

**WSR 11-18-004**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 11-204—Filed August 25, 2011, 9:18 a.m., effective August 25, 2011, 9:18 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-24-04000F; 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 is a sufficient harvestable portion of the salmon quota that remains to be caught by the troll fleet. A reduced landing limit on chinook should allow the fishery to stay within the chinook quota and harvest more of the coho quota. 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: August 25, 2011.

Philip Anderson  
 Director

**NEW SECTION**

**WAC 220-24-04000F 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:

August 27 through August 29, 2011.

(2) Landing and possession limit of 12 Chinook and 75 coho per boat per each entire open period for catch areas 1, 2, 3 and 4.

(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 there is no chum retention north of Cape Alava, Washington, in August and September. It is unlawful to possess wild coho salmon.

(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 Salmon Management and Catch Reporting Area 3 from 48°00.00' N latitude; 125°14.00' W longitude to 48°02.00' 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 August 31, 2011:

WAC 220-24-04000F All-citizen commercial salmon troll.

**WSR 11-18-006**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 11-203—Filed August 25, 2011, 10:40 a.m., effective August 29, 2011]

Effective Date of Rule: August 29, 2011.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62000H; and amending WAC 232-28-620.

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: Insufficient chinook quota remain in Marine Areas 1 through 4 to allow a chinook retention fishery. 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: August 25, 2011.

Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-62000I Coastal salmon—Saltwater seasons and daily limits.** Notwithstanding the provisions of WAC 232-28-620, effective August 29, 2011, until further notice, it is unlawful to violate the following provisions:

**(1) Catch Record Card Area 1:** Open immediately through September 30. Daily limit of 2 salmon. Release Chinook and wild coho.

a) October 1 until further notice - Closed.

**(2) Catch Record Card Area 2:** Open immediately through September 18. Daily limit of 2 salmon. Release Chinook and wild coho.

a) September 19 until further notice - Closed.

**(3) Willapa Bay (Catch Record Card Area 2-1):** Open immediately until further notice. Daily limit of six salmon, of which not more than three may be adult salmon. Release chum and wild Chinook.

**(4) Grays Harbor (Catch Record Card Area 2-2 east of the Buoy 13 line):**

a) Open September 16 until further notice. Daily limit of 2 salmon. Release Chinook and chum.

b) Notwithstanding the provisions of this subsection, Westport Boat Basin and Ocean Shores Boat Basin: Open only immediately until further notice. Daily limit of six salmon, of which not more than four may be adult salmon. Release wild Chinook.

**(5) Catch Record Card Area 3:**

a) Open immediately through September 18. Daily limit of 2 salmon. In years ending in odd numbers, 1 additional pink salmon may be retained as part of the daily limit. Release Chinook and wild coho.

b) September 19 until September 23 - Closed.

c) Notwithstanding the provisions of this subsection, waters north of 47°50'00"N latitude and south of 48°00'00"N latitude also open September 24 through October 9. Daily limit two salmon. In years ending in odd numbers, 1 additional pink salmon may be retained as part of the daily limit. Release Chinook and wild coho.

d) October 10 until further notice - Closed.

**(6) Catch Record Card Area 4:**

a) Open immediately through September 18. Daily limit of 2 salmon. In years ending in odd numbers, 1 additional pink salmon may be retained as part of the daily limit. Release Chinook and wild coho salmon. Release chum salmon.

b) September 19 until further notice - Closed.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective August 29, 2011:

WAC 232-28-62000H Coastal salmon—Saltwater seasons and daily limits. (11-197)

**WSR 11-18-008**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 11-200—Filed August 25, 2011, 2:31 p.m., effective September 1, 2011]

Effective Date of Rule: September 1, 2011.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900K; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: There is a large run of upriver bright hatchery fall chinook expected to return to the Snake River. Significant steelhead fisheries also occur in the area, and some hatchery fall chinook are expected to be caught during steelhead fishing. Retention of hatchery fall chinook is not expected to increase impacts to Endangered Species Act listed wild fall chinook. 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: August 25, 2011.

Lori Preuss  
for Philip Anderson  
Director

NEW SECTION

**WAC 232-28-61900K Exceptions to statewide rules—Snake River.** Notwithstanding the provisions of WAC 232-28-619, effective September 1 through October 31, 2011, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) A person may fish for salmon upstream from the mouth of the Snake river, beginning at the south bound lanes of the Highway 12 Bridge (near Pasco) to the Oregon State

line (located approximately 7 miles upstream of the mouth of the Grande Ronde River).

(a) Daily limit of three hatchery Chinook adults (24 inches in length and larger), and three hatchery jack Chinook (less than 24 inches). Minimum size for Chinook that can be retained is 12 inches.

(b) Barbless hooks required, and anglers must stop fishing for salmon for the day once they have retained 3 hatchery steelhead (regardless of whether the salmon daily limit has been retained).

(c) All Chinook and steelhead with unclipped adipose fins must be immediately release unharmed. Anglers cannot remove any Chinook or steelhead from the water unless it is retained as part of the daily bag limit.

**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 November 1, 2011:

WAC 232-28-61900K      Exceptions to statewide  
rules—Snake River.

**WSR 11-18-009**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 11-205—Filed August 25, 2011, 2:32 p.m., effective August 27, 2011, 12:01 a.m.]

Effective Date of Rule: August 27, 2011, 12:01 a.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900J.

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: Steelhead numbers passing Wells Dam have increased in recent days. The triploid fishery will close in order to minimize impacts to natural origin steelhead. 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 0, 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: August 25, 2011.

Lori Preuss  
for Philip Anderson  
Director

### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. August 27, 2011:

WAC 232-28-61900J Exceptions to statewide rules—Columbia River. (11-178)

### **WSR 11-18-010 EMERGENCY RULES**

#### **HEALTH CARE AUTHORITY**

[Filed August 25, 2011, 4:53 p.m., effective August 25, 2011, 4:53 p.m.]

Effective Date of Rule: Immediately.

Purpose: Upon order of the governor, the health care authority (HCA) reduced its budget expenditures for fiscal year 2011 and 2012 by eliminating a number of optional medical services from program benefits packages for clients twenty-one years of age and older. These medical services include vision, hearing, and dental care. Sections in chapter 182-501 WAC and WAC 182-502-0160 are being amended to reflect and support these program cuts.

Citation of Existing Rules Affected by this Order: Amending WAC 388-501-0050 [182-501-0050], 388-501-0060 [182-501-0060], 388-501-0065 [182-501-0065], 388-501-0070 [182-501-0070], and 388-502-0160 [182-502-0160].

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: Chapter 564, Laws of 2011 (2E2SHB 1738).

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 year 2009, 2010, 2011, 2012 or 2013, 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 for the benefits was eliminated effective January 1, 2011, as part of these regulatory amendments. HCA is proceeding with the permanent rule adoption process initiated by the CR-101 filed under WSR 10-22-12 [10-22-121].

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 5, 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: August 25, 2011.

Kevin M. Sullivan  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-501-0050 Healthcare general coverage.** WAC ((~~388-501-0050~~)) 182-501-0050 through ((~~388-501-0065~~)) 182-501-0065 describe the healthcare services available to a client on a fee-for-service basis or to a client enrolled in a managed care organization (MCO) (defined in WAC ((~~388-538-050~~)) 182-538-050). For the purposes of this section, healthcare services includes treatment, equipment, related supplies, and drugs. WAC ((~~388-501-0070~~)) 182-501-0070 describes noncovered services.

(1) Healthcare service categories listed in WAC ((~~388-501-0060~~)) 182-501-0060 do not represent a contract for healthcare services.

(2) For the provider to receive payment, the client must be eligible for the covered healthcare service on the date the healthcare service is performed or provided.

(3) Under the ((~~department's~~)) agency's or the agency designee's fee-for-service programs, providers must be enrolled with the ((~~department~~)) agency or the agency's designee and meet the requirements of chapter ((~~388-502~~)) 182-502 WAC to be paid for furnishing healthcare services to clients.

(4) The ((~~department~~)) agency or the agency's designee pays only for the healthcare services that are:

(a) ~~((Within the scope of))~~ Included in the client's ((medical program)) healthcare benefits package as described in WAC 182-501-0060;

(b) Covered - See subsection (9) of this section;

(c) Ordered or prescribed by a healthcare provider who meets the requirements of chapter ~~((388-502))~~ 182-502 WAC;

(d) Medically necessary as defined in WAC ~~((388-500-0005))~~ 182-500-0070;

(e) Submitted for authorization, when required, in accordance with WAC ~~((388-501-0163))~~ 182-501-0163;

(f) Approved, when required, in accordance with WAC ~~((388-501-0165))~~ 182-501-0165;

(g) Furnished by a provider according to chapter ~~((388-502))~~ 182-502 WAC; and

(h) Billed in accordance with ~~((department))~~ agency or agency's designee program rules and the ~~((department's))~~ agency's current published billing instructions and numbered memoranda.

(5) The ~~((department))~~ agency or the agency's designee does not pay for any healthcare service requiring prior authorization from the ~~((department))~~ agency or the agency's designee, if prior authorization was not obtained before the healthcare service was provided; unless:

(a) The client is determined to be retroactively eligible for medical assistance; and

(b) The request meets the requirements of subsection (4) of this section.

(6) The ~~((department))~~ agency does not reimburse clients for healthcare services purchased out-of-pocket.

(7) The ~~((department))~~ agency does not pay for the replacement of ~~((department-purchased))~~ agency-purchased equipment, devices, or supplies which have been sold, gifted, lost, broken, destroyed, or stolen as a result of the client's carelessness, negligence, recklessness, or misuse unless:

(a) Extenuating circumstances exist that result in a loss or destruction of ~~((department-purchased))~~ agency-purchased equipment, devices, or supplies, through no fault of the client that occurred while the client was exercising reasonable care under the circumstances; or

(b) Otherwise allowed under ~~((chapter 388-500 WAC))~~ specific agency program rules.

(8) The ~~((department's))~~ agency's refusal to pay for replacement of equipment, device, or supplies will not extend beyond the limitations stated in specific ~~((department))~~ agency program rules.

(9) **Covered healthcare services.**

(a) Covered healthcare services are either:

(i) "Federally mandated" - Means the state of Washington is required by federal regulation (42 CFR 440.210 and 220) to cover the healthcare service for medicaid clients; or

(ii) "State-option" - Means the state of Washington is not federally mandated to cover the healthcare service but has chosen to do so at its own discretion.

(b) The ~~((department))~~ agency or the agency's designee may limit the scope, amount, duration, and/or frequency of covered healthcare services. Limitation extensions are authorized according to WAC ~~((388-501-0169))~~ 182-501-0169.

(10) **Noncovered healthcare services.**

(a) The ~~((department))~~ agency or the agency's designee does not pay for any healthcare service(~~(:~~

(i) ~~That federal or state laws or regulations prohibit the department from covering; or~~

(ii) ~~) listed as noncovered in WAC ((388-501-0070)) 182-501-0070 or in any other agency program rule. The ((department)) agency or the agency's designee evaluates a request for a noncovered healthcare service only if an exception to rule is requested according to the provisions in WAC ((388-501-0160)) 182-501-0160.~~

(b) When a noncovered healthcare service is recommended during the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) exam and then ordered by a provider, the ~~((department))~~ agency or the agency's designee evaluates the healthcare service according to the process in WAC ~~((388-501-0165))~~ 182-501-0165 to determine if it is medically necessary, safe, effective, and not experimental (see WAC ~~((388-534-0100))~~ 182-534-0100 for EPSDT rules).

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-501-0060 Healthcare coverage—~~((Scope of covered categories of service))~~ Program benefits packages—Scope of service categories. ~~((1)) This rule provides a list (see subsection (5)) of medical, dental, mental health, and substance abuse categories of service covered by the department under categorically needy (CN) medicaid, medically needy (MN) medicaid, Alien Emergency Medical (AEM), and medical care services (MCS) programs. MCS means the limited scope of care financed by state funds and provided to general assistance and Alcohol and Drug Addiction Treatment and Support Act (ADATSA) program clients.~~**

~~((2)) Not all categories of service listed in this section are covered under every medical program, nor do they represent a contract for services. Services are subject to the exclusions, limitations, and eligibility requirements contained in department rules.~~

~~((3)) Services covered under each listed category:~~

~~((a)) Are determined by the department after considering available evidence relevant to the service or equipment to:~~

~~((i)) Determine efficacy, effectiveness, and safety;~~

~~((ii)) Determine impact on health outcomes;~~

~~((iii)) Identify indications for use;~~

~~((iv)) Compare alternative technologies; and~~

~~((v)) Identify sources of credible evidence that use and report evidence-based information.~~

~~((b)) May require prior authorization (see WAC 388-501-0165), or expedited authorization when allowed by the department.~~

~~((c)) Are paid for by the department and subject to review both before and after payment is made. The department or the client's managed care organization may deny or recover payment for such services, equipment, and supplies based on these reviews.~~

~~((4)) The department does not pay for covered services, equipment, or supplies that:~~

(a) Require prior authorization from the department, if prior authorization was not obtained before the service was provided;

(b) Are provided by providers who are not contracted with the department as required under chapter 388-502 WAC;

(c) Are included in a department waiver program identified in chapter 388-515 WAC; or

(d) Are covered by a third party payer (see WAC 388-501-0200), including medicare, if the third party payer has not made a determination on the claim or has not been billed by the provider.

(5) **Scope of covered service categories.** The following table lists the department's covered categories of healthcare services:

- Under the four program columns (CN, MN, MCS, and AEM), the letter "C" means a service category is covered for that program, subject to any limitations listed in the specific medical assistance program WAC and department issuances.

- The letter "N" means a service category is not covered under that program.

- The letter "E" means the service category is available only if it is necessary to treat the client's emergency medical condition and may require prior authorization from the department.

- Refer to WAC 388-501-0065 for a description of each service category and for the specific program WAC containing the limitations and exclusions to services.

Service Categories	CN*	MN	MCS	AEM
(a) Adult day health	€	€	N	E
(b) Ambulance (ground and air)	€	€	€	E
(c) Blood processing/administration	€	€	€	E
(d) Dental services	€	€	€	E
(e) Detoxification	€	€	€	E
(f) Diagnostic services (lab & x ray)	€	€	€	E
(g) Family planning services	€	€	€	E
(h) Healthcare professional services	€	€	€	E
(i) Hearing care (audiology/hearing exams/aids)	€	€	€	E
(j) Home health services	€	€	€	E
(k) Hospice services	€	€	N	E
(l) Hospital services - inpatient/outpatient	€	€	€	E
(m) Intermediate care facility/services for mentally retarded	€	€	€	E
(n) Maternity care and delivery services	€	€	N	E
(o) Medical equipment, durable (DME)	€	€	€	E

Service Categories	CN*	MN	MCS	AEM
(p) Medical equipment, nondurable (MSE)	€	€	€	E
(q) Medical nutrition services	€	€	€	E
(r) Mental health services	€	€	€	E
(s) Nursing facility services	€	€	€	E
(t) Organ transplants	€	€	€	N
(u) Out of state services	€	€	N	E
(v) Oxygen/respiratory services	€	€	€	E
(w) Personal care services	€	€	N	N
(x) Prescription drugs	€	€	€	E
(y) Private duty nursing	€	€	N	E
(z) Prosthetic/orthotic devices	€	€	€	E
(aa) School medical services	€	€	N	N
(bb) Substance abuse services	€	€	€	E
(cc) Therapy - occupational/physical/speech	€	€	€	E
(dd) Vision care (exams/lenses)	€	€	€	E

\*Clients enrolled in the State Children's Health Insurance Program and the Children's Health Program receive CN scope of medical care.) (1) This rule provides a table that lists:

(a) The categorically needy (CN) medicaid, medically needy (MN) medicaid, and medical care services (MCS) programs; and

(b) The benefits packages showing what service categories are included for each program.

(2) Within a service category included in a benefits package, some services may be covered and others noncovered.

(3) Services covered within each service category included in a benefits package:

(a) Are determined, in accordance with WAC 182-501-0050 and 182-501-0055 when applicable.

(b) May be subject to limitations, restrictions, and eligibility requirements contained in agency rules.

(c) May require prior authorization (see WAC 182-501-0165), or expedited authorization when allowed by the agency or the agency's designee.

(d) Are paid for by the agency or the agency's designee and subject to review both before and after payment is made. The agency or the agency's designee or the client's managed care organization may deny or recover payment for such services, equipment, and supplies based on these reviews.

(4) The agency or the agency's designee does not pay for covered services, equipment, or supplies that:

(a) Require prior authorization from the agency or the agency's designee, if prior authorization was not obtained before the service was provided;

(b) Are provided by providers who are not contracted with the agency or the agency's designee as required under chapter 182-502 WAC;

(c) Are included in an agency or an agency's designee waiver program identified in chapter 388-515 WAC; or

(d) Are covered by a third-party payor (see WAC 182-501-0200), including medicare, if the third-party payor has not made a determination on the claim or has not been billed by the provider.

(5) Other programs:

(a) Early and periodic screening, diagnosis, and treatment (EPSDT) services are not addressed in the table. For EPSDT services, see chapter 182-534 WAC and WAC 182-501-0050(10).

(b) Alien emergency medical (AEM) services are not addressed in the table. For AEM services, see chapter 388-438 WAC.

(6) **Scope of service categories.** The following table lists the agency's categories of healthcare services.

(a) Under the CN and MN headings there are two columns. One addresses clients twenty years of age and younger and the other addresses clients twenty-one years of age and older.

(b) Under the MCS heading, "DL" refers to the disability lifeline medical program.

(c) The letter "Y" means a service category is included for that program. Services within each service category are subject to limitations and restrictions listed in the specific medical assistance program WAC and agency issuances.

(d) The letter "N" means a service category is not included for that program.

(e) Refer to WAC 182-501-0065 for a description of each service category and for the specific program WAC containing the limitations and restrictions to services.

<u>Service Categories</u>	<u>CN<sup>1</sup> 20-</u>	<u>21+</u>	<u>MN 20-</u>	<u>21+</u>	<u>MCS DL</u>
<u>Adult day health</u>	<u>Y</u>	<u>Y</u>	<u>Y<sup>2</sup></u>	<u>N</u>	<u>N</u>
<u>Ambulance (ground and air)</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Blood processing/administration</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Dental services</u>	<u>Y</u>	<u>N</u>	<u>Y</u>	<u>N</u>	<u>N</u>
<u>Detoxification</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Diagnostic services (lab and X ray)</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Healthcare professional services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Hearing evaluations</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Hearing aids</u>	<u>Y</u>	<u>N</u>	<u>Y</u>	<u>N</u>	<u>N</u>
<u>Home health services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Hospice services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Hospital services - Inpatient/outpatient</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Intermediate care facility/services for mentally retarded</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Maternity care and delivery services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>N</u>
<u>Medical equipment, durable (DME)</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Medical equipment, nondurable (MSE)</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Medical nutrition services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Mental health services:</u>					
• <u>Inpatient care</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
• <u>Outpatient community mental health services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y<sup>3</sup></u>
• <u>Psychiatrist visits</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y<sup>4</sup></u>
• <u>Medication management</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Nursing facility services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Organ transplants</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Out-of-state services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>N</u>
<u>Oxygen/respiratory services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Personal care services</u>	<u>Y</u>	<u>Y</u>	<u>N</u>	<u>N</u>	<u>N</u>
<u>Prescription drugs</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>

Service Categories	CN <sup>1</sup> 20-	21+	MN 20-	21+	MCS DL
Private duty nursing	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>N</u>
Prosthetic/orthotic devices	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
Psychological evaluation <sup>2</sup>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>N</u>
Reproductive health services (includes family planning and TAKE CHARGE)	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
Substance abuse services	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
Therapy - Occupational, physical and speech	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
Vision care - Exams, refractions, and fittings	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
Vision - Frames and lenses	<u>Y</u>	<u>N</u>	<u>Y</u>	<u>N</u>	<u>N</u>

- <sup>1</sup> Clients enrolled in the children's health insurance program and the apple health for kids program receive CN-scope of medical care.
- <sup>2</sup> Restricted to 18-20 year olds.
- <sup>3</sup> Restricted to DL clients enrolled in managed care.
- <sup>4</sup> DL clients can receive one psychiatric diagnostic evaluation per year and eleven monthly visits per year for medication management.
- <sup>5</sup> Only two allowed per lifetime.

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-501-0065 Healthcare coverage—Description of ((covered)) categories of service.** This rule provides a brief description of the medical, dental, mental health, and substance abuse service categories listed in the table in WAC ((388-501-0060)) 182-501-0060. The description of services under each category is not intended to be all inclusive.

(1) For categorically needy (CN), medically needy (MN), and medical care services (MCS), refer to the WAC citations listed in the following descriptions for specific details regarding each service category. ((For Alien Emergency Medical (AEM) services, refer to WAC 388-438-0110.))

(2) The following service categories are subject to the exclusions, limitations, restrictions, and eligibility requirements contained in ((department)) agency rules:

(a) **Adult day health**—((Skilled nursing services, counseling, therapy (physical, occupational, speech, or audiology), personal care services, social services, general therapeutic activities, health education, nutritional meals and snacks, supervision, and protection. [WAC 388-71-0702 through 388-71-0776])) A supervised daytime program providing skilled nursing and rehabilitative therapy services in addition to the core services of adult day care. Adult day health services are for adults with medical or disabling conditions that require the intervention or services of a registered nurse or licensed rehabilitative therapist acting under the supervision of the client's physician or ARNP. (WAC 388-71-0706, 388-71-0710, 388-71-0712, 388-71-0714, 388-71-0720, 388-71-0722, 388-71-0726, and 388-71-0758)

(b) **Ambulance**—Emergency medical transportation and ambulance transportation for nonemergency medical needs. (([WAC 388-546-0001 through 388-546-4000])) (WAC 182-546-0001 through 182-546-4000)

(c) **Blood processing/administration**—Blood and/or blood derivatives, including synthetic factors, plasma expanders, and their administration. (([WAC 388-550-1400 and 388-550-1500])) (WAC 182-550-1400 and 182-550-1500)

(d) **Dental services**—Diagnosis and treatment of dental problems including emergency treatment and preventive care. (([Chapters 388-535 and 388-535A WAC])) (Chapters 182-535 and 182-535A WAC)

(e) **Detoxification**—Inpatient treatment performed by a certified detoxification center or in an inpatient hospital setting. (([WAC 388-800-0020 through 388-800-0035; and ((388-550-1100))]) 182-550-1100)

(f) **Diagnostic services**—Clinical testing and imaging services. (([WAC 388-531-0100; 388-550-1400 and 388-550-1500])) (WAC 182-531-0100; 182-550-1400 and 182-550-1500)

(g) ((**Family planning services**—Gynecological exams; contraceptives, drugs, and supplies, including prescriptions; sterilization; screening and treatment of sexually transmitted diseases; and educational services. [WAC 388-532-530]

((h)) **Healthcare professional services**—Office visits, emergency oral health, emergency room, nursing facility, home-based, and hospital-based care; surgery, anesthesia, pathology, radiology, and laboratory services; obstetric services; kidney dialysis and renal disease services; osteopathic care, podiatry services, psychiatry, and pulmonary/respiratory services; and allergen immunotherapy. (([Chapter 388-531 WAC]

((i)) (Chapter 182-531 WAC)

(h) **Hearing ((care)) evaluations**—Audiology; diagnostic evaluations; hearing exams and testing((; and hearing aids. [WAC 388-544-1200 and 388-544-1300; 388-545-700; and 388-531-0100])) (WAC 182-531-0100 and 182-531-0375)

(i) **Hearing aids**—(chapter 182-547 WAC)

(j) **Home health services**—Intermittent, short-term skilled nursing care, physical therapy, speech therapy, home infusion therapy, and health aide services, provided in the home. (([WAC 388-551-2000 through 388-551-2220])) (WAC 182-551-2000 through 182-551-2220)

(k) **Hospice services**—Physician services, skilled nursing care, medical social services, counseling services for client and family, drugs, medications (including biologicals), medical equipment and supplies needed for palliative care, home health aide, homemaker, personal care services, medical transportation, respite care, and brief inpatient care. This



benefit also includes services rendered in a hospice care center and pediatric palliative care services. (~~(WAC 388-551-1210 through 388-551-1850)~~) (WAC 182-551-1210 through 182-551-1850)

(l) **Hospital services—Inpatient/outpatient**—Emergency room; hospital room and board (includes nursing care); inpatient services, supplies, equipment, and prescription drugs; surgery, anesthesia; diagnostic testing, laboratory work, blood/blood derivatives; radiation and imaging treatment and diagnostic services; and outpatient or day surgery, and obstetrical services. (~~(Chapter 388-550 WAC)~~) (Chapter 182-550 WAC)

(m) **Intermediate care facility/services for mentally retarded**—Habilitative training, health-related care, supervision, and residential care. (~~(F)~~)(Chapter 388-835 WAC(~~F~~))

(n) **Maternity care and delivery services**—Community health nurse visits, nutrition visits, behavioral health visits, midwife services, maternity and infant case management services, family planning services and community health worker visits. (~~(WAC 388-533-0330)~~) (WAC 182-533-0300)

(o) **Medical equipment, durable (DME)**—Wheelchairs, hospital beds, respiratory equipment; prosthetic and orthotic devices; casts, splints, crutches, trusses, and braces. (~~(WAC 388-543-1100)~~) (Chapter 182-543 WAC)

(p) **Medical equipment, nondurable (MSE)**—Antiseptics, germicides, bandages, dressings, tape, blood monitoring/testing supplies, braces, belts, supporting devices, decubitus care products, ostomy supplies, pregnancy test kits, syringes, needles, (~~(transcutaneous electrical nerve stimulators (TENS) supplies,)~~) and urological supplies. (~~(WAC 388-543-2800)~~) (Chapter 182-543 WAC)

(q) **Medical nutrition services**—Enteral and parenteral nutrition, including supplies. (~~(Chapters 388-553 and 388-554 WAC)~~) (Chapters 182-553 and 182-554 WAC)

(r) **Mental health services**—(~~Inpatient and outpatient psychiatric services and community mental health services. (Chapter 388-865 WAC)~~) Crisis mental health services are available to state residents through the regional support networks (RSNs).

