

**WSR 11-17-117**  
**PROPOSED RULES**  
**BENTON CLEAN AIR AGENCY**

[Filed August 23, 2011, 1:31 p.m.]

Original Notice.

Proposal is exempt under RCW 70.94.141.

Title of Rule and Other Identifying Information: Regulation 1, the changes are primarily housekeeping items such as updating outdated references to WACs and/or RCWs. Also, making the document easier to read and clarifying language, updating agency name per board approval in 2007.

Hearing Location(s): Benton Clean Air Agency, 526 South Clodfelter Road, Kennewick, WA 99336, on October 27, 2011, 5:00 p.m.

Date of Intended Adoption: October 27, 2011, or later.

Submit Written Comments to: Sherrie Bowers, 526 South Clodfelter Road, Kennewick, WA 99336, e-mail sbow@bcaa.net, fax (509) 783-1304, by October 10, 2011.

Assistance for Persons with Disabilities: Contact 711 relay, or contact Sherrie Bowers, [see] above.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The changes are primarily housekeeping items such as:

- Updating outdated references to WACs and/or RCWs.
- Aligning language with the current RCWs and WACs.
- Making the document easier to read and clarifying language, including clarifying definitions.
- Updating agricultural burning rule and fees per changes already made to the WAC.
- Updating agency name change.

Reasons Supporting Proposal: Current rules are out of date with the WAC and have incorrect references.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: Chapter 70.94 RCW.

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

Name of Proponent: Benton Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Robin Priddy, 526 South Clodfelter, Kennewick, (509) 783-1304.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Proposed changed [changes] strictly clarify existing regulation[s] and correct out of date references to RCWs and WACs, and align language with WAC changes in 2010.

A cost-benefit analysis is not required under RCW 34.05.328. Proposed changed [changes] strictly clarify existing regulation[s] and correct out of date references to RCWs and WACs, and align language with WAC changes in 2010.

July 5, 2011  
Robin Priddy  
Director

**ARTICLE 1**

**Name, Short Title, and Policy**

**Section 1.01 Name of ((Authority)) Agency**

The name of this Air Pollution Control ((Authority)) Agency, declared to be and directed to function as a single county authority with the boundaries of Benton County and activated by the Washington Clean Air Act, Revised Code of Washington (RCW) 70.94 as amended, shall be known as the BENTON CLEAN AIR ((AUTHORITY)) AGENCY, hereinafter referred to as the BCAA, or the ((Authority)) Agency.

**Section 1.02 Policy**

A. The BCAA adopts Regulation 1 to control the emissions of air contaminants from all sources within Benton County; to provide for the uniform administration and enforcement of this regulation; and to carry out the requirements and purposes of the ((U.S)) Federal Clean Air Act (42 USC. 7401 et. seq.) and the Washington State Clean Air Act (RCW 70.94).

B. It is hereby declared to be the public policy of the BCAA to:

1. Secure and maintain such levels of air quality that protect human health and safety, including the most sensitive members of the population;
2. Secure compliance with the requirements of the F ((F)) ederal C ((e)) lean A ((a)) ir A ((a)) ct;
3. Prevent injury to plant and animal life and to property;
4. Foster the comfort and convenience of its inhabitants;
5. Promote the economic and social development of Benton County; and
6. Facilitate the enjoyment of the natural attractions of Benton County.

C. It is further the intent of Regulation 1 to protect the public welfare, to preserve visibility, to protect scenic, aesthetic, historic, and cultural values, and to prevent air pollution problems that interfere with the enjoyment of life, property, or natural attractions.

D. Wherever Regulation 1 constitutes a restatement of the requirements and purposes of RCW 70.94, it is the intent of the BCAA that Regulation 1 be interpreted in the same manner as the statute adopted by the Washington State Legislature. Any deviation from the statute, except where the statute allows BCAA to be more stringent, is intended for purposes of clarity.

**Reviser's note:** The typographical error in the above material occurred in the copy filed by the Benton Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**ARTICLE 5**  
**Outdoor Burning**

**Section 5.01 Definitions**

A. Definitions of all terms in this article, unless otherwise defined below, are as defined in WAC 173-425-030.

B. A "burn day" is a day, as determined by the BCAA, during which outdoor burning may take place in areas where open burning is allowed. The length of the burn day shall be defined as the period from 9:00 AM until one hour before sunset.

~~((The BCAA shall make a daily burn day decisions based on available meteorological information. The daily~~

~~burn decision shall be provided daily through a burn day message line and/or through the local media.))~~

1. BCAA shall make a burn day decision for residential burning that will be updated and provided daily.

2. BCAA shall make a burn day decision for agricultural burning that will be updated and provided daily.

C. A "person" means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

D. An "Urban Growth Area" or "UGA" means land, generally including and associated with an incorporated city, designated by a county for urban growth under RCW 36.70A.030.

## ARTICLE 6 Agricultural Burning

### Section 6.01 Definitions

A. Definitions of all terms in this article, unless otherwise defined below, are as defined in WAC 173-430-030.

B. An "agricultural burn day" is a day, as determined by the BCAA, during which permitted agricultural burning may take place in areas where agricultural burning is allowed. The length of the burn day shall be defined as the period from 9:00 AM until one hour before sunset. The BCAA shall make daily burn day decisions ~~((based on available meteorological information)).~~ The ~~((daily))~~ burn decision shall be provided daily ~~((through a burn day message line and/or through the local media)).~~

C. ~~((<sup>(2)</sup>))~~ Incidental agricultural burning ~~((<sup>(2)</sup>))~~ Burning of organic debris related to agricultural activity requires a permit and a fee except for agricultural burning that is incidental to commercial agricultural activities (RCW 70.94.6524). An agricultural operation burning under the incidental agricultural burning exception must still notify the local fire department within the area, the BCAA, and not burn during an air pollution episode or any stage of impaired air quality. The specific types of burning that qualify as exceptions to permit requirements are ~~((is the burning of vegetative debris that is non-essential to the propagation of a crop and is any of the following))~~

1. Orchard prunings. An orchard pruning is a routine and periodic operation to remove overly vigorous or nonfruiting tree limbs or branches to improve fruit quality, assist with tree canopy training and improve the management of plant and disease, and pest infestations.

2. ~~((Vegetative))~~ Organic debris along fence ~~((lines or irrigation or drainage ditches.; or))~~ † A fenceline or fencerow is the area bordering a commercial agricultural field that is or would be unworkable by equipment used to cultivate the adjacent field.

3. Organic debris along or in irrigation or drainage ditches. An irrigation or drainage ditch is a waterway which predictably carries water (not necessarily continuously) and is unworkable by equipment used to cultivate the adjacent field

~~((3))~~ 4. Organic Debris ~~((Vegetative debris))~~ blown by the wind. The primary example is tumbleweeds.

A "person" means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

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

### Section 6.02 Agricultural Burning Permit

#### A. Agricultural Burning Permit Required

1. All agricultural burning, except for incidental agricultural burning, requires a written agricultural burning permit from the BCAA. Agricultural burning permits shall be subject to a fee as described in Article 10 and payable at the time of application.

2. Agricultural burning shall be allowed only on designated agricultural burn days.

3. It shall be the responsibility of the person conducting agricultural burning to be informed of any additional fire safety rules as determined by the Benton County Fire Marshall.

#### B. Agricultural Burning Permit Not Required

1. Incidental agricultural burning, as defined in Section 6.01(C), shall be allowed without obtaining an agricultural burning permit from the BCAA and on days that are not agricultural burn days, except:

a. When the Benton County Fire Marshall has declared a ban on burning due to fire safety; or

b. During any stage of impaired air quality conditions, or during a forecast, alert, warning, or emergency air pollution episode declared under RCW 70.94.715.

c. When wind speeds forecasted by the National Weather Service (NWS) Pendleton are equal to or over 20 mph.

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

## ARTICLE 9 Source Registration

### Section 9.02 Source Registration Program Purpose and Components

A. Program purpose. The registration program is a program to develop and maintain a current and accurate record of air contaminant sources. Information collected through the registration program is used to evaluate the effectiveness of air pollution control strategies and to verify source compliance with applicable air pollution requirements.

B. Program components. The components of the registration program consist of:

1. Initial registration and annual or other periodic reports from stationary source owners providing information on location, size, height of contaminant outlets, processes employed, nature and quantity of the air contaminant emissions, and other information that is relevant to air pollution and available or reasonably capable of being assembled. For purposes of this chapter, information relevant to air pollution may include air pollution requirements established by rule,

regulatory order, or ordinance pursuant to chapter RCW 70.94.

2. On-site inspections necessary to verify compliance with registration requirements.

3. Data storage and retrieval systems necessary for support of the registration program.

4. Emission inventory reports and emission reduction credits computed from information provided by source owners pursuant to registration requirements.

5. Staff review, including engineering analysis for accuracy and ((currentness)) currency of information provided by source owners pursuant to registration program requirements.

6. Clerical and other office support in direct furtherance of the registration program.

7. Administrative support provided in directly carrying out the registration program.

#### Section 9.04 Source Registration Source List

The following sources shall register with the BCAA:

A. Any source classification listed below:

1. Abrasive blasting operation (WAC 173-460), except portable blasting operations operating at a construction site, or at a site for less than thirty (30) days in any running twelve (12) month period and operations that are inside a building and any associated air pollution control equipment that exhausts inside of the building;

2. Adhesive manufacturing operations;

3. Agricultural chemical operations or soil amendment operations - including manufacturing, mixing, packaging, concentrators, and/or other activities;

4. Agricultural drying and dehydrating operations;

5. Asphalt and asphalt products production operations;

6. Brick and clay manufacturing operations - including tiles and ceramics;

7. Cattle feedlots with operational facilities which have an inventory of one thousand or more cattle in operation between June 1 and October 1, where vegetation forage growth is not sustained over the majority of the lot during the normal growing season;

8. Chemical manufacturing operations;

9. Coffee roasting operations;

10. Composting operations - including commercial, industrial and municipal, but exempting residential composting activities;

11. Concrete product manufacturing operations;

12. Concrete manufacturing operations, ready mix and premix;

13. Crematoria - including human and animal crematoria;

14. Dry cleaning operations using solvents emitting VOCs or toxic air pollutants;

15. Flexible polyurethane foam, polyester resin, and styrene production operations;

16. Flexible vinyl and urethane coating and printing operations;

17. Gasoline dispensing facilities, bulk gasoline loading terminals, or bulk gasoline plants;

18. Grain handling facilities - including seed, animal feed, legume, and flour processing operations;

19. Hay cubing and pelletizer operations;

20. Hazardous waste treatment and disposal facilities;

21. Ink manufacturers;

22. Insulation and insulation fiber manufacturing;

23. Landfills, active and inactive - including covers, gas collections systems or flares;

24. Materials handling and transfer facilities that generate particulate matter - including pneumatic conveying, cyclones, baghouses, and industrial housekeeping vacuuming systems that exhaust to the atmosphere;

