (ii) Fruits and vegetables;
- (iii) Cheese, milk, and other dairy products;
- (iv) Meats, fish, poultry, and eggs;
- (v) Most other food items that are not prepared hot foods; and
- (vi) Seeds and plants that produce food.

(d) It is not legal to:

(i) Give your EBT card or benefits to anyone who is not in your food assistance household or your authorized representative.

(ii) Use food benefits on your EBT card for any purpose other than to buy food for eligible household members.

(iii) Exchange your food benefits for anything of value (trafficking). Examples of illegal trafficking include exchanging food benefits for cash, drugs, weapons or anything other than food from an authorized retailer.

(iv) Sell, attempt to sell, exchange, or donate your EBT card or any benefits to any person or entity.

(v) Sell or trade any food that was purchased using your food assistance benefits for cash, drugs, alcohol, tobacco products, firearms, or anything of value.

(vi) Use food benefits to buy nonfood items such as cigarettes, tobacco, beer, wine, liquor, household supplies, soaps, paper products, vitamins, medicine, or pet food.

(e) If you intentionally misuse your food assistance benefits, you may be:

(i) Disqualified for an intentional program violation under WAC 388-446-0015 and 388-446-0020. If you are disqualified you will lose your benefits for at least one year and up to a lifetime. The disqualification continues even if you move to another state.

(ii) Subject to fines.

(iii) Subject to legal action, including criminal prosecution. DSHS will cooperate with state, local and federal prosecuting authorities to prosecute trafficking in food assistance/SNAP benefits.

**AMENDATORY SECTION** (Amending WSR 02-14-083, filed 6/28/02, effective 7/1/02)

**WAC 388-460-0035 When is a protective payee assigned for mismanagement of funds?** (1) The decision to assign a person to a protective payee because of mismanagement of funds must be based on law or with proof the client is unable to manage their cash benefits. The proof must be current and show how this threatens the well being of a child or client on ~~((TANF/SFA, GA or WCCC))~~ public assistance. Examples of proof are:

(a) Department employees or others observe that the client or client's children are hungry, ill, or not adequately clothed;

(b) Repeated requests from the client for extra money for basic essentials such as food, utilities, clothing, and housing;

(c) A series of evictions or utility shut off notices within the last twelve months;

(d) Medical or psychological evaluations showing an inability to handle money;

(e) Persons having had ~~((an ADATSA))~~ a chemical dependency assessment and who are participating in ~~((ADATSA-funded))~~ chemical dependency treatment;

(f) Not paying an in home child care provider for services when payment has been issued to the client by the department for that purpose;

(g) A complaint from businesses showing a pattern of failure to pay bills or rent;

(h) ~~((Using public assistance electronic benefits transfer (EBT) card or cash obtained through EBT to purchase or pay for lottery tickets, pari-mutuel wagering, or any of the activities authorized under chapter 9.46 RCW))~~ Notice from the office of fraud and accountability that a client illegally used a public assistance electronic benefits transfer (EBT) card or cash obtained with an EBT card two or more times. Illegal use includes infractions, felonies, or violations referenced in WAC 388-412-0046 or WAC 388-446-0020.

(2) A lack of money or a temporary shortage of money because of an emergency does not constitute mismanagement.

(3) When a client has a history of mismanaging money, benefits can be paid through a protective payee or directly to a vendor.

**WSR 11-14-081**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Economic Services Administration)

[Filed July 1, 2011, 8:39 a.m., effective July 1, 2011, 8:39 a.m.]

Effective Date of Rule: Immediately.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: ESSB 5921, section 8(6), as signed by the governor on June 15, 2011, as it relates to the temporary assistance for needy families/WorkFirst program directs the department to expand community service programs to include a recipient's voluntary service at a child care or preschool facility licensed under chapter 43.215 RCW, or an elementary school in which his or her child is enrolled effective July 1, 2011.