(i) Inpatient care - Voluntary and involuntary admissions for psychiatric services. (WAC 182-550-2600)

(ii) Outpatient (community mental health) services - Nonemergency, nonurgent counseling. (WAC 182-531-1400, 388-865-0215, and 388-865-0230)

(iii) Psychiatric visits. (WAC 182-531-1400 and 388-865-0230)

(iv) Medication management. (WAC 182-531-1400)

(s) **Nursing facility services**—Nursing, therapies, dietary, and daily care services. (~~(F)~~)(Chapter 388-97 WAC(~~F~~))

(t) **Organ transplants**—Solid organs, e.g., heart, kidney, liver, lung, pancreas, and small bowel; bone marrow and peripheral stem cell; skin grafts; and corneal transplants. (~~(WAC 388-550-1900 and 388-550-2000, and 388-556-0400)~~) (WAC 182-550-1900 and 182-556-0400)

(u) **Out-of-state services**—(~~(Emergency services; prior authorized care. Services provided in bordering cities are treated as if they were provided in state. (WAC 388-501-0175 and 388-501-0180; 388-531-1100; and 388-556-~~

~~0500)~~) See WAC 182-502-0120 for payment of services out-of-state.

(v) **Oxygen/respiratory services**—Oxygen, oxygen equipment and supplies; oxygen and respiratory therapy, equipment, and supplies. (~~(Chapter 388-552 WAC)~~) (Chapter 182-552 WAC)

(w) **Personal care services**—Assistance with activities of daily living (e.g., bathing, dressing, eating, managing medications) and routine household chores (e.g., meal preparation, housework, essential shopping, transportation to medical services). (~~(F)~~)(WAC 388-106-0010, (~~(388-106-10300, 388-106-10400, 388-106-10500, 388-106-10600, 388-106-10700, 388-106-10720 and 388-106-10900)~~) 388-106-0200, 388-106-0300, 388-106-0400, 388-106-0500, 388-106-0700, and 388-106-0745)

(x) **Prescription drugs**—Outpatient drugs (including in nursing facilities), both generic and brand name; drug devices and supplies; some over-the-counter drugs; oral, topical, injectable drugs; vaccines, immunizations, and biologicals; and family planning drugs, devices, and supplies. (~~(WAC 388-530-1100)~~) (WAC 182-530-2000.) Additional coverage for medications and prescriptions is addressed in specific program WAC sections.

(y) **Private duty nursing**—Continuous skilled nursing services provided in the home, including client assessment, administration of treatment, and monitoring of medical equipment and client care for clients seventeen years of age and under. (~~(WAC 388-551-3000)~~) (WAC 182-551-3000.) For benefits for clients eighteen years of age and older, see WAC 388-106-1000 through 388-106-1055.

(z) **Prosthetic/orthotic devices**—Artificial limbs and other external body parts; devices that prevent, support, or correct a physical deformity or malfunction. (~~(WAC 388-543-1100)~~) (WAC 182-543-1100)

(aa) (~~(School medical services—Medical services provided in schools to children with disabilities under the Individuals with Disabilities Education Act (IDEA). (Chapter 388-537 WAC)~~

~~(bb))~~) **Psychological evaluation**—Complete diagnostic history, examination, and assessment, including the testing of cognitive processes, visual motor responses, and abstract abilities. (WAC 388-865-0610)

(bb) **Reproductive health services**—Gynecological exams; contraceptives, drugs, and supplies, including prescriptions; sterilization; screening and treatment of sexually transmitted diseases; and educational services. (WAC 182-532-530)

(cc) **Substance abuse services**—Chemical dependency assessment, case management services, and treatment services. (~~(WAC 388-533-0701 through 388-533-0730; 388-556-0100 and 388-556-0400)~~) (WAC 182-533-0701 through 182-533-0730; 182-556-0100 and 182-556-0400; and 388-800-0020(~~F~~))

(~~(ee)~~) (dd) **Therapy—Occupational/physical/speech**—Evaluations, assessments, and treatment. (~~(WAC 388-545-300, 388-545-500, and 388-545-700)~~

~~(dd))~~) (Chapter 182-545 WAC)

(ee) **Vision care**—Eye exams, refractions, (~~(frames, lenses,)~~) fittings, visual field testing, vision therapy, ocular

prosthetics, and surgery. (~~([WAC 388-544-0250 through 388-544-0550]) (WAC 182-531-1000)~~)

~~(ff) Vision hardware—Frames and lenses. (Chapter 182-544 WAC)~~

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-501-0070 Healthcare coverage—Noncovered services.** (1) The ~~((department))~~ agency or the agency's designee does not pay for any healthcare service not listed or referred to as a covered healthcare service under the medical programs described in WAC ~~((388-501-0060))~~ 182-501-0060, regardless of medical necessity. For the purposes of this section, healthcare services includes treatment, equipment, related supplies, and drugs. Circumstances in which clients are responsible for payment of healthcare services are described in WAC ~~((388-502-0160))~~ 182-502-0160.

(2) This section does not apply to healthcare services provided as a result of the early and periodic screening, diagnosis, and treatment (EPSDT) program as described in chapter ~~((388-534))~~ 182-534 WAC.

(3) The ~~((department))~~ agency or the agency's designee does not pay for any ancillary healthcare service(s) provided in association with a noncovered healthcare service.

(4) The following list of noncovered healthcare services is not intended to be exhaustive. Noncovered healthcare services include, but are not limited to:

(a) Any healthcare service specifically excluded by federal or state law;

(b) Acupuncture, Christian Science practice, faith healing, herbal therapy, homeopathy, massage, massage therapy, naturopathy, and sanopractice;

(c) Chiropractic care for adults;

(d) Cosmetic, reconstructive, or plastic surgery, and any related healthcare services, not specifically allowed under WAC 388-531-0100(4)(-);

(e) Discography;

(f) Ear or other body piercing;

(g) Face lifts or other facial cosmetic enhancements;

(h) Fertility, infertility or sexual dysfunction testing, and related care, drugs, and/or treatment including but not limited to:

(i) Artificial insemination;

(ii) Donor ovum, sperm, or surrogate womb;

(iii) In vitro fertilization;

(iv) Penile implants;

(v) Reversal of sterilization; and

(vi) Sex therapy.

(i) Gender reassignment surgery and any surgery related to trans-sexualism, gender identity disorders, and body dysmorphism, and related healthcare services or procedures, including construction of internal or external genitalia, breast augmentation, or mammoplasty;

(j) Hair transplants, epilation (hair removal), and electrolysis;

(k) Marital counseling;

(l) Motion analysis, athletic training evaluation, work hardening condition, high altitude simulation test, and health and behavior assessment;

(m) Nonmedical equipment;

(n) Penile implants;

(o) Prosthetic testicles;

(p) Psychiatric sleep therapy;

(q) Subcutaneous injection filling;

(r) Tattoo removal;

(s) Transport of Involuntary Treatment Act (ITA) clients to or from out-of-state treatment facilities, including those in bordering cities;

(t) Upright magnetic resonance imaging (MRI); and

(u) Vehicle purchase - new or used vehicle.

(5) For a specific list of noncovered healthcare services in the following service categories, refer to the WAC citation:

(a) Ambulance transportation and nonemergent transportation as described in chapter ~~((388-546))~~ 182-546 WAC;

(b) Dental services for clients twenty years of age and younger as described in chapter ~~((388-535))~~ 182-535 WAC;

~~((c))~~ ~~((Dental services for clients twenty-one years of age and older as described in chapter 388-535 WAC;~~

~~((d))~~ Durable medical equipment as described in chapter ~~((388-543))~~ 182-543 WAC;

~~((e))~~ (d) Hearing (ear services) aids for clients twenty years of age and younger as described in chapter ~~((388-547))~~ 182-547 WAC;

~~((f))~~ (e) Home health services as described in WAC ~~((388-551-2130))~~ 182-551-2130;

~~((g))~~ (f) Hospital services as described in WAC ~~((388-550-1600))~~ 182-550-1600;

~~((h) Physician-related))~~ (g) Healthcare professional services as described in WAC ~~((388-531-0150))~~ 182-531-0150;

~~((i))~~ (h) Prescription drugs as described in chapter ~~((388-530))~~ 182-530 WAC; ~~(and~~

~~((j))~~ (i) Vision care (services) hardware for clients twenty years of age and younger as described in chapter ~~((388-544))~~ 182-544 WAC; ~~and~~

(j) Vision care exams as described in WAC 182-531-1000.

(6) A client has a right to request an administrative hearing, if one is available under state and federal law. When the ~~((department))~~ agency or the agency's designee denies all or part of a request for a noncovered healthcare service(s), the ~~((department))~~ agency or the agency's designee sends the client and the provider written notice, within ten business days of the date the decision is made, that includes:

(a) A statement of the action the ~~((department))~~ agency or the agency's designee intends to take;

(b) Reference to the specific WAC provision upon which the denial is based;

(c) Sufficient detail to enable the recipient to:

(i) Learn why the ~~((department's))~~ agency's or the agency designee's action was taken; and

(ii) Prepare a response to the ~~((department's))~~ agency's or the agency's designee decision to classify the requested healthcare service as noncovered.

(d) The specific factual basis for the intended action; and

(e) The following information:

(i) Administrative hearing rights;

(ii) Instructions on how to request the hearing;

(iii) ~~((Acknowledgement))~~ Acknowledgment that a client may be represented at the hearing by legal counsel or other representative;

(iv) Instructions on how to request an exception to rule (ETR);

(v) Information regarding ~~((department covered))~~ agency-covered healthcare services, if any, as an alternative to the requested noncovered healthcare service; and

(vi) Upon the client's request, the name and address of the nearest legal services office.

(7) A client can request an exception to rule (ETR) as described in WAC ~~((388-501-0160))~~ 182-501-0160.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-502-0160 Billing a client.** (1) The purpose of this section is to specify the limited circumstances in which:

(a) Fee-for-service or managed care clients can choose to self-pay for medical assistance services; and

(b) Providers (as defined in WAC ~~((388-500-0005))~~ 182-500-0085) have the authority to bill fee-for-service or managed care clients for medical assistance services furnished to those clients.

(2) The provider is responsible for:

(a) Verifying whether the client is eligible to receive medical assistance services on the date the services are provided;

(b) Verifying whether the client is enrolled with ~~((a department contracted))~~ an agency-contracted managed care organization (MCO);

(c) Knowing the limitations of the services within the scope of the eligible client's medical program (see WAC ~~((388-501-0050(4)(a) and 388-501-0065))~~ 182-501-0050(4)(a) and 182-501-0065);

(d) Informing the client of those limitations;

(e) Exhausting all applicable ~~((department))~~ agency or ~~((department contracted))~~ agency-contracted MCO processes necessary to obtain authorization for requested service(s);

(f) Ensuring that translation or interpretation is provided to clients with limited English proficiency (LEP) who agree to be billed for services in accordance with this section; and

(g) Retaining all documentation which demonstrates compliance with this section.

(3) Unless otherwise specified in this section, providers must accept as payment in full the amount paid by the ~~((department))~~ agency or ~~((department contracted))~~ agency-contracted MCO for medical assistance services furnished to clients. See 42 CFR § 447.15.

(4) A provider must not bill a client, or anyone on the client's behalf, for any services until the provider has completed all requirements of this section, including the conditions of payment described in ~~((department's))~~ the agency's rules, the ~~((department's))~~ agency's fee-for-service billing instructions, and the requirements for billing the ~~((department contracted))~~ agency-contracted MCO in which the client is enrolled, and until the provider has then fully informed the client of his or her covered options. A provider must not bill a client for:

(a) Any services for which the provider failed to satisfy the conditions of payment described in ~~((department's))~~ the agency's rules, the ~~((department's))~~ agency's fee-for-service billing instructions, and the requirements for billing the ~~((department contracted))~~ agency-contracted MCO in which the client is enrolled.

(b) A covered service even if the provider has not received payment from the ~~((department))~~ agency or the client's MCO.

(c) A covered service when the ~~((department))~~ agency or the agency's designee denies an authorization request for the service because the required information was not received from the provider or the prescriber under WAC ~~((388-501-0165))~~ 182-501-0165 (7)(c)(i).

(5) If the requirements of this section are satisfied, then a provider may bill a fee-for-service or a managed care client for a covered service, defined in WAC ~~((388-501-0050(9)))~~ 182-501-0050(9), or a noncovered service, defined in WAC ~~((388-501-0050(10) and 388-501-0070))~~ 182-501-0050(10) and 182-501-0070. The client and provider must sign and date the ~~((DHS))~~ form 13-879, Agreement to Pay for Healthcare Services, before the service is furnished. ~~((DHS))~~ Form 13-879, including translated versions, is available to download at ~~((http://www1.dshs.wa.gov/msa/forms/eforms.html))~~ http://hrsa.dshs.wa.gov/mpforms.shtml. The requirements for this subsection are as follows:

(a) The agreement must:

(i) Indicate the anticipated date the service will be provided, which must be no later than ninety calendar days from the date of the signed agreement;

(ii) List each of the services that will be furnished;

(iii) List treatment alternatives that may have been covered by the ~~((department))~~ agency or ~~((department contracted))~~ agency-contracted MCO;

(iv) Specify the total amount the client must pay for the service;

(v) Specify what items or services are included in this amount (such as pre-operative care and postoperative care). See WAC ~~((388-501-0070(3)))~~ 182-501-0070(3) for payment of ancillary services for a noncovered service;

(vi) Indicate that the client has been fully informed of all available medically appropriate treatment, including services that may be paid for by the ~~((department))~~ agency or ~~((department contracted))~~ agency-contracted MCO, and that he or she chooses to get the specified service(s);

(vii) Specify that the client may request an exception to rule (ETR) in accordance with WAC ~~((388-501-0160))~~ 182-501-0160 when the ~~((department))~~ agency or the agency's designee denies a request for a noncovered service and that the client may choose not to do so;

(viii) Specify that the client may request an administrative hearing in accordance with chapter 388-526 WAC ~~((388-526-2610))~~ to appeal the ~~((department's))~~ agency's or the agency designee denial of a request for prior authorization of a covered service and that the client may choose not to do so;

(ix) Be completed only after the provider and the client have exhausted all applicable ~~((department))~~ agency or ~~((department contracted))~~ agency-contracted MCO processes necessary to obtain authorization of the requested service, except that the client may choose not to request an ETR

or an administrative hearing regarding ~~((department))~~ agency or agency designee denials of authorization for requested service(s); and

(x) Specify which reason in subsection (b) below applies.

(b) The provider must select on the agreement form one of the following reasons (as applicable) why the client is agreeing to be billed for the service(s). The service(s) is:

(i) Not covered by the ~~((department))~~ agency or the client's ~~((department-contracted))~~ agency-contracted MCO and the ETR process as described in WAC ~~((388-501-0160))~~ 182-501-0160 has been exhausted and the service(s) is denied;

(ii) Not covered by the ~~((department))~~ agency or the client's ~~((department-contracted))~~ agency-contracted MCO and the client has been informed of his or her right to an ETR and has chosen not to pursue an ETR as described in WAC ~~((388-501-0160))~~ 182-501-0160;

(iii) Covered by the ~~((department))~~ agency or the client's ~~((department-contracted))~~ agency-contracted MCO, requires authorization, and the provider completes all the necessary requirements; however the ~~((department))~~ agency or the agency's designee denied the service as not medically necessary (this includes services denied as a limitation extension under WAC ~~((388-501-0169))~~ 182-501-0169); or

(iv) Covered by the ~~((department))~~ agency or the client's ~~((department-contracted))~~ agency-contracted MCO and does not require authorization, but the client has requested a specific type of treatment, supply, or equipment based on personal preference which the ~~((department))~~ agency or MCO does not pay for and the specific type is not medically necessary for the client.

(c) For clients with limited English proficiency, the agreement must be the version translated in the client's primary language and interpreted if necessary. If the agreement is translated, the interpreter must also sign it;

(d) The provider must give the client a copy of the agreement and maintain the original and all documentation which supports compliance with this section in the client's file for six years from the date of service. The agreement must be made available to the ~~((department))~~ agency or the agency's designee for review upon request; and

(e) If the service is not provided within ninety calendar days of the signed agreement, a new agreement must be completed by the provider and signed by both the provider and the client.

(6) There are limited circumstances in which a provider may bill a client without executing ~~((DSHS))~~ form 13-879, Agreement to Pay for Healthcare Services, as specified in subsection (5) of this section. The following are those circumstances:

(a) The client, the client's legal guardian, or the client's legal representative:

(i) Was reimbursed for the service directly by a third party (see WAC ~~((388-501-0200))~~ 182-501-0200); or

(ii) Refused to complete and sign insurance forms, billing documents, or other forms necessary for the provider to bill the third party insurance carrier for the service.

(b) The client represented himself/herself as a private pay client and not receiving medical assistance when the client was already eligible for and receiving benefits under a

medical assistance program. In this circumstance, the provider must:

(i) Keep documentation of the client's declaration of medical coverage. The client's declaration must be signed and dated by the client, the client's legal guardian, or the client's legal representative; and

(ii) Give a copy of the document to the client and maintain the original for six years from the date of service, for ~~((department))~~ agency or the agency's designee review upon request.

(c) The bill counts toward the financial obligation of the client or applicant (such as spenddown liability, client participation as described in WAC 388-513-1380, emergency medical expense requirement, deductible, or copayment required by the ~~((department))~~ agency or the agency's designee). See subsection (7) of this section for billing a medically needy client for spenddown liability;

(d) The client is under the ~~((department's))~~ agency's or ~~((a department-contracted))~~ an agency-contracted MCO's patient review and coordination (PRC) program (WAC ~~((388-501-0135))~~ 182-501-0135) and receives nonemergency services from providers or healthcare facilities other than those to whom the client is assigned or referred under the PRC program;

(e) The client is a dual-eligible client with medicare Part D coverage or similar creditable prescription drug coverage and the conditions of WAC ~~((388-530-7700))~~ 182-530-7700 (2)(a)(iii) are met;

(f) The services provided to a TAKE CHARGE or family planning only client are not within the scope of the client's benefit package;

(g) The services were noncovered ambulance services (see WAC ~~((388-546-0250(2)))~~ 182-546-0250(2));

(h) A fee-for-service client chooses to receive nonemergency services from a provider who is not contracted with the ~~((department))~~ agency or the agency's designee after being informed by the provider that he or she is not contracted with the ~~((department))~~ agency or the agency's designee and that the services offered will not be paid by the client's healthcare program; ~~((and))~~

(i) ~~((A department-contracted))~~ An agency-contracted MCO enrollee chooses to receive nonemergency services from providers outside of the MCO's network without authorization from the MCO, i.e., a nonparticipating provider; and

(j) The service is within a service category excluded from the client's benefits package. See WAC 182-501-0060.

(7) Under chapter 388-519 WAC, an individual who has applied for medical assistance is required to spend down excess income on healthcare expenses to become eligible for coverage under the medically needy program. An individual must incur healthcare expenses greater than or equal to the amount that he or she must spend down. The provider is prohibited from billing the individual for any amount in excess of the spenddown liability assigned to the bill.

(8) There are situations in which a provider must refund the full amount of a payment previously received from or on behalf of an individual and then bill the ~~((department))~~ agency for the covered service that had been furnished. In these situations, the individual becomes eligible for a covered service that had already been furnished. Providers must then

accept as payment in full the amount paid by the ((~~department~~)) agency or the agency's designee or managed care organization for medical assistance services furnished to clients. These situations are as follows:

(a) The individual was not receiving medical assistance on the day the service was furnished. The individual applies for medical assistance later in the same month in which the service was provided and the ((~~department~~)) agency or the agency's designee makes the individual eligible for medical assistance from the first day of that month;

(b) The client receives a delayed certification for medical assistance as defined in WAC ((~~388-500-0005~~)) 182-500-0025; or

(c) The client receives a certification for medical assistance for a retroactive period according to 42 CFR § 435.914(a) and defined in WAC ((~~388-500-0005~~)) 182-500-0095.

(9) Regardless of any written, signed agreement to pay, a provider may not bill, demand, collect, or accept payment or a deposit from a client, anyone on the client's behalf, or the ((~~department~~)) agency or the agency's designee for:

(a) Copying, printing, or otherwise transferring health-care information, as the term healthcare information is defined in chapter 70.02 RCW, to another healthcare provider. This includes, but is not limited to:

- (i) Medical/dental charts;
- (ii) Radiological or imaging films; and
- (iii) Laboratory or other diagnostic test results.

(b) Missed, ((~~cancelled~~)) cancelled, or late appointments;

(c) Shipping and/or postage charges;

(d) "Boutique," "concierge," or enhanced service packages (e.g., newsletters, 24/7 access to provider, health seminars) as a condition for access to care; or

(e) The price differential between an authorized service or item and an "upgraded" service or item (e.g., a wheelchair with more features; brand name versus generic drugs).

## WSR 11-18-011

### EMERGENCY RULES

#### HEALTH CARE AUTHORITY

[Filed August 25, 2011, 5:11 p.m., effective August 25, 2011, 5:11 p.m.]

Effective Date of Rule: Immediately.

Purpose: Upon order of the governor, the health care authority (HCA) reduced its budget expenditures for fiscal year 2011 by 6.3 percent. To achieve the expenditure reduction required under Executive Order 10-04, HCA eliminated dental-related services from program benefit packages for clients twenty-one years of age and older and clients receiving medical care services under the disability lifeline (DL) and Alcohol and Drug Abuse Treatment and Support Act (ADATSA) programs. Clients who are classified as developmentally disabled under RCW 71A.10.020 who are twenty-one years of age and older will continue to receive dental-related services under chapter 182-535 WAC.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-535-1065 [182-535-1065], 388-535-1247 [182-535-1247], 388-535-1255 [182-535-1255], 388-535-1257 [182-535-1257], 388-535-1259 [182-535-1259],

388-535-1261 [182-535-1261], 388-535-1263 [182-535-1263], 388-535-1266 [182-535-1266], 388-535-1267 [182-535-1267], 388-535-1269 [182-535-1269], 388-535-1271 [182-535-1271] and 388-535-1280 [182-535-1280] (Reviser's note: Repealed WAC 182-535-1247 through 182-535-1280 are not shown in the repealer section below. The agency has filed a repealer section showing all the sections being repealed in WSR 11-18-065 filed on September 2, 2011); and amending WAC 388-535-1060 [182-535-1065], 388-535-1079 [182-535-1079], 388-535-1080 [182-535-1080], 388-535-1082 [182-535-1082], 388-535-1084 [182-535-1084], 388-535-1086 [182-535-1086], 388-535-1088 [182-535-1088], 388-535-1090 [182-535-1090], 388-535-1092 [182-535-1092], 388-535-1094 [182-535-1094], 388-535-1096 [182-535-1096], 388-535-1098 [182-535-1098], 388-535-1099 [182-535-1099], 388-535-1100 [182-535-1100], 388-535-1220 [182-535-1220], 388-535-1350 [182-535-1350], 388-535-1400 [182-535-1400], 388-535-1450 [182-535-1450], and 388-535-1500 [182-535-1500].

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: Section 209(1), chapter 37, Laws of 2010 (ESSB 6444); sections 201 and 209, chapter 564, Laws of 2009 (ESHB 1244).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012 or 2013, 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 HCA and all other state agencies to reduce their expenditures in state fiscal year 2011 by approximately 6.3 percent. As a consequence of the executive order, funding will no longer be available as of January 1, 2011, for the benefits that are being eliminated as part of these regulatory amendments.

The immediate adoption of these cuts to optional services is necessary to maintain the mandatory medicaid services for the majority of HCA clients. The rule continues the emergency rule filed under WSR 11-10-031 on April 28, 2011, that complies with sections 201 and 209 of the operating budget for fiscal years 2010 and 2011 with respect to dental services. CR-101s were filed under WSR 09-14-093 on June 30, 2009, and WSR 10-20-160 on October 6, 2010. HCA is currently preparing drafts for the permanent rule to share with providers for their input. Following this, HCA plans to formally adopt the permanent rule.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 19, Repealed 12.

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 19, Repealed 12.

Date Adopted: August 25, 2011.