25. Metal casting facilities and foundries, ferrous and nonferrous;

26. Metal plating and anodizing operations;

27. Metallic and nonmetallic mineral processing plants - including rock crushing, sand, and gravel mixing operations;

28. Metallurgical and mineralogical processing operations;

29. Mills - including lumber, plywood, shake, shingle, woodchip, veneer operations, dry kilns, pulpwood insulating board, or any combination thereof;

30. Mills - including grain, seed, feed, flour production, and related activities;

31. Mills - including cabinet works, casket works, furniture, wood by-products, and other wood product manufacturing operations;

32. Natural gas transmission and distribution;

33. Paper manufacturing operations, except kraft and sulfite pulp mills;

34. Petroleum refineries;

35. Pharmaceutical production operations;

36. Plastics and fiberglass fabrication - including gel-coat, polyester resin, or vinyl ester coating operations;

37. Refuse systems - including landfills with gas collection systems and/or flares, hazardous waste treatment, storage, and disposal facilities,; and wastewater treatment plants other than private and publicly owned treatment works,;

38. Rendering facilities;

39. Semi-conductor manufacturing;

40. Soil and ground water remediation projects;

41. Surface coating operations - including automotive, metal, cans, pressure sensitive tape, labels, coils, wood, plastic, rubber, glass, paper and other substrates;

42. Surface coating manufacturers;

43. Synthetic fiber production operations;

44. Synthetic organic chemical manufacturing;

45. Tire recapping operations;

46. Wastewater treatment plants - including private and publicly owned treatment works with a rated capacity of more than 1 million gallons per day;

B. Any source that owns or operates any of the following equipment:

1. Boilers, all gas fired boilers above ten (10) million BTU/hr input;

2. Boilers, all solid and liquid fuel burning boilers with the exception of those utilized for residential heating;

3. Chemical evaporators or concentrators;

4. Flares utilized to combust any gaseous material;

5. Fuel burning equipment - including, but not limited to boilers, building and process heating units (external combustion) with per unit heat inputs of equal to or greater than any of the following:

- a. 500,000 BTU/hr using coal or other solid fuels with a sulfur content of 0.5% or less;
  - b. 500,000 BTU/hr using waste or used oil meeting specifications in RCW 70.94.610;
  - c. 1,000,000 BTU/hr using kerosene, fuel oil, or any other liquid fuel, except used or waste oil;
  - d. 4,000,000 BTU/hr using gaseous fuels;
  - e. 400,000 BTU/hr using wood, wood waste, or paper.
6. Graphic art systems - including lithographic and screen printing operations;
7. Incinerators and combustion units
- a. Commercial and industrial solid waste incineration units, defined as per WAC 173-400-050(4);
  - b. Small municipal waste combustion units, defined as per WAC 173-400-050(5)
  - c. Wood waste incinerators;
  - d. Any other solid, liquid, or gaseous waste incinerators;
8. Stationary internal combustion engines rated at 500 horsepower or greater - including standby and backup operations
9. Organic vapor collection systems within commercial or industrial facilities;
10. Ovens/furnaces, kilns and curing, burnout - including, but not limited to, ovens/furnaces that heat clean automotive parts, paint hooks, electric motors, etc.;
11. Degreasing and solvent cleaners, not subject to 40 CFR 63 Subpart T - including vapor, cold, open top, and conveyor cleaners;
12. Sterilizing operations - including ethylene oxide (EtO) and hydrogen peroxide;
13. Storage tanks for organic liquids within commercial or industrial facilities with capacities of twenty thousand (20,000) gallons or greater;

~~((14. Utilities consisting of a combination of electric and natural gas.))~~

C. Any source that has a potential to emit any pollutant equal to or greater than the following:

- 1. 5.0 tons/yr of carbon monoxide (CO);
- 2. 2.0 tons/yr of nitrogen oxides (NO<sub>x</sub>);
- 3. 2.0 tons/yr of sulfur dioxide (SO<sub>2</sub>);
- 4. 1.25 tons/yr of particulate matter (PM or TSP);
- 5. 0.75 tons/yr of fine particulate matter (PM<sub>10</sub>);
- 6. 2.0 tons/yr of volatile organic compounds (VOC);
- 7. 0.005 tons/yr of lead.

D. Any source subject to a federally-enforceable emission limit under a Synthetic Minor Order.

E. Any source that is subject to permitting requirements Chapter 173-400 or 173-460 WAC.

~~((Any source that is required to report periodically to demonstrate non-applicability to EPA requirements under Sections 111 or 112 of Federal Clean Air Act.~~

F. Any category of stationary source subject to a new source performance standard (NSPS) under 40 CFR Part 60, other than Subpart AAA (Standards of Performance for New Residential Wood Heaters).

G. Any source subject to a National Emission Standard for Hazardous Air Pollutants (NESHAP) under 40 CFR Part 61, other than Subpart M (National Emission Standard for Asbestos).

~~H. Any source subject to a National Emission Standard for Hazardous Air Pollutants for Source Categories (Maximum Achievable Control Technology (MACT) standard) under 40 CFR Part 63.~~

~~I. Any source, stationary source or emission unit with an emission rate defined as "significant" under WAC 173-400-112 or 173-400-113, as applicable.~~

~~J. Any source that has a potential to emit toxic air pollutants as defined in WAC 173-460-020, which exceeds any small quantity emission rates under WAC 173-460-080 (2)(e.))~~

K. Any other source determined to be registerable by the BCAA.

D. Class 2. Sources whose actual annual emissions are greater than that listed in Section 9.03(B), but less than one hundred (100) tons/yr of CO, NO<sub>x</sub>, SO<sub>2</sub>, TSP, PM<sub>10</sub>, VOCs, or lead, shall be classified as Class 2 Sources.

E. Class 2 Toxic Source. Toxic air pollutants are those listed in WAC 173-460-150 and 173-460-160. Sources whose actual emissions are greater than that listed in Section 9.03(C), but less than ten (10) tons/yr of any single toxic air pollutant or less than twenty-five (25) tons/yr of a combination of toxic air pollutants, shall be classified as Class 2 Toxic Sources:

F. Synthetic Minor Source. Sources that have requested and received a federally enforceable emissions limit to limit the total potential-to-emit of the facility to less than one hundred (100) tons/yr of any criteria pollutant, ten (10) tons/yr of any single hazardous air pollutant, or twenty-five (25) tons/yr of any combination of hazardous air pollutants are synthetic minor sources.

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

## ARTICLE 10 Fees and Charges

### Section 10.04 General Administrative Fees

~~((A. Administrative fees shall be due and payable at the time service is rendered, unless otherwise specified by BCAA.~~

~~1. A fee of fifteen cents (\$0.15) per page shall be charged for photocopies.~~

~~2. A fee of twenty dollars (\$20.00) per hour shall be charged for research time for requests covering more than one hour of staff time.~~

~~3. A fee of ten dollars (\$10.00) shall be charged per copy of audio or video materials.~~

~~4. The actual cost of postage or shipping shall be charged for all material requested to be mailed.~~

~~B. For other administrative services requested and performed by BCAA staff persons that are not provided to the public generally, the Control Officer shall determine such charge as reasonably reimburses the BCAA for time and materials expended in providing the service.))~~

~~((C.)) A fifty dollar (\$50.00) fee will be assessed for any check written to the BCAA returned due to non-sufficient funds.~~

**Section 10.05 Registered Source Fees**

A. The BCAA shall charge an annual registration fee pursuant to RCW 70.94.151 for services provided in administering the registration program. Fees received under the registration program shall not exceed the cost of administering the registration program. The Board shall review the registration program on an annual basis.

B. All air contaminant sources required by Section 9.04 or 9.05 to be registered are subject to the following fees:

1. Class 1 and Class 1 Toxic sources shall pay an annual registration fee of:

- a. A base fee of three hundred fifty dollars (\$350.00);
- b. Fifty dollars (\$50.00) per ton of criteria pollutant emitted;
- c. One hundred fifty dollars (\$150.00) per ton or prorated on fraction of a ton of toxic air pollutant emitted; and
- d. Fifty (\$50.00) dollars per emission process unit or emission point.

2. Class 2 and Class 2 Toxic sources shall pay an annual registration fee of:

- a. A base fee of seven hundred fifty dollars (\$750.00);
- b. Fifty dollars (\$50.00) per ton of criteria pollutant emitted;
- c. One hundred fifty dollars (\$150.00) per ton or prorated on fraction of a ton of toxic air pollutant emitted; and
- d. Fifty (\$50.00) dollars per emission process unit or emission point

3. Synthetic Minor sources shall pay an annual registration fee of:

- a. A base fee of fifteen hundred dollars (\$1,500.00);
- b. Fifty dollars (\$50.00) per ton of criteria pollutant emitted;
- c. One hundred fifty dollars (\$150.00) per ton or prorated on fraction of a ton of toxic air pollutant emitted; and
- d. Fifty (\$50.00) dollars per emission process unit or emission point

4. Gasoline facilities shall pay an annual registration fee of:

- a. Gasoline Loading Terminals: two thousand dollars (\$2,000.00) plus fifty dollars (\$50.00) per ton of pollutant emitted;
- b. Bulk Gasoline Plants: eight hundred dollars (\$800.00) plus fifty dollars (\$50.00) per ton of pollutant emitted; and
- c. Gasoline Dispensing Facilities:
  - i. Fee is determined by multiplying current annual gasoline throughput (greater than 400,000) in gallons times \$0.0005 per gallon.
  - ii. Fee for stations with annual throughput less than 400,000 gallons shall be two hundred dollars (\$200.00).

**C. Fee Payment**

1. Fee Payment. The annual registration fee shall be due and payable on ~~((February 28))~~ by April 15th of each year, unless otherwise specified in writing to the source by the BCAA.

2. Late Payment of Fees. A late fee shall be charged to a source for late payment of all or part of its annual registration fee at the following rates:

- a. Ten percent (10%) of the annual registration fee for payment received up to the thirtieth (30th) day past the due date;

b. Fifteen percent (15%) of the annual registration fee for payment received between the thirty-first (31st) day and the sixtieth (60th) day past the due date; and

c. Twenty-five percent (25%) of the annual registration fee for payment received between the sixty-first day (61st) and the ninetieth (90th) day past the due date.

d. Failure to pay all or part of an annual registration fee after the ninety-first (91st) day past the due date may result in the commencement of a formal enforcement action.

3. Transfer in Ownership. Transfer in ownership of a source shall not affect that source's obligation to pay registration fees. Any liability for fee payment, including payment of late payment and other penalties shall survive any transfer in ownership of a source.

**Reviser's note:** The typographical error in the above material occurred in the copy filed by the Benton Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**Section 10.06 Fees for Application for Notice of Construction (NOC) and Application for Notice of Intent to Install and Operate a Temporary Source (NIO)**

A. NOC or NIO Application Filing Fee. An application filing fee shall be due and payable at the time of filing the NOC or NIO application. The filing fee is non-refundable.