Purpose: The department is amending WAC 388-310-1400 WorkFirst—Community service, to include recipient's voluntary service at a child care or preschool facility licensed under chapter 43.215 RCW, or an elementary school in which his or her child as an approved community service activity.

These amendments are necessary to comply with ESSB 5921.

Citation of Existing Rules Affected by this Order: Amending WAC 388-310-1400.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.08.090, 74.08A.250.

Other Authority: ESSB 5921, section 8(6).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: ESSB 5921, section 8(6), as signed by the governor on June 15, 2011, goes into effect July 1, 2011.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: July 1, 2011.

Katherine I. Vasquez  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-07-046, filed 3/14/08, effective 5/1/08)

**WAC 388-310-1400 WorkFirst—Community service. (1) What is community service?**

Community service is unpaid work (such as the work performed by volunteer workers) that:

(a) You perform for a charitable nonprofit organization, federal, state, local or tribal government or district, including traditional activities that perpetuate tribal culture and customs; or

(b) You self-initiate at a childcare or preschool facility licensed under chapter 43.215 RCW, or at an elementary school in which your child is enrolled.

**(2) What other activities may be approved, even though they are not considered community service, because they benefit me, my family, my community or my tribe and might be included in my individual responsibility plan?**

~~((The following types [of] activities may be approved, even though they are not considered community service, because they benefit you, your family, your community or your tribe and might be included in your individual responsibility plan:))~~

(a) Caring for a disabled family member;

(b) Caring for a child, if you are fifty-five years old or older and receiving TANF or SFA assistance for the child as a relative (instead of as the child's parent);

(c) Providing childcare for another WorkFirst participant who is doing community service;

(d) Actively participating in a drug or alcohol assessment or treatment program which is certified or contracted by the state under chapter 70.96A RCW;

(e) Participating in family violence counseling or drug or alcohol treatment that will help you become employable or keep your job (this is called "specialized services" in state law);

(f) Participating in the pregnancy to employment pathway; and/or

(g) Job preparation.

**WSR 11-14-083**

**RESCISSION OF EMERGENCY RULES**

**DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed July 1, 2011, 8:53 a.m.]

The economic services administration requests the rescission of the emergency rule-making order filed as WSR 11-10-033 on April 27, 2011, effective April 29, 2011.

Katherine I. Vasquez  
Rules Coordinator

**WSR 11-14-086**

**EMERGENCY RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed July 1, 2011, 10:50 a.m., effective July 1, 2011, 10:50 a.m.]

Effective Date of Rule: Immediately.

Purpose: The department of social and health services division of child support (DCS) is filing the CR-103E for an emergency rule amending various sections of chapter 388-14A WAC to implement sections 9, 10 and 11 of ESSB 5921 (chapter 42, Laws of 2011).

The statutory changes are effective July 1, 2011. Because the governor did not sign ESSB 5921 until June 15, 2011, it is necessary to file emergency rules in order to have our rule changes effective by July 1.

At the same time we file this emergency rule-making order, DCS is filing the CR-101 Preproposal statement of inquiry, to start the regular rule-making process. Because DCS will be unable to complete the regular adoption process by the effective date of the statute, DCS is adopting emergency rules at this time, but continues the regular rule-making process and will adopt final rules as soon as possible.

Citation of Existing Rules Affected by this Order: New sections WAC 388-14A-2007 Does an application for subsidized child care automatically become an application for support enforcement services?, 388-14A-2042 What happens if I don't cooperate with DCS while I receive a child care subsidy? and 388-14A-2093 Who is mailed notice of DCS' intent to close a case when the custodial parent receives a child care subsidy or a working connections child care subsidy?; and amending WAC 388-14A-2040 Do I have to cooperate with the division of child support in establishing or enforcing child support?, 388-14A-2041 What happens if I don't cooperate with DCS while I receive public assistance?, 388-14A-2045 What can I do if I am afraid that cooperating with the division of child support will be harmful to me or to my children?, 388-14A-2050 Who decides if I have good cause not to cooperate?, and 388-14A-2075 What happens if the division of child support determines that I am not cooperating?