Kevin M. Sullivan  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-535-1060 Clients who are eligible for dental-related services.** ~~(1) The ((following)) clients ((who receive services under the medical assistance programs listed)) described in this section are eligible ((for covered)) to receive the dental-related services((, subject to the restrictions and specific limitations)) described in this chapter ((and other applicable WAC:~~

~~(1) Children eligible for the)), subject to limitations, restrictions, and client-age requirements identified for a specific service.~~

~~(a) Clients who are eligible under one of the following medical assistance programs:~~

~~((a)) (i) Categorically needy program (CN or CNP);~~

~~((b)) (ii) Categorically needy program - Children's health insurance program (CNP-CHIP); ((and~~

~~(c) Limited casualty program--))~~

~~(iii) Medically needy program ((LCP--))MNP);~~

~~(iv) Disability lifeline (DL) or Alcohol and Drug Abuse Treatment and Support Act (ADATSA).~~

~~((2) Adults eligible for the:~~

~~(a) Categorically needy program (CN or CNP); and~~

~~(b) Limited casualty program--medically needy program (LCP-MNP).~~

~~(3) Clients eligible for medical care services under the following state-funded only programs are eligible only for the limited dental-related services described in WAC 388-535-1065:~~

~~(a) General assistance--Unemployable (GA-U); and~~

~~(b) General assistance--Alcohol and Drug Abuse Treatment and Support Act (ADATSA) (GA-W).~~

~~(4)) (b) Clients who are eligible under one of the medical assistance programs in subsection (a) of this section and are one of the following:~~

~~(i) Twenty years of age and younger;~~

~~(ii) Twenty years of age and younger enrolled in ((a)) an agency-contracted managed care ((plan are eligible for medical assistance administration (MAA)-covered dental services that are not covered by their plan,)) organization (MCO). MCO clients are eligible under fee-for-service for covered~~

~~dental-related services not covered by their MCO plan, subject to the provisions of this chapter ((388-535-WAC)) and other applicable ((WAC)) agency rules;~~

~~((ii) For dates of service on and after July 1, 2011, clients who are verifiably pregnant;~~

~~((iv) For dates of service on and after July 1, 2011, clients residing in one of the following:~~

~~(A) Nursing home.~~

~~(B) Nursing facility wing of a state veteran's home.~~

~~(C) Privately operated intermediate care facility for the intellectually disabled (ICF/ID).~~

~~(D) State-operated residential habilitation center (RHC);~~

~~(v) For dates of service on and after July 1, 2011, clients who are eligible under an Aging and Disability Services Administration (ADSA) 1915 (c) waiver program;~~

~~(vi) For dates of service prior to October 1, 2011, clients of the division of developmental disabilities; or~~

~~(vii) For dates of service on and after October 1, 2011, clients of the division of developmental disabilities who also qualify under (b)(i), (iii), (iv), or (v) of this subsection.~~

~~(2) See WAC 388-438-0120 for rules for clients eligible under an alien emergency medical program.~~

~~(3) The dental services discussed in this chapter are excluded from the benefit package for clients not mentioned in subsection (1) of this section. Clients who do not have these dental services in their benefit package may be eligible for the emergency oral healthcare benefit according to WAC 182-531-1025.~~

~~(4) Services announced in the agency's numbered memoranda as discontinued as part of the legislature's budget reductions are excluded from the client's benefit package.~~

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-535-1079 Dental-related services ((for clients through age twenty))—General.** (1) Clients described in WAC 182-535-1060 are eligible to receive the dental-related services described in this chapter, subject to coverage limitations, restrictions, and client-age requirements identified for a specific service. The ((department)) agency pays for dental-related services and procedures provided to eligible clients ((through age twenty)) when the services and procedures:

(a) Are part of the client's dental benefit package;

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

((b)) (c) Are medically necessary;

((c)) (d) Meet the ((department's)) agency's prior authorization requirements, if any;

((d)) (e) Are documented in the client's record in accordance with chapter ((388-502)) 182-502 WAC;

((e)) (f) Are within accepted dental or medical practice standards;

((f)) (g) Are consistent with a diagnosis of dental disease or condition;

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

~~((H))~~ (i) Are listed as covered in the ~~((department's published))~~ agency's rules and published billing instructions and fee schedules.

(2) The agency requires site-of-service prior authorization, in addition to prior authorization of the procedure, if applicable, for nonemergency dental-related services performed in a hospital or an ambulatory surgery center when:

(a) A client is not a client of the division of developmental disabilities according to WAC 182-535-1099;

(b) A client is nine years of age or older;

(c) The service is not listed as exempt from the site-of-service authorization requirement in the agency's current published dental-related services fee schedule or billing instructions; and

(d) The service is not listed as exempt from the prior authorization requirement for deep sedation or general anesthesia (see WAC 182-535-1098 (1)(c)(v)).

(3) To be eligible for payment, dental-related services performed in a hospital or an ambulatory surgery center must be listed in the agency's current published outpatient fee schedule or ambulatory surgery center fee schedule. The claim must be billed with the correct procedure code for the site-of-service.

(4) Under the early periodic screening and diagnostic treatment (EPSDT) program, clients ~~((ages))~~ twenty years of age and younger may be eligible for dental-related services listed as noncovered.

~~((3))~~ Clients who are eligible for services through the division of developmental disabilities may receive dental-related services according to WAC 388-535-1099.

(4)) (5) The ~~((department))~~ agency evaluates a request for dental-related services that are:

(a) ~~((That are))~~ In excess of the dental program's limitations or restrictions, according to WAC ((388-501-0169)) 182-501-0169; and

(b) ~~((That are))~~ Listed as noncovered, according to WAC ((388-501-0160)) 182-501-0160.

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-535-1080 Covered dental-related services ~~((for clients through age twenty))~~—Diagnostic.** ~~((The department covers medically necessary dental-related diagnostic services, subject to the coverage limitations listed, for clients through age twenty as follows:))~~ Clients described in WAC 182-535-1060 are eligible to receive the dental-related diagnostic services listed in this section, subject to coverage limitations, restrictions, and client-age requirements identified for a specific service.

(1) **Clinical oral evaluations.** The ~~((department))~~ agency covers:

(a) Oral health evaluations and assessments.

(b) Periodic oral evaluations as defined in WAC ((388-535-1050)) 182-535-1050, once every six months. Six months must elapse between the comprehensive oral evaluation and the first periodic oral evaluation.

(c) Limited oral evaluations as defined in WAC ((388-535-1050)) 182-535-1050, only when the provider performing the limited oral evaluation is not providing routine sched-

uled dental services for the client. The limited oral evaluation:

(i) Must be to evaluate the client for a:

(A) Specific dental problem or oral health complaint;

(B) Dental emergency; or

(C) Referral for other treatment.

(ii) When performed by a dentist, is limited to the initial examination appointment. The ~~((department))~~ agency does not cover any additional limited examination by a dentist for the same client until three months after a removable prosthesis has been seated.

(d) Comprehensive oral evaluations as defined in WAC ((388-535-1050)) 182-535-1050, once per client, per provider or clinic, as an initial examination. The ~~((department))~~ agency covers an additional comprehensive oral evaluation if the client has not been treated by the same provider or clinic within the past five years.

(e) Limited visual oral assessments as defined in WAC ((388-535-1050)) 182-535-1050, up to two per client, per year, per provider only when the assessment is:

(i) Not performed in conjunction with other clinical oral evaluation services;

(ii) Performed by a licensed dentist or dental hygienist to determine the need for sealants or fluoride treatment and/or when triage services are provided in settings other than dental offices or clinics; and

(iii) Provided by a licensed dentist or licensed dental hygienist.

(2) **Radiographs (X rays).** The ~~((department))~~ agency:

(a) Covers radiographs that are of diagnostic quality, dated, and labeled with the client's name. The ~~((department))~~ agency requires:

(i) Original radiographs to be retained by the provider as part of the client's dental record~~((:))~~; and

(ii) Duplicate radiographs to be submitted;

~~((A))~~ With requests for prior authorization ~~((requests, or))~~; and

~~((B))~~ When the agency requests copies of dental records ~~((are requested))~~.

(b) Uses the prevailing standard of care to determine the need for dental radiographs.

(c) Covers an intraoral complete series (includes four bitewings), once in a three-year period only if the ~~((department))~~ agency has not paid for a panoramic radiograph for the same client in the same three-year period.

(d) Covers periapical radiographs that are not included in a complete series (incomplete radiographs), once in a three-year period. Documentation supporting the medical necessity for these must be included in the client's record. The agency limits reimbursement for all incomplete radiographs to a total payment of no more than the payment for a complete series.

(e) Covers an occlusal intraoral radiograph once in a two-year period~~((:))~~ Documentation supporting the medical necessity for these must be included in the client's record), for clients twenty years of age and younger.

(f) Covers ~~((a maximum of four bitewing radiographs once every twelve months for clients through age eleven))~~ oral facial photo images, only on a case-by-case basis when requested by the agency, for clients twenty years of age and younger.

(g) Covers a maximum of four bitewing radiographs once every twelve months ~~((for clients ages twelve through twenty)).~~

(h) Covers panoramic radiographs in conjunction with four bitewings, once in a three-year period, only if the ~~((department))~~ agency has not paid for an intraoral complete series for the same client in the same three-year period.

(i) May ~~((cover))~~ reimburse for panoramic radiographs for preoperative or postoperative surgery cases more than once in a three-year period, only on a case-by-case basis and when prior authorized.

(j) Covers cephalometric films ~~((:))~~ once in a two-year period for clients twenty years of age and younger, only on a case-by-case basis and when prior authorized.

For orthodontic ~~((s))~~ services, ~~((as described in))~~ see chapter ~~((388-535A))~~ 182-535A WAC ~~((: or~~

~~((ii) Only on a case-by-case basis and when prior authorized)).~~

(k) Covers radiographs not listed as covered in this subsection, only on a case-by-case basis and when prior authorized.

(l) Covers oral and facial photographic images, only on a case-by-case basis and when requested by the ~~((department))~~ agency.

**(3) Tests and examinations.** The ~~((department))~~ agency covers the following for clients who are twenty years of age and younger:

(a) One pulp vitality test per visit (not per tooth):

(i) For diagnosis only during limited oral evaluations; and

(ii) When radiographs and/or documented symptoms justify the medical necessity for the pulp vitality test.

(b) Diagnostic casts other than those included in an orthodontic case study, on a case-by-case basis, and when requested by the ~~((department))~~ agency.

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-535-1082 Covered dental-related services ~~((for clients through age twenty))~~—Preventive services.** Clients described in WAC 182-535-1060 are eligible for the ~~((department covers medically necessary))~~ dental-related preventive services ~~((, subject to the coverage limitations))~~ listed in this section, ~~((for clients through age twenty as follows:))~~ subject to coverage limitations and client-age requirements identified for a specific service.

(1) **Dental prophylaxis.** The ~~((department))~~ agency covers prophylaxis as follows. Prophylaxis:

(a) ~~((Which))~~ Includes scaling and polishing procedures to remove coronal plaque, calculus, and stains when performed on primary ~~((, transitional,))~~ or permanent dentition ~~((: once every six months for clients through age twenty)).~~

(b) Is limited to once every:

(i) Six months for clients eighteen years of age and younger; and

(ii) Twelve months for clients nineteen years of age and older.

(c) Is reimbursed only when the service is performed:

(i) At least six months after periodontal scaling and root planing, or periodontal maintenance services, for clients ~~((ages))~~ from thirteen ~~((through twenty))~~ to eighteen years of age; and

(ii) At least twelve months after periodontal scaling and root planing, periodontal maintenance services, for clients nineteen years of age and older.

~~((e) Only))~~ (d) Is not reimbursed separately when ~~((not))~~ performed on the same date of service as periodontal scaling and root planing, periodontal maintenance, gingivectomy, or gingivoplasty.

~~((f))~~ (e) Is covered for clients of the division of developmental disabilities according to (a), (c), and (d) of this subsection and WAC ~~((388-535-1099))~~ 182-535-1099.

**(2) Topical fluoride treatment.** The ~~((department))~~ agency covers:

(a) Fluoride ~~((varnish,))~~ rinse, foam or gel, for clients ~~((ages))~~ six years of age and younger, up to three times within a twelve-month period.

(b) Fluoride ~~((varnish,))~~ rinse, foam or gel, for clients ~~((ages))~~ from seven ~~((through))~~ to eighteen years of age, up to two times within a twelve-month period.

(c) Fluoride ~~((varnish,))~~ rinse, foam or gel, up to three times within a twelve-month period during orthodontic treatment.

(d) Fluoride rinse, foam or gel, for clients ~~((ages))~~ from nineteen ~~((through twenty))~~ to sixty-four years of age, once within a twelve-month period.

(e) Fluoride rinse, foam or gel, for clients sixty-five years of age and older who reside in alternate living facilities, up to three times within a twelve-month period.

(f) Additional topical fluoride applications only on a case-by-case basis and when prior authorized.

~~((g))~~ (g) Topical fluoride treatment for clients of the division of developmental disabilities according to WAC ~~((388-535-1099))~~ 182-535-1099.

**(3) Oral hygiene instruction.** The ~~((department))~~ agency covers:

(a) Oral hygiene instruction only for clients ~~((through age))~~ eight years of age and younger.

(b) Oral hygiene instruction up to two times within a twelve-month period.

(c) Individualized oral hygiene instruction for home care to include tooth brushing technique, flossing, and use of oral hygiene aides.

(d) Oral hygiene instruction only when not performed on the same date of service as prophylaxis.

(e) Oral hygiene instruction only when provided by a licensed dentist or a licensed dental hygienist and the instruction is provided in a setting other than a dental office or clinic.

(4) **Sealants.** The ~~((department))~~ agency covers:

(a) Sealants only when used on a mechanically and/or chemically prepared enamel surface.

(b) Sealants once per tooth:

(i) In a three-year period for clients ~~((through age))~~ eighteen years of age and younger; and

(ii) In a two-year period for clients any age of the division of developmental disabilities according to WAC 182-535-1099.



- (c) Sealants only when used on the occlusal surfaces of:
- (i) Permanent teeth two, three, fourteen, fifteen, eighteen, nineteen, thirty, and thirty-one; and
  - (ii) Primary teeth A, B, I, J, K, L, S, and T.
- (d) Sealants on noncarious teeth or teeth with incipient caries.
- (e) Sealants only when placed on a tooth with no preexisting occlusal restoration, or any occlusal restoration placed on the same day.
- (f) Additional sealants not described in this subsection on a case-by-case basis and when prior authorized.
- (5) **Space maintenance.** The ~~((department covers))~~ agency:
- (a) Covers fixed unilateral or fixed bilateral space maintainers for clients ((through age eighteen)) twelve years of age and younger, subject to the following:
    - (i) Only one space maintainer is covered per quadrant.
    - (ii) Space maintainers are covered only for missing primary molars A, B, I, J, K, L, S, and T.
    - (iii) Replacement space maintainers are covered only on a case-by-case basis and when prior authorized.
  - (b) ~~((Only one space maintainer per quadrant.~~
  - (c) ~~Space maintainers only for missing primary molars A, B, I, J, K, L, S, and T.~~
  - (d) ~~Replacement space maintainers only on a case-by-case basis and when prior authorized.))~~ Covers removal of fixed space maintainers for clients eighteen years of age and younger.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-535-1084 Covered dental-related services ((for clients through age twenty))—Restorative services.** ~~((The department covers medically necessary dental-related restorative services, subject to the coverage limitations listed, for clients through age twenty as follows:))~~ Clients described in WAC 182-535-1060 are eligible for the dental-related restorative services listed in this section, subject to coverage limitations, restrictions, and client-age requirements identified for a specific service.

- (1) ~~((Restorative/operative procedures. The department covers restorative/operative procedures performed in a hospital or an ambulatory surgical center for:~~
- (a) ~~Clients ages eight and younger;~~
  - (b) ~~Clients ages nine through twenty only on a case-by-case basis and when prior authorized; and~~
  - (c) ~~Clients of the division of developmental disabilities according to WAC 388-535-1099.~~

**(2)) Amalgam restorations for primary and permanent teeth.** The ~~((department))~~ agency considers:

- (a) Tooth preparation, all adhesives (including amalgam bonding agents), liners, bases, and polishing as part of the amalgam restoration.
- (b) The occlusal adjustment of either the restored tooth or the opposing tooth or teeth as part of the amalgam restoration.
- (c) Buccal or lingual surface amalgam restorations, regardless of size or extension, as a one-surface restoration.

The ~~((department))~~ agency covers one buccal and one lingual surface per tooth.

(d) Multiple amalgam restorations of fissures and grooves of the occlusal surface of the same tooth as a one surface restoration.

(e) Amalgam restorations placed within six months of a crown preparation by the same provider or clinic to be included in the payment for the crown.

~~((3))~~ **(2) Amalgam restorations for primary posterior teeth only.** The ~~((department))~~ agency covers amalgam restorations for a maximum of two surfaces for a primary first molar and maximum of three surfaces for a primary second molar. (See subsection ~~((9))~~ (10)(c) of this section for restorations for a primary posterior tooth requiring additional surfaces.) The ~~((department))~~ agency does not pay for additional amalgam restorations.

~~((4))~~ **(3) Amalgam restorations for permanent posterior teeth only.** The ~~((department))~~ agency:

(a) Covers two occlusal amalgam restorations for teeth one, two, three, fourteen, fifteen, and sixteen, if the restorations are anatomically separated by sound tooth structure.

(b) Covers amalgam restorations for a maximum of five surfaces per tooth for a permanent posterior tooth, once per client, per provider or clinic, in a two-year period.

(c) Covers amalgam restorations for a maximum of six surfaces per tooth for teeth one, two, three, fourteen, fifteen, and sixteen, once per client, per provider or clinic, in a two-year period (see (a) of this subsection).

(d) Does not pay for replacement of amalgam restoration on permanent posterior teeth within a two-year period unless the restoration has an additional adjoining carious surface. The ~~((department))~~ agency pays for the replacement restoration as one multi-surface restoration. The client's record must include radiographs and documentation supporting the medical necessity for the replacement restoration.

~~((5))~~ **(4) Resin-based composite restorations for primary and permanent teeth.** The ~~((department))~~ agency:

(a) Considers tooth preparation, acid etching, all adhesives (including resin bonding agents), liners and bases, polishing, and curing as part of the resin-based composite restoration.

(b) Considers the occlusal adjustment of either the restored tooth or the opposing tooth or teeth as part of the resin-based composite restoration.

(c) Considers buccal or lingual surface resin-based composite restorations, regardless of size or extension, as a one-surface restoration. The ~~((department))~~ agency covers only one buccal and one lingual surface per tooth.

(d) Considers resin-based composite restorations of teeth where the decay does not penetrate the dentoenamel junction (DEJ) to be sealants (see WAC ~~((388-535-1082))~~ 182-535-1082(4) for sealants coverage).

(e) Considers multiple preventive restorative resin, flowable composite resin, or resin-based composites for the occlusal, buccal, lingual, mesial, and distal fissures and grooves on the same tooth as a one surface restoration.

(f) Does not cover preventive restorative resin or flowable composite resin on the interproximal surfaces (mesial and/or distal) when performed on posterior teeth or the incisal surface of anterior teeth.

(g) Considers resin-based composite restorations placed within six months of a crown preparation by the same provider or clinic to be included in the payment for the crown.

~~((6))~~ **(5) Resin-based composite restorations for primary teeth only.** The ~~((department))~~ agency covers:

(a) Resin-based composite restorations for a maximum of three surfaces for a primary anterior tooth (see subsection ~~((9))~~ **(10)**(b) of this section for restorations for a primary anterior tooth requiring a four or more surface restoration). The ~~((department))~~ agency does not pay for additional composite or amalgam restorations on the same tooth after three surfaces.

(b) Resin-based composite restorations for a maximum of two surfaces for a primary first molar and a maximum of three surfaces for a primary second molar. (See subsection ~~((9))~~ **(10)**(c) of this subsection for restorations for a primary posterior tooth requiring additional surfaces.) The ~~((department))~~ agency does not pay for additional composite restorations on the same tooth.

(c) Glass ~~((ionomer))~~ **ionomer** restorations only for primary teeth, and only for clients ~~((ages))~~ **five years of age** and younger. The ~~((department))~~ agency pays for these restorations as a one-surface, resin-based composite restoration.

~~((7))~~ **(6) Resin-based composite restorations for permanent teeth only.** The ~~((department))~~ agency covers:

(a) Two occlusal resin-based composite restorations for teeth one, two, fourteen, fifteen, and sixteen if the restorations are anatomically separated by sound tooth structure.

(b) Resin-based composite restorations for a maximum of five surfaces per tooth for a permanent posterior tooth, once per client, per provider or clinic, in a two-year period.

(c) Resin-based composite restorations for a maximum of six surfaces per tooth for permanent posterior teeth one, two, three, fourteen, fifteen, and sixteen, once per client, per provider or clinic, in a two-year period (see (a) of this subsection).

(d) Resin-based composite restorations for a maximum of six surfaces per tooth for a permanent anterior tooth, once per client, per provider or clinic, in a two-year period.

(e) Replacement of resin-based composite restoration on permanent teeth within a two-year period only if the restoration has an additional adjoining carious surface. The ~~((department))~~ agency pays the replacement restoration as a one multi-surface restoration. The client's record must include radiographs and documentation supporting the medical necessity for the replacement restoration.

~~((8))~~ **(7) The agency reimburses proximal restorations that do not involve the incisal angle on anterior teeth as a two-surface restoration.**

**(8) The agency reimburses multiple restorations that do not involve the proximal and occlusal surfaces of the same tooth as a single multi-surface restoration.**

**(9) Crowns.** The ~~((department))~~ agency:

(a) Covers the following indirect crowns once every five years, per tooth, for permanent anterior teeth for clients ~~((ages))~~ **from twelve** ~~((through))~~ **to twenty years of age** when the crowns meet prior authorization criteria in WAC ~~((388-535-1220))~~ **182-535-1220** and the provider follows the prior authorization requirements in ~~((d))~~ **(c)** of this subsection:

(i) Porcelain/ceramic crowns to include all porcelains, glasses, glass-ceramic, and porcelain fused to metal crowns; and

(ii) Resin crowns and resin metal crowns to include any resin-based composite, fiber, or ceramic reinforced polymer compound.

~~((b))~~ **(b) ~~((Covers full coverage metal crowns once every five years, per tooth, for permanent posterior teeth to include high noble, titanium, titanium alloys, noble, and predominantly base metal crowns for clients ages eighteen through twenty when they meet prior authorization criteria and the provider follows the prior authorization requirements in (d) and (e) of this subsection.~~**

~~((e))~~ Considers the following to be included in the payment for a crown:

(i) Tooth and soft tissue preparation;

(ii) Amalgam and resin-based composite restoration, or any other restorative material placed within six months of the crown preparation. Exception: The ~~((department))~~ agency covers a one-surface restoration on an endodontically treated tooth, or a core buildup or cast post and core;

(iii) Temporaries, including but not limited to, temporary restoration, temporary crown, provisional crown, temporary prefabricated stainless steel crown, ion crown, or acrylic crown;

(iv) Packing cord placement and removal;

(v) Diagnostic or final impressions;

(vi) Crown seating **(placement)**, including cementing and insulating bases;

(vii) Occlusal adjustment of crown or opposing tooth or teeth; and

(viii) Local anesthesia.

~~((d))~~ **(c)** Requires the provider to submit the following with each prior authorization request:

(i) Radiographs to assess all remaining teeth;

(ii) Documentation and identification of all missing teeth;

(iii) Caries diagnosis and treatment plan for all remaining teeth, including a caries control plan for clients with rampant caries;

(iv) Pre- and post-endodontic treatment radiographs for requests on endodontically treated teeth; and

(v) Documentation supporting a five-year prognosis that the client will retain the tooth or crown if the tooth is crowned.

~~((e))~~ **(d)** Requires a provider to bill for a crown only after delivery and seating of the crown, not at the impression date.

~~((9))~~ **(10) Other restorative services.** The ~~((department))~~ agency covers the following restorative services:

(a) All recementations of permanent indirect crowns only for clients from twelve to twenty years of age.

(b) Prefabricated stainless steel crowns with resin window, resin-based composite crowns, prefabricated esthetic coated stainless steel crowns, and fabricated resin crowns for primary anterior teeth once every three years;

(i) Only for clients from twelve to twenty years of age; and

(ii) Without prior authorization if the tooth requires a four or more surface restoration.

(c) Prefabricated stainless steel crowns for primary posterior teeth once every three years without prior authorization if:

(i) Decay involves three or more surfaces for a primary first molar;

(ii) Decay involves four or more surfaces for a primary second molar; or

(iii) The tooth had a pulpotomy.

(d) Prefabricated stainless steel crowns for permanent posterior teeth once every three years ~~((when))~~, for clients twenty years of age and younger, without prior ((authorized)) authorization.

(e) Prefabricated stainless steel crowns for clients of the division of developmental disabilities without prior authorization according to WAC ~~((388-535-1099))~~ 182-535-1099.

(f) Core buildup, including pins, only on permanent teeth, only for clients twenty years of age and younger, and only when prior authorized at the same time as the crown prior authorization.

(g) Cast post and core or prefabricated post and core, only on permanent teeth, only for clients twenty years of age and younger, and only when prior authorized at the same time as the crown prior authorization.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-535-1086 Covered dental-related services ~~((for clients through age twenty))~~—Endodontic services.** ~~((The department covers medically necessary dental-related endodontic services, subject to the coverage limitations listed, for clients through age twenty as follows:))~~ Clients described in WAC 182-535-1060 are eligible to receive the dental-related endodontic services listed in this section, subject to coverage limitations, restrictions, and client-age requirements identified for a specific service.

(1) **Pulp capping.** The ~~((department))~~ agency considers pulp capping to be included in the payment for the restoration.