1. Permanent stationary source. The filing fee shall be four hundred dollars (\$400.00)

2. ~~((Temporary or))~~ P~~((r))~~ortable source. The filing fee shall be five hundred dollars (\$500.00).

3. Relocation of ~~((a temporary or))~~ portable or source. The filing fee shall be two hundred fifty dollars (\$250.00) and shall be charged each time the source relocates within the boundaries of Benton County. For Portable Rock Crushers, an additional PM fee shall apply per Table 10-1.

B. NOC or NIO Engineering Examination and Inspection Fee.

1. An examination and inspection fee shall be charged according to Table 10-1. The engineering and inspection fee shall be due and payable at the time of filing the NOC or NIO, unless otherwise specified to the applicant by the BCAA.

2. Emergency application or expedited review fee shall be two (2) times the normal application and review fee.

**C. Additional Fees**

Additional fees may be charged according to Table 10-2. Table 10-2 fees are cumulative. The additional fees shall be due and payable at the time of filing the NOC or NIO, unless otherwise specified to the applicant by the BCAA.

1. Fee amounts in Table 10-1 and 10-2 listed as "Actual" are based upon the BCAA's actual cost to complete a review or task and shall be determined using the actual or direct hours expended completing the specific review or task.

If the staff time required to review a permit application exceeds the listed amounts associated with the applicable review fee specified in Table 10-1 and 10-2, the applicant will be invoiced for each additional work hour at the current engineering charge rate in dollars per hour.

2. If an NOC or NIO applicability determination fee is received by the BCAA and an NOC or NIO is determined not to be required, the Engineering Examination and Inspection

Fee shall be the actual time expended at the current engineering charge rate in dollars per hour.

D. Any NOC or NIO application received by the BCAA without the accompanying fee shall be rejected and returned

to sender. Such action shall not constitute a determination of completeness or incompleteness as per WAC 173-400-110.

Table 10-1: NOC or NIO Engineering Examination and Inspection Fees

<p><b>Fuel Burning Equipment with or without Air Pollution Equipment (million Btu/hr)</b></p> <p>5 or less . . . . . \$500</p> <p>Greater than 5 to 10 . . . . . \$600</p> <p>Greater than 10 to 30 . . . . . \$750</p> <p>Greater than 30 to 50 . . . . . \$900</p> <p>Greater than 50 to 100 . . . . . \$1,200</p> <p>Greater than 100 to 250 . . . . . \$2,500</p> <p>Greater than 250 to 500 . . . . . \$4,000</p> <p>Greater than 500 . . . . . \$6,000</p> <p>Fuel change or new fuel . . . . . 1/2 new installation fee</p> <p><b>Process Equipment, Air Pollution Control Device, and/or Uncontrolled Process Discharge (ft<sup>3</sup>/min)</b></p> <p>50 or less . . . . . \$600</p> <p>Greater than 50 to 5,000 . . . . . \$700</p> <p>Greater than 5,000 to 20,000 . . . . . \$800</p> <p>Greater than 20,000 to 50,000 . . . . . \$900</p> <p>Greater than 50,000 to 100,000 . . . . . \$950</p> <p>Greater than 100,000 to 250,000 . . . . . \$1,000</p> <p>Greater than 250,000 to 500,000 . . . . . \$2,000</p> <p>Greater than 500,000 . . . . . \$4,000</p> <p><b>Refuse Burning Equip (tons/day)</b></p> <p>0.5 or less . . . . . \$700</p> <p>Greater than 0.5 to 5 . . . . . \$800</p> <p>Greater than 5 to 12 . . . . . \$1,000</p> <p>Greater than 12 to 50 . . . . . \$3,000</p> <p>Greater than 50 to 250 . . . . . \$6,000</p> <p>Greater than 250 . . . . . \$12,000</p> <p><b>Other Incinerators (pounds/hr)</b></p> <p>100 or less . . . . . \$300</p> <p>Greater than 100 to 200 . . . . . \$600</p> <p>Greater than 200 to 500 . . . . . \$1,200</p> <p>Greater than 500 to 1000 . . . . . \$2,400</p> <p>Greater than 1000 . . . . . \$3,000</p> <p><b>Storage Tanks (gal)</b></p> <p>10,000 or less . . . . . \$600</p> <p>Greater than 10,000 to 40,000 . . . . . \$1000</p> <p>Greater than 40,000 to 100,000 . . . . . \$1,500</p> <p>Greater than 100,000 . . . . . \$2000</p> <p><b>Gasoline Dispensing Facilities</b></p> <p>Stage I . . . . . \$500</p> <p>Stage II . . . . . \$600</p> <p>Stage I and II Combined . . . . . \$700</p> <p>Toxics review for gasoline facility . . . . . \$1,500</p> <p>Removal of Stage II . . . . . \$600</p>	<p><b>Spray Painting (per booth)</b> . . . . . \$500</p> <p><b>Dry Cleaner (per machine)</b> . . . . . \$600</p> <p><b>Coffee Roaster</b> . . . . . \$700</p> <p><b>Asphalt Plant, Cement Plant, or Rock Crushing Plant (Non-Portable ((Temporary))</b> . . . . . \$2,000</p> <p><b>Asphalt Plant or Concrete Plant, Plant (Portable) engineering fee</b> . . . . . \$500</p> <p><b>Particulate matter and fugitive emissions from rock crushing, material transfer and ship loading (Emissions - tons per year):</b></p> <p>Less than or equal to 10 . . . . . \$600.00</p> <p>Greater than 10 to 50 . . . . . \$1,000.00</p> <p>Greater than 50 to 100 . . . . . \$1,500.00</p> <p>Greater than 100 to 250 . . . . . \$2,500.00</p> <p>Greater than 250 . . . . . \$6,000.00</p> <p><b>Diesel engine generators/pumps (Aggregate horsepower rating):</b></p> <p>Less than or equal to 100 . . . . . \$600.00</p> <p>Greater than 100 to 500 . . . . . \$700.00</p> <p>Greater than 500 to 2,000 . . . . . \$1,000.00</p> <p>Greater than 2,000 to 5,000 . . . . . \$1,500.00</p> <p>Greater than 5,000 to 10,000 . . . . . \$3,000.00</p> <p>Greater than 10,000 . . . . . \$6,000.00</p> <p><b>Soil Thermal Desorption Unit</b></p> <p>Initial . . . . . \$3,000</p> <p>Relocation of Unit . . . . . \$1,000</p> <p><b>Odor Source</b> . . . . . \$500</p> <p><b>Composting Facility</b> . . . . . Actual</p> <p><b>Landfill Gas System</b> . . . . . Actual</p> <p><b>Soil and Groundwater Remediation</b> . . . . . Actual</p> <p><b>Review of projects under RCW 70.105D.090</b> . . . . . Actual</p> <p><b>Review of Ecology "Agreed Orders" and "Consent Orders" pursuant to RCW 70.105D.090(1)</b> . . Actual</p> <p><b>All other sources not listed</b> . . . . . greater of \$1000 or Actual</p>
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Table 10-2: Additional Fees

CATEGORY	FEE	CATEGORY	FEE
Public Noticing	Actual	Variance Request	Actual
Publishing of Public Notices	Actual	Alternative Opacity Limits Review	Actual
Public Hearings	Actual	Inspection of Source that began Construction/Operation without Approval/Permit	greater of \$500 or Actual
Air Toxics Screening as per WAC 173-460		Synthetic Minor Determination	Actual
Review of source supplied ASIL	\$300	Major Source, Major Modification, or PSD Thresholds	Actual
Review of source supplied risk analysis	\$1000	Emission Units subject to NSPS or NESHAP (except residential woodstoves, heaters, asbestos renovation or demolition and PCE dry cleaning)	Actual
BCAA conducted screening analysis	Actual	Construction or Reconstruction of a Major Source of Hazardous Air Pollutants	Actual
NOC/NIO Application Assistance	Actual	Each CEM or Alternate Monitoring Device	Actual
NOC/NIO Applicability Determination	Actual	Each Source Test Required in NOC	Actual
NOC-CEM or Alternate Monitoring Device Installed	Actual	Opacity/Gain Loading Correlation	Actual
SEPA Threshold Determination (lead agency)	Actual	Bubble Application	Actual
Environmental Impact Statement Review	Actual	Netting Analysis	Actual
NOC Order of Approval Modification	lesser of 1/2 NOC/NIO fee or \$350		
RACT/BACT/MACT/BART/LAER Determination	Actual		
Emission Offset Analysis	Actual		
Emission Reduction Credit (ERC) Application	Actual		

Table 10-3: Asbestos Fees

Asbestos Projects at Residential Units	
Activity	Fee
Demolition	\$ ((+0)) <u>25.00</u>
Renovation: Any amount in lin. ft or ft <sup>2</sup>	\$ ((+0)) <u>25.00</u>
Demolition or Renovation Amendment	\$ ((25)) <u>30.00</u>
Emergency Renovation Operation	\$ ((50)) <u>60.00</u>
Alternate Removal Methods	Two (2) times renovation fee

  

Asbestos Projects at Facilities	
Activity	Fee
Demolition	\$ ((+0)) <u>25.00</u>
Renovation:	
10 to 259 lin. ft	\$ <u>150</u> ((25)) .00
260 to 999 lin. ft	\$ <u>300</u> ((250)) .00
1,000 to 9,999 lin. ft	\$ <u>600</u> ((500)) .00
Over 10,000 lin. ft	\$ <u>1800</u> ((1,500)) .00
Annual Renovation	\$ <u>1800</u> ((1,500)) .00
Demolition or Renovation Amendment	\$ <u>60</u> ((50)) .00
Emergency Renovation Operation	Two (2) times renovation fee
Alternate Removal Methods	Two (2) times renovation fee

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

**Section 10.09 Title 5 Air Operating Permit Fees**

All eligible sources under WAC 173-401 shall be subject to the annual fees described in this section.