Statutory Authority for Adoption: ESSB 5921 (chapter 42, Laws of 2011), RCW 34.05.020, 34.05.220, 34.05.350, 74.08.090, 74.20.040.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: The statutory changes are effective July 1, 2011. Because the governor did not sign ESSB 5921 until June 15, 2011, it is necessary to file emer-

agency rules in order to have our rule changes effective by July 1.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 5, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 5, Repealed 0.

Date Adopted: July 1, 2011.

Katherine I. Vasquez  
Rules Coordinator

#### NEW SECTION

**WAC 388-14A-2007 Does an application for subsidized child care automatically become an application for support enforcement services?** (1) As a condition of receiving a child care subsidy or a working connections child care (WCCC) subsidy, the applicant or recipient must seek child support enforcement services, unless the department finds that the applicant or recipient has good cause not to cooperate.

(a) An application for a subsidy does not automatically become an application for support enforcement services.

(b) The person receiving the subsidy must file a signed application for support enforcement services as described in WAC 388-14A-2000 and 388-14A-2010, unless the person is also receiving cash assistance.

(2) Payment for subsidized child care services or WCCC services constitutes an authorization to DCS to provide the recipient of the subsidy with support enforcement services, but the recipient must submit a signed application, as provided in subsection (1) of this section.

(3) DCS collects, but does not retain, child support payments unless there is also an assignment of rights based on receipt of cash assistance or medical assistance.

(4) If DCS documents failure to cooperate by the custodial parent (CP), and that cooperation is essential for the next step in enforcement, DCS closes the child support enforcement case under WAC 388-14A-2080(8) or as that section may hereinafter be amended.

(5) If the person receiving the subsidy requests that DCS stop providing services and there is no current assignment of medical or support rights, DCS closes the child support enforcement case under WAC 388-14A-2080(4) or as that section may hereinafter be amended.

(6) If DCS closes a case as provided in subsection (4) or (5) of this section, DCS notifies the community services division (CSD) that the recipient of the subsidy has failed to cooperate with DCS. Any sanctions for failure to cooperate

are determined by the CSO or the department of early learning (DEL).

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

**WAC 388-14A-2040 Do I have to cooperate with the division of child support in establishing or enforcing child support?** (1) You must cooperate with the division of child support (DCS) when you receive public assistance unless the department determines there is good cause not to cooperate under WAC 388-422-0020.

(2) You must cooperate with the division of child support (DCS) when you receive a child care subsidy or a working connections child care (WCCC) subsidy, unless the department determines there is good cause not to cooperate under WAC 388-422-0020 or another specific DEL rule.

(3) As described in WAC 388-14A-2080, DCS may close a nonassistance case if the custodial parent (CP) fails to cooperate, if cooperation is essential for the next step in enforcement.

(4) For purposes of this section and WAC 388-14A-2075, cooperating with DCS includes cooperating with those acting on behalf of DCS (its "representatives"), namely the prosecuting attorney, the attorney general, or a private attorney paid per RCW 74.20.350. In cases where paternity is at issue, the custodial parent (CP) of a child who receives assistance must cooperate whether or not the parent receives assistance.

~~((2))~~ (5) Cooperation means giving information, attending interviews, attending hearings, or taking actions to help DCS establish and collect child support. This information and assistance is necessary for DCS to:

(a) Identify and locate the responsible parent;

(b) Establish the paternity of the child(ren) on assistance in the CP's care; and

(c) Establish or collect support payments or resources such as property due the CP or the child(ren).

~~((3))~~ (6) The CP must also cooperate by sending to DCS any child support received by the CP while on assistance, as required by RCW 74.20A.275 (3)(c). If the client keeps these payments, known as retained support, the CP must sign an agreement to repay under RCW 74.20A.275, and the CP must honor that agreement.