(2) **Pulpotomy.** The ~~((department))~~ agency covers:

(a) Therapeutic pulpotomy on primary posterior teeth ~~only~~ for clients twenty years of age and younger.

(b) Pulpal debridement on permanent teeth only, excluding teeth one, sixteen, seventeen, and thirty-two. The ~~((department))~~ agency does not pay for pulpal debridement when performed with palliative treatment of dental pain or when performed on the same day as endodontic treatment.

(3) **Endodontic treatment.** The ~~((department))~~ agency:

(a) Covers endodontic treatment with resorbable material for primary maxillary incisor teeth D, E, F, and G, if the entire root is present at treatment.

(b) Covers endodontic treatment for permanent anterior, bicuspid, and molar teeth, excluding teeth one, sixteen, seventeen, and thirty-two for clients twenty years of age and younger.

(c) Considers the following included in endodontic treatment:

(i) Pulpotomy when part of root canal therapy;

(ii) All procedures necessary to complete treatment; and

(iii) All intra-operative and final evaluation radiographs for the endodontic procedure.

(d) Pays separately for the following services that are related to the endodontic treatment:

(i) Initial diagnostic evaluation;

(ii) Initial diagnostic radiographs; and

(iii) Post treatment evaluation radiographs if taken at least three months after treatment.

(e) ~~((Requires))~~ Covers endodontic retreatment for clients twenty years of age and younger when prior ((authorization for endodontic retreatment and)) authorized.

(f) The agency considers endodontic retreatment to include:

(i) The removal of post(s), pin(s), old root canal filling material, and all procedures necessary to prepare the canals;

(ii) Placement of new filling material; and

(iii) Retreatment for permanent anterior, bicuspid, and molar teeth, excluding teeth one, sixteen, seventeen, and thirty-two.

~~((f))~~ ~~((g))~~ (g) Pays separately for the following services that are related to the endodontic retreatment:

(i) Initial diagnostic evaluation;

(ii) Initial diagnostic radiographs; and

(iii) Post treatment evaluation radiographs if taken at least three months after treatment.

~~((g))~~ ~~((h))~~ (h) Does not pay for endodontic retreatment when provided by the original treating provider or clinic unless prior authorized by the ~~((department))~~ agency.

~~((h))~~ (i) Covers apexification for apical closures for anterior permanent teeth only on a case-by-case basis and when prior authorized. Apexification is limited to the initial visit and three interim treatment visits and limited to clients twenty years of age and younger.

~~((i))~~ (j) Covers apicoectomy and a retrograde fill for anterior teeth only for clients twenty years of age and younger.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-535-1088 Covered dental-related services ~~((for clients through age twenty))~~—Periodontic services.** ~~((The department covers medically necessary periodontic services, subject to the coverage limitations listed, for clients through age twenty as follows:))~~ Clients described in WAC 182-535-1060 are eligible to receive the dental-related periodontic services listed in this section, subject to coverage limitations, restrictions, and client-age requirements identified for a specified service.

(1) **Surgical periodontal services.** The ~~((department))~~ agency covers the following surgical periodontal services, including all postoperative care:

(a) Gingivectomy/gingivoplasty only on a case-by-case basis and when prior authorized and only for clients twenty years of age and younger; and

(b) Gingivectomy/gingivoplasty for clients of the division of developmental disabilities according to WAC ~~((388-535-1099))~~ 182-535-1099.

(2) **Nonsurgical periodontal services.** The ~~((department))~~ agency:

(a) Covers periodontal scaling and root planing for clients from thirteen to eighteen years of age, once per quadrant, per client, in a two-year period, on a case-by-case basis, when prior authorized ~~((for clients ages thirteen through eighteen))~~, and only when:

(i) The client has radiographic evidence of periodontal disease;

(ii) The client's record includes supporting documentation for the medical necessity, including complete periodontal charting and a definitive diagnosis of periodontal disease;

(iii) The client's clinical condition meets current published periodontal guidelines; and

(iv) Performed at least two years from the date of completion of periodontal scaling and root planing or surgical periodontal treatment, or at least twelve calendar months from the completion of periodontal maintenance.

(b) Covers periodontal scaling and root planing once per quadrant, per client, in a two-year period for clients ~~((ages))~~ nineteen ((through twenty)) years of age and older. Criteria in (a)(i) through (iv) of this subsection must be met.

(c) Considers ultrasonic scaling, gross scaling, or gross debridement to be included in the procedure and not a substitute for periodontal scaling and root planing.

(d) Covers periodontal scaling and root planing only when the services are not performed on the same date of service as prophylaxis, periodontal maintenance, gingivectomy, or gingivoplasty.

(e) Covers periodontal scaling and root planing for clients of the division of developmental disabilities according to WAC ~~((388-535-1099))~~ 182-535-1099.

(3) **Other periodontal services.** The ~~((department))~~ agency:

(a) Covers periodontal maintenance for clients from thirteen to eighteen years of age once per client in a twelve-month period on a case-by-case basis, when prior authorized, ~~((for clients ages thirteen through eighteen))~~ and only when:

(i) The client has radiographic evidence of periodontal disease;

(ii) The client's record includes supporting documentation for the medical necessity, including complete periodontal charting with location of the gingival margin and clinical attachment loss and a definitive diagnosis of periodontal disease;

(iii) The client's clinical condition meets current published periodontal guidelines; and

(iv) ~~((Performed at least))~~ The client has had periodontal scaling and root planing but not within twelve months ((from)) of the date of completion of periodontal scaling and root planing, or surgical periodontal treatment.

(b) Covers periodontal maintenance once per client in a twelve month period for clients ~~((ages))~~ nineteen ((through twenty)) years of age and older. Criteria in (a)(i) through (iv) of this subsection must be met.

(c) Covers periodontal maintenance only if performed ~~((on a different date of service as))~~ at least twelve calendar months after receiving prophylaxis, periodontal scaling and root planing, gingivectomy, or gingivoplasty.

(d) Covers periodontal maintenance for clients of the division of developmental disabilities according to WAC ~~((388-535-1099))~~ 182-535-1099.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-535-1090 Covered dental-related services ~~((for clients through age twenty))~~—Prosthodontics (removable).** ~~((The department covers medically necessary prosthodontics (removable) services, subject to the coverage limitations listed, for clients through age twenty as follows:))~~ Clients described in WAC 182-535-1060 are eligible to receive the prosthodontics (removable) and related services, subject to the coverage limitations, restrictions, and client-age requirements identified for a specific service.

(1) **Prosthodontics.** The ~~((department))~~ agency:

(a) Requires prior authorization for all removable prosthodontic and prosthodontic-related procedures ~~((, except as stated in (e)(ii)(B) of this subsection))~~. Prior authorization requests must meet the criteria in WAC ~~((388-535-1220))~~ 182-535-1220. In addition, the ~~((department))~~ agency requires the dental provider to submit:

(i) Appropriate and diagnostic radiographs of all remaining teeth.

(ii) A dental record which identifies:

(A) All missing teeth for both arches;

(B) Teeth that are to be extracted; and

(C) Dental and periodontal services completed on all remaining teeth.

~~((iii) A prescription written by a dentist when a dentist's prior authorization request is for an immediate denture or a cast metal partial denture.))~~

(b) Covers complete dentures, as follows:

(i) A complete denture, including an ~~((immediate denture or))~~ overdenture, is covered when prior authorized.

(ii) An immediate denture for clients twenty years of age and younger when prior authorized.

(iii) Three-month post-delivery care (e.g., adjustments, soft relines, and repairs) from the seat (placement) date of the complete denture, is considered part of the complete denture procedure and is not paid separately.

~~((iii) Replacement))~~ (iv) Reline of an immediate denture with a complete denture is covered for clients twenty years of age and younger, if the ~~((complete denture))~~ reline is prior authorized at least six months after the seat date of the immediate denture.

~~((iv))~~ (v) Replacement of an immediate denture with a complete denture is covered, if the complete denture is prior authorized at least six months after the seat date of the immediate denture.

(vi) Replacement of a complete denture or overdenture is covered only if prior authorized, and only if the replacement occurs at least five years after the seat date of the complete denture or overdenture being replaced. The replacement denture must be prior authorized.

(vii) Complete dentures for clients twenty-one years of age and older are limited to:

(A) One initial maxillary complete denture and one initial mandibular complete denture per client, per the client's lifetime; and

(B) One replacement maxillary complete denture and one replacement mandibular complete denture per client, per client's lifetime.

(c) Covers partial dentures, as follows:

(i) A partial denture, including a resin ~~((or flexible base))~~ partial denture, is covered for anterior and posterior teeth when the partial denture meets the following ~~((department))~~ agency coverage criteria.

(A) The remaining teeth in the arch must have a reasonable periodontal diagnosis and prognosis;

(B) The client has established caries control;

(C) One or more anterior teeth are missing or four or more posterior teeth are missing (excluding teeth one, two, fifteen, sixteen, seventeen, eighteen, thirty-one, and thirty-two);

(D) There is a minimum of four stable teeth remaining per arch; and

(E) There is a three-year prognosis for retention of the remaining teeth.

(ii) Prior authorization ~~((of))~~ is required for partial dentures~~(=~~

~~(A) Is required for clients ages nine and younger; and~~

~~(B) Not required for clients ages ten through twenty. Documentation supporting the medical necessity for the service must be included in the client's file).~~

(iii) Three-month post-delivery care (e.g., adjustments, soft relines, and repairs) from the seat date of the partial denture, is considered part of the partial denture procedure and is not paid separately.

(iv) Replacement of a ~~((resin or flexible base))~~ resin-based denture with any prosthetic is covered only if prior authorized at least three years after the seat date of the resin or flexible base partial denture being replaced. The replacement denture must be prior authorized and meet ~~((department))~~ agency coverage criteria in (c)(i) of this subsection.

(d) Covers cast-metal framework partial dentures~~(= as follows:))~~.

(i) Cast-metal framework with resin-based partial dentures, including any conventional clasps, rests, and teeth, are covered for clients ~~((ages))~~ from eighteen ((through)) to twenty years of age:

(A) Only once in a five-year period((:));

(B) On a case-by-case basis((:));

(C) When prior authorized; and ((department))

(D) When agency coverage criteria listed in subsection (d)(v) of this subsection are met.

(ii) Cast-metal framework partial dentures are not covered for:

(A) Clients ((ages)) seventeen years of age and younger ((are not covered)); or

(B) Clients twenty-one years of age and older.

(iii) Three-month post-delivery care (e.g., adjustments, soft relines, and repairs) from the seat date of the cast metal partial denture is considered part of the partial denture procedure and is not paid separately.

(iv) Replacement of a cast metal framework partial denture, with any prosthetic, is covered on a case-by-case basis

and only if placed at least five years after the seat date of the partial denture being replaced. The replacement denture must be ~~((prior authorized))~~ a covered prosthetic and meet ~~((department))~~ agency coverage criteria listed in ~~((d)(v) of)~~ this ~~((subsection))~~ chapter.

(v) ~~((Department))~~ Agency authorization and payment for cast metal framework partial dentures is based on the following criteria:

(A) The remaining teeth in the arch must have a stable periodontal diagnosis and prognosis;

(B) The client has established caries control;

(C) All restorative and periodontal procedures must be completed before the request for prior authorization is submitted;

(D) There are fewer than eight posterior teeth in occlusion;

(E) There is a minimum of four stable teeth remaining per arch; and

(F) There is a five-year prognosis for the retention of the remaining teeth.

(vi) The ~~((department))~~ agency may consider resin partial dentures as an alternative if the ~~((department))~~ agency determines the criteria for cast metal framework partial dentures listed in (d)(v) of this subsection are not met.

(e) Does not cover replacement of a cast-metal framework partial denture, with any type of denture, within five years of the initial seat date of the partial denture.

(f) Requires a provider to bill for removable prosthetic procedures only after the seating of the prosthesis, not at the impression date. Refer to subsection (2)(e) and (f) of this section for what the ((department)) agency may pay if the removable prosthesis is not delivered and inserted.

~~((f))~~ (g) Requires a provider to submit the following with a prior authorization request for removable prosthetics for a client residing in an alternate living facility (ALF) as defined in WAC 388-513-1301 or in a nursing facility:

(i) The client's medical diagnosis or prognosis;

(ii) The attending physician's request for prosthetic services;

(iii) The attending dentist's or denturist's statement documenting medical necessity;

(iv) A written and signed consent for treatment from the client's legal guardian when a guardian has been appointed; and

(v) A completed copy of the denture/partial appliance request for skilled nursing facility client form (DSHS 13-788) available from the ~~((department's))~~ agency's published billing instructions.

~~((g))~~ (h) Limits removable partial dentures to resin-based partial dentures for all clients residing in one of the facilities listed in (f) of this subsection. ((The department may consider cast metal partial dentures if the criteria in subsection (1)(d) are met.

~~((h))~~ (i) Requires a provider to deliver services and procedures that are of acceptable quality to the ((department)) agency. The ((department)) agency may recoup payment for services that are determined to be below the standard of care or of an unacceptable product quality.

(2) **Other services for removable prosthodontics.** The ~~((department))~~ agency covers:

(a) Adjustments to complete and partial dentures three months after the date of delivery.

(b) Repairs to complete and partial dentures, once in a twelve-month period. The cost of repairs cannot exceed the cost of the replacement denture or partial denture. The ~~((department))~~ agency covers additional repairs on a case-by-case basis and when prior authorized.

(c) A laboratory reline or rebase to a complete or ~~((cast-metal))~~ partial denture, once in a three-year period when performed at least six months after the seating date. An additional reline or rebase may be covered for complete or ~~((cast-metal))~~ partial dentures on a case-by-case basis when prior authorized.

(d) Up to two tissue conditionings, only for clients twenty years of age and younger, and only when performed within three months after the seating date.

(e) Laboratory fees, subject to the following:

(i) The ~~((department))~~ agency does not pay separately for laboratory or professional fees for complete and partial dentures; and

(ii) The ~~((department))~~ agency may pay part of billed laboratory fees when the provider obtains prior authorization, and the client:

(A) Is not eligible at the time of delivery of the prosthesis;

(B) Moves from the state;

(C) Cannot be located;

(D) Does not participate in completing the complete, immediate, or partial dentures; or

(E) Dies.

(f) A provider must submit copies of laboratory prescriptions and receipts or invoices for each claim when billing for laboratory fees.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-535-1092 Covered dental-related services ~~((for clients through age twenty))~~—Maxillofacial prosthetic services.** ~~((The department covers medically necessary maxillofacial prosthetic services, subject to the coverage limitations listed, for clients through age twenty as follows:))~~ Clients described in WAC 182-535-1060 are eligible to receive the maxillofacial prosthetic services listed in this section, subject to the following:

(1) Maxillofacial prosthetics are covered only for clients twenty years of age and younger on a case-by-case basis and when prior authorized; and

(2) The ~~((department))~~ agency must preapprove a provider qualified to furnish maxillofacial prosthetics.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-535-1094 Covered dental-related services ~~((for clients through age twenty))~~—Oral and maxillofacial surgery services.** ~~((The department covers medically necessary oral and maxillofacial surgery services;))~~ Clients described in WAC 182-535-1060 are eligible to receive the

oral and maxillofacial surgery services listed in this section, subject to the coverage limitations ~~((listed, for clients through age twenty as follows:)), restrictions, and client-age requirements identified for a specific service.~~

(1) **Oral and maxillofacial surgery services.** The ~~((department))~~ agency:

(a) Requires enrolled providers who do not meet the conditions in WAC ~~((388-535-1070))~~ 182-535-1070(3) to bill claims for services that are listed in this subsection using only the current dental terminology (CDT) codes.

(b) Requires enrolled providers (oral and maxillofacial surgeons) who meet the conditions in WAC ~~((388-535-1070))~~ 182-535-1070(3) to bill claims using current procedural terminology (CPT) codes unless the procedure is specifically listed in the ~~((department's))~~ agency's current published billing instructions as a CDT covered code (e.g., extractions).

(c) Covers nonemergency oral surgery performed in a hospital or ambulatory surgery center only for:

(i) Clients ~~((ages))~~ eight years of age and younger;

(ii) Clients ~~((ages))~~ from nine ~~((through))~~ to twenty years of age only on a case-by-case basis and when the site-of-service is prior authorized by the agency; and

(iii) Clients any age of the division of developmental disabilities ~~((according to WAC 388-535-1099))~~.

(d) Requires the client's dental record to include supporting documentation for each type of extraction or any other surgical procedure billed to the ~~((department))~~ agency. The documentation must include:

(i) Appropriate consent form signed by the client or the client's legal representative;

(ii) Appropriate radiographs;

(iii) Medical justification with diagnosis;

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

(v) A surgical narrative and complete description of each service performed beyond surgical extraction or beyond code definition;

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

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

(e) Covers routine and surgical extractions.

(f) Requires prior authorization for complicated surgical extractions.

(g) Covers tooth reimplantation/stabilization of accidentally evulsed or displaced teeth for clients twenty years of age and younger.

(h) Covers surgical extraction of unerupted teeth for clients twenty years of age and younger.

(i) Covers debridement of a granuloma or cyst that is five millimeters or greater in diameter. The ~~((department))~~ agency includes debridement of a granuloma or cyst that is less than five millimeters as part of the global fee for the extraction.

~~((g))~~ (j) Covers ~~((biopsy, as follows))~~ the following without prior authorization:

(i) Biopsy of soft oral tissue ~~((or))~~;

(ii) Brush biopsy ~~((do not require prior authorization; and~~

~~((it)))~~ for clients twenty years of age and younger.

(k) Requires providers to keep all biopsy reports or findings ~~((must be kept))~~ in the client's dental record.

~~((H))~~ (l) Covers alveoloplasty for clients twenty years of age and younger only on a case-by-case basis and when prior authorized. The ~~((department))~~ agency covers alveoloplasty only when not performed in conjunction with extractions.

~~((I))~~ (m) Covers surgical excision of soft tissue lesions only on a case-by-case basis and when prior authorized.

~~((J))~~ (n) Covers only the following excisions of bone tissue in conjunction with placement of ~~((immediate,))~~ complete(-) or partial dentures for clients twenty years of age and younger when prior authorized:

- (i) Removal of lateral exostosis;
- (ii) Removal of torus palatinus or torus mandibularis; and
- (iii) Surgical reduction of soft tissue ~~((ø))~~ osseous tuberosity.

(2) **Surgical incisions.** The ~~((department))~~ agency covers the following surgical incision-related services:

(a) Uncomplicated intraoral and extraoral soft tissue incision and drainage of abscess. The ~~((department))~~ agency does not cover this service when combined with an extraction or root canal treatment. Documentation supporting medical necessity must be in the client's record.

(b) Removal of foreign body from mucosa, skin, or subcutaneous alveolar tissue for clients twenty years of age and younger when prior authorized. Documentation supporting the medical necessity for the service must be in the client's record.

(c) Frenuloplasty/frenulectomy for clients ~~((through age))~~ six years of age and younger without prior authorization. ~~((The department covers))~~

(d) Frenuloplasty/frenulectomy for clients ~~((ages))~~ from seven ~~((through))~~ to twelve years of age only on a case-by-case and when prior authorized. Documentation supporting the medical necessity for the service must be in the client's record.

(3) **Occlusal orthotic devices.** (Refer to WAC ~~((388-535-1098 (5)))~~ 182-535-1098 (4)(c) for occlusal guard coverage and limitations on coverage.) The ~~((department))~~ agency covers:

(a) Occlusal orthotic devices for clients ~~((ages))~~ from twelve ~~((through))~~ to twenty years of age only on a case-by-case basis and when prior authorized.

(b) An occlusal orthotic device only as a laboratory processed full arch appliance.

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-535-1096 Covered dental-related services ~~((for clients through age twenty))~~—Orthodontic services.**

(1) The ~~((department))~~ agency covers orthodontic services, subject to the coverage limitations listed, for clients ~~((through age))~~ twenty years of age and younger, according to chapter ~~((388-535A))~~ 182-535A WAC.

(2) The agency does not cover orthodontic services for clients twenty-one years of age and older.

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-535-1098 Covered dental-related services ~~((for clients through age twenty))~~—Adjunctive general services.** ~~((The department covers medically necessary dental-related adjunctive general services, subject to the coverage limitations listed, for clients through age twenty as follows:))~~ Clients described in WAC 182-535-1060 are eligible to receive the adjunctive general services listed in this section, subject to coverage limitations, restrictions, and client-age requirements identified for a specific service.

(1) **Adjunctive general services.** The ~~((department))~~ agency:

(a) Covers palliative (emergency) treatment, not to include pupal debridement (see WAC ~~((388-535-1086))~~ 182-535-1086 (2)(b)), for treatment of dental pain, for clients twenty years of age and younger, limited to once per day, per client, as follows:

(i) The treatment must occur during limited evaluation appointments;

(ii) A comprehensive description of the diagnosis and services provided must be documented in the client's record; and

(iii) Appropriate radiographs must be in the client's record supporting the medical necessity of the treatment.

(b) Covers local anesthesia and regional blocks as part of the global fee for any procedure being provided to clients.

(c) Covers office-based oral or parenteral conscious sedation, deep sedation, or general anesthesia, as follows:

(i) The provider's current anesthesia permit must be on file with the ~~((department))~~ agency.

(ii) For clients ~~((of the division of developmental disabilities, the services must be performed according to WAC 388-535-1099.~~

~~((iii))~~ For clients ~~((ages))~~ eight years of age and younger, and for clients any age of the division of developmental disabilities, documentation supporting the medical necessity of the anesthesia service must be in the client's record.

~~((iv))~~ (iii) For clients ~~((ages))~~ from nine ~~((through))~~ to twenty years of age, deep sedation or general anesthesia services are covered on a case-by-case basis and when prior authorized, except for oral surgery services. Oral surgery services listed in WAC ~~((388-535-1094))~~ 182-535-1094 do not require prior authorization.

~~((v))~~ (iv) Prior authorization is not required for oral or parenteral conscious sedation for any dental service for clients twenty years of age and younger, and for clients any age of the division of developmental disabilities. Documentation supporting the medical necessity of the service must be in the client's record.

~~((vi))~~ (v) For clients ~~((ages))~~ from nine ~~((through eight-teen))~~ to twenty years of age who have a diagnosis of oral facial cleft, the ~~((department))~~ agency does not require prior authorization for deep sedation or general anesthesia services when the dental procedure is directly related to the oral facial cleft treatment.

~~((vii))~~ For clients through age twenty, the (vi) A provider must bill anesthesia services using the CDT codes listed in the ~~((department's))~~ agency's current published billing instructions.

(d) Covers inhalation of nitrous oxide (~~for clients through age twenty~~), once per day.

(e) Requires providers of oral or parenteral conscious sedation, deep sedation, or general anesthesia to meet:

(i) The prevailing standard of care;

(ii) The provider's professional organizational guidelines;

(iii) The requirements in chapter 246-817 WAC; and

(iv) Relevant department of health (DOH) medical, dental, or nursing anesthesia regulations.

(f) Pays for dental anesthesia services according to WAC ~~((388-535-1350))~~ 182-535-1350.

(g) Covers professional consultation/diagnostic services as follows:

(i) A dentist or a physician other than the practitioner providing treatment must provide the services; and

(ii) A client must be referred by the ~~((department))~~ agency for the services to be covered.

~~(2) ((Nonemergency dental services. The department covers nonemergency dental services performed in a hospital or ambulatory surgical center only for:~~

~~(a) Clients ages eight and younger.~~

~~(b) Clients ages nine through twenty only on a case-by-case basis and when prior authorized.~~

~~(c) Clients of the division of developmental disabilities according to WAC 388-535-1099.~~

~~(3))~~ **Professional visits.** The ~~((department))~~ agency covers:

(a) Up to two house/extended care facility calls (visits) per facility, per provider. The ~~((department))~~ agency limits payment to two facilities per day, per provider.

(b) One hospital call (visit), including emergency care, per day, per provider, per client, and not in combination with a surgical code unless the decision for surgery is a result of the visit.

(c) Emergency office visits after regularly scheduled hours. The ~~((department))~~ agency limits payment to one emergency visit per day, per client, per provider.

~~((4))~~ **(3) Drugs and/or medications (pharmaceuticals).** The ~~((department))~~ agency covers drugs and/or medications only when used with parenteral conscious sedation, deep sedation, or general anesthesia for clients twenty years of age and younger. The ~~((department's))~~ agency's dental program does not pay for oral sedation medications.

~~((5))~~ **(4) Miscellaneous services.** The ~~((department))~~ agency covers:

(a) Behavior management when the assistance of one additional dental staff other than the dentist is required ~~((;))~~ for the following clients and documentation supporting the need for the behavior management must be in the client's record:

(i) Clients ~~((ages))~~ eight years of age and younger;

(ii) Clients ~~((ages))~~ from nine ~~((through))~~ to twenty years of age, only on a case-by-case basis and when prior authorized;

(iii) Clients any age of the division of developmental disabilities ~~((according to WAC 388-535-1099));~~ and

(iv) Clients who reside in an alternate living facility (ALF) as defined in WAC 388-513-1301 or in a nursing facility.

(b) Treatment of post-surgical complications (e.g., dry socket). Documentation supporting the medical necessity of the service must be in the client's record.