- A. Permanent annual fee determination and certification
  - 1. Fee Determination

a. Fee Determination. The BCAA shall develop a fee schedule using the process outlined below, according to which it will collect fees from permit program sources under its jurisdiction. The fees shall be sufficient to cover all permit administration costs. The BCAA shall also collect its juris-

diction's share of Ecology's development and oversight costs. The fee schedule shall differentiate as separate line items the BCAA's and Ecology's fees. Opportunities for public participation shall be afforded throughout the fee determination process, as provided in Section 10.08 (A)(3)(a).

b. Fee Eligible Activities. The costs of permit administration and development and oversight activities are fee eligible.

i. Permit Administration. Permit administration costs are those incurred by BCAA in administering and enforcing the operating permit program with respect to sources under its jurisdiction. Eligible permit administration costs are as follows:

(A) Pre-application assistance and review of an application and proposed compliance plan for a permit, permit revision, or renewal;

(B) Source inspection, testing, and other data-gathering activities necessary for the development of a permit, permit revision, or renewal;

(C) Acting on an application for a permit, permit revision, or renewal, including the costs of developing an applicable requirement as part of the processing of a permit, permit revision, or renewal, preparing a draft permit and fact sheet, and preparing a final permit, but excluding the costs of developing BACT, LAER, BART, or RACT requirements for criteria and toxic air pollutants;

(D) Notifying and soliciting, reviewing and responding to comment from the public and contiguous states and tribes, conducting public hearings regarding the issuance of a draft permit and other costs of providing information to the public regarding operating permits and the permit issuance process;

(E) Modeling necessary to establish permit limits or to determine compliance with permit limits;

(F) Reviewing compliance certifications and emissions reports and conducting related compilation and reporting activities;

(G) Conducting compliance inspections, complaint investigations, and other activities necessary to ensure that a source is complying with permit conditions;

(H) Administrative enforcement activities and penalty assessment, excluding the costs of proceedings before the pollution control hearings board and all costs of judicial enforcement;

(I) The share attributable to permitted sources of the development and maintenance of emissions inventories;

(J) The share attributable to permitted sources of ambient air quality monitoring and associated recording a reporting activities;

(K) Training for permit administration and enforcement;

(L) Fee determination, assessment, and collection, including the costs of necessary administrative dispute resolution and penalty collection;

(M) Required fiscal audits, periodic performance audits, and reporting activities;

(N) Tracking of time, revenues and expenditures, and accounting activities;

(O) Administering the permit program including the costs of clerical support, supervision, and management;

(P) Provision of assistance to small businesses under the jurisdiction of the permitting authority as required under section 507 of the Federal Clean Air Act; and

(Q) Other activities required by operating permit regulations issued by the United States Environmental Protection Agency under the Federal Clean Air Act.

ii. Ecology Development and Oversight. Development and oversight costs are those incurred by Ecology in developing and administering the state operating permit program and in overseeing the administration of the program by the delegated local authorities. Development and oversight costs are in Chapter 252, Laws of 1993 Section 6 (2)(b).

c. Workload Analysis.

i. The BCAA shall conduct an annual workload analysis of the previous years' work, to projecting resource requirements for the purpose of facilitating budget preparation for permit administration. The workload analysis shall include resource requirements for both the direct and indirect costs of the permit administration activities in Section 10.08 (A)(1)(b)(i).

ii. Ecology will, for the two-year period corresponding to each biennium, identify the development and oversight activities that it will perform during that biennium. The eligible activities are those referenced in Section 10.08 (A)(1)(b)(ii).

d. Budget Development. The BCAA shall annually prepare an operating permit program budget. The budget shall be based on the resource requirements identified in an annual workload analysis and shall take into account the projected fund balance at the start of the calendar year. The BCAA shall publish a draft budget for the following calendar year on or before May 31 and shall provide opportunity for public comment thereon in accordance with 10.08 (A)(3)(a). The BCAA shall publish a final budget for the following calendar year on or before June 30.

e. Allocation Method(~~ology~~).

i. Permit Administration Costs. The BCAA shall allocate its permit administration costs and its share of Ecology's development and oversight costs among the permit program sources for whom it acts as permitting authority, according to a three-tiered model based upon:

(A) the number of sources under its jurisdiction;

(B) the complexity of the sources under its jurisdiction, and

(C) the size of the sources under its jurisdiction, as measured by the quantity of each regulated pollutant emitted. The quantity of each regulated pollutant emitted by a source shall be determined based on the annual emissions data during the most recent calendar year for which data is available. Each of the three tiers shall be equally weighted.

ii. Ecology Development and Oversight Costs. Ecology will allocate its development and oversight costs among all permitting authorities, including the BCAA, based upon the number of permit program sources under the jurisdiction of each permitting authority. If Ecology determines that it has incurred extraordinary costs in order to oversee a particular permitting authority and that those costs are readily attributable to the particular permitting authority, Ecology may assess to that permitting authority such extraordinary costs.

f. Fee Schedule. The BCAA shall issue annually a fee schedule reflecting the permit administration fee and Ecology's



ogy's development and oversight fee to be paid by each permit program source under its jurisdiction. The fee schedule shall be based on the information contained in the final source data statements for each year; the final source data statements shall be issued after opportunity for petition and review has been afforded in accordance with Section 10.08 (A)(4).

## 2. Fee Collection - Ecology and BCAA.

a. Collection from Sources. The BCAA, as a delegated local authority, shall collect the fees from the permit program sources under its jurisdiction.

i. Permit Administration Costs. The BCAA shall collect from permit program sources under its jurisdiction fees sufficient in the aggregate to cover its permit administration costs.

ii. Ecology Development and Oversight Costs. The BCAA shall collect from permit program sources under its jurisdiction fees sufficient in the aggregate to cover its share of Ecology's development and oversight costs.

## b. Dedicated Account.

i. All receipts from fees collected by the BCAA, as a delegated local authority, from permit program sources pursuant to RCW 70.94.152(1), and RCW 70.94.161, Section 6 of Chapter 252, Laws of 1993, and Section 8 of Chapter 252, Laws of 1993 shall be deposited in the dedicated accounts of its treasury. Expenditures from these dedicated accounts will be used only for the activities described in RCW 70.94.152 (1), and RCW 70.94.161, Section 6 of Chapter 252, Laws of 1993, and Section 8 of Chapter 252, Laws of 1993.

ii. All receipts from fees collected by BCAA on behalf of Ecology from permit program sources pursuant to RCW 70.94.152(1), and RCW 70.94.161, Section 6 of Chapter 252, Laws of 1993, and Section 8 of Chapter 252, Laws of 1993 shall be deposited in the air operating permit account created under RCW 70.94.015. Expenditures from the air operating permit account may be used only for the activities described in RCW 70.94.152(1), and RCW 70.94.161, Section 6 of Chapter 252, Laws of 1993, and Section 8 of Chapter 252, Laws of 1993.

## 3. Accountability

a. Public Participation During Fee Determination Process. The BCAA shall provide for public participation in the fee determination process described under 10.08 (A)(1), which provision shall include but not be limited to the following:

i. The BCAA shall provide opportunity for public review of and comment on:

- (A) each annual workload analysis;
- (B) each annual budget; and
- (C) each annual fee schedule

ii. The BCAA shall submit to Ecology for publication in the Permit Register notice of issuance of its draft annual workload analysis, issuance of its draft annual budget and issuance of its draft annual fee schedule.

iii. The BCAA shall make available for public inspection and to those requesting opportunity for review copies of its draft:

- (A) annual workload analysis on or before March 31.
- (B) annual budget on or before May 31.
- (C) annual fee schedule on or before December 31.

iv. The BCAA shall provide a minimum of thirty (30) days for public comment on the draft annual workload analysis and draft annual budget. Such thirty-day period for comment shall run from the date of publication of notice in the Permit Register as provided in Section 10.08 (A)(3)(a)(ii).

## b. Tracking of Revenues, Time and Expenditures.

i. Revenues. The BCAA shall track revenues on a source-specific basis.

ii. Time and Expenditures. The BCAA shall track time and expenditures on the basis of functional categories as follows:

- (A) application review and permit issuance;
- (B) permit modification;
- (C) permit maintenance;
- (D) compliance and enforcement;
- (E) business assistance;
- (F) regulation and guidance development;
- (G) management and training;
- (H) technical support.

iii. Use of Information Obtained from Tracking Revenues, Time and Expenditures. The BCAA shall use the information obtained from tracking revenues, time and expenditures to modify its workload analysis during each calendar year's review provided for under Section 10.08 (A)(1)(d).

iv. The information obtained from tracking revenues, time, and expenditures shall not provide a basis for challenge to the amount of an individual source's fee.

c. Periodic Fiscal Audits, Reports and Performance Audits. A system of regular, periodic fiscal audits, reports and performance audits shall be conducted in order to evaluate Ecology's and the BCAA's operating permit program administration, as follows:

i. Fiscal Audits. The BCAA shall contract with the State Auditor to perform a standard fiscal audit of its operating permit program every other year.

ii. Annual Routine Performance Audits. The BCAA shall be subject to annual routine performance audits, except that the routine audit shall be incorporated into the extensive performance audit, conducted pursuant to Section 10.08 (A)(3)(c)(v) in each year during which an extensive performance is conducted. Ecology shall issue guidance regarding the content of the routine performance audits and shall conduct the BCAA's audits.

iii. Annual Random Individual Permit Review. One permit issued by the BCAA shall be subject to review in conjunction with the annual routine performance. The permit to be reviewed shall be selected at random. Ecology shall issue guidance regarding the content of the random individual permit review and shall conduct the BCAA's review.

iv. Periodic Extensive Performance Audits. The BCAA shall be subject to extensive performance audits every five years. In addition, the BCAA may be subject to an extensive performance audit more frequently under the conditions of Section 10.08 (A)(3)(c)(v). Ecology shall issue guidance regarding the content of the extensive performance audits and shall conduct the audits of this BCAA.

v. Finding of Inadequate Administration or Need for Further Evaluation. If, in the process of conducting a fiscal audit, annual routine audit, or annual random individual permit review, the auditor or Ecology finds that the BCAA is

inadequately administering the operating permit program or finds that further evaluation is immediately warranted, an extensive performance audit shall be conducted, as provided in Section 10.08 (A)(3)(c)(iv).

vi. Annual Reports. The BCAA shall prepare an annual report evaluating its operating permit program administration. Such report shall include any findings of the auditor or Ecology resulting from the relevant fiscal audits, annual routine audits, annual random individual permit reviews or periodic extensive performance audits. The BCAA shall submit its report to its Board and to Ecology.

#### 4. Administrative Dispute Resolution.

a. Preliminary Statement of Source Data. The BCAA shall provide to the permit program sources under their respective jurisdictions a preliminary statement of emissions and other data from that source upon which the BCAA intends to base its allocation determination under Section 10.08 (A)(1)(e). Such preliminary statement shall be provided to the permit program sources on or before September 30 of each year. Such preliminary statement shall indicate the name, address and telephone number of the person or persons to whom the source or other individual may direct inquiries and/or petitions for review under Section 10.08 (A)(4)(b) regarding the accuracy of the data contained therein.

b. Petition for Review of Statement. A permit program source or other individual under the jurisdiction of the BCAA, as a delegated local authority, may petition to review for accuracy the data contained in the preliminary source data statement provided for under Section 10.08 (A)(4)(a). Such petition shall be lodged on or before October 31 of each year. Such petition shall be in writing, directed to the individual indicated on the statement of source data. Such petition shall indicate clearly the data to be reviewed, the specific action that the source or petitioning individual is requesting be taken and may, if the source or petitioning individual desires, be accompanied by written documentation supporting the request for review. Such petition shall, in addition, state the name, address and telephone number of the person or persons to whom the BCAA may direct inquiries regarding the request. Upon receipt of such a petition, the BCAA, as a delegated local authority, must issue its written response to the petitioner on or before November 30 of each year. Such response shall state the conclusions of the review and the reasons therefore, and shall contain a new preliminary source data statement, revised to reflect any changes necessitated by the BCAA's response.

c. Final Source Data Statement. The BCAA shall provide to the permit program sources under its jurisdiction a final statement of emissions and other data from that source upon which the BCAA will base its allocation determination under Section 10.08 (A)(1) along with an invoice reflecting the fee billed to that source on or before December 31 of each year.