~~((4))~~ (7) The cooperation requirements of subsections (1), (4) and ~~((2))~~ (5) above, but not subsection ~~((3))~~ (6), apply to a recipient of medicaid-only assistance.

(8) The cooperation requirements of subsections (2), (4) and (5) above, but not subsection (6), apply to a recipient of a child care subsidy or a WCCC subsidy.

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

**WAC 388-14A-2041 What happens if I don't cooperate with DCS while I receive public assistance?** (1) If you receive public assistance, there may be penalties, called sanctions, for not cooperating with the division of child support (DCS). These sanctions and the noncooperation process are described in WAC 388-14A-2075. You may be sanctioned if:

(a) You do not go to scheduled interviews and answer questions;

(b) There is credible evidence showing that you could have given the information but did not;

(c) You have been giving inconsistent or false information without a good reason; or

(d) You refuse to sign or honor a repayment agreement under WAC 388-14A-2040(3).

(2) You must be given the opportunity to swear you do not have the information.

(3) You cannot be sanctioned because you provided information on a possible parent who was then excluded by genetic testing. In this event you must continue to cooperate in naming other possible parents and taking part in any resulting genetic testing.

(4) You may not be able to help DCS if you do not know, do not possess, or cannot reasonably obtain the requested information. To avoid a sanction, you must, under penalty of perjury, swear or attest to your lack of information in an interview held by DCS or its representative.

(5) If you fear that cooperation may cause harm to you or your children, you may contact the community services division (CSD) to claim good cause not to cooperate under WAC 388-422-0020.

#### NEW SECTION

**WAC 388-14A-2042 What happens if I don't cooperate with DCS while I receive a child care subsidy?** (1) If the division of child support (DCS) closes your nonassistance case either at your request or based on your failure to cooperate while you are a recipient of a child care subsidy or a working connections child care (WCCC) subsidy, DCS notifies the community services division (CSD) that your case was closed.

(2) Any sanctions for your failure to cooperate are determined by CSD or the department of early learning (DEL).

(3) If you fear that cooperation may cause harm to you or your children, you may contact the community services division (CSD) to claim good cause not to cooperate under WAC 388-422-0020 or another specific DEL rule.

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

**WAC 388-14A-2045 What can I do if I am afraid that cooperating with the division of child support will be harmful to me or to my children?** (1) If a custodial parent (CP) receiving public assistance fears that the establishment or enforcement of support may result in harm to the CP or the children, the CP may be excused from the cooperation requirements. ((You can)) The CP must contact the community services office (CSO) to claim good cause not to cooperate under WAC 388-422-0020. ((Go to the community services office (CSO) to claim good cause:))

(2) If a CP who is not receiving public assistance but is receiving a child care subsidy or a working connections child care (WCCC) subsidy fears that the establishment or enforcement of support may result in harm to the CP or the children, the CP may be excused from the cooperation requirements. The CP must contact the CSO to claim good cause not to

cooperate under WAC 388-422-0020 or another specific DEL rule.

(3) If a CP who is not receiving public assistance, a child care subsidy or a WCCC subsidy fears that the establishment or enforcement of support may result in harm to the CP or the children, the CP should tell the division of child support (DCS) that family violence is an issue in the case, so that DCS may take appropriate action. The CP may ask DCS to close the nonassistance support enforcement case.

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

**WAC 388-14A-2050 Who decides if I have good cause not to cooperate?** (1) The community services office (CSO) decides whether you have good cause not to cooperate with the division of child support (DCS). You must tell the CSO if you want to claim good cause.

(a) The CSO determines good cause under WAC 388-422-0020 or another specific DEL rule.

(b) You may claim good cause at the time you apply for public assistance or for a child care or working connections child care (WCCC) subsidy, or at any time thereafter.