(c) Occlusal guards when medically necessary and prior authorized. (Refer to WAC ~~((388-535-1094))~~ 182-535-1094(3) for occlusal orthotic device coverage and coverage limitations.) The ~~((department))~~ agency covers:

(i) An occlusal guard only for clients ~~((ages))~~ from twelve ~~((through))~~ to twenty years of age when the client has permanent dentition; and

(ii) An occlusal guard only as a laboratory processed full arch appliance.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-535-1099 Covered dental-related services for clients of the division of developmental disabilities.** Subject to coverage limitations, restrictions, and client-age requirements identified for a specific service, the ~~((department))~~ agency pays for the dental-related services listed under the categories of services ~~((listed))~~ in this section ~~((for))~~ that are provided to clients of the division of developmental disabilities ~~((, subject to the coverage limitations listed)).~~ Except for WAC 182-535-1065, this chapter ~~((388-535-WAC))~~ also applies to clients of the division of developmental disabilities, regardless of age, unless otherwise stated in this section.

**(1) Preventive services.**

(a) Dental prophylaxis. The ~~((department))~~ agency covers dental prophylaxis or periodontal maintenance up to three times in a twelve-month period (see subsection (3) of this section for limitations on periodontal scaling and root planing).

(b) Topical fluoride treatment. The ~~((department))~~ agency covers topical fluoride varnish, rinse, foam or gel, up to three times within a twelve-month period.

(c) Sealants. The ~~((department))~~ agency covers sealants:

(i) Only when used on the occlusal surfaces of:

(A) Primary teeth A, B, I, J, K, L, S, and T; or

(B) Permanent teeth two, three, four, five, twelve, thirteen, fourteen, fifteen, eighteen, nineteen, twenty, twenty-one, twenty-eight, twenty-nine, thirty, and thirty-one.

(ii) Once per tooth in a two-year period.

(2) **Crowns.** The ~~((department))~~ agency covers stainless steel crowns every two years for the same tooth and only for primary molars and permanent premolars and molars, as follows:

(a) For clients ages twenty and younger, the ~~((department))~~ agency does not require prior authorization for stainless steel crowns. Documentation supporting the medical necessity of the service must be in the client's record.

(b) For clients ~~((ages))~~ twenty-one years of age and older, the ~~((department))~~ agency requires prior authorization for stainless steel crowns when the tooth has had a pulpotomy and only for:

(i) Primary first molars when the decay involves three or more surfaces; and

(ii) Second molars when the decay involves four or more surfaces.



**(3) Periodontic services.**

**(a) Surgical periodontal services.** The ~~((department))~~ agency covers:

(i) Gingivectomy/gingivoplasty once every three years. Documentation supporting the medical necessity of the service must be in the client's record (e.g., drug induced gingival hyperplasia).

(ii) Gingivectomy/gingivoplasty with periodontal scaling and root planing or periodontal maintenance when the services are performed:

(A) In a hospital or ambulatory surgical center; or

(B) For clients under conscious sedation, deep sedation, or general anesthesia.

**(b) Nonsurgical periodontal services.** The ~~((department))~~ agency covers:

(i) Periodontal scaling and root planing, up to two times per quadrant in a twelve-month period.

(ii) Periodontal scaling (four quadrants) substitutes for an eligible periodontal maintenance or oral prophylaxis, twice in a twelve-month period.

**(4) Adjunctive general services.** ~~((a) Adjunctive general services.)~~ The ~~((department))~~ agency covers:

~~((i))~~ (a) Oral parenteral conscious sedation, deep sedation, or general anesthesia for any dental services performed in a dental office or clinic. Documentation supporting the medical necessity must be in the client's record.

~~((ii))~~ (b) Sedations services according to WAC ((388-535-1098)) 182-535-1098 (1)(c) and (e).

~~((b))~~ (5) Nonemergency dental services. The ~~((department))~~ agency covers nonemergency dental services performed in a hospital or an ambulatory surgical center for services listed as covered in WAC ~~((388-535-1082, 388-535-1084, 388-535-1086, 388-535-1088, and 388-535-1094))~~ 182-535-1082, 182-535-1084, 182-535-1086, 182-535-1088, and 182-535-1094. Documentation supporting the medical necessity of the service must be included in the client's record.

~~((5))~~ (6) Miscellaneous services—Behavior management. The ~~((department))~~ agency covers behavior management provided in dental offices or dental clinics ~~((for clients of any age)).~~ Documentation supporting the medical necessity of the service must be included in the client's record.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-535-1100 Dental-related services not covered** ~~((for clients through age twenty)).~~ (1) The ~~((department))~~ agency does not cover the following ~~((for clients through age twenty))~~:

(a) The dental-related services described in subsection (2) of this section unless the services are covered under the early periodic screening, diagnosis and treatment (EPSDT) program. See WAC ~~((388-534-0100))~~ 182-534-0100 for information about the EPSDT program.

(b) Any service specifically excluded by statute.

(c) More costly services when less costly, equally effective services as determined by the ~~((department))~~ agency are available.

(d) Services, procedures, treatment, devices, drugs, or application of associated services:

(i) ~~((Which))~~ That the ~~((department))~~ agency or the Centers for Medicare and Medicaid Services (CMS) considers investigative or experimental on the date the services were provided.

(ii) That are not listed as covered in one or both of the following:

(A) Washington Administrative Code (WAC).

(B) The ~~((department's))~~ agency's current published documents.

(2) The ~~((department))~~ agency does not cover dental-related services listed under the following categories of service ~~((for clients through age twenty))~~ (see subsection (1)(a) of this section for services provided under the EPSDT program):

(a) **Diagnostic services.** The ~~((department))~~ agency does not cover:

(i) Detailed and extensive oral evaluations or reevaluations.

(ii) Extraoral radiographs.

~~((ii) Comprehensive periodontal evaluations.)~~ (iii) Posterior-anterior or lateral skull and facial bone survey films.

(iv) Any temporomandibular joint films.

(v) Tomographic surveys.

(vi) Cephalometric films, for clients twenty-one years of age and older.

(vii) Oral/facial photographic images, for clients twenty-one years of age and older.

(viii) Comprehensive periodontal evaluations.

(ix) Occlusal intraoral radiographs, for clients twenty-one years of age and older.

(x) Viral cultures, genetic testing, caries susceptibility tests, or adjunctive prediagnostic tests.

(xi) Pulp vitality tests, for clients twenty-one years of age and older.

(xii) Diagnostic casts, for clients twenty-one years of age and older.

(b) **Preventive services.** The ~~((department))~~ agency does not cover:

(i) Nutritional counseling for control of dental disease.

(ii) Tobacco counseling for the control and prevention of oral disease.

(iii) Removable space maintainers of any type.

(iv) Oral hygiene instructions for clients nine years of age and older. This is included as part of the global fee for oral prophylaxis.

(v) Sealants placed on a tooth with the same-day occlusal restoration, preexisting occlusal restoration, or a tooth with occlusal decay.

~~((v))~~ (vi) Sealants, for clients twenty years of age and older. For clients of the division of developmental disabilities, see WAC 182-535-1099.

(vii) Space maintainers, for clients ((ages)) nineteen ((through twenty)) years of age and older.

(viii) Recementation of space maintainers, for clients twenty-one years of age and older.

(ix) Fluoride trays of any type, for clients twenty-one years of age and older.

(c) **Restorative services.** The ~~((department))~~ agency does not cover:

(i) Restorations for wear on any surface of any tooth without evidence of decay through the dentoenamel junction (DEJ) or on the root surface.

~~((ii))~~ (ii) Gold foil restorations.

~~((iii))~~ (iii) Metallic, resin-based composite, or porcelain/ceramic inlay/onlay restorations.

~~((iii))~~ (iv) Prefabricated resin crowns, for clients twenty-one years of age and older.

~~((v))~~ (v) Preventive restorations.

~~((vi))~~ (vi) Crowns for cosmetic purposes (e.g., peg laterals and tetracycline staining).

~~((iv))~~ (vii) Permanent indirect crowns for ~~((third molars one, sixteen, seventeen, and thirty-two))~~ molar teeth.

~~((v))~~ (viii) Temporary or provisional crowns (including ion crowns).

~~((vi))~~ (ix) Labial veneer resin or porcelain laminate restorations.

~~((vii))~~ (x) Recementation of any crown, inlay/onlay, or any other type of indirect restoration, for clients twenty-one years of age and older.

~~((xi))~~ (xi) Sedative fillings.

~~((xii))~~ (xii) Any type of core buildup, cast post and core, or pre-fabricated post and core, for clients twenty-one years of age and older.

~~((xiii))~~ (xiii) Any type of coping.

~~((viii))~~ (xiv) Crown repairs.

~~((ix))~~ (xv) Polishing or recontouring restorations or overhang removal for any type of restoration.

(d) **Endodontic services.** The ~~((department))~~ agency does not cover:

(i) The following endodontic services for clients twenty-one years of age and older:

~~((A))~~ (A) Endodontic therapy on permanent bicuspids;

~~((B))~~ (B) Any apexification/recalcification procedures; or

~~((C))~~ (C) Any apicoectomy/periradicular service.

(ii) Apexification/recalcification for root resorption of permanent anterior teeth.

~~((iii))~~ (iii) The following endodontic services:

~~((A))~~ (A) Indirect or direct pulp caps.

~~((B))~~ (B) Any endodontic therapy on primary teeth, except as described in WAC ~~((388-535-1086))~~ 182-535-1086 (3)(a).

~~((ii))~~ (ii) Apexification/recalcification for root resorption of permanent anterior teeth:

~~((iii))~~ (iii) (C) Endodontic therapy on molar teeth.

~~((D))~~ (D) Any apexification/recalcification procedures for bicuspid or molar teeth.

~~((iv))~~ (E) Any apicoectomy/periradicular services for bicuspid teeth or molar teeth.

~~((v))~~ (F) Any surgical endodontic procedures including, but not limited to, retrograde fillings (except for anterior teeth), root amputation, reimplantation, and hemisections.

(e) **Periodontic services.** The ~~((department))~~ agency does not cover:

(i) Surgical periodontal services including, but not limited to:

(A) Gingival flap procedures.

(B) Clinical crown lengthening.

(C) Osseous surgery.

(D) Bone or soft tissue grafts.

(E) Biological material to aid in soft and osseous tissue regeneration.

(F) Guided tissue regeneration.

(G) Pedicle, free soft tissue, apical positioning, subepithelial connective tissue, soft tissue allograft, combined connective tissue and double pedicle, or any other soft tissue or osseous grafts.

(H) Distal or proximal wedge procedures.

(ii) Nonsurgical periodontal services including, but not limited to:

(A) Intracoronary or extracoronary provisional splinting.

(B) Full mouth or quadrant debridement.

(C) Localized delivery of chemotherapeutic agents.

(D) Any other type of nonsurgical periodontal service.

(f) **Removable prosthodontics.** The ~~((department))~~ agency does not cover:

(i) Removable unilateral partial dentures.

(ii) Adjustments to any removable prosthesis.

~~((iii))~~ (iii) Any interim complete or partial dentures.

~~((iii))~~ (iv) Flexible base partial dentures.

~~((v))~~ (v) Any type of permanent soft relines (e.g., molloplast).

~~((vi))~~ (vi) Precision attachments.

~~((iv))~~ (vii) Replacement of replaceable parts for semi-precision or precision attachments.

(g) **Implant services.** The ~~((department))~~ agency does not cover:

(i) Any type of implant procedures, including, but not limited to, any tooth implant abutment (e.g., periosteal implants, eosteal implants, and transosteal implants), abutments or implant supported crowns, abutment supported retainers, and implant supported retainers.

(ii) Any maintenance or repairs to procedures listed in (g)(i) of this subsection.

(iii) The removal of any implant as described in (g)(i) of this subsection.

(h) **Fixed prosthodontics.** The ~~((department))~~ agency does not cover any type of:

~~((i))~~ (i) ~~((Any type of))~~ Fixed partial denture pontic ~~((or))~~.

~~((ii))~~ (ii) Fixed partial denture retainer.

~~((ii))~~ ~~((Any type of))~~ (iii) Precision attachment, stress breaker, connector bar, coping, cast post, or any other type of fixed attachment or prosthesis.

~~((iv))~~ (iv) Occlusal orthotic splint or device, bruxing or grinding splint or device, temporomandibular joint splint or device, or sleep apnea splint or device.

~~((v))~~ (v) Orthodontic service or appliance, for clients twenty-one years of age and older.

~~((i))~~ (i) **Oral maxillofacial prosthetic services.** The agency does not cover any type of oral or facial prosthesis other than those listed in WAC 182-535-1092.

~~((j))~~ (j) **Oral and maxillofacial surgery.** The ~~((department))~~ agency does not cover:

(i) Any oral surgery service not listed in WAC ~~((388-535-1094))~~ 182-535-1094.

(ii) Any oral surgery service that is not listed in the ~~((department's))~~ agency's list of covered current procedural terminology (CPT) codes published in the ~~((department's))~~ agency's current rules or billing instructions.

~~((j))~~ (iii) Vestibuloplasty.

(iv) Frenuloplasty/frenulectomy, for clients twenty-one years of age and older.

(k) Adjunctive general services. The ~~((department))~~ agency does not cover:

(i) Anesthesia, including, but not limited to:

(A) Local anesthesia as a separate procedure.

(B) Regional block anesthesia as a separate procedure.

(C) Trigeminal division block anesthesia as a separate procedure.

(D) Medication for oral sedation, or therapeutic intramuscular (IM) drug injections, including antibiotic and injection of sedative.

(E) Application of any type of desensitizing medicament or resin.

(ii) Other general services including, but not limited to:

(A) Fabrication of an athletic mouthguard.

(B) Occlusal guards for clients twenty-one years of age and older.

(C) Nightguards.

(D) Occlusion analysis.

~~((C))~~ (E) Occlusal adjustment, tooth or restoration adjustment or smoothing, or odontoplasties.

~~((D))~~ (F) Enamel microabrasion.

~~((E))~~ (G) Dental supplies such as toothbrushes, toothpaste, floss, and other take home items.

~~((F))~~ (H) Dentist's or dental hygienist's time writing or calling in prescriptions.

~~((G))~~ (I) Dentist's or dental hygienist's time consulting with clients on the phone.

~~((H))~~ (J) Educational supplies.

~~((I))~~ (K) Nonmedical equipment or supplies.

~~((J))~~ (L) Personal comfort items or services.

~~((K))~~ (M) Provider mileage or travel costs.

~~((L))~~ (N) Fees for no-show, ~~((cancelled))~~ canceled, or late arrival appointments.

~~((M))~~ (O) Service charges of any type, including fees to create or copy charts.

~~((N))~~ (P) Office supplies used in conjunction with an office visit.

~~((O))~~ (Q) Teeth whitening services or bleaching, or materials used in whitening or bleaching.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-535-1220 Obtaining prior authorization for dental-related services ~~((for clients through age twenty)).~~** (1) The ~~((department))~~ agency uses the determination process for payment described in WAC ~~((388-501-0165))~~ 182-501-0165 for covered dental-related services ~~((for clients through age twenty))~~ that require prior authorization.

(2) The ~~((department))~~ agency requires a dental provider who is requesting prior authorization to submit sufficient objective clinical information to establish medical necessity. The request must be submitted in writing on ~~((an American Dental Association (ADA) claim form, which may be obtained by writing to the American Dental Association, 211 East Chicago Avenue, Chicago, Illinois 60611))~~ DSHS form 13-835, available on the agency's web site.

(3) The ~~((department))~~ agency may request additional information as follows:

(a) Additional radiographs (X rays) (refer to WAC ~~((388-535-1080))~~ 182-535-1080(2)(-));

(b) Study models;

(c) Photographs; and

(d) Any other information as determined by the ~~((department))~~ agency.

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

(5) When the ~~((department))~~ agency authorizes a dental-related service for a client, that authorization indicates only that the specific service is medically necessary; it is not a guarantee of payment. The authorization is valid for six months and only if the client is eligible for covered services on the date of service.

(6) The ~~((department))~~ agency denies a request for a dental-related service when the requested service:

(a) Is covered by another ~~((department))~~ agency program;

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

(c) Fails to meet the program criteria, limitations, or restrictions in this chapter ~~((388-535-WAC))~~.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-535-1350 Payment methodology for dental-related services.** The ~~((medical assistance administration (MAA)))~~ agency uses the description of dental services described in the American Dental Association's Current Dental Terminology, and the American Medical Association's Physician's Current Procedural Terminology (CPT).

(1) For covered dental-related services provided to eligible clients, ~~((MAA))~~ the agency pays dentists and other eligible providers on a fee-for-service or contractual basis, subject to the exceptions and restrictions listed under WAC ~~((388-535-1100))~~ 182-535-1100 and ~~((388-535-1400))~~ 182-535-1400.

(2) ~~((MAA))~~ The agency sets maximum allowable fees for dental services ~~((provided to children))~~ as follows:

(a) ~~((MAA's))~~ The agency's historical reimbursement rates for various procedures are compared to usual and customary charges.

(b) ~~((MAA))~~ The agency consults with representatives of the provider community to identify program areas and concerns that need to be addressed.

(c) ~~((MAA))~~ The agency consults with dental experts and public health professionals to identify and prioritize dental services and procedures for their effectiveness in improving or promoting ~~((children's))~~ dental health.

(d) Legislatively authorized vendor rate increases and/or earmarked appropriations for ~~((children's))~~ dental services are allocated to specific procedures based on the priorities identified in (c) of this subsection and considerations of access to services.

(e) Larger percentage increases may be given to those procedures which have been identified as most effective in improving or promoting ~~((children's))~~ dental health.

(f) Budget-neutral rate adjustments are made as appropriate based on the ~~((department's))~~ agency's evaluation of utilization trends, effectiveness of interventions, and access issues.

(3) ~~((MAA))~~ The agency reimburses dental general anesthesia services for eligible clients on the basis of base anesthesia units plus time. Payment for dental general anesthesia is calculated as follows:

(a) Dental procedures are assigned an anesthesia base unit of five;

(b) Fifteen minutes constitute one unit of time. When a dental procedure requiring dental general anesthesia results in multiple time units and a remainder (less than fifteen minutes), the remainder or fraction is considered as one time unit;

(c) Time units are added to the anesthesia base unit of five and multiplied by the anesthesia conversion factor;

(d) The formula for determining payment for dental general anesthesia is: (5.0 base anesthesia units + time units) x conversion factor = payment.

(4) When billing for anesthesia, the provider must show the actual beginning and ending times on the claim. Anesthesia time begins when the provider starts to physically prepare the client for the induction of anesthesia in the operating room area (or its equivalent), and ends when the provider is no longer in constant attendance (i.e., when the client can be safely placed under postoperative supervision).

(5) ~~((MAA))~~ The agency pays eligible providers listed in WAC ~~((388-535-1070))~~ 182-535-1070 for conscious sedation with parenteral and multiple oral agents, or for general anesthesia when the provider meets the criteria in this chapter and other applicable WAC.

(6) Dental hygienists who have a contract with ~~((MAA))~~ the agency are paid at the same rate as dentists who have a contract with ~~((MAA))~~ the agency, for services allowed under The Dental Hygienist Practice Act.

(7) Licensed denturists who have a contract with ~~((MAA))~~ the agency are paid at the same rate as dentists who have a contract with ~~((MAA))~~ the agency, for providing dentures and partials.

(8) ~~((MAA))~~ The agency makes fee schedule changes whenever the legislature authorizes vendor rate increases or decreases.

(9) ~~((MAA))~~ The agency may adjust maximum allowable fees to reflect changes in services or procedure code descriptions.

(10) ~~((MAA))~~ The agency does not pay separately for chart or record setup, or for completion of reports, forms, or charting. The fees for these services are included in ~~((MAA's))~~ the agency's reimbursement for comprehensive oral evaluations or limited oral evaluations.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-535-1400 Payment for dental-related services.** (1) The ~~((medical assistance administration (MAA)))~~ agency considers that a provider who furnishes covered dental services to an eligible client has accepted ~~((MAA's))~~ the agency's rules and fees.

(2) Participating providers must bill ~~((MAA))~~ the agency their usual and customary fees.

(3) Payment for dental services is based on ~~((MAA's))~~ the agency's schedule of maximum allowances. Fees listed in the ~~((MAA))~~ agency's fee schedule are the maximum allowable fees.

(4) ~~((MAA))~~ The agency pays the provider the lesser of the billed charge (usual and customary fee) or ~~((MAA's))~~ the agency's maximum allowable fee.

(5) ~~((MAA))~~ The agency pays "by report" on a case-by-case basis, for a covered service that does not have a set fee.

(6) Participating providers must bill a client according to WAC ~~((388-502-0160))~~ 182-502-0160, unless otherwise specified in this chapter.

(7) If the client's eligibility for dental services ends before the conclusion of the dental treatment, payment for any remaining treatment is the client's responsibility. The exception to this is dentures and partial dentures as described in WAC ~~((388-535-1240))~~ 182-535-1240 and ~~((388-535-1290))~~ 182-535-1290.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-535-1450 Payment for denture laboratory services.** This section applies to payment for denture laboratory services. The ~~((medical assistance administration (MAA)))~~ agency does not directly reimburse denture laboratories. ~~((MAA's))~~ The agency's reimbursement for complete dentures, ~~((immediate dentures,))~~ partial dentures, and overdentures includes laboratory fees. The provider is responsible to pay a denture laboratory for services furnished at the request of the provider.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-535-1500 Payment for dental-related hospital services.** The ~~((medical assistance administration (MAA)))~~ agency pays for medically necessary dental-related ~~((hospital))~~ services provided in an inpatient ((and)) or outpatient ((services in accord with)) hospital setting according to WAC ~~((388-550-1100))~~ 182-550-1100.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-535-1065

Coverage limits for dental-related services provided under the GA-U and ADATSA programs.

**WSR 11-18-013**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 11-206—Filed August 26, 2011, 9:37 a.m., effective August 28, 2011, 9:00 p.m.]

Effective Date of Rule: August 28, 2011, 9:00 p.m.

Purpose: The purpose of this rule making is to allow nontreaty commercial fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000A; and amending WAC 220-33-010.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets the final two periods of the mainstem Columbia River early fall commercial season. Modifies the 2011 fall season in the Tongue Point Select Area fishing site. Requires participating vessel operators to cooperate with Oregon (ODFW) and Washington (WDFW) departments of fish and wildlife if either agency intends to initiate on-board monitoring. The seasons are consistent with the 2008-2017 Interim Management Agreement, and the 2011 Non-Indian Salmon Allocation Agreement. Salmon are available for harvest during fall season fisheries. The regulation is consistent with compact action of July 28, 2011, and August 25, 2011. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the WDFW and ODFW convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: August 26, 2011.

Lori Preuss  
for Philip Anderson  
Director

NEW SECTION

**WAC 220-33-01000B Columbia River season below Bonneville.** Notwithstanding the provisions of WAC 220-33-010, and WAC 220-33-020, it is unlawful for a person to take or possess salmon or sturgeon for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1A, 1B, 1C, 1D, and 1E, except as provided in the following subsections.

**1. Mainstem Columbia River**

a. SEASON: 9 PM Sunday, August 28, to 6 AM Monday, August 29, 2011

9 PM Tuesday, August, 30 to 6 AM Wednesday, August 31, 2011

b. AREA: SMCRA 1D, 1E. The deadline at the lower end of SMCRA 1D is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation buoy #1 and continuing to the Washington shore.

c. GEAR: Drift gillnets only. 9-inch minimum mesh size.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. SANCTUARIES: Washougal and Sandy Rivers.

e. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of three (3) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday).

### 2. Blind Slough/Knappa Slough Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights from August 29 through October 28, 2011. Open hours are 7 PM to 7 AM through September 16, and 6 PM to 8 AM thereafter.

b. AREA: Blind Slough and Knappa Slough. An area closure of an approximately 100-foot radius at the mouth of Big Creek is defined by markers. Concurrent jurisdiction waters include all areas in Knappa Slough and downstream of the Railroad Bridge in Blind Slough.

c. GEAR: Gillnet. Monofilament gear is allowed. 9 3/4-inch maximum mesh size. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. ALLOWABLE SALES: Salmon.

### 3. Tongue Point/South Channel Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights from August 29 through October 28, 2011. Open 7 PM to 7 AM through September 16, and 4 PM to 10 AM thereafter.

b. AREA: Tongue Point and South Channel. All waters in this fishing area are concurrent jurisdiction waters.

c. GEAR: Gillnet. 6-inch maximum mesh.

Tongue Point fishing area: Net length 250 fathoms maximum. Weight not to exceed two pounds on any one fathom. Fishers participating in the Tongue Point fishery may have onboard gillnets legal for the South Channel fishing area.

South Channel area: Net length 100 fathoms maximum. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If

the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. ALLOWABLE SALES: Salmon.

### 4. Deep River Select Area.

a. SEASON: Monday, Tuesday, Wednesday and Thursday nights from August 29 through October 28, 2011. 7 PM to 9 AM through September 16, and 4 PM to 9 AM thereafter.

b. AREA: The Deep River Select Area. Concurrent jurisdiction waters extend downstream of the Highway 4 Bridge.

c. GEAR: Gill net. Monofilament gear is allowed. 6-inch maximum mesh. Net length 100 fathoms maximum. No weight restriction on the lead line. Use of additional weights or anchors attached directly to the lead line is allowed. Nets may not be tied off to stationary structures. Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream or channel any gill net gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level. This emergency provision shall supersede the permanent regulation and all other regulations that conflict with it. All other provisions of the permanent regulation remain in effect (WAC 220-20-015(1)).

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. ALLOWABLE SALES: Salmon.