#### 5. Fee Payment and Penalties

a. Fee Payment. Each permit program source shall pay a fee in the amount reflected in the invoice issued under Section 10.08 (A)(4)(c). Such fee shall be due on or before February 28 of each year.

b. Late Payment of Fees. BCAA shall charge a penalty to a permit program source under its jurisdiction for late pay-

ment of all or part of its operating permit fee at the following rates:

i. Ten percent of the source's total assessed fee for payment received after the due date for fee payment but up to the first thirty days past the due date for fee payment;

ii. Fifteen percent of the source's total assessed fee for payment received between the thirty-first day and the sixtieth day past the due date for fee payment; and

iii. Twenty-five percent of the source's total assessed fee for payment received between the sixty-first day and the ninetieth day past the due date for fee payment.

c. Failure to Pay Fees. The BCAA shall charge a penalty to a permit program source under its jurisdiction for failure to pay all or part of its operating permit fee and/or penalties thereon after ninety days past the due date for fee payment in an amount three times the source's total assessed fee.

d. Other Penalties. The penalties authorized in Section 10.08 (A)(5)(b) and (c), are additional to and in no way prejudice the BCAA's ability to exercise other civil and criminal remedies, including the authority to revoke a source's operating permit for failure to pay all or part of its operating permit fee.

e. Facility Closure. Sources that permanently cease operations shall be required to pay only a pro rata portion of the annual operating permit fee for the fiscal year in which they cease operations. The portion of the fee to be paid shall be calculated by dividing the number of calendar days that have passed in the relevant calendar year at the time the source ceases operations by the total of 365 calendar days, and multiplying the fraction thus derived by the fee that the source would have paid for the relevant calendar year, had it not ceased operations.

f. Transfer in Ownership. Transfer in ownership of a source shall not affect that source's obligation to pay operating permit fees. Any liability for fee payment, including payment of late payment and other penalties shall survive any transfer in ownership of a source.

#### 6. Development and Oversight Remittance by Local Authorities to Ecology

a. Ecology will provide to the BCAA a statement of the share of Ecology's development and oversight costs for which it is responsible for collecting from sources under its jurisdiction on or before December 31 of each year.

b. The BCAA shall remit to Ecology one-half of the share of Ecology's development and oversight costs for which it is responsible for collecting from sources under its jurisdiction on or before March 31 of each year and shall remit to Ecology the balance of its share of Ecology's development and oversight costs on or before June 30 of each year.

**Reviser's note:** The typographical error in the above material occurred in the copy filed by the Benton Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

#### Section 10.11 Agricultural Burning Permit Fees

A. An application fee for an agricultural burning permit shall be due and payable at the time of submittal of the application. Refunds may be issued by the BCAA for acres or tons not burned under each permit provided the adjusted fee after

subtracting refunds is no less than the minimum fee.  
(~~twenty-five dollars.~~)

~~((B. Upon approval of any agricultural burning permit application, the BCAA shall charge a fee at a maximum fee level as set by statute at two dollars and fifty cents per acre (RCW 70.94.650(2)) and as established by the agricultural burning practices and research task force (RCW 70.94.650 (4)).~~

~~A portion of this fee shall go directly to Ecology to be divided among administration, oversight costs, and the research fund. The remainder of the fee shall go to the BCAA for local administration and implementation of the program. The permitting authority may set the fee as an amount per agricultural operation per calendar year, a set amount per fire, or a set rate no greater than one dollar and twenty-five cents per acre burned.~~

~~The Ecology administration portion of the fee shall be used to off-set the statewide administrative, education, and oversight costs of the department for the agricultural burning program.~~

~~The agricultural burning applied research portion of the fee shall be no greater than one dollar per acre burned. The~~

((

Fee Level	Section	Local Administration	Research	Ecology Administration
\$25.00	WAC 173-430-040 (4)(a)(i)	\$12.50	\$12.50	-0-
\$50.00	WAC 173-430-040 (4)(a)(ii)	\$12.50	\$12.50	\$25.00
2008 and beyond-- \$2.25 per acre	WAC 173-430-040 (4)(b)(ii)	Up to \$1.25 per acre	50 cents per acre	50 cents per acre

~~The agricultural burning practices and research task force may set acreage equivalents, for non-field style agricultural burning practices, based on the amount of emissions relative to typical field burning emissions. Any acreage equivalents, established by rule, shall be used in determining fees. For agricultural burning conducted by irrigation or drainage districts, each mile of ditch (including banks) burned is calculated on an equivalent acreage basis.)~~

B. Permit Fee Schedule. Table 10-4 shows the permit fee schedule, starting in the calendar year 2011. This fee schedule will remain in place until ecology and the task force adjust it using the process in WAC 173-430-042.

Table 10-4 Agricultural Burning Fee Schedule

Fee	Minimum Fee	Variable Fee
Field Burning	\$30 for the first 10 acres	\$3.00 for each additional acre
Spot Burning	\$30 for the first 10 acres or less	None
Pile Burning	\$80 for the first 100 tons	\$0.50 for each additional ton

**ACRONYMS AND ABBREVIATIONS**

ACM ..... Asbestos Containing Material  
 ARP ..... Application for Relief from Penalty  
 BACT ..... Best Available Control Technology  
 BART ..... Best Available Retrofit Technology

~~amount assessed may be less than one dollar per acre burned as periodically determined by the agricultural burning practices and research task force based on applied research needs, regional needs and the research fund budget. The agricultural burning practices and research task force may also establish discounted assessment rates based on the use of best management practices.~~

~~C. The local portion of the agricultural burning permit fee shall be one dollar and twenty-five cents) per acre (\$1.25).~~

~~D. Minimum and variable fee levels are as follows:~~

~~1. Twenty-five dollars (\$25.00) per calendar year per agricultural operation based on burning up to ten acres or equivalent;~~

~~2. Fifty dollars (\$50.00) for orchard tear-out burning per calendar year per agricultural operation based on burning debris from up to twenty acres or equivalent.~~

~~3. The variable fee is two dollars and twenty-five cents per acre (\$2.25).~~

~~4. The chart below shows the permit fee break-out per category))~~

BCAA ..... Benton Clean Air ((Authority)) Agency Board  
 Board ..... Benton Clean Air ((Authority)) Agency Board of Directors  
 BTU ..... British Thermal Unit (unit of measure)  
 CEM ..... Continuous Emission Monitoring  
 CFR ..... U.S. Code of Federal Regulations  
 Ecology ..... Washington State Department of Ecology  
 ERC ..... Emission Recovery Credit  
 LAER ..... Lowest Achievable Emission Rate  
 MACT ..... Maximum Achievable Control Technology  
 NESHAP ..... National Emission Standards for Hazardous Air Pollutants  
 NOC ..... Notice of Construction  
 NIO ..... Notice of Intent to Install and Operate a Temporary Source  
 NOI ..... Notice of Intent to Demolish or Remove Asbestos  
 NOP ..... Notice of Penalty  
 NSPS ..... New Source Performance Standard  
 PCHB ..... Washington State Pollution Control Hearings Board  
 PSD ..... Prevention of Significant Deterioration  
 RACM ..... Regulated Asbestos Containing Material  
 RACT ..... Reasonably Available Control Technology  
 RCW ..... Revised Code of Washington  
 SEPA ..... State Environmental Policy Act  
 USC ..... United States Code  
 WAC ..... Washington Administrative Code

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

**WSR 11-17-134**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Disability Services)  
[Filed August 24, 2011, 8:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-13-094.

Title of Rule and Other Identifying Information: The department intends to amend WAC 388-78A-2020 Definitions, 388-78A-2030 Applicability, 388-78A-2130 Service agreement planning, 388-78A-2461 Background check—General, 388-78A-2467 Background check—Sharing by health care facilities, 388-78A-2474 Training and home care aide certification, 388-78A-2750 Application process, 388-78A-2780 Change in license/change of ownership—Notice to department and residents, 388-78A-2800 Changes in licensed bed capacity, 388-78A-3230 Fees, and other related rules as appropriate.

The department intends to add WAC 388-78A-2032 Boarding home license not required and 388-78A-2035 Disclosure statement to nonresident individuals.

The department intends to repeal WAC 388-78A-2463 Background check—National fingerprint checks—Who is required to have.

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

Date of Intended Adoption: Not earlier than October 12, 2011.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax (360) 664-6185, by 5 p.m. on October 11, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by September 27, 2011, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsj14@dshs.wa.gov](mailto:johnsj14@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending these rules as a result of legislative activity during session and to be consistent with newly passed state laws: SSB 5042 Vulnerable adults protection, ESHB 1277 Oversight of licensed or certified long-term care settings for vulnerable adults; ESHB 1548 Long-term care worker requirement; ESSB 5708 Long-term care services; and 2ESSB [2E2SHB] 1738 Changing the designation of medicaid state agency.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: Chapter 18.20 RCW.  
Statute Being Implemented: Chapter 18.20 RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Judy Johnson, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2591; Implementation and Enforcement: Lori Melchiori, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2404.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3), a small business economic impact statement is not required for rules adopting or incorporating, by reference without material change, Washington state statutes or regulations.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b), a cost-benefit analysis is not required for rules adopting or incorporating, by reference without material change, Washington state statutes [statutes] or regulations.

August 18, 2011  
Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-05-099, filed 2/15/08, effective 3/17/08)

**WAC 388-78A-2020 Definitions. "Abandonment"** means action or inaction by a person with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

**"Abuse"** means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a resident. In instances of abuse of a resident who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a resident, which have the following meanings:

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

(2) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints;

(3) **"Sexual abuse"** means any form of nonconsensual sexual contact, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual contact may include interactions that do not involve touching, including but not limited to sending sexually explicit messages, or cuing or encouraging a resident to perform sexual acts. Sexual abuse includes any sexual contact between a staff person and a resident, whether or not it is consensual;

(4) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a resident causing the resident to act in a way that is inconsistent with relevant past

behavior, or causing the resident to perform services for the benefit of another.

**"Activities of daily living"** means the following tasks related to basic personal care: Bathing; toileting; dressing; personal hygiene; mobility; transferring; and eating.

**"Adult day services"** means care and services provided to a nonresident individual by the boarding home on the boarding home premises, for a period of time not to exceed ten continuous hours, and does not involve an overnight stay.

**"Ambulatory"** means capable of walking or traversing a normal path to safety without the physical assistance of another individual:

(1) **"Nonambulatory"** means unable to walk or traverse a normal path to safety without the physical assistance of another individual;

(2) **"Semiambulatory"** means physically and mentally capable of traversing a normal path to safety with the use of mobility aids, but unable to ascend or descend stairs without the physical assistance of another individual.