(2) When you make a claim of good cause not to cooperate, DCS does not take any action on ~~((the))~~ your case while the CSO is reviewing your good cause claim.

(3) If you are not receiving public assistance but are applying for a child care subsidy or a WCCC subsidy, you may be granted good cause and not have to apply for child support enforcement services.

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

**WAC 388-14A-2075 What happens if the division of child support determines that I am not cooperating?** (1) When the division of child support (DCS) or its representatives believe ~~((you are))~~ that a custodial parent (CP) who receives cash assistance or medical assistance not cooperating as defined in WAC 388-14A-2040, DCS sends a notice to ((you)) the CP and to the community service office (CSO) ((stating)) about the noncooperation ((and explaining)).

(a) The notice contains the following information:

~~((a))~~ (i) How the noncooperation was determined, including what actions were required;

~~((b))~~ (ii) What actions ((you)) the CP must take to resume cooperation;

~~((c))~~ (iii) That this notice was sent to the CSO;

~~((d))~~ (iv) That ((you)) the CP may contact the CSO immediately if ((you)) the CP disagrees with the notice, needs help in order to cooperate, or believes the actions required are unreasonable; and

~~((e))~~ (v) That the CSO may sanction ((you)) the CP by either reducing or terminating the grant.

~~((2))~~ (b) The CSO sends a notice of planned action to ((you)) the CP as provided by WAC 388-472-0005 (1)(i).

~~((3))~~ (c) Either the notice of alleged noncooperation or the CSO's notice of planned action may serve as the basis for a sanction.

~~((4))~~ (d) If the noncooperation was due to missing an interview without reasonable excuse, ((you)) the CP will be

considered to be cooperating when ~~((you))~~ the CP appears for a rescheduled interview and either provides information or attests to the lack of information. DCS or its representative must reschedule the interview within seven business days from the date ~~((you))~~ the CP contacts them to reschedule an interview.

~~((5))~~ (e) If the noncooperation was due to not taking a required action, cooperation resumes when ~~((you))~~ the CP takes that action.

~~((6))~~ (2) There is no hearing right for a notice of noncooperation, but ~~((you can))~~ the CP may request a hearing on the sanction imposed by the CSO.

(3) When DCS or its representatives believe that a CP who does not receive public assistance but does receive a child care subsidy or a working connections child care (WCCC) subsidy is not cooperating, and that cooperation is essential for the next step in establishment or enforcement, DCS sends a notice of case closure to the CP.

(a) The notice of case closure contains the following information:

(i) That DCS cannot take the next step in establishment or enforcement because of the CP's failure to cooperate;

(ii) What actions the CP must take to resume cooperation;

(iii) The DCS will notify the CSO of case closure;

(iv) That DCS may close the nonassistance case if the CP does not cooperate within sixty days; and

(v) That the CSO may sanction the CP. Any sanctions for failure to cooperate are determined by the CSO.

(4) If the CP takes the actions required to resume cooperation within sixty days, DCS leaves the case open and continues to establish or enforce the support obligation.

(5) The CP may request a hearing to contest case closure, as described in WAC 388-14A-2095.

(6) If DCS closes the case due to noncooperation, a CP who does not receive public assistance but does receive a child care subsidy or a WCCC subsidy may request a hearing on the sanction imposed by the CSO.

## NEW SECTION

**WAC 388-14A-2093 Who is mailed notice of DCS' intent to close a case when the custodial parent receives a child care subsidy or a working connections child care subsidy?** (1) Unless the department finds good cause not to require it, a recipient of a child care subsidy or a working connections child care (WCCC) subsidy who does not receive cash assistance or medical assistance must apply for support enforcement services.

(2) If the division of child support (DCS) intends to close the case because the custodial parent (CP) who receives a child care or WCCC subsidy fails to cooperate as described in WAC 388-14A-2075(3), DCS sends a copy of the notice of intent to close the case to the CP. DCS also notifies the community services division (CSD).