**5. Quick Reporting:** 24-hour quick-reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When quick-reporting is required, Columbia River reports must be submitted within 24 hours of the closure of each fishing period. This quick-reporting requirement applies to all seasons described above (Columbia River and Select Areas).

**6. Observer program:** As a condition of fishing, owners or operators of commercial fishing vessels must cooperate with department observers or observers collecting data for the department, when notified by the observer of his or her intent to board the commercial vessel for observation and sampling during an open fishery.

**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.

**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 9:00 PM August 28, 2011:

WAC 220-33-01000A Columbia River season below Bonneville. (11-180)

**WSR 11-18-014**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 11-207—Filed August 26, 2011, 9:40 a.m., effective August 26, 2011, 9:40 a.m.]

Effective Date of Rule: Immediately.

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 220-32-05100F; 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); *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: Modifies the weekly commercial gillnet fishing periods to include one additional day of fishing for each of the two weekly periods previously adopted. 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. Allows sale of all salmon (including sockeye and pink). Based on preseason forecasts, adult fall chinook and steelhead are available for treaty Indian harvest. Fisheries are expected to remain within the impact limits set for ESA-listed salmonids. Harvest is expected to remain within the allocation and guidelines of the 2008-2017 management agreement. Rule is consistent with action of the Columbia River compact on May 10 and August 25, 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 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: August 26, 2011.

Lori Preuss  
for Philip Anderson  
Director

NEW SECTION

**WAC 220-32-05100G 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 and 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 August 29 through 6:00 PM September 2, 2011.

6:00 AM September 6 through 6:00 PM September 10, 2011.

b. Gear: Gill nets only. Minimum mesh size is 8 inches.

c. Allowable Sales: Salmon, steelhead, shad, yellow perch, bass, walleye, carp and catfish may be sold or retained for subsistence. 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.

d. Standard river mouth sanctuaries in effect.

2. Open Area: SMCRA 1F, 1G, 1H (Zone 6):

a. Season: Immediately until further notice.

b. Gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

c. Allowable sale: Salmon, steelhead, shad, yellow perch, bass, carp and catfish. 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. Standard river mouth sanctuaries in effect.

3. 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, yellow perch, bass, carp and catfish.

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.

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.

e. Season: Immediately until further notice.

f. Gear: Hook and line, or as defined by each tribe's MOA or MOA.

g. Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon retention is prohibited; 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. 24-hour quick reporting required for Washington wholesale dealers, WAC 220-69-240, for all areas.

**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.

**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:

WAC 220-32-05100F Columbia River salmon seasons above Bonneville Dam. (11-181)

### **WSR 11-18-019**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF FISH AND WILDLIFE**

[Order 11-202—Filed August 26, 2011, 11:13 a.m., effective August 26, 2011, 11:13 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-41100T; and amending WAC 220-47-411.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This emergency rule is needed to correct opening and closing times in the permanent rule for the gillnet fishery in Areas 8 and 8A. Also, there is no participation in a "limited participation fishery" in Area 10, therefore the area is closed to commercial fishing. 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: August 26, 2011.

Lori Preuss  
for Philip Anderson  
Director

**NEW SECTION**

**WAC 220-47-41100T Gill net—Open periods.** Notwithstanding the provisions of WAC 220-47-411, effective immediately until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

Seasons:

AREA	TIME	DATE(S)	MINIMUM MESH
8:	5:30 AM - 10:30 PM	8/29, 8/31	5" minimum and 5 1/2" maximum
8A:	5:30 AM - 10:30 PM	8/31	5" minimum and 5 1/2" maximum
10:	Closed		

**REPEALER**

The following section of the Washington Administrative Code is repealed effective September 1, 2011:

WAC 220-47-41100T Gill net—Open periods.

**WSR 11-18-021  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 11-208—Filed August 26, 2011, 3:27 p.m., effective August 27, 2011, 5:00 a.m.]

Effective Date of Rule: August 27, 2011, 5:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-50100J; and amending WAC 220-47-501.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation provides for Pacific Salmon Commission authorized fisheries in Areas 7 and 7A. These emergency rules are necessary to initiate fisheries targeting a harvestable amount of pink salmon available. 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: August 26, 2011.

Lori Preuss  
for Philip Anderson  
Director

**NEW SECTION**

**WAC 220-47-50100J Puget Sound all-citizen commercial salmon fishery—Open periods.** Notwithstanding the provisions of chapter 220-47 WAC, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

**Areas 7 and 7A:**

**Reef Nets -** Open to reef net gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5:00 AM - 9:00 PM	8/27, 8/28, 8/29

(a) It is unlawful to retain rockfish, unmarked Chinook, unmarked coho, sockeye, and chum.

(b) It is unlawful to retain marked Chinook unless the reef net operator is in immediate possession of a Puget Sound Reef Net Logbook.

(c) It is unlawful to fish for salmon with reef net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in immediate possession of a department issued certification card.

**(4) "Quick Reporting Fisheries":**

All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-22-030), are designated as "Quick Reporting Required" per WAC 220-47-001.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 9:01 PM August 29, 2011:

WAC 220-47-50100J Puget Sound all-citizen commercial salmon fishery—  
Open periods.

**WSR 11-18-022**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 11-210—Filed August 26, 2011, 5:14 p.m., effective August 27, 2011, 12:01 a.m.]

Effective Date of Rule: August 27, 2011, 12:01 a.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:  
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: This emergency rule is needed to reduce impacts to overfished bottomfish species: Yelloweye and canary rockfish. 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 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: August 26, 2010 [2011].

Lisa M. Veneroso  
for Philip Anderson  
Director

NEW SECTION

**WAC 220-56-25000N Lingcod—Areas and seasons.**  
Notwithstanding the provisions of WAC 220-56-250, effective 12:01 a.m. August 27, 2011, until further notice, it is

unlawful to take or fish for lingcod in that portion of Marine Area 1 from 46°N 38'10" to 46°N 28'00".

**WSR 11-18-025**  
**EMERGENCY RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed August 29, 2011, 11:33 a.m., effective August 29, 2011, 11:33 a.m.]

Effective Date of Rule: Immediately.

Purpose: The proposed rules are to support the 2011 legislature in that the legislature finds that the current economic environment requires that the state, when appropriate, charge for some of the services provided directly to the users of those services. The legislature finds that the processing of certifications should be moved to an on-line system that allows educators to manage their certifications and provides better information to policymakers. The legislature intends to assess a certification processing fee to eliminate state-funded support of the cost to issue educator certificates.

Statutory Authority for Adoption: ESHB 1449 (chapter 23, 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 year 2009, 2010, 2011, 2012 or 2013, 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 appropriations act reduced the state funding for the office of superintendent of public instruction (OSPI) certification office in anticipation of OSPI collecting the certification processing fee that this rule would institute.

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 0, Amended 0, Repealed 0.

Date Adopted: August 29, 2011.

Randy Dorn  
State Superintendent  
of Public Instruction

## Chapter 392-194 WAC

## SCHOOL PERSONNEL CERTIFICATE FEES

NEW SECTION

**WAC 392-194-001 Purpose and authority.** The purpose of this chapter is to establish the fee for processing initial educator certificate applications and subsequent actions. The authority for this chapter is chapter 23 (ESHB 1449), Laws of 2011.

NEW SECTION

**WAC 392-194-002 Fee for processing initial educator certificate applications and subsequent actions.** Effective October 1, 2011, the superintendent of public instruction will charge a nonrefundable fee of thirty-three dollars for processing any certificate application or requests for administrative action which results in the issuance, renewal or reissuance of a permit or certificate pursuant to RCW 28A.410.010, 28A.410.025, 28A.410.210, and chapters 181-85 and 181-77 WAC; for issuance of a letter authorizing internship/student teaching pursuant to WAC 181-78A-130; and any subsequent action upon any certificate or permit referred to within this chapter. Educator certificates governed under this chapter include:

- (1) Teacher. The teacher certificate, including teacher exchange permits as provided in WAC 181-79A-140, authorizes service as a classroom teacher.
- (2) Career and technical. The career and technical education certificate authorizes service in career and technical education programs in accordance with the provisions of chapter 181-77 WAC.
- (3) First people's language/culture. The first peoples' language, culture, and oral tribal traditions teacher certificate authorizes service as defined under WAC 181-78A-700(8).
- (4) Administrator.
- (5) Educational staff associate. The educational staff associate certificate authorizes service in the roles of school speech pathologists or audiologists, school counselors, school nurses, school occupational therapists, school physical therapists, school psychologists, and school social workers: Provided, That nothing within chapter 181-79A WAC authorizes professional practice by an educational staff associate which is otherwise prohibited or restricted by any other law, including licensure statutes and rules and regulations promulgated by the appropriate licensure board or agency.
- (6) Limited certificates. The following limited certificates are issued to individuals under specific circumstances set forth in WAC 181-79A-231:
  - (a) Conditional certificate.
  - (b) Substitute certificate.
  - (c) Emergency certificate.
  - (d) Emergency substitute certificate.
  - (e) Nonimmigrant alien exchange teacher.
  - (f) Intern substitute teacher certificate.
  - (g) Transitional certificate.
  - (h) Provisional alternative administrative certificate.

**WSR 11-18-026**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 11-213—Filed August 29, 2011, 4:10 p.m., effective August 30, 2011, 5:00 a.m.]

Effective Date of Rule: August 30, 2011, 5:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-50100K; and amending WAC 220-47-501.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation provides for Pacific Salmon Commission authorized fisheries in Areas 7 and 7A. These emergency rules are necessary to initiate fisheries targeting a harvestable amount of pink salmon available. 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: August 29, 2011.

Lisa M. Veneroso  
 for Philip Anderson  
 Director

NEW SECTION

**WAC 220-47-50100K Puget Sound all-citizen commercial salmon fishery—Open periods.** Notwithstanding the provisions of Chapter 220-47 WAC, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

**Areas 7 and 7A:**

(1) **Purse Seines** - Open to purse seine gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5:00 AM - 9:00 PM	8/31

(a) It is unlawful to retain rockfish, Chinook, coho, sockeye, and chum.

(b) Purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

(c) It is unlawful to bring salmon aboard a vessel unless all salmon captured in the seine net are removed from the seine net using a brailer or dip net meeting the specifications in WAC 220-47-325, prior to the seine net being removed from the water. All salmon and rockfish must be immediately sorted, and those required to be released must be placed in an operating recovery box or released into the water before the next brail may be brought on the deck. However, small numbers of fish may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

(d) It is unlawful to fish for salmon with purse seine gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(2) **Gill Nets** - Open to gill net gear with 5 inch minimum and 5 1/2 inch maximum mesh size according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
8:00 AM - Midnight	8/31

(a) It is unlawful to retain rockfish and sockeye.

(b) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(3) **Reef Nets** - Open to reef net gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5:00 AM - 9:00 PM	8/30, 8/31, 9/1

(a) It is unlawful to retain rockfish, unmarked Chinook, unmarked coho, sockeye and chum.

(b) It is unlawful to retain marked Chinook unless the reef net operator is in immediate possession of a Puget Sound Reef Net Logbook.

(c) It is unlawful to fish for salmon with reef net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in immediate possession of a department issued certification card.

**(4) "Quick Reporting Fisheries":**

All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-22-030), are designated as "Quick Reporting Required" per WAC 220-47-001.

REPEALER

The following section of the Washington Administrative Code is repealed effective 9:01 p.m. September 1, 2011:

WAC 220-47-50100K Puget Sound all-citizen commercial salmon fishery—  
Open periods.

**WSR 11-18-031  
EMERGENCY RULES  
SUPERINTENDENT OF  
PUBLIC INSTRUCTION**

[Filed August 30, 2011, 10:45 a.m., effective September 1, 2011]

Effective Date of Rule: September 1, 2011.

Purpose: To define resident student enrollment for purposes of SSB 5239, section I [1](5) which shall consider and address the impact of alternative learning experience students on federal forest funds distribution. That definition is as follows: As used in RCW 28A.520.020, resident full-time equivalent students means full-time equivalent students as defined in WAC 392-121-122, excluding students enrolled in alternative learning experience (ALE) programs who reside outside the county of school district boundaries.

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-421.

Statutory Authority for Adoption: SSB 5349 [5239], section I [1](5) passed in 2011 legislative session.

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 year 2009, 2010, 2011, 2012 or 2013, 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: This is necessary to clarify the definition of resident full-time equivalent students due to the impact that students enrolled in ALE programs have on federal forest fund distribution.

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 0, Amended 0, Repealed 0.

Date Adopted: August 30, 2011.

Randy Dorn  
State Superintendent

Date Adopted: August 30, 2011.

Philip Anderson  
DirectorNEW SECTION

**WAC 392-121-421 Definition—Resident student—Basic education allocation—Federal forest funds.** As used in RCW 28A.520.020, resident full-time equivalent students means full-time equivalent students as defined in WAC 392-121-122, excluding students enrolled in alternative learning experience programs who reside outside the county of the school district boundaries.

**WSR 11-18-032**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 11-212—Filed August 30, 2011, 12:11 p.m., effective August 30, 2011, 12:11 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100A; and amending WAC 220-52-051.

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 2011 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) closes Shrimp Management Area 1B and Catch Areas 23A-C, 23A-W and 26B-2, because the spot shrimp quotas will be reached; and (2) closes Shrimp Management Areas 1A, 1B and 1C to non-spot shrimp, as the quota has been reached. 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.

NEW SECTION

**WAC 220-52-05100B Puget Sound shrimp pot and beam trawl fishery—Season.** Notwithstanding the provisions of WAC 220-52-051, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound, except as provided for in this section:

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas (SMA) 1B, 2W, 3, 4, and 6 are open to the harvest of all shrimp species, effective immediately until further notice, except as provided for in this section:

i) All waters of SMA 1A, 1C, 2E, Catch Areas 26B-1, 26C, and the Discovery Bay Shrimp District are closed.

ii) All waters of SMA 2W, and Catch Areas 23A-E, 23B and 26D, are closed to the harvest of spot shrimp.

iii) Effective immediately, until 5:59 p.m. September 6, 2011, all waters of SMA 1B are closed to the harvest of all species except spot shrimp.

iv) Effective 6:00 p.m. September 6, 2011, all waters of Catch Areas 23A-C and 23A-W are closed to the harvest of spot shrimp, and all waters of SMA 1B and Catch Area 26B-2 are closed.

(b) The shrimp catch accounting week is Wednesday through Tuesday.

(c) Effective immediately, until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, except as follows:

i) Effective immediately it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 170 pounds per week in SMA 1B, or to exceed 300 pounds per week in Catch Area 25A, or to exceed 400 pounds per week in Catch Area 26B-2.

(d) It is unlawful to pull shellfish pots in more than one Catch Area per day.

(e) Only pots with a minimum mesh size of 1 inch may be pulled on calendar days when fishing for or retaining spot shrimp. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1-3/4 inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(2) Shrimp beam trawl gear:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay, and Catch Area 23D) is open, effective immediately until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) Catch Area 20A is open, effective immediately until further notice.

(3) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100A Puget Sound shrimp beam trawl fishery—Season. (11-199)

**WSR 11-18-035  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 11-211—Filed August 30, 2011, 1:46 p.m., effective September 1, 2011]

Effective Date of Rule: September 1, 2011.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:  
Amending WAC 220-52-073.

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: Harvestable amounts of red and green sea urchins exist in the areas described. By harvest management agreement, the legal size limits for red sea urchins have changed for the 2011-2012 harvest management period. Prohibiting all diving from licensed sea urchin harvest vessels within Sea Urchin District 3 when those vessels have red sea urchin on-board discourages the taking of red urchins from the district (which is currently closed to red urchin harvest) and reporting the catch to the adjacent harvest district. Prohibiting transport of urchins from Districts 1 and 2 to other districts will prevent spoiling of product, promote accurate catch accounting, and provide for an orderly fishery. 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 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 Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 30, 2011.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-52-07300V Sea urchins.** Notwithstanding the provisions of WAC 220-52-073, effective September 1, 2011 until further notice, it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

(1) Green sea urchins: Sea Urchin Districts 3, 4, 6 and 7 are open seven days-per-week.

(2) Red sea urchins: Sea Urchin Districts 1, 2 and 4 are open seven days-per-week. In Sea Urchin Districts 1, 2 and 4, it is unlawful to harvest red sea urchins smaller than 3.25 inches or larger than 5.0 inches (size in largest test diameter exclusive of spines).

(3) It is unlawful to dive for any purpose from a commercially licensed sea urchin fishing vessel in Sea Urchin District 3 when the vessel has red sea urchins on-board.

(4) Red sea urchins harvested in Sea Urchin Districts 1 and 2 must be landed within Sea Urchin Districts 1 and 2.

**WSR 11-18-038  
EMERGENCY RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed August 31, 2011, 9:08 a.m., effective September 1, 2011]

Effective Date of Rule: September 1, 2011.

Purpose: Under the 2011-13 omnibus operating budget, the department must establish certification fees at an amount adequate to reimburse costs for its certification and regulation activities for approved chemical dependency treatment programs.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-805-080 and 388-805-090; and amending WAC 388-805-085 and 388-805-100.

Statutory Authority for Adoption: RCW 43.135.055 and 70.96A.090.

Other Authority: 2011-13 omnibus operating budget (2ESHB 1087).

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 year 2009, 2010, 2011, 2012 or 2013, 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 rule adoption is required in order for the department to comply with section 208 of 2ESHB 1087, which requires the department to increase fees for the review and approval of treatment pro-

grams in fiscal years 2012 and 2013 as necessary to support the costs of the regulatory program. Providers with proof of accreditation for programs will have fees that reflect a lower cost of certifying them. The law directs the increased fees to be implemented in fiscal years 2012 and 2013 as necessary to support the costs of the regulatory program. This does not allow the department enough time to adopt rules through the regular rule adoption process. The department is concurrently filing a CR-101 for the permanent rule.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 2.

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 2.

Date Adopted: August 25, 2011.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-11-096, filed 5/17/06, effective 6/17/06)

**WAC 388-805-085** (~~What are the fees for agency certification?~~) **What are the fee requirements for chemi-**

**Application Fees for Agency Certification for Approved Chemical Dependency Treatment Programs**

<u>New agency application</u>	\$1,000
<u>Branch agency application</u>	\$500
<u>Application to add one or more services</u>	\$200
<u>Application to change ownership</u>	\$500

**Initial and Annual Certification Fees for Detoxification, Residential, and Nonresidential Services**

<u>Detoxification and residential services</u>	\$100 per licensed bed, per year, for agencies not renewing certification through deeming \$50 per licensed bed, per year, for agencies renewing certification through deeming per WAC 388-805-115
<u>Nonresidential services</u>	\$750 per year for agencies not renewing certification through deeming \$200 per year for agencies certified through deeming per WAC 388-805-115

**Complaint/Incident Investigation Fees**

<u>All agencies</u>	\$1,000 per substantiated complaint/incident investigation
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(2) Agency providers must pay fees:

(a) Within thirty days of receiving an invoice from the department.

**cal dependency treatment programs?** (1) ((Application fees:))

<del>((a) New agency))</del>	<del>(((\$500))</del>
<del>((b) Branch agency))</del>	<del>(((\$500))</del>
<del>((c) Application for adding one or more services))</del>	<del>(((\$200))</del>
<del>((d) Change in ownership))</del>	<del>(((\$500))</del>

~~((2) Initial and annual certification fees:))~~

~~((a) For detoxification and residential services:))~~ (((\$26 per licensed bed))

~~((b) For nonresidential services:))~~

~~((i) Large size agencies: 3,000 or more patients served per year))~~ (((\$1,125 per year))

~~((ii) Medium size agencies: 1,000-2,999 patients served per year))~~ (((\$750 per year))

~~((iii) Small size agencies: 0-999 patients served per year))~~ (((\$375 per year))

~~((c) For agencies certified through deeming per WAC 388-805-115))~~ (((\$200 per year))

~~((3) Each year providers must complete a declaration form provided by the department indicating the number of patients served annually, the provider's national accreditation status, and other information necessary for establishing fees and updating certification information))~~ The department charges the following fees for approved chemical dependency treatment programs:

(b) By check, draft, or money order made payable to the department of social and health services.

(3) The department:

(a) May refund one-half of the application fee if an application is withdrawn before certification or denial.

(b) Will not refund fees when certification is denied, revoked, or suspended.

(4) Agency providers must annually complete a declaration form provided by the department to indicate information necessary for establishing fees and updating certification information. Required information includes, but is not limited to:

(a) The number of licensed detoxification and residential beds; and

(b) The agency provider's national accreditation status.

**AMENDATORY SECTION** (Amending WSR 08-24-083, filed 12/1/08, effective 1/1/09)

**WAC 388-805-100 What do I need to do to maintain agency certification?** A service provider's continued certification and renewal is contingent upon:

(1) Completion of an annual declaration of certification.

(2) Payment of certification fees(~~(, if applicable)~~).

(3) Providing the essential requirements for chemical dependency treatment, including the following elements:

(a) Treatment process:

(i) Assessments, as described in WAC 388-805-310;

(ii) Treatment planning, as described in WAC 388-805-315 (2)(a) and 388-805-325(11);

(iii) Documenting patient progress, as described in WAC 388-805-315 (1)(b) and 388-805-325(13);

(iv) Treatment plan reviews and updates, as described in WAC 388-805-315 (2)(a), 388-805-325(11) and 388-805-325 (13)(c);

(v) Patient compliance reports, as described in WAC 388-805-315 (4)(b), 388-805-325(17), and 388-805-330;

(vi) Continuing care, transfer summary and discharge planning, as described in WAC 388-805-315 (2)(c) and (d), (6)(a) and (b), and (7)(a), and 388-805-325 (18) and (19); and

(vii) Conducting individual and group counseling, as described in WAC 388-805-315 (2)(b) and 388-805-325(13).

(b) Staffing: Provide sufficient qualified personnel for the care of patients as described in WAC 388-805-140(5) and 388-805-145(5);

(c) Facility:

(i) Provide sufficient facilities, equipment, and supplies for the care and safety of patients as described in WAC 388-805-140 (5) and (6);

(ii) If a residential provider, be licensed by the department of health as described by WAC 388-805-015 (1)(b).

(4) Findings during periodic on-site surveys and complaint investigations to determine the provider's compliance with this chapter. During on-site surveys and complaint investigations, provider representatives must cooperate with department representatives to:

(a) Examine any part of the facility at reasonable times and as needed;

(b) Review and evaluate records, including patient clinical records, personnel files, policies, procedures, fiscal records, data, and other documents as the department requires to determine compliance; and

(c) Conduct individual interviews with patients and staff members.

(5) The provider must post the notice of a scheduled department on-site survey in a conspicuous place accessible to patients and staff.

(6) The provider must correct compliance deficiencies found at such surveys immediately or as agreed by a plan of correction approved by the department.

#### **REPEALER**

The following sections of the Washington Administrative Code are repealed:

WAC 388-805-080      What are the fee requirements for certification?

WAC 388-805-090      May certification fees be waived?

#### **WSR 11-18-040**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

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

(Aging and Disability Services Administration)

[Filed August 31, 2011, 9:12 a.m., effective September 1, 2011]

Effective Date of Rule: September 1, 2011.

Purpose: Under the 2011-13 omnibus operating budget, the department must establish licensing and certification fees at an amount adequate to reimburse costs for its certification and regulation activities for approved mental health treatment programs.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-865-0474 and 388-865-0516.

Statutory Authority for Adoption: RCW 43.20B.110, 43.135.055, and 71.24.035.

Other Authority: 2011-13 omnibus operating budget (2ESHB 1087).

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 year 2009, 2010, 2011, 2012 or 2013, 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 rule adoptions is [are] required in order for the department to comply with section 204 of 2ESHB 1087, which requires the department to increase fees for the review and approval of treatment programs in fiscal years 2012 and 2013 as necessary to support the costs of the regulatory program. Providers with proof of accreditation for programs will have fees that reflect the lower cost of licensing than for other organizations which are not accredited. The law directs the increased fees to be implemented in fiscal years 2012 and 2013 as necessary to support the costs of the regulatory program. This does now allow the department enough time to adopt rules through the



regular rule adoption process. The department is concurrently filing a CR-101 for the permanent rule.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 2.

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 2.

Date Adopted: August 25, 2011.

Katherine I. Vasquez  
Rules Coordinator

NEW SECTION

**WAC 388-865-0103 Fee requirements for mental health treatment programs.** (1) The department charges the following fees to reimburse costs for its licensing and certification activities for approved mental health treatment programs:

<b>New Agency Licensing Application Fee for Approved Mental Health Treatment Programs</b>	
Licensing application fee for residential and nonresidential services—New agencies	\$1000
<b>Agencies not Certified through Deeming: Residential Services—Initial and Annual Certification Fees</b>	
Evaluation and treatment (E&T) residential bed fees	\$90 initial certification fee, per licensed bed \$90 annual certification fee, per licensed bed
<b>Agencies not Licensed through Deeming: Nonresidential Services—Initial and Annual Licensing Fees</b>	
Annual service hours provided:	Initial and annual licensing fees:
0 - 3,999	\$728
4,000 - 14,999	\$1,055
15,000 - 29,999	\$1,405
30,000 - 49,000	\$2,105
50,000 or more	\$2,575
<b>Deemed agencies: Residential and Nonresidential Services—Renewal Licensing Fees</b>	
Deemed agencies licensed by DBHR	\$500 licensing fee
<b>Complaint/Incident Investigation Fee</b>	
All residential and nonresidential agencies	\$1,000 per substantiated complaint/incident investigation

(2) Initial and annual licensing/certification fees identified in the table in subsection (1) of this section must:

- (a) Be sent with an initial application or with an annual license/certification renewal.
- (b) Cover a minimum of one year.
- (c) Be made payable to the division of behavioral health and recovery by check, electronic fund transfer, or money order.
- (3) Failure to pay fees when due will result in suspension or denial of the license/certification.
- (4) The department:
  - (a) May refund one-half of the fees submitted with an application upon the receipt of the applicant if the application is withdrawn before the department issues the license.
  - (b) Will not refund fees when a license or certificate is denied, revoked, or suspended.
  - (c) Requires a new license and payment of fees for a change in agency ownership.
- (5) Agencies providing nonresidential services must report the number of annual service hours provided based on

the division of behavioral health and recovery's (DBHR's) current published "Service Encounter Reporting Instructions for RSNs" and the "Consumer Information System (CIS) Data Dictionary for RSNs." These publications are available at the DBHR website at: <http://www.dshs.wa.gov/dbhr/mhpublications.shtml>.