**"Applicant"** means the person, as defined in this section, that has submitted, or is in the process of submitting, an application for a boarding home license.

**"Basic services"** means housekeeping services, meals, nutritious snacks, laundry, and activities.

**"Bathing fixture"** means a bathtub, shower or sit-down shower.

**"Bathroom"** means a room containing at least one bathing fixture.

**"Boarding home"** means any home or other institution, however named, which is advertised, announced, or maintained for the express or implied purpose of providing housing, basic services, and assuming general responsibility for the safety and well-being of the residents, and may also provide domiciliary care, consistent with this chapter to seven or more residents after July 1, 2000. However, a boarding home that is licensed for three to six residents prior to or on July 1, 2000, may maintain its boarding home license as long as it is continually licensed as a boarding home. "Boarding home" does not include facilities certified as group training homes pursuant to RCW 71A.22.040, nor any home, institution or section thereof which is otherwise licensed and regulated under the provisions of state law providing specifically for the licensing and regulation of such home, institution or section thereof. Nor shall it include any independent senior housing, independent living units in continuing care retirement communities, or other similar living situations including those subsidized by the Department of Housing and Urban Development. "Boarding home" may also include persons associated with the boarding home to carry out its duties under this chapter.

**"Building code"** means the building codes and standards adopted by the Washington state building code council.

**"Caregiver"** means anyone providing hands-on personal care to another person including, but not limited to: Cuing, reminding or supervision of residents, on behalf of a boarding home, except volunteers who are directly supervised. Direct supervision means oversight by a person who has demonstrated competency in the basic training (and specialty training if required), or who has been exempted from

the basic training requirements, is on the premises, and is quickly and easily available to the caregiver.

**"Construction review services"** means the office of construction review services within the Washington state department of health.

**"Continuing care contract"** means, as stated in RCW 70.38.025, a contract providing a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services, which is conditioned upon the transfer of property, the payment of an entrance fee to the provider of such services, or the payment of periodic charges for the care and services involved. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

**"Continuing care retirement community"** means, as stated in RCW 70.38.025, an entity which provides shelter and services under continuing care contracts with its members and which sponsors or includes a health care facility or a health service.

**"Contractor"** means an agency or person who contracts with a licensee to provide resident care, services or equipment.

**"Crimes relating to financial exploitation"** means the same as "crimes relating to financial exploitation" as defined in RCW 43.43.830 or 43.43.842.

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

**"Dietitian"** means an individual certified under chapter 18.138 RCW.

**"Document"** means to record, with signature, title, date and time:

(1) Information about medication administration, medication assistance or disposal, a nursing care procedure, accident, occurrence or change in resident condition that may affect the care or needs of a resident; and

(2) Processes, events or activities that are required by law, rule or policy.

**"Domiciliary care"** means:

(1) Assistance with activities of daily living provided by the boarding home either directly or indirectly; or

(2) Health support services, if provided directly or indirectly by the boarding home; or

(3) Intermittent nursing services, if provided directly or indirectly by the boarding home.

**"Enforcement remedy"** means one or more of the department's responses to a boarding home's noncompliance with chapter 18.20 RCW and this chapter, as authorized by RCW 18.20.190.

**"Financial exploitation"** means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.-020(6).

**"Food service worker"** means according to chapter 246-217 WAC an individual who works (or intends to work) with or without pay in a food service establishment and han-

dles unwrapped or unpackaged food or who may contribute to the transmission of infectious diseases through the nature of his/her contact with food products and/or equipment and facilities. This does not include persons who simply assist residents with meals.

**"General responsibility for the safety and well-being of the resident"** means the provision of the following:

- (1) Prescribed general low sodium diets;
- (2) Prescribed general diabetic diets;
- (3) Prescribed mechanical soft foods;
- (4) Emergency assistance;
- (5) Monitoring of the resident;
- (6) Arranging health care appointments with outside health care providers and reminding residents of such appointments as necessary;
- (7) Coordinating health care services with outside health care providers consistent with WAC 388-78A-2350;
- (8) Assisting the resident to obtain and maintain glasses, hearing aids, dentures, canes, crutches, walkers, wheelchairs, and assistive communication devices;
- (9) Observation of the resident for changes in overall functioning;
- (10) Blood pressure checks as scheduled;
- (11) Responding appropriately when there are observable or reported changes in the resident's physical, mental, or emotional functioning; or
- (12) Medication assistance as permitted under RCW 69.41.085 and as described in RCW 69.41.010 and chapter 246-888 WAC.

**"Harm"** means a physical or mental or emotional injury or damage to a resident including those resulting from neglect or violations of a resident's rights.

**"Health support services"** means any of the following optional services:

- (1) Blood glucose testing;
- (2) Puree diets;
- (3) Calorie controlled diabetic diets;
- (4) Dementia care;
- (5) Mental health care; or
- (6) Developmental disabilities care.

**"Independent living unit"** means:

- (1) Independent senior housing;
- (2) Independent living unit in a continuing care retirement community or other similar living environments;
- (3) Boarding home unit where domiciliary services are not provided; or
- (4) Boarding home unit where one or more items listed under "general responsibilities" are not provided.

**"Independent senior housing"** means an independent living unit occupied by an individual or individuals sixty or more years of age.

**"Infectious"** means capable of causing infection or disease by entrance of organisms into the body, which grow and multiply there, including, but not limited to, bacteria, viruses, protozoans, and fungi.

**"Licensee"** means the person, as defined in this chapter, to whom the department issues the boarding home license.

**"Licensed resident bed capacity"** means the resident occupancy level requested by the licensee and approved by the department. All residents receiving domiciliary care or

the items or services listed under general responsibility for the safety and well-being of the resident as defined in this section count towards the licensed resident bed capacity. Adult day services clients do not count towards the licensed resident bed capacity.

**"Majority owner"** means any person that owns:

- (1) More than fifty percent interest; or
- (2) If no one person owns more than fifty percent interest, the largest interest portion; or
- (3) If more than one person owns equal largest interest portions, then all persons owning those equal largest interest portions.

**"Manager"** means the person defined in this chapter, providing management services on behalf of the licensee.

**"Management agreement"** means a written, executed agreement between the licensee and the manager regarding the provision of certain services on behalf of the licensee.

**"Mandated reporter":**

- (1) Is an employee of the department, law enforcement officer, social worker, professional school personnel, individual provider, an employee of a facility, an operator of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW; and

(2) For the purpose of the definition of mandated reporter, "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW (boarding homes), chapter 18.51 RCW (nursing homes), chapter 70.128 RCW (adult family homes), chapter 72.36 RCW (soldiers' homes), chapter 71A.20 RCW (residential habilitation centers), or any other facility licensed by the department.

**"Maximum facility capacity"** means the maximum number of individuals that the boarding home may serve at any one time, as determined by the department.

- (1) The maximum facility capacity includes all residents and respite care residents and adult day services clients.
- (2) The maximum facility capacity is equal to the lesser of:

(a) The sum of the number of approved bed spaces for all resident rooms (total number of approved bed spaces), except as specified in subsection (3); or

(b) Twice the seating capacity of the dining area(s) consistent with WAC 388-78A-2300 (1)(h); or

(c) The number of residents permitted by calculating the ratios of toilets, sinks, and bathing fixtures to residents consistent with WAC 388-78A-3030; or

(d) For boarding homes licensed on or before December 31, 1988, the total day room area in square feet divided by ten square feet, consistent with WAC 388-78A-3050; or

(e) For boarding homes licensed after December 31, 1988, the total day room area in square feet divided by twenty square feet, consistent with WAC 388-78A-3050.

(3) For the purposes of providing adult day services consistent with WAC 388-78A-2360, one additional adult day services client may be served, beyond the total number of approved bed spaces, for each additional sixty square feet of day room area greater than the area produced by multiplying

the total number of approved bed spaces by twenty square feet, provided that:

(a) There is ~~((a-[at]))~~ at least one toilet and one hand washing sink accessible to adult day services clients for every eight adult day services clients or fraction thereof;

(b) The total number of residents and adult day services clients does not exceed twice the seating capacity of the dining area(s) consistent with WAC 388-78A-2300 (1)(h); and

(c) The adult day services program area(s) and building do not exceed the occupancy load as determined by the local building official or state fire marshal.

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

**"Medication assistance"** means assistance with self-administration of medication rendered by a nonpractitioner to a resident of a boarding home in accordance with chapter 246-888 WAC.

**"Medication organizer"** means a container with separate compartments for storing oral medications organized in daily doses.

**"Medication service"** means any service provided either directly or indirectly by a boarding home related to medication administration, medication administration provided through nurse delegation, medication assistance, or resident self-administration of medication.

**"Neglect"** means:

(1) A pattern of conduct or inaction resulting in the failure to provide the goods and services that maintain physical or mental health of a resident, or that fails to avoid or prevent physical or mental harm or pain to a resident; or

(2) An act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the resident's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

**"Nonresident individual"** means an individual who resides in independent senior housing, independent living units in continuing care retirement communities, or in other similar living environments or in an unlicensed room located within a boarding home ~~((and))~~. A nonresident individual may receive one or more of the services listed in WAC ((388-78A-2030 (2)(a) through (g))) 388-78A-2032. A nonresident individual may not receive domiciliary care as defined in this section, directly or indirectly by the boarding home, and may not receive the items or services listed under general responsibility for the safety and well-being of the resident as defined in this section, except during the time the person is receiving adult day services as defined in this section.

**"Nonpractitioner"** means any individual who is not a practitioner as defined in WAC 388-78A-2020 and chapter 69.41 RCW.

**"Nurse"** means an individual currently licensed under chapter 18.79 RCW as either a:

(1) **"Licensed practical nurse"** (LPN); or

(2) **"Registered nurse"** (RN).

**"Over-the-counter (OTC) medication"** means any medication that may be legally purchased without a prescrip-

tive order, including, but not limited to, aspirin, antacids, vitamins, minerals, or herbal preparations.

**"Person"** means any individual, firm, partnership, corporation, company, association, joint stock association or any other legal or commercial entity.

**"Physician"** means an individual licensed under chapter 18.57 or 18.71 RCW.

**"Practitioner"** includes a licensed physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant. Refer to chapter 69.41 RCW for a complete listing of practitioners.

**"Prescribed medication"** means any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

**"Prescriber"** means a health care practitioner authorized by Washington state law to prescribe drugs.

**"Problem"** means a violation of any WAC or RCW applicable to the operation of a boarding home:

(1) **"Recurring problem"** means, for all purposes other than those described in RCW 18.20.400, that the department has cited the boarding home for a violation of WAC or RCW and the circumstances of (a) or (b) of this subsection are present:

(a) The department previously imposed an enforcement remedy for a violation of the same section of WAC or RCW for substantially the same problem following any type of inspection within the preceding thirty-six months; or

(b) The department previously cited a violation under the same section of WAC or RCW for substantially the same problem following any type of inspection on two occasions within the preceding thirty-six months.