(3) As provided in WAC 388-14A-2090, DCS does not send a notice of intent to close when the CP requests case closure. When DCS closes a case at the request of a CP who receives a child care or WCCC subsidy, DCS sends a copy of the case closure notice to the CP, and also notifies CSD.

(4) Requesting case closure while receiving a child care or WCCC subsidy counts as a failure to cooperate with DCS.

## WSR 11-14-087 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 11-147—Filed July 1, 2011, 11:06 a.m., effective July 5, 2011, 6:00 a.m.]

Effective Date of Rule: July 5, 2011, 6:00 a.m.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100A; and amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Puget Sound Gillnetters Ass'n v. Moos*, 92 Wn.2d 939, 603 P.2d 819 (1979); *State v. James*, 72 Wn.2d 746, 435 P.2d 521 (1967); 40 Stat. 515 (Columbia River compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Sets the fourth weekly gillnet fishing period for the 2011 summer season. Discontinues sales of legal-size sturgeon during the gillnet fishery. Continues to allow the sale of platform and hook and line caught fish from mainstem tribal fisheries (above and below Bonneville Dam) and fish caught in Yakama Nation tributary fisheries. Salmon and steelhead remain available for harvest based on harvest guidelines and management agreements. Fisheries are consistent with the 2008-2017 management agreement and the associated biological opinion. Rule is consistent with action of the Columbia River compact on May 10 and June 30, 2011. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Manage-

ment Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allow for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement. Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 1.

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

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

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

Date Adopted: July 1, 2011.

Joe Stohr  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 220-32-05100B Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management Catch Reporting Areas (SMCRA) 1E, 1F, 1G, and 1H, and in the Wind River, White Salmon River, Klickitat River, and Drano Lake, except as provided in the following subsections. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

1. Open Area: SMCRA 1F, 1G, 1H (Zone 6):

a. Season: 6:00 AM July 5 through 6:00 PM July 8, 2011

b. Gear: Gill nets only.

c. Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon between 38-

54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes only.

d. River mouth sanctuaries (WAC 220-32-058) remain in effect, except the Spring Creek Hatchery sanctuary

2. Open Area: SMCRA 1F, 1G, 1H (Zone 6):

e. Season: Immediately until further notice.

f. Gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

g. Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes only.

h. River mouth sanctuaries (WAC 220-32-058) remain in effect, except the Spring Creek Hatchery sanctuary.

3. Open Area: SMCRA 1E; Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife regarding tribal fisheries in the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe.

a. Participants: Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2011 MOU with the Nez Perce Tribe. Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

b. Season: Immediately until further notice.

c. Gear: Hook and line, or as defined by each tribe's MOU or MOA.

d. Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon retention is prohibited, and sturgeon may not be sold or retained for ceremonial or subsistence purposes. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property.

4. Open Area: Columbia River Tributaries above Bonneville Dam:

a. Season: Immediately until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

b. Area: Drano Lake, and the Wind, White Salmon, and Klickitat rivers.

c. Gear: Hoop nets, dip bag nets, and rod and reel with hook-and-line. Gill nets may only be used in Drano Lake.

d. Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch.

24-Hour quick reporting required for Washington wholesale dealers, WAC 220-69-240, for all areas. Commercial buyers may only purchase sturgeon in the round.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. July 5, 2011:

WAC 220-32-05100A Columbia River salmon seasons above Bonneville Dam. (11-136)

**WSR 11-14-118****EMERGENCY RULES****BOARD OF INDUSTRIAL INSURANCE APPEALS**

[Filed July 6, 2011, 10:34 a.m., effective July 22, 2011]

Effective Date of Rule: July 22, 2011.

Purpose: To revise the board's rules of practice and procedure by amending WAC 263-12-050 and 263-12-059. Changes are necessary to meet current business needs and to meet the legislative mandate for enacting rules to implement ESSB 5068, 2011 legislative session, effective July 22, 2011.