- (a) Existing licensed agencies must compute the annual service hours based on the most recent state fiscal year.
- (b) Newly licensed agencies must compute the annual service hours by projecting the service hours for the first twelve months of operation.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-865-0474 Fees for community support service provider licensure.
- WAC 388-865-0516 Certification fees.

**WSR 11-18-041**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed August 31, 2011, 9:14 a.m., effective September 1, 2011]

Effective Date of Rule: September 1, 2011.

Purpose: The department is amending chapter 388-71 WAC, Home and community services and programs and chapter 388-106 WAC, Long-term care services. Amendments are necessary to implement adult day health (ADH) changes as required under 2ESHB 1087 (2011-2013 operating budget).

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0300 and 388-106-0305.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Other Authority: 2ESHB 1087.

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 is adding the ADH service and eligibility into the community options program entry system (COPEs) waiver effective September 1, 2011, as a result of the legislative action under 2ESHB 1087. The department is directed to eliminate the ADH service under the state plan 1915(i) option and to reestablish it under the COPEs waiver. This CR-103E replaces and supersedes the CR-103E filed May 10, 2011, as WSR 11-11-023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, 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 2, Repealed 0.

Date Adopted: August 26, 2011.

Katherine I. Vasquez  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-24-026, filed 11/28/07, effective 1/1/08)

**WAC 388-106-0300 What services may I receive under community options program entry system (COPEs) when I live in my own home?** When you live in your own home, you may be eligible to receive only the following services under COPEs:

(1) Personal care services as defined in WAC 388-106-0010 in your own home and, as applicable, while you are out of the home accessing community resources or working.

(2) Adult day care if you meet the eligibility requirements under WAC 388-106-0805.

(3) Environmental modifications, if the minor physical adaptations to your home:

(a) Are necessary to ensure your health, welfare and safety;

(b) Enable you to function with greater independence in the home;

(c) Directly benefit you medically or remedially;

(d) Meet applicable state or local codes; and

(e) Are not adaptations or improvements, which are of general utility or add to the total square footage.

(4) Home delivered meals, providing nutritional balanced meals, limited to one meal per day, if:

(a) You are homebound and live in your own home;

(b) You are unable to prepare the meal;

(c) You don't have a caregiver (paid or unpaid) available to prepare this meal; and

(d) Receiving this meal is more cost-effective than having a paid caregiver.

(5) Home health aide service tasks in your own home, if the service tasks:

(a) Include assistance with ambulation, exercise, self-administered medications and hands-on personal care;

(b) Are beyond the amount, duration or scope of medicare reimbursed home health services as described in WAC 388-551-2120 and are in addition to those available services;

(c) Are health-related. Note: Incidental services such as meal preparation may be performed in conjunction with a health-related task as long as it is not the sole purpose of the aide's visit; and

(d) Do not replace medicare home health services.

(6)(a) Personal emergency response system (PERS), if the service is necessary to enable you to secure help in the event of an emergency and if:

(i) You live alone in your own home;

(ii) You are alone, in your own home, for significant parts of the day and have no regular provider for extended periods of time; or

(iii) No one in your home, including you, can secure help in an emergency.

(b) A medication reminder if you:

(i) Are eligible for a PERS unit;

(ii) Do not have a caregiver available to provide the service; and

(iii) Are able to use the reminder to take your medications.

(7) Skilled nursing, if the service is:

(a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse; and

(b) Beyond the amount, duration or scope of medicare-reimbursed home health services as provided under WAC 388-551-2100.

(8) Specialized durable and nondurable medical equipment and supplies under WAC 388-543-1000, if the items are:

(a) Medically necessary under WAC 388-500-0005;

(b) Necessary for: Life support; to increase your ability to perform activities of daily living; or to perceive, control, or communicate with the environment in which you live;

(c) Directly medically or remedially beneficial to you; and

(d) In addition to and do not replace any medical equipment and/or supplies otherwise provided under medicaid and/or medicare.

(9) Training needs identified in CARE or in a professional evaluation, which meet a therapeutic goal such as:

(a) Adjusting to a serious impairment;

(b) Managing personal care needs; or

(c) Developing necessary skills to deal with care providers.

(10) Transportation services, when the service:

(a) Provides access to community services and resources to meet your therapeutic goal;

(b) Is not diverting in nature; and

(c) Is in addition to and does not replace the medicaid-brokered transportation or transportation services available in the community.

(11) Nurse delegation services, when:

(a) You are receiving personal care from a registered or certified nursing assistant who has completed nurse delegation core training;

(b) Your medical condition is considered stable and predictable by the delegating nurse; and

(c) Services are provided in compliance with WAC 246-840-930.

(12) Nursing services, when you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities. The frequency and scope of the nursing services is based on your individual need as determined by your CARE assessment and any additional collateral contact information obtained by your case manager.

(a) Nursing assessment/reassessment;

(b) Instruction to you and your providers;

(c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In non-emergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.

(e) File review; and/or

(f) Evaluation of health-related care needs affecting service plan and delivery.

(13) Community transition services, if you are being discharged from the nursing facility or hospital and if services are necessary for you to set up your own home. Services:

(a) May include: Safety deposits, utility set-up fees or deposits, health and safety assurances such as pest eradication, allergen control or one-time cleaning prior to occupancy, moving fees, furniture, essential furnishings, and basic items essential for basic living outside the institution; and

(b) Do not include rent, recreational or diverting items such as TV, cable or VCRs.

(14) Adult day health services as described in WAC 388-71-0706 when you are:

(a) Assessed as having an unmet need for skilled nursing under WAC 388-71-0712 or skilled rehabilitative therapy under WAC 388-71-0714 and:

(i) There is a reasonable expectation that these services will improve, restore or maintain your health status, or in the case of a progressive disabling condition, will either restore or slow the decline of your health and functional status or ease related to pain or suffering;

(ii) You are at risk for deteriorating health, deteriorating functional ability, or institutionalization; and

(iii) You have a chronic or acute health condition that you are not able to safely manage due to a cognitive, physical, or other functional impairment.

(b) Assessed as having needs for personal care or other core services, whether or not those needs are otherwise met.

(c) You are not eligible for adult day health if you:

(i) Can independently perform or obtain the services provided at an adult day health center;

(ii) Have referred care needs that:

(A) Exceed the scope of authorized services that the adult day health center is able to provide;

(B) Do not need to be provided or supervised by a licensed nurse or therapist;

(C) Can be met in a less structured care setting;

(D) In the case of skilled care needs, are being met by paid or unpaid caregivers;

(E) Live in a nursing home or other institutional facility;

or

(F) Are not capable of participating safely in a group care setting.

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

**WAC 388-106-0305 What services may I receive under COPES if I live in a residential facility?** If you live in one of the following residential facilities: A licensed boarding home contracted with the department to provide assisted living, enhanced adult residential care, enhanced adult residential care-specialized dementia care or an adult family home, you may be eligible to receive only the following services under COPES:

(1) Personal care services as defined under WAC 388-106-0010.

(2) Specialized durable and nondurable medical equipment and supplies under WAC 388-543-1000, when the items are:

(a) Medically necessary under WAC 388-500-0005; and

(b) Necessary: For life support; to increase your ability to perform activities of daily living; or to perceive, control, or communicate with the environment in which you live; and

(c) Directly medically or remedially beneficial to you; and

(d) In addition to and do not replace any medical equipment and/or supplies otherwise provided under medicaid and/or medicare; and

(e) In addition to and do not replace the services required by the department's contract with a residential facility.

(3) Training needs identified in CARE or in a professional evaluation, that are in addition to and do not replace the services required by the department's contract with the residential facility and that meet a therapeutic goal such as:

- (a) Adjusting to a serious impairment;
- (b) Managing personal care needs; or
- (c) Developing necessary skills to deal with care providers.

(4) Transportation services, when the service:

- (a) Provides access to community services and resources to meet a therapeutic goal;
- (b) Is not diverting in nature;
- (c) Is in addition to and does not replace the medicaid-brokered transportation or transportation services available in the community; and
- (d) Does not replace the services required by DSHS contract in residential facilities.

(5) Skilled nursing, when the service is:

- (a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse;
- (b) Beyond the amount, duration or scope of medicaid-reimbursed home health services as provided under WAC 388-551-2100; and

(c) In addition to and does not replace the services required by the department's contract with the residential facility (e.g. intermittent nursing services as described in WAC 388-78A-2310).

(6) Nursing services, when you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities. The frequency and scope of the nursing services is based on your individual need as determined by your CARE assessment and any additional collateral contact information obtained by your case manager.

- (a) Nursing assessment/reassessment;
- (b) Instruction to you and your providers;
- (c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In none-emergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.

- (e) File review; and/or
- (f) Evaluation of health-related care needs affecting service plan and delivery.

(7) Community transition services, if you are being discharged from the nursing facility or hospital and if services are necessary for you to live in a residential facility. Services:

(a) May include: Safety deposits, utility set up fees or deposits, health and safety assurances such as pest eradication, allergen control or one time cleaning prior to occupancy, moving fees, furniture, essential furnishings, and basic items essential for basic living outside the institution.

(b) Do not include rent, recreational or diverting items such as TV, cable or VCRs.

(8) Adult day health services as described in WAC 388-71-0706 when you are:

(a) Assessed as having an unmet need for skilled nursing under WAC 388-71-0712 or skilled rehabilitative therapy under WAC 388-71-0714, and:

(i) There is a reasonable expectation that these services will improve, restore or maintain your health status, or in the case of a progressive disabling condition, will either restore or slow the decline of your health and functional status or ease related pain or suffering;

(ii) You are at risk for deteriorating health deteriorating functional ability, or institutionalization; and

(iii) You have a chronic or acute health condition that you are not able to safely manage due to a cognitive, physical, or other functional impairment.

(b) Assessed as having needs for personal care or other core services, whether or not those needs are otherwise met.

(c) You are not eligible for adult day health if you:

(i) Can independently perform or obtain the services provided at an adult day health center;

(ii) Have referred care needs that:

(A) Exceed the scope of authorized services that the adult day health center is able to provide;

(B) Do not need to be provided or supervised by a licensed nurse or therapist;

(C) Can be met in a less structured care setting;

(D) In the case of skilled care needs, are being met by paid or unpaid caregivers;

(E) Live in a nursing home or other institutional facility;

or

(F) Are not capable of participating safely in a group care setting.

#### WSR 11-18-049

#### EMERGENCY RULES

#### DEPARTMENT OF

#### FISH AND WILDLIFE

[Order 11-217—Filed August 31, 2011, 1:58 p.m., effective August 31, 2011, 1:58 p.m.]

Effective Date of Rule: Immediately.

Purpose: To establish restrictions on the importation of deer, elk, and moose from states known to harbor chronic wasting disease in wild populations.

Citation of Existing Rules Affected by this Order: Amending WAC 232-12-021.

Statutory Authority for Adoption: RCW 77.12.047, 77.12.620.

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 reduce the disease risk for native deer, elk, and moose populations in Washington.

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 0, Repealed 0.

Date Adopted: August 31, 2011.

Philip Anderson  
Director

#### NEW SECTION

**WAC 232-12-02100B Importation and retention of dead nonresident wildlife.** Notwithstanding the provisions of WAC 232-12-021, effective immediately until further notice, under subsection 3, add Maryland and Minnesota to the list of states affected by this rule.

**WSR 11-18-052**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 11-218—Filed August 31, 2011, 3:50 p.m., effective August 31, 2011, 3:50 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-24-04000G; 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 is a sufficient harvestable portion of the salmon quota that remains to be caught by the troll fleet. An increase[d] landing limit on chinook and coho should allow the fishery to stay within the chinook and coho quotas and harvest more of the quotas during the last two openings. 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: August 31, 2011.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-24-04000G 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:

September 3 through September 6, 2011.

September 10 through September 13, 2011.

(2) Landing and possession limit of 20 Chinook and 100 coho per boat per each entire open period for catch areas 1, 2, 3 and 4.

(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 there is no chum retention north of Cape Alava, Washington, in August and September. It is unlawful to possess wild coho salmon.

(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 Salmon Management and Catch Reporting Area 3 from 48°00.00' N latitude; 125°14.00' W longitude to 48°02.00' 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 220-24-04000G All-citizen commercial salmon troll.

**WSR 11-18-053  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 11-219—Filed August 31, 2011, 4:48 p.m., effective September 5, 2011]

Effective Date of Rule: September 5, 2011.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62000I; and amending WAC 232-28-620.

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: Sufficient chinook quota remains in Marine Areas 1 through 4 to allow a chinook retention fishery. 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: August 31, 2011.

Philip Anderson  
Director

NEW SECTION

**WAC 232-28-62000J Coastal salmon—Saltwater seasons and daily limits.** Notwithstanding the provisions of WAC 232-28-620, effective September 5, 2011, until further notice, it is unlawful to violate the following provisions:

**(1) Catch Record Card Area 1:** Open immediately through September 30. Daily limit of 2 salmon, only one of which can be a Chinook. Release wild coho.

a) October 1 until further notice - Closed.

**(2) Catch Record Card Area 2:** Open immediately through September 18. Daily limit of 2 salmon, only one of which can be a Chinook. Release wild coho.

a) September 19 until further notice - Closed.

**(3) Willapa Bay (Catch Record Card Area 2-1):** Open immediately until further notice. Daily limit of 6 salmon, of which not more than 3 may be adult salmon. Release chum and wild Chinook.

**(4) Grays Harbor (Catch Record Card Area 2-2 east of the Buoy 13 line):**

a) Open September 16 until further notice. Daily limit of 2 salmon. Release Chinook and chum.

b) Notwithstanding the provisions of this subsection, Westport Boat Basin and Ocean Shores Boat Basin: Open only immediately until further notice. Daily limit of 6

salmon, of which not more than 4 may be adult salmon. Release wild Chinook.

**(5) Catch Record Card Area 3:**

a) Open immediately through September 18. Daily limit of 2 salmon, only one of which can be a Chinook. In years ending in odd numbers, one additional pink salmon may be retained as part of the daily limit. Release wild coho.

b) September 19 until September 23 - Closed.

c) Notwithstanding the provisions of this subsection, waters north of 47°50'00"N latitude and south of 48°00'00"N latitude also open September 24 through October 9. Daily limit 2 salmon, only one of which can be a Chinook. In years ending in odd numbers, one additional pink salmon may be retained as part of the daily limit. Release wild coho.

d) October 10 until further notice - Closed.

**(6) Catch Record Card Area 4:**

a) Open immediately through September 18. Daily limit of 2 salmon, only one of which can be a Chinook. In years ending in odd numbers, one additional pink salmon may be retained as part of the daily limit. Release wild coho. Release chum salmon.

b) September 19 until further notice - Closed.

**REPEALER**

The following section of the Washington Administrative Code is repealed effective September 5, 2011:

WAC 232-28-62000I Coastal salmon—Saltwater seasons and daily limits. (11-203)

**WSR 11-18-056**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed September 1, 2011, 10:56 a.m., effective September 1, 2011, 10:56 a.m.]

Effective Date of Rule: Immediately.

Purpose: The department is proposing to amend by emergency adoption WAC 388-484-0005 There is a five-year (sixty-month) time limit for TANF, SFA and GA-S cash assistance and 388-484-0006 TANF/SFA time limit extensions.

As required by sections 1 and 6 of ESSB 5921, which was signed into law on June 15, 2011, the department is counting months an ineligible parent receives a TANF/SFA grant for his or her child but is ineligible to receive TANF/SFA assistance towards the parent's sixty-month TANF/SFA time limit.

These changes are required by state law and are necessary to comply with the department's appropriation for the 2011-2013 biennium, per RCW 34.05.350 as amended by ESSB [EHB] 1248 and as documented in the 2011-2013 TANF/WorkFirst spending plan.

Citation of Existing Rules Affected by this Order: Amending WAC 388-484-0005 and 388-484-0006.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapters 74.08A and 74.12 RCW.

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 year 2009, 2010, 2011, 2012 or 2013, 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: An emergency adoption of this rule is required to realize \$6.7 million in budgetary reductions for SFY 12 [2012], as documented in the TANF/WorkFirst spending plan for the 2011-2013 biennium. The department must make these changes to comply with the department's appropriation, per RCW 34.05.350 as amended by ESSB [EHB] 1248.

The department has experienced a budgetary shortfall since October 1, 2010, as a result of increased demand for TANF benefits due to the economic recession. The WorkFirst caseload grew by more than thirty percent, from 51,106 cases in July 2008 to 66,634 cases in June 2010. As of June 2011, the WorkFirst caseload is 58,610 cases, which is still well above the July 2008 levels, despite various program reductions in the past year.

The Governor's Executive Order 10-04 (ordering expenditure reductions in allotments of state general fund appropriations), signed on September 13, 2010, found that:

- Revenues had fallen short of projections;
- The official state economic and revenue forecast of general fund revenues were less than the official estimate upon which the state's 2009-2011 biennial operating budget and supplemental operating budget were enacted; and
- The anticipated revenues combined with the beginning cash balance of the general fund were insufficient to meet anticipated expenditures from this fund for the remainder of the current fiscal period.

Accordingly, the governor ordered across-the-board reductions of state general fund allotments by 6.287 percent, effective October 1, 2010. There were further reductions in November 2010, December 2010, and March 2011. These reductions are inadequate for the 2011-2013 biennium and further reductions are needed to stay within the department's appropriation.

The TANF/WorkFirst spending plan includes approximately \$6.7 million in cost reduction during FY 2012 based on the ineligible parent time limit rules. Emergency rule making is necessary because required savings cannot be achieved under permanent rule making. Failure to adopt an emergency rule will result in a \$4.8 million shortfall in FY 2012 and a \$2.1 million shortfall for the 2011-2013 biennium.

An emergency rule permits the department to avoid budget shortfalls, which will lessen the adverse impact on families. If immediate budget reductions are not realized, the department will have to make additional cuts in the future to TANF/WorkFirst assistance programs to stay within budget.

This could include greater reductions in benefits than currently proposed, and/or the elimination of benefits currently provided. This would have a much greater detrimental effect on vulnerable families with children in need.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, 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 2, Repealed 0.

Date Adopted: September 1, 2011.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-24-013, filed 11/18/10, effective 12/19/10)

**WAC 388-484-0005 There is a five-year (sixty-month) time limit for TANF, SFA and GA-S cash assistance. (1) What is the sixty-month time limit?**

(a) You can receive cash assistance for temporary assistance for needy families (TANF), state family assistance (SFA), and general assistance for pregnant women (GA-S) for a lifetime limit of sixty months. The time limit applies to cash assistance provided by any combination of these programs, and whether or not it was received in consecutive months.

(b) If you receive cash assistance for part of the month, it counts as a whole month against the time limit.

(c) If you have received cash assistance from another state on or after August 1, 1997, and it was paid for with federal TANF funds, those months will count against your time limit.

(d) The time limit does not apply to diversion cash assistance, support services, food assistance or medicaid.

**(2) When did the sixty-month time limit go into effect?**

The sixty-month time limit applies to cash assistance received on or after August 1, 1997 for TANF and SFA. Although the GA-S program no longer exists, the time limit applies to GA-S cash assistance received from May 1, 1999 through July 31, 1999.

**(3) Does the time limit apply to me?**

The sixty-month time limit applies to you for any month in which you are a parent or other relative as defined in WAC 388-454-0010, or a minor parent emancipated through court order or marriage.

**(4) Do any exceptions to the time limits apply to me?**

The department does not count months of assistance towards the sixty-month time limit if you are:

(a) An adult caretaker, as described in WAC 388-454-0005 through 388-454-0010, who is not a member of the assistance unit and you are receiving cash assistance on behalf of a child, unless you are an ineligible parent. An ineligible parent is a natural, adoptive or step parent as defined in WAC 388-454-0010 who receives a TANF/SFA grant for his or her child but is ineligible to receive TANF/SFA assistance;

(b) An unemancipated pregnant or parenting minor living in a department approved living arrangement as defined by WAC 388-486-0005; or

(c) An adult and you are living in Indian country, as defined under 18 U.S.C. 1151, or an Alaskan native village and you are receiving TANF, SFA, or GA-S cash assistance during a period when at least fifty percent of the adults living in Indian country or in the village were not employed. See WAC 388-484-0010.

**(5) What happens if a member of my assistance unit has received sixty months of TANF, SFA, and GA-S cash benefits?**

Once any adult or emancipated minor in the assistance unit has received sixty months of cash assistance, the entire assistance unit becomes ineligible for TANF or SFA cash assistance, unless you qualify for a hardship extension and are eligible for an extended period of cash assistance called a TANF/SFA time limit extension under WAC 388-484-0006.

**(6) What happens when an ineligible parent in the home has received sixty months of TANF, SFA, and GA-S cash benefits?**

Once an ineligible parent in the home has received sixty months of cash assistance for themselves or their child, the entire assistance unit becomes ineligible for TANF/SFA cash assistance, unless the ineligible parent meets the criteria for a TANF/SFA time limit extension under WAC 388-484-0006.

**(7) What can I do if I disagree with how the department has counted my months of cash assistance?**

(a) If you disagree with how we counted your months of cash assistance, you may ask for a hearing within ninety days of the date we sent you a letter telling you how many months we are counting.

(b) You will get continued benefits (the amount you were getting before the change) if:

(i) You have used all sixty months of benefits according to our records; and

(ii) You ask for a hearing within the ten-day notice period, as described in chapter 388-458 WAC.

(c) If you get continued benefits and the administrative law judge (ALJ) agrees with our decision, you may have to pay back the continued benefits after the hearing, as described in chapter 388-410 WAC.

**((7)) (8) Does the department ever change the number of months that count against my time limit?**

We change the number of months we count in the following situations:

(a) You repay an overpayment for a month where you received benefits but were not eligible for any of the benefits you received. We subtract one month for each month that you completely repay. If you were eligible for some of the benefits you received, we still count that month against your time limit.



(b) We did not close your grant on time when the division of child support (DCS) collected money for you that was over your grant amount two months in a row, as described in WAC 388-422-0030.

(c) An ALJ decides at an administrative hearing that we should change the number of months we count.

(d) You start getting worker's compensation payments from the department of labor and industries (L&I) and your L&I benefits have been reduced by the payments we made to you.

(e) You participated in the excess real property (ERP) program in order to get assistance and we collected the funds when your property sold.

(f) Another state gave us incorrect information about the number of months you got cash assistance from them.

**AMENDATORY SECTION** (Amending WSR 10-24-013, filed 11/18/10, effective 12/19/10)

**WAC 388-484-0006 TANF/SFA time limit extensions. (1) What happens after I receive sixty or more months of TANF/SFA cash assistance?**

After you receive sixty or more months of TANF/SFA cash assistance, you may qualify for additional months of cash assistance. We call these additional months of TANF/SFA cash assistance a hardship TANF/SFA time limit extension.

**(2) Who is eligible for a hardship TANF/SFA time limit extension?**

Effective February 1, 2011, you are eligible for a hardship TANF/SFA time limit extension if you are on TANF ~~((ø))~~, are otherwise eligible for TANF, or are an ineligible parent, and you have received sixty cumulative months of TANF and:

(a) You are approved for one of the exemptions from mandatory participation according to WAC 388-310-0350 (1)(a) through (d) or, if you are an ineligible parent, you are a supplemental security income recipient, a social security disability insurance recipient or meet the criteria for an exemption from mandatory WorkFirst participation; or

(b) You:

(i) Have an open child welfare case with a state or tribal government and this is the first time you have had a child dependent under RCW 13.34.030 in this or another state or had a child a ward of a tribal court; or

(ii) Are working in unsubsidized employment for thirty-two hours or more per week; or

(iii) Document that you meet the family violence option criteria in WAC 388-61-001 and are participating satisfactorily in specialized activities needed to address your family violence according to a service plan developed by a person trained in family violence or have a good reason, as described in WAC 388-310-1600(3) for failure to participate satisfactorily in specialized activities.

**(3) Who reviews and approves a hardship time limit extension?**

(a) Your case manager or social worker will review your case and determine whether a hardship time limit extension type will be approved.

(b) This review will not happen until after you have received at least fifty-two months of assistance but before you reach your time limit or lose cash assistance due to the time limit.

(c) Before you reach your time limit or lose cash assistance due to the time limit, the department will send you a notice that tells you whether a hardship time limit extension will be approved when your time limit expires and how to request an administrative hearing if you disagree with the decision.