(c) If the previous violation in (a) or (b) of this subsection was pursuant to WAC or RCW that has changed at the time of the new violation, citation to the equivalent current WAC or RCW section is sufficient.

(d) When there is a change in licensees between the first and the second or third citations, the new licensee must accept, and the department will consider, the prior licensee's compliance and enforcement record as part of the new licensee's compliance record at that boarding home if any person affiliated with the new licensee was affiliated with the prior licensee at the same boarding home. A person is considered affiliated with the licensee if the person is an applicant for the boarding home license, or is listed on the license application as a partner, officer, director, or majority owner of the applicant.

(2) **"Serious problem"** means:

(a) There has been a violation of a WAC or RCW; and

(b) Significant harm has actually occurred to a resident;

or

(c) It is likely that significant harm or death will occur to a resident.

(3) **"Uncorrected problem"** means the department has cited a violation of WAC or RCW following any type of inspection and the violation remains uncorrected at the time the department makes a subsequent inspection for the specific purpose of verifying whether such violation has been corrected. When a change in licensees occurs, the new licensee is responsible for correcting any remaining viola-

tions that may exist, including complying with any plan of correction in effect immediately prior to the change in licensees.

**"Prospective resident"** means an individual who is seeking admission to a licensed boarding home and who has completed and signed an application for admission, or such application for admission has been completed and signed in their behalf by their legal representative if any, and if not, then the designated representative if any.

**"Reasonable accommodation"** and **"reasonably accommodate"** have the meaning given in federal and state antidiscrimination laws and regulations which include, but are not limited to, the following:

(1) Reasonable accommodation means that the boarding home must:

(a) Not impose admission criteria that excludes individuals unless the criteria is necessary for the provision of boarding home services;

(b) Make reasonable modification to its policies, practices or procedures if the modifications are necessary to accommodate the needs of the resident;

(c) Provide additional aids and services to the resident.

(2) Reasonable accommodations are not required if:

(a) The resident or individual applying for admission presents a significant risk to the health or safety of others that cannot be eliminated by the reasonable accommodation;

(b) The reasonable accommodations would fundamentally alter the nature of the services provided by the boarding home; or

(c) The reasonable accommodations would cause an undue burden, meaning a significant financial or administrative burden.

**"RCW"** means Revised Code of Washington.

**"Records"** means:

(1) **"Active records"** means the current, relevant documentation regarding residents necessary to provide care and services to residents; or

(2) **"Inactive records"** means historical documentation regarding the provision of care and services to residents that is no longer relevant to the current delivery of services and has been thinned from the active record.

**"Resident"** means an individual who:

(1) Chooses to reside in a boarding home, including an individual receiving respite care;

(2) Is not related by blood or marriage to the operator of the boarding home;

(3) Receives basic services; and

(4) Receives one or more of the services listed under general responsibility for the safety and well-being of the resident, and may receive domiciliary care or respite care provided directly, or indirectly, by the boarding home.

**"Resident's representative"** means:

(1) The legal representative who is the person or persons identified in RCW 7.70.065 and who may act on behalf of the resident pursuant to the scope of their legal authority. The legal representative shall not be affiliated with the licensee, boarding home, or management company, unless the affiliated person is a family member of the resident; or

(2) If there is no legal representative, a person designated voluntarily by a competent resident in writing, to act in the

resident's behalf concerning the care and services provided by the boarding home and to receive information from the boarding home if there is no legal representative. The resident's representative may not be affiliated with the licensee, boarding home, or management company, unless the affiliated person is a family member of the resident. The resident's representative under this subsection shall not have authority to act on behalf of the resident once the resident is no longer competent. The resident's competence shall be determined using the criteria in RCW 11.88.010 (1)(e).

**"Respite care"** means short-term care for any period in excess of twenty-four continuous hours for a resident to temporarily relieve the family or other caregiver of providing that care.

**"Restraint"** means any method or device used to prevent or limit free body movement, including, but not limited to:

(1) Confinement, unless agreed to as provided in WAC 388-78A-2370;

(2) **"Chemical restraint"** which means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms; and

(3) **"Physical restraint"** which means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, is used for discipline or convenience, and not required to treat the resident's medical symptoms.

**"Room"** means a space set apart by floor to ceiling partitions on all sides with all openings provided with doors or windows.

(1) **"Sleeping room"** means a room where a resident is customarily expected to sleep and contains a resident's bed.

(2) **"Resident living room"** means the common space in a resident unit that is not a sleeping room, bathroom or closet.

**"Significant change"** means a change in the resident's physical, mental, or psychosocial status that causes either life-threatening conditions or clinical complications.

**"Special needs"** means a developmental disability, mental illness, or dementia.

**"Staff person"** means any boarding home employee or temporary employee or contractor, whether employed or retained by the licensee or any management company, or volunteer.

**"State fire marshal"** means the director of fire protection under the direction of the chief of the Washington state patrol.

**"Toilet"** means a disposal apparatus used for urination and defecation, fitted with a seat and flushing device.

**"Volunteer"** means an individual who interacts with residents without reimbursement.

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

(1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(2) Found incapacitated under chapter 11.88 RCW; or

(3) Who has a developmental disability as defined under RCW 71A.10.020; or

(4) Admitted to any facility, including any boarding home; or



(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(6) Receiving services from an individual provider.

(7) For the purposes of requesting and receiving background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

"WAC" means Washington Administrative Code.

"Willful" means the deliberate, or nonaccidental, action or inaction by an alleged perpetrator that he/she knows or reasonably should have known could cause a negative outcome, including harm, injury, pain or anguish.

"WISHA" means the Washington Industrial Safety and Health Act, chapter 49.17 RCW administered by the Washington state department of labor and industries.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

**WAC 388-78A-2030 ((Applicability)) Boarding home license required.** (1) A ~~((person must have a))~~ boarding home license ~~((issued by the department under chapter 18.20 RCW and this chapter, except as otherwise exempted by RCW 18.20.170 and subsection (2) of this section, if the person advertises as, or operates, or maintains a facility that meets the definition of a "boarding home" in this chapter, within Washington state and provides housing, one or more basic services, and one or more of the following))~~ is required when any person other than an outside service provider, under RCW 18.20.380, or family member:

(a) Assumes general responsibility for the safety and well-being of the residents;

(b) Provides assistance with activities of daily living, either directly or indirectly;

(c) Provides health support services, either directly or indirectly; or

(d) Provides intermittent nursing services, either directly or indirectly.

(2) A boarding home license is ~~((not required for one or more of the following services that may be provided to a non-resident individual. These services may not include continual care or supervision of a nonresident individual without a boarding home license:~~

~~(a) Emergency assistance provided on an intermittent or nonroutine basis to any nonresident individual; or~~

~~(b) Systems employed by independent senior housing, or independent living units in continuing care retirement communities, to respond to the potential need for emergency services for nonresident individuals; or~~

~~(c) Infrequent, voluntary, and nonscheduled blood pressure checks for nonresident individuals; or~~

~~(d) Nurse referral services provided at the request of a nonresident individual to determine whether referral to an outside health care provider is recommended; or~~

~~(e) Making health care appointments at the request of nonresident individuals; or~~

~~(f) Preadmission assessment, at the request of the non-resident individual; or~~

~~(g) Services customarily provided under landlord tenant agreements governed by the Residential Landlord-Tenant Act, chapter 59.18 RCW; or~~

~~(h) Housing nonresident individuals who, without ongoing assistance from the boarding home, initiate and arrange for services with a practitioner licensed under Title 18 RCW or a home health, hospice, or home care agency licensed under chapter 70.127 RCW, or other persons as permitted by the boarding home.~~

~~(3) This section does not prohibit a boarding home from furnishing written information concerning available community resources to nonresident individuals or the individual's family members or legal representatives. However, the boarding home may not require the use of any particular service provider))~~ required to operate or maintain a boarding home as defined in chapter 18.20 RCW and this chapter.

### NEW SECTION

**WAC 388-78A-2032 Boarding home license not required.** (1) A boarding home license is not required for the housing, or services, customarily provided under landlord tenant agreements governed by the residential tenant act, chapter 59.18 RCW, or when housing nonresident individuals who chose to participate in the programs or services in subsection (2) of this section when offered by the boarding home licensee or the licensee's contractor.

(2) A boarding home license is not required for one or more of the following services that may, upon request of the nonresident, be provided to a nonresident individual:

(a) Emergency assistance provided on an intermittent or nonroutine basis;

(b) Systems including technology-based monitoring devices employed by independent senior housing, or independent living units in continuing care retirement communities, to respond to the potential need for emergency services;

(c) Scheduled and nonscheduled blood pressure checks;

(d) Nursing assessment services to determine whether referral to an outside health care provider is recommended;

(e) Making and reminding of health care appointments;

(f) Preadmission assessment, for the purposes of transitioning to a licensed care setting;

(g) Medication assistance which may include reminding or coaching the nonresident individual, opening the nonresident's medication container, using an enabler, and handing prefilled insulin syringes to the nonresident individual;

(h) Prefilling insulin syringes which must be performed by a nurse licensed under chapter 18.79 RCW;

(i) Falls risk assessment;

(j) Nutrition management and education services;

(k) Dental services;

(l) Wellness programs; or

(m) Services customarily provided under the landlord tenant agreements governed by the residential landlord-tenant act, chapter 59.18 RCW.

(3) This section does not prohibit a boarding home from furnishing written information concerning available community resources to nonresident individuals or the individual's family members or legal representatives. However, the

boarding home may not require the use of any particular service provider.

#### NEW SECTION

**WAC 388-78A-2035 Disclosure statement to nonresident individuals.** (1) A boarding home must provide each nonresident individual a disclosure statement upon admission and at the time that additional services are requested by the nonresident individual.

(2) The disclosure statement must notify the nonresident individual that:

(a) The resident rights of chapter 70.129 RCW do not apply to nonresident individuals;

(b) Licensing requirements for boarding homes under this chapter do not apply to nonresident units; and

(c) The jurisdiction of the long-term care ombudsman does not apply to nonresident individuals and nonresident units.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

**WAC 388-78A-2130 Service agreement planning.** The boarding home must:

(1) Develop an initial resident service plan, based upon discussions with the resident and the resident's representative if the resident has one, and the preadmission assessment of a qualified assessor, upon admitting a resident into a boarding home. The boarding home must ensure the initial resident service plan:

(a) Integrates the assessment information provided by the department's case manager for each resident whose care is partially or wholly funded by the ~~((department))~~ health care authority;

(b) Identifies the resident's immediate needs; and

(c) Provides direction to staff and caregivers relating to the resident's immediate needs, capabilities, and preferences.