Citation of Existing Rules Affected by this Order: Amending WAC 263-12-050 and 263-12-059.

Statutory Authority for Adoption: RCW 51.52.020.

Other Authority: ESSB 5068, 2011 legislative session.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: To meet the legislative mandate for enacting rules to implement ESSB 5068, 2011 legislative session, effective July 22, 2011.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: July 6, 2011.

David E. Threedy  
Chairperson

AMENDATORY SECTION (Amending WSR 04-16-009, filed 7/22/04, effective 8/22/04)

**WAC 263-12-050 Contents of notice of appeal.** The board's jurisdiction shall be invoked by filing a written notice of appeal.

(1) **General rule.** In all appeals, the notice of appeal should contain where applicable:

(a) The name and address of the appealing party and of the party's representative, if any;

(b) A statement identifying the date and content of the department order, decision or award being appealed. This requirement may be satisfied by attaching a copy of the order, decision or award;

(c) The reason why the appealing party considers such order, decision or award to be unjust or unlawful;

(d) A statement of facts in full detail in support of each stated reason;

(e) The specific nature and extent of the relief sought;

(f) The place, most convenient to the appealing party and that party's witnesses, where board proceedings are requested to be held;

(g) A statement that the person signing the notice of appeal has read it and that to the best of his or her knowledge the contents are true;

(h) The signature of the appealing party or the party's representative.

(2) **Industrial insurance appeals.** In appeals arising under the Industrial Insurance Act (Title 51 RCW), the notice of appeal should also contain:

(a) The name and address of the injured worker;

(b) The name and address of the worker's employer at the time the injury occurred;

(c) In the case of occupational disease, the name and address of all employers in whose employment the worker was allegedly exposed to conditions that gave rise to the occupational disease;

(d) The nature of the injury or occupational disease;

(e) The time when and the place where the injury occurred or the occupational disease arose.

(3) **Crime Victims' Compensation Act.** In appeals arising under the Crime Victims' Compensation Act (chapter 7.68 RCW), the notice of appeal should also contain:

(a) The time when and the place where the criminal act occurred;

(b) The name and address of the alleged perpetrator of the crime; and

(c) The nature of the injury.

(4) **Assessment appeals.** In appeals from a notice of assessment arising under chapter 51.48 RCW or in cases arising from an assessment under the Worker and Community Right to Know Act (chapter 49.70 RCW), the notice of appeal should also contain:

(a) A statement setting forth with particularity the reason for the appeal; and

(b) The amounts, if any, that the party admits are due.

(5) **LEOFF and public employee death benefit appeals.** In appeals arising under the special death benefit provision of the Law Enforcement Officers' and Firefighters' Retirement System (chapter 41.26 RCW), the notice of appeal should also contain:

(a) The time when and the place where the death occurred; and

(b) The name and address of the decedent's employer at the time the injury occurred.

(6) **Asbestos certification appeals.** In appeals arising under chapter 49.26 RCW concerning the denial, suspension or revocation of certificates involving asbestos projects, the notice of appeal should also contain:

(a) A statement identifying the certification decision appealed from;

(b) The reason why the appealing party considers such certification decision to be incorrect.

(7) **WISHA appeals.** In appeals arising under the Washington Industrial Safety and Health Act (chapter 49.17 RCW), where the employer has moved for a stay of abatement pursuant to RCW 49.17.140, the employer shall, within seven calendar days of the date of the board's notice of filing of appeal, file with the board, the department, and any affected employees all documents supporting the request for a stay of the abatement of the violation(s). The supporting documents shall conform to rule 56(e) of the Superior Court Civil Rules of the State of Washington and be limited to evidence addressing: (1) whether there is good cause to stay the abatement of the violation(s) set forth in the citation and notice or corrective notice of redetermination; and (2) whether it is more likely than not that a stay of the abatement of the violation(s) would result in death or serious physical harm to a worker.