**(4) ~~((ø))~~ When I have an individual responsibility plan, do my WorkFirst participation requirements change ~~((#))~~ when I receive a hardship TANF/SFA time limit extension?**

(a) Even if you qualify for a hardship TANF/SFA time limit extension you will still be required to participate as required in your individual responsibility plan (WAC 388-310-0500). You must still meet all of the WorkFirst participation requirements listed in chapter 388-310 WAC while you receive a hardship TANF/SFA time limit extension.

(b) If you do not participate in the WorkFirst activities required by your individual responsibility plan, and you do not have a good reason under WAC 388-310-1600, the department will follow the sanction rules in WAC 388-310-1600.

**(5) Do my benefits change if I receive a hardship TANF/SFA time limit extension?**

(a) You are still a TANF/SFA recipient or an ineligible parent who is receiving TANF/SFA cash assistance on behalf of your child and your cash assistance, services, or supports will not change as long as you continue to meet all other TANF/SFA eligibility requirements.

(b) During the hardship TANF/SFA time limit extension, you must continue to meet all other TANF/SFA eligibility requirements. If you no longer meet TANF/SFA eligibility criteria during your hardship time limit extension, your benefits will end.

**(6) How long will a hardship TANF/SFA time limit extension last?**

(a) We will review your hardship TANF/SFA time limit extension and your case periodically for changes in family circumstances:

(i) If you are extended under WAC 388-484-0006 (2)(a) then we will review your extension at least every twelve months;

(ii) If you are extended under WAC 388-484-0006 (2)(b) then we will review your extension at least every six months.

(b) Your hardship TANF/SFA time limit extension may be renewed for as long as you continue to meet the criteria to qualify for a hardship time limit extension.

(c) If during the extension period we get proof that your circumstances have changed, we may review your case and determine if you continue to qualify for a hardship TANF/SFA time limit extension. When you no longer qualify for a hardship TANF/SFA time limit extension we will stop your TANF/SFA cash assistance. You will be notified of your case closing and will be given the opportunity to request an administrative hearing before your benefits will stop.

**WSR 11-18-057**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

[Filed September 1, 2011, 10:57 a.m., effective September 2, 2011]

Effective Date of Rule: September 2, 2011.

Purpose: Upon order of the governor, the health care authority (HCA) was required to reduce its budget expenditures for fiscal year 2011 by 6.3 percent. This cost-saving measure was implemented as part of this mandated reduction and to bring HCA's payment methodology for qualified medicare beneficiary (QMB) clients into alignment with the payment formula established in WAC 182-502-0110 for medicare/medicaid dual-eligible QMB clients.

Citation of Existing Rules Affected by this Order: Amending WAC 388-517-0320.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: 42 U.S.C. § 1396a (n)(2).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; 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 year 2009, 2010, 2011, 2012 or 2013, 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 HCA and all other state agencies to reduce their expenditures in state fiscal year 2011 by approximately 6.3 percent. This emergency rule is necessary while HCA completes the permanent rule-making process initiated by the CR-101 filed under WSR 11-09-056. HCA anticipates filing a CR-102 proposal in September 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 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: August 24, 2011.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-15-032, filed 7/12/07, effective 8/12/07)

**WAC 388-517-0320 Medicare savings and state-funded medicare buy-in programs cover some client costs.** (1) For qualified medicare beneficiary (QMB) clients, the department pays(=

~~(a) Medicare Part A premiums (if any);~~

~~(b) Medicare Part B premiums;~~

~~(c) Coinsurance, deductibles, and copayments for medicare Part A, Part B, and medicare advantage Part C with the following conditions:~~

~~(i) Only the Part A and Part B deductible, coinsurance, and copayments up to the medicare or medicaid allowed amount, whichever is less (WAC 388-502-0110), if the service is covered by medicare and medicaid.~~

~~(ii) Only the deductible, coinsurance, and copayments up to the medicare allowed amount if the service is covered only by medicare.~~

~~(d) Copayments for QMB eligible clients enrolled in medicare advantage Part C up to the medicare or medicaid allowed amount whichever is less (WAC 388-502-0110).~~

~~(e) QMB Part A and/or Part B premiums the first of the month following the month the QMB eligibility is determined)) medicare Part A premiums (if any) and medicare Part B premiums the first of the month following the month the QMB eligibility is determined. The department pays medicare coinsurance, deductibles, and copayments for medicare Part A, Part B and medicare advantage Part C.~~

(2) For specified low-income medicare beneficiary (SLMB) clients, the department pays medicare Part B premiums effective up to three months prior to the certification period if eligible for those months. No other payments are made for SLMBs.

(3) For qualified individual (QI-1) clients, the department pays medicare Part B premiums effective up to three months prior to the certification period if eligible for those months unless:

(a) The client receives medicaid categorically needy (CN) or medically needy (MN) benefits; and/or

(b) The department's annual federal funding allotment is spent. The department resumes QI-1 benefit payments the beginning of the next calendar year.

(4) For qualified disabled working individual (QDWI) clients, the department pays medicare Part A premiums effective up to three months prior to the certification period if eligible for those months. The department stops paying medicare Part A premiums if the client begins to receive CN or MN medicaid.

(5) For state-funded medicare buy-in program clients, the department pays(=

~~(a) Medicare Part B premiums; and~~

~~(b) Only the Part A and B co-insurance, deductibles, and copayments up to the medicare or medicaid allowed amount, whichever is less (WAC 388-502-0110), if the service is covered by medicare and medicaid.~~

(6) For the dual-eligible client, (a client receiving both medicare and CN or MN medical coverage) the department pays as follows:

(a) If the service is covered by medicare and medicaid, medicaid pays only the deductible, and coinsurance up to the medicare or medicaid allowed amount, whichever is less (WAC 388-502-0110); and

(b) Copayments for medicare advantage Part C up to the medicare or medicaid allowed copayment amount, whichever is less (WAC 388-502-0110);

(c) If no medicaid rate exists, the department will deny payment unless the client is also QMB then refer to section (1) above) medicare Part B premiums. Cost sharing for medicare deductibles, copayments and co-insurance is paid by the categorically needy (CN) or medically needy (MN) medicaid program.

Date Adopted: September 1, 2011.

Lori Preuss  
for Philip Anderson  
Director

NEW SECTION

**WAC 220-47-50100L Puget Sound all-citizen commercial salmon fishery—Open periods.** Notwithstanding the provisions of Chapter 220-47 WAC, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

**Areas 7 and 7A:**

(1) **Purse Seines** - Open to purse seine gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
11:00 AM - 9:00 PM	9/4

(a) It is unlawful to retain rockfish, Chinook, coho, sockeye, and chum.

(b) Waters north and west of the Area 7A "Iwerson Dock Line" (a line projected from Iwerson Dock on Point Roberts to the Georgina Point light at the entrance to Active Pass in the Province of British Columbia) are closed.

(c) Purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

(d) It is unlawful to bring salmon aboard a vessel unless all salmon captured in the seine net are removed from the seine net using a brailer or dip net meeting the specifications in WAC 220-47-325, prior to the seine net being removed from the water. All salmon and rockfish must be immediately sorted, and those required to be released must be placed in an operating recovery box or released into the water before the next brail may be brought on the deck. However, small numbers of fish may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

(e) It is unlawful to fish for salmon with purse seine gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(2) **Gill Nets** - Open to gill net gear with 5 inch minimum and 5 1/2 inch maximum mesh size according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
11:00 AM - Midnight	9/4

(a) It is unlawful to retain rockfish and sockeye.

(b) Waters north and west of the Area 7A "Iwerson Dock Line" (a line projected from Iwerson Dock on Point Roberts to the Georgina Point light at the entrance to Active Pass in the Province of British Columbia) are closed.

(c) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a

**WSR 11-18-060  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 11-220—Filed September 1, 2011, 2:48 p.m., effective September 2, 2011, 5:00 a.m.]

Effective Date of Rule: September 2, 2011, 5:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-50100L; and amending WAC 220-47-501.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation provides for Pacific Salmon Commission authorized fisheries in Areas 7 and 7A. These emergency rules are necessary to initiate fisheries targeting a harvestable amount of pink salmon available. 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.

"Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(3) **Reef Nets** - Open to reef net gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5:00 AM - 9:00 PM	9/2, 9/3, 9/4, 9/5, 9/6

(a) It is unlawful to retain rockfish, unmarked Chinook, unmarked coho, sockeye and chum.

(b) It is unlawful to retain marked Chinook unless the reef net operator is in immediate possession of a Puget Sound Reef Net Logbook.

(c) It is unlawful to fish for salmon with reef net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in immediate possession of a department issued certification card.

(4) **"Quick Reporting Fisheries":**

All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-22-030), are designated as "Quick Reporting Required" per WAC 220-47-001.

REPEALER

The following section of the Washington Administrative Code is repealed effective 9:01 p.m. September 6, 2011:

WAC 220-47-50100L	Puget Sound all-citizen commercial salmon fishery— Open periods.
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**WSR 11-18-062**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 11-221—Filed September 1, 2011, 3:57 p.m., effective September 3, 2011]

Effective Date of Rule: September 3, 2011.  
Purpose: Amend recreational fishing rules.  
Citation of Existing Rules Affected by this Order:  
Repealing WAC 220-56-25000N; 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: This rule is intended to protect yelloweye and canary rockfish, two species managed under rebuilding plans by the Pacific Fishery Management Council. The closure will reduce the amount of yelloweye and canary rockfish that are incidentally caught while anglers are target-

ing lingcod in deeper water where they are more likely to encounter these species. 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: September 1, 2011.

Lori Preuss  
for Philip Anderson  
Director

NEW SECTION

**WAC 220-56-25000P Lingcod—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-250:

(1) Effective immediately until further notice, it is unlawful to take or fish for lingcod in those waters of Marine Area 1 from 46°N 38'10" to 46°N 28'00".

(2) Effective September 3, 2011, until further notice, it is unlawful to take or fish for lingcod in those waters of Marine Area 2 seaward of 124°30' W. longitude from the Queets River (46°32.31' N. lat.) to Leadbetter Point (46°38.17' N. lat.).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-25000N	Lingcod—Areas and seasons. (11-210)
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**WSR 11-18-065**  
**EMERGENCY RULES**  
**HEALTH CARE AUTHORITY**

[Filed September 2, 2011, 9:46 a.m., effective September 2, 2011, 9:46 a.m.]

Effective Date of Rule: Immediately.

Purpose: The emergency rule-making order adopted as WSR 11-18-011 on August 25, 2011, indicated that WAC 182-535-1247, 182-535-1255, 182-535-1257, 182-535-1259, 182-535-1261, 182-535-1263, 182-535-1266, 182-535-1267, 182-535-1269, 182-535-1271, and 182-535-1280 were being repealed. Unfortunately, those sections were erroneously omitted from the text that was filed. This emergency rule corrects that omission.

Purpose of WSR 11-18-011: Upon order of the governor, the health care authority (HCA) reduced its budget expenditures for fiscal year 2011 by 6.3 percent. To achieve the expenditure reduction required under Executive Order 10-04, HCA eliminated dental-related services from program benefit packages for clients twenty-one years of age and older and clients receiving medical care services under the disability lifeline (DL) and Alcohol and Drug Abuse Treatment and Support Act (ADATSA) programs. Clients who are classified as developmentally disabled under RCW 71A.10.020 who are twenty-one years of age and older will continue to receive dental-related services under chapter 182-535 WAC.

Citation of Existing Rules Affected by this Order: Repealing WAC 182-535-1247, 182-535-1255, 182-535-1257, 182-535-1259, 182-535-1261, 182-535-1263, 182-535-1266, 182-535-1267, 182-535-1269, 182-535-1271, and 182-535-1280.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: Section 209(1), chapter 37, Laws of 2010, (ESSB 6444); sections 201 and 209, chapter 564, Laws of 2009, (ESHB 1244).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012 or 2013, 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 HCA and all other state agencies to reduce their expenditures in state fiscal year 2011 by approximately 6.3 percent. As a consequence of the executive order, funding will no longer be available as of January 1, 2011, for the benefits that are being eliminated as part of these regulatory amendments.

The immediate adoption of these cuts to optional services is necessary to maintain the mandatory medicaid services for the majority of HCA clients. The rule continues the emergency rule filed under WSR 11-10-031 on April 28, 2011, that complies with sections 201 and 209 of the operating budget for fiscal years 2010 and 2011 with respect to dental services. CR-101s were filed under WSR 09-14-093 on June 30, 2009, and WSR 10-20-160 on October 6, 2010. HCA is currently preparing drafts for the permanent rule to share with providers for their input. Following this, HCA plans to formally adopt the permanent rule.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 11.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 11.

Date Adopted: September 2, 2011.

Kevin M. Sullivan  
Rules Coordinator

### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-535-1247	Dental-related services for clients age twenty-one and older—General.
WAC 182-535-1255	Covered dental-related services—Adults.
WAC 182-535-1257	Covered dental-related services for clients age twenty-one and older—Preventive services.
WAC 182-535-1259	Covered dental-related services for clients age twenty-one and older—Restorative services.
WAC 182-535-1261	Covered dental-related services for clients age twenty-one and older—Endodontic services.
WAC 182-535-1263	Covered dental-related services for clients age twenty-one and older—Periodontic services.
WAC 182-535-1266	Covered dental-related services for clients age twenty-one and older—Prosthodontics (removable).
WAC 182-535-1267	Covered dental-related services for clients age twenty-one and older—Oral and maxillofacial surgery services.
WAC 182-535-1269	Covered dental-related services for clients age twenty-one and older—Adjunctive general services.

- WAC 182-535-1271 Dental-related services not covered for clients age twenty-one and older.
- WAC 182-535-1280 Obtaining prior authorization for dental-related services for clients age twenty-one and older.

**WSR 11-18-070**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 11-223—Filed September 2, 2011, 3:29 p.m., effective September 5, 2011]

Effective Date of Rule: September 5, 2011.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62100M; and amending WAC 232-28-621.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation implements agreement between the department and treaty tribes to reduce conflict and confusion regarding boundaries. 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: September 2, 2011.

Philip Anderson  
Director

NEW SECTION

**WAC 232-28-62100M Puget Sound salmon—Saltwater seasons and daily limits.** Notwithstanding the provisions of WAC 232-28-621, WAC 220-56-128, and WAC 220-56-195, effective September 5, 2011, through October 15, 2011,

it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

1) **Catch Record Card Area 7:**

a. Waters east of a line from Gooseberry Pt. to Sandy Pt., closed.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 AM October 16, 2011:

WAC 232-28-62100M Puget Sound salmon—Saltwater seasons and daily limits. (11-223)

**WSR 11-18-071**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 11-222—Filed September 2, 2011, 3:44 p.m., effective September 5, 2011, 9:01 p.m.]

Effective Date of Rule: September 5, 2011, 9:01 p.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-50100L and 220-47-50100M; and amending WAC 220-47-501.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation provides for Pacific Salmon Commission authorized fisheries in Areas 7 and 7A. These emergency rules are necessary to initiate fisheries targeting a harvestable amount of pink salmon available. 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: September 2, 2011.

Philip Anderson  
Director

NEW SECTION

**WAC 220-47-50100M Puget Sound all-citizen commercial salmon fishery—Open periods.** Notwithstanding the provisions of chapter 220-47 WAC, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas 7 and 7A:

(1) **Purse Seines** - Open to purse seine gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5:00 AM - 9:00 PM	9/6

(a) It is unlawful to retain rockfish, Chinook, coho, sockeye, and chum.

(b) Waters north and west of the Area 7A "Iwerson Dock Line" (a line projected from Iwerson Dock on Point Roberts to the Georgina Point light at the entrance to Active Pass in the Province of British Columbia) are closed.

(c) Purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

(d) It is unlawful to bring salmon aboard a vessel unless all salmon captured in the seine net are removed from the seine net using a brailer or dip net meeting the specifications in WAC 220-47-325, prior to the seine net being removed from the water. All salmon and rockfish must be immediately sorted, and those required to be released must be placed in an operating recovery box or released into the water before the next brail may be brought on the deck. However, small numbers of fish may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

(e) It is unlawful to fish for salmon with purse seine gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(2) **Gill Nets** - Open to gill net gear with 5 inch minimum and 5 1/2 inch maximum mesh size according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
8:15 AM - Midnight	9/6

(a) It is unlawful to retain rockfish and sockeye.

(b) Waters north and west of the Area 7A "Iwerson Dock Line" (a line projected from Iwerson Dock on Point Roberts to the Georgina Point light at the entrance to Active Pass in the Province of British Columbia) are closed.

(c) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(3) **Reef Nets** - Open to reef net gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5:00 AM - 9:00 PM	9/6

(a) It is unlawful to retain rockfish, unmarked Chinook, unmarked coho, sockeye and chum.

(b) It is unlawful to retain marked Chinook unless the reef net operator is in immediate possession of a Puget Sound Reef Net Logbook.

(c) It is unlawful to fish for salmon with reef net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in immediate possession of a department issued certification card.

**(4) "Quick Reporting Fisheries":**

All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-22-030), are designated as "Quick Reporting Required" per WAC 220-47-001.

REPEALER

The following section of the Washington Administrative Code is repealed effective 9:01 p.m. September 5, 2011:

WAC 220-47-50100L Puget Sound all-citizen commercial salmon fishery—Open periods. (11-220)

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. September 7, 2011:

WAC 220-47-50100M Puget Sound all-citizen commercial salmon fishery—Open periods. (11-222)

**WSR 11-18-079  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 11-224—Filed September 6, 2011, 2:55 p.m., effective September 6, 2011, 2:55 p.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this rule making is to allow nontreaty commercial fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000B; and amending WAC 220-33-010.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Corrects the gear requirements in the Deep River fishing area. Correctly states that 9 3/4 inch mesh is the maximum allowed through September 16. The seasons are consistent with the 2008-2017 interim management agreement, and the 2011 non-Indian salmon allocation agreement. Salmon are available for harvest during fall season fisheries. The regulation is consistent with compact action of July 28, 2011, and August 25, 2011. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: September 6, 2011.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-33-01000C Columbia River season below Bonneville.** Notwithstanding the provisions of WAC 220-33-010, and WAC 220-33-020, it is unlawful for a person to take or possess salmon or sturgeon for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1A, 1B, 1C, 1D, and 1E, except as provided in the following subsections.

##### **1. Blind Slough/Knappa Slough Select Area.**

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights from immediately through October 28, 2011. Open hours are 7 PM to 7 AM through September 16, and 6 PM to 8 AM thereafter.

b. AREA: Blind Slough and Knappa Slough. An area closure of an approximately 100-foot radius at the mouth of Big Creek is defined by markers. Concurrent jurisdiction waters include all areas in Knappa Slough and downstream of the Railroad Bridge in Blind Slough.

c. GEAR: Gillnet. Monofilament gear is allowed. 9 3/4-inch maximum mesh size. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. ALLOWABLE SALES: Salmon.

##### **2. Tongue Point/South Channel Select Area.**

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights from immediately through October 28, 2011. Open 7 PM to 7 AM through September 16, and 4 PM to 10 AM thereafter.

b. AREA: Tongue Point and South Channel. All waters in this fishing area are concurrent jurisdiction waters.

c. GEAR: Gillnet. 6-inch maximum mesh.



**Tongue Point fishing area:** Net length 250 fathoms maximum. Weight not to exceed two pounds on any one fathom. Fishers participating in the Tongue Point fishery may have onboard gillnets legal for the South Channel fishing area.

**South Channel area:** Net length 100 fathoms maximum. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. ALLOWABLE SALES: Salmon.

### 3. Deep River Select Area.

a. SEASON: Monday, Tuesday, Wednesday and Thursday nights immediately through October 28, 2011. 7 PM to 9 AM through September 16, and 4 PM to 9 AM thereafter.

b. AREA: The Deep River Select Area. Concurrent jurisdiction waters extend downstream of the Highway 4 Bridge.

c. GEAR: Gill net. Monofilament gear is allowed. 9 3/4-inch maximum mesh size restriction through September 16 and 6-inch maximum mesh size thereafter. Net length 100 fathoms maximum. No weight restriction on the lead line. Use of additional weights or anchors attached directly to the lead line is allowed. Nets may not be tied off to stationary structures. Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream or channel any gill net gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level. This emergency provision shall supersede the permanent regulation and all other regulations that conflict with it. All other provisions of the permanent regulation remain in effect (WAC 220-20-015(1)).

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. ALLOWABLE SALES: Salmon.

**4. Quick Reporting:** 24-hour quick-reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When quick-reporting is required, Columbia River reports must be submitted within 24 hours of the closure of each fishing period. This quick-reporting requirement applies to all seasons described above (Columbia River and Select Areas).

**5. Observer program:** As a condition of fishing, owners or operators of commercial fishing vessels must cooperate

with department observers or observers collecting data for the department, when notified by the observer of his or her intent to board the commercial vessel for observation and sampling during an open fishery.

**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:

WAC 220-33-01000B Columbia River season below Bonneville. (11-206)

### WSR 11-18-080

#### EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 11-225—Filed September 6, 2011, 2:59 p.m., effective September 7, 2011, 12:01 a.m.]

Effective Date of Rule: September 7, 2011, 12:01 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100B; and amending WAC 220-52-051.

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 2011 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule closes Catch Areas 23A-S/23D and 25A because the spot shrimp quotas will be reached, along with reducing the weekly limit in those areas before the closure. There is insufficient time to adopt permanent rules.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 6, 2011.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-52-05100C Puget Sound shrimp pot and beam trawl fishery—Season.** Notwithstanding the provisions of WAC 220-52-051, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound, except as provided for in this section:

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas (SMA) 2W, 3 and 6 are open to the harvest of all shrimp species, effective immediately until further notice, except as provided for in this section:

i) All waters of SMA 1A, 1B, 1C, 2E, 4 and the Discovery Bay Shrimp District are closed.

ii) All waters of SMA 2W, and Catch Areas 23A-C, 23A-E, 23A-W, 23B and 26D, are closed to the harvest of spot shrimp.

iii) Effective 6:00 p.m. September 10, 2011, all waters of Catch Areas 23A-S/23D and 25A are closed to the harvest of spot shrimp.

(b) The shrimp catch accounting week is Wednesday through Tuesday.

(c) Effective immediately, until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, except as follows:

i) Effective immediately it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 100 pounds per week in Catch Area 25A, or to exceed 200 pounds per week in Catch Area 23A-S/23D.

(d) It is unlawful to pull shellfish pots in more than one Catch Area per day.

(e) Only pots with a minimum mesh size of 1 inch may be pulled on calendar days when fishing for or retaining spot shrimp. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1-3/4 inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(2) Shrimp beam trawl gear:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay, and Catch Area 23D) is open, effective immediately until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) Catch Area 20A is open, effective immediately until further notice.

(3) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. September 7, 2011:

WAC 220-52-05100B Puget Sound shrimp beam trawl fishery—Season. (11-212)

#### **WSR 11-18-083 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 11-226—Filed September 6, 2011, 4:00 p.m., effective September 7, 2011, 5:00 a.m.]

Effective Date of Rule: September 7, 2011, 5:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-50100N; and amending WAC 220-47-501.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation provides for Pacific Salmon Commission authorized fisheries in Areas 7 and 7A. These emergency rules are necessary to initiate fisheries targeting a harvestable amount of pink salmon available. 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: September 6, 2011.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-47-50100N Puget Sound all-citizen commercial salmon fishery—Open periods.** Notwithstanding the provisions of chapter 220-47 WAC, effective immedi-

ately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas 7 and 7A:

(1) **Reef Nets** - Open to reef net gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5:00 AM - 9:00 PM	9/7, 9/8

(a) It is unlawful to retain rockfish, unmarked Chinook, unmarked coho, sockeye and chum.

(b) It is unlawful to retain marked Chinook unless the reef net operator is in immediate possession of a Puget Sound Reef Net Logbook.

(c) It is unlawful to fish for salmon with reef net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in immediate possession of a department issued certification card.

**(2) "Quick Reporting Fisheries":**

All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for pink in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-22-030), are designated as "Quick Reporting Required" per WAC 220-47-001.

REPEALER

The following section of the Washington Administrative Code is repealed effective 9:01 p.m. September 8, 2011:

WAC 220-47-50100N Puget Sound all-citizen commercial salmon fishery—Open periods.

**WSR 11-18-084  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 11-209—Filed September 6, 2011, 4:05 p.m., effective September 17, 2011, 6:00 a.m.]

Effective Date of Rule: September 17, 2011, 6:00 a.m.

Purpose: Amend recreational 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: A clean-up event is planned on this date in preparation for the removal of Condit Dam in October. Local volunteers, partnering agencies and tribe[s] are going to be removing debris and abandoned boats to prevent them from being buried in sediment or washed into the Columbia River when Condit Dam is breached. Divers will be used to collect debris from the bottom of the river, kayakers and bank walkers will also work throughout this section of the river. A closure is necessary to insure a safe work area. 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: September 6, 2011.

Philip Anderson  
Director

NEW SECTION

**WAC 232-28-61900L Exceptions to statewide rules—White Salmon River.** Notwithstanding the provisions of WAC 232-28-619, effective 6:00 a.m. through 6:00 p.m. September 17, 2011, it is unlawful to fish in waters of the White Salmon River from the Highway 14 Bridge upstream to the powerhouse.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. September 17, 2011:

WAC 232-28-61900L Exceptions to statewide rules—White Salmon River.