If an employer fails to file the supporting documents within seven calendar days of the date of the board's notice of filing of appeal, the request for a stay of the abatement of the violation(s) will be denied. Within fourteen calendar days of the date of the board's notice of filing of appeal, the department of labor and industries and any affected employees shall file all supporting documents opposing the motion to stay the abatement. The supporting documents shall be limited to evidence addressing: (1) whether there is good cause to stay the abatement of the violation(s) set forth in the citation and notice or corrective notice of redetermination; and (2) whether it is more likely than not that a stay of the abatement of the violation(s) would result in death or serious physical harm to a worker.

In appeals arising under the Washington Industrial Safety and Health Act (chapter 49.17 RCW), the appeal should also contain:

(a) A statement identifying the citation, penalty assessment, or notice of abatement date appealed from;

(b) The name and address of the representative of any labor union representing any employee who was or who may be affected by the alleged safety violation(s);

(c) A statement certifying compliance with WAC 263-12-059.

(i) In appeals where the employer has made or renewed its request for a stay of the abatement of the violation(s) alleged in the citation and notice or corrective notice of redetermination, if the employer fails to comply with WAC 263-12-059, the motion for a stay of the abatement of the violation(s) will be denied.

(8) **Other safety appeals.** In appeals arising under chapter 49.22 RCW concerning alleged violations of safety proce-

dures in late night retail establishments, chapter 70.74 RCW concerning alleged violations of the Washington State Explosives Act, or chapter 88.04 RCW concerning alleged violations of the Charter Boat Safety Act, the notice of appeal should also contain:

(a) A statement identifying the citation, penalty assessment, or notice of abatement date appealed from;

(b) The name and address of the representative of any labor union representing any employee who was or who may be affected by the alleged safety violation or violations;

(c) If applicable, a statement certifying compliance with WAC 263-12-059.

AMENDATORY SECTION (Amending WSR 03-02-038, filed 12/24/02, effective 1/24/03)

**WAC 263-12-059 Appeals arising under the Washington Industrial Safety and Health Act—Notice to interested employees.** In the case of any appeal by an employer concerning an alleged violation of the Washington Industrial Safety and Health Act, the employer shall give notice of such appeal to its employees by either: (1) Providing copies of the appeal to each employee member of the employer's safety committee; or (2) by posting a copy of the appeal in a conspicuous place at the work site at which the alleged violation occurred. Any posting shall remain during the pendency of the appeal.

The employer shall also provide notice advising interested employees that an appeal has been filed with the board and that any employee or group of employees who wish to participate in the appeal may do so by contacting the board. Such notice shall include the address of the board.

In appeals where the employer has moved for a stay of the abatement of the violation(s) alleged in the citation and notice or corrective notice of redetermination, the employer shall include in the notice of appeal the names and addresses of any unions representing workers for the employer. If the employer fails to provide the names and addresses of union representatives at the time of filing of the notice of appeal, the motion to stay the abatement of the violation(s) will be denied. Additionally, the employer shall include with the notice of appeal a certification that the employer has posted the notice of appeal and the motion to stay the abatement of the violation(s) in a conspicuous place at the work site at which the alleged violation(s) occurred. If the employer fails to file a certification of the posting of the notice of appeal and the motion to stay the abatement of the violation(s), the motion to stay the abatement of the violation(s) will be denied. Any posting shall remain during the pendency of the appeal.

The employer shall file with the board a certificate of proof of compliance with this section within fourteen days of receipt of the board's notice acknowledging receipt of the appeal. If notice as required by this section is not possible the employer shall advise the board or its designee of the reasons why notice cannot be accomplished. If the board, or its designee, accepts the impossibility of the required notice it will prescribe the terms and conditions of a substitute notice procedure reasonably calculated to give notice to affected employees.