(2) Complete the negotiated service agreement for each resident using the resident's preadmission assessment, initial resident service plan, and full assessment information, within thirty days of the resident moving in;

(3) Review and update each resident's negotiated service agreement consistent with WAC 388-78A-2120:

(a) Within a reasonable time consistent with the needs of the resident following any change in the resident's physical, mental, or emotional functioning; and

(b) Whenever the negotiated service agreement no longer adequately addresses the resident's current assessed needs and preferences.

(4) Review and update each resident's negotiated service agreement as necessary following an annual full assessment;

(5) Involve the following persons in the process of developing and updating a negotiated service agreement:

(a) The resident;

(b) The resident's representative to the extent he or she is willing and capable, if the resident has one;

(c) Other individuals the resident wants included;

(d) The department's case manager, if the resident is a recipient of medicaid assistance, or any private case manager, if available; and

(e) Staff designated by the boarding home.

(6) Ensure:

(a) Individuals participating in developing the resident's negotiated service agreement:

(i) Discuss the resident's assessed needs, capabilities, and preferences; and

(ii) Negotiate and agree upon the care and services to be provided to support the resident; and

(b) Staff persons document in the resident's record the agreed upon plan for services.

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

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

(1) Washington state background checks including:

(a) Department and department of health findings;

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

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

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

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

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

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

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

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

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

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

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

(2) The boarding home may also establish, maintain and follow a written agreement with home health, hospice, or home care agencies licensed under chapter 70.127 RCW or

nursing pools registered under chapter 18.52C RCW in order to ensure that the agency or pool staff meet the requirements of WAC 388-78A-2470.

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

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

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

- (a) Orientation and safety;
- (b) Basic;
- (c) Specialty for dementia, mental illness and/or developmental disabilities when serving residents with any of those primary special needs;
- (d) Cardiopulmonary resuscitation and first aid; and
- (e) Continuing education.

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

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

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

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

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

- (1) Submit to the department a complete license application on forms designated by the department at least ninety days prior to the proposed effective date of the license;
- (2) Submit all relevant attachments specified in the application;
- (3) Submit department background authorization forms as required in WAC 388-78A-2462 and 388-78A-2463;
- (4) Sign the application;
- (5) Submit the license fee as specified in WAC 388-78A-3230;
- (6) Submit verification that construction plans have been approved by construction review services;
- (7) Submit a revised application before the license is issued if any information has changed since the initial license application was submitted;
- (8) Submit a revised application containing current information about the proposed licensee or any other persons

named in the application, if a license application is pending for more than one year; and

(9) If the licensee's agent prepares an application on the licensee's behalf, the licensee must review, sign and attest to the accuracy of the information contained in the application.

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

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

AMENDATORY SECTION (Amending WSR 09-06-063, filed 3/2/09, effective 4/2/09)

**WAC 388-78A-2780 Change in licensee/change of ownership—Notice to department and residents.** (1) In order to change the licensee of a boarding home, the current licensee must notify the following in writing of the proposed change in licensee:

- (a) The department; and
- (b) All residents, or resident representatives (if any).

(2) The licensee must include the following information in the written notice:

(a) Name of the present licensee and prospective licensee;

(b) Name and address of the boarding home for which the licensee is being changed;

(c) Date of proposed change; and

(d) If the boarding home contracts with the ((department)) health care authority or other public agencies that may make payments for residential care on behalf of residents, the anticipated effect, such as discharge from the boarding home, the change of licensee will have on residents whose care and services are supported through these contracts.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

**WAC 388-78A-2800 Changes in licensed bed capacity.** To change the licensed bed capacity in a boarding home, the boarding home must:

- (1) Submit a completed request for approval to the department at least one day before the intended change;
- (2) Submit the prorated fee ((required according to WAC 388-78A-3230)) for additional beds if applicable; and
- (3) Post an amended license obtained from the department, indicating the new bed capacity.

AMENDATORY SECTION (Amending WSR 10-21-036, filed 10/12/10, effective 10/29/10)

**WAC 388-78A-3230 Fees.** The boarding home must:

(1) Submit an annual per bed license fee ((~~of one hundred six dollars per bed of the licensed resident bed capacity as determined by and in accordance with RCW 18.20.050~~)) based on the licensed bed capacity and as established in the state's biennial omnibus appropriation act and any amendment or addition made to that act;

(2) ((~~Submit an additional one hundred fifty dollars when billed by the department for:~~

~~(a) A third on-site visit required by the boarding home's failure to adequately correct problems identified in a statement of deficiencies; and~~

~~(b) A full out-of-sequence inspection resulting from information gathered during a complaint investigation.~~

~~(3))~~ Submit an additional late fee in the amount of ten dollars per day from the license renewal date until the date of mailing the fee, as evidenced by the postmark; and

~~((4))~~ (3) Submit to construction review services a fee for the review of the construction documents per the review fee schedule that is based on the project cost.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 388-78A-2463	Background check— National fingerprint checks—Who is required to have.
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**WSR 11-18-003  
PROPOSED RULES  
BOARD OF  
PILOTAGE COMMISSIONERS**

[Filed August 24, 2011, 1:19 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 363-116-185 Pilotage rates for the Grays Harbor pilotage district.

Hearing Location(s): 2901 Third Avenue, 1st Floor, Agate Conference Room, Seattle, WA 98121, on October 13, 2011, at 9:30 a.m.

Date of Intended Adoption: October 13, 2011.

Submit Written Comments to: Captain Harry Dudley, Chairman, 2901 Third Avenue, Suite 500, Seattle, WA 98121, e-mail [larsonp@wsdot.wa.gov](mailto:larsonp@wsdot.wa.gov), fax (206) 515-3906, by September 29, 2011.

Assistance for Persons with Disabilities: Contact Shawna Erickson by October 10, 2011, (206) 515-3647.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to establish a 2012 Grays Harbor pilotage district annual tariff.

The proposed rule reflects an effective overall decrease to the tariff of three percent or \$159 per pilotage job.

The proposal as requested by the Port of Grays Harbor calls for an across-the-board reduction in all charges by 3.33 percent except as specified below:

Boarding Charge: A decrease from \$1,030 to \$1,000.

Pension Charge: An increase from \$271 to \$280\*.

Travel Allowance: No change.

\*As the administrator of Grays Harbor pension funds for retired Grays Harbor pilots, Puget Sound pilots provides this calculation.

Reasons Supporting Proposal: RCW 88.16.035 requires that a tariff be set annually.

Statutory Authority for Adoption: RCW 88.16.035.

Statute Being Implemented: Chapter 88.16 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Current rates for the Grays Harbor pilotage district expire on December 31, 2011. New rates must be set accordingly.

All requirements necessary to amend the existing Grays Harbor pilotage district tariff as set forth in chapter 53.08 RCW have been met.

The board may adopt a rule that varies from the proposed rule upon consideration of presentations and written comments from the public and any other interested parties.

Name of Proponent: Port of Grays Harbor, public.

Name of Agency Personnel Responsible for Drafting: Peggy Larson, 2901 Third Avenue, Seattle, WA 98121, (206) 515-3904; Implementation and Enforcement: Board of Pilotage Commissioners, 2901 Third Avenue, Seattle, WA 98121, (206) 515-3904.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule is being considered in the context of the required annual review of the rates charged for pilotage services. The application of the proposed revisions is clear in the description of the proposal and its anticipated effects as well as the proposed tariff below.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this rule adoption. The Washington state board of pilotage commissioners is not a listed agency in RCW 34.05.328 (5)(a)(i).

August 24, 2011

Peggy Larson

Executive Director

**AMENDATORY SECTION** (Amending WSR 11-10-052, filed 4/29/11, effective 5/30/11)

**WAC 363-116-185 Pilotage rates for the Grays Harbor pilotage district.** Effective 0001 hours ~~((August 1, 2010))~~ January 1, 2012, through 2400 hours December 31, ~~((2011))~~ 2012.

**CLASSIFICATION**

Charges for piloting of vessels in the inland waters and tributaries of Grays Harbor shall consist of the following:

**Draft and Tonnage Charges:**

Each vessel shall be charged according to its draft and tonnage for each vessel movement inbound to the Grays Harbor pilotage district, and for each movement outbound from the district.

**RATE**

CLASSIFICATION	RATE
Draft	\$ <del>((100.12))</del> <u>96.79</u> per meter or \$ <del>((30.51))</del> <u>29.49</u> per foot
Tonnage	\$ <del>((0.287))</del> <u>0.277</u> per net registered ton
Minimum Net Registered Tonnage	\$ <del>((1,004.00))</del> <u>970.00</u>
Extra Vessel (in case of tow)	\$ <del>((562.00))</del> <u>543.00</u>

Provided that, due to unique circumstances in the Grays Harbor pilotage district, vessels that call, and load or discharge cargo, at Port of Grays Harbor Terminal No. 2 shall be charged \$~~((5,562.00))~~ 5,377.00 per movement for each vessel movement inbound to the district for vessels that go directly to Terminal No. 2, or that go to anchor and then go directly to Terminal No. 2, or because Terminal No. 2 is not available upon arrival that go to layberth at Terminal No. 4 (without loading or discharging cargo) and then go directly to Terminal No. 2, and for each vessel movement outbound from the district from Terminal No. 2, and that this charge shall be in lieu of only the draft and tonnage charges listed above.

**Boarding Charge:**

Per each boarding/deboarding from a boat or helicopter \$~~((1,030.00))~~ 1,000.00

**Harbor Shifts:**

For each shift from dock to dock, dock to anchorage, anchorage to dock, or anchorage to anchorage \$~~((699.00))~~ 676.00

Delays per hour \$~~((164.00))~~ 159.00

Cancellation charge (pilot only) \$~~((274.00))~~ 265.00

Cancellation charge (boat or helicopter only) \$~~((822.00))~~ 795.00

**Two Pilots Required:**

When two pilots are employed for a single vessel transit, the second pilot charge shall include the harbor shift charge of \$~~((699.00))~~ 676.00 and in addition, when a bridge is transited the bridge transit charge of \$~~((301.00))~~ 291.00 shall apply.

**Pension Charge:**

Charge per pilotage assignment, including cancellations \$~~((271.00))~~ 280.00

**Travel Allowance:**

Transportation charge per assignment \$100.00

Pilot when traveling to an outlying port to join a vessel or returning through an outlying port from a vessel which has been piloted to sea shall be paid \$931.00 for each day or fraction thereof, and the travel expense incurred.

**Bridge Transit:**

Charge for each bridge transited \$~~((301.00))~~ 291.00

Additional surcharge for each bridge transited for vessels in excess of 27.5 meters in beam \$~~((833.00))~~ 805.00

**Miscellaneous:**

The balance of amounts due for pilotage rates not paid within 30 days of invoice will be assessed at 1 1/2% per month late charge.

**WSR 11-18-028****WITHDRAWAL OF PROPOSED RULES****GROWTH MANAGEMENT  
HEARINGS BOARDS**

(By the Code Reviser's Office)

[Filed August 30, 2011, 9:06 a.m.]

34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

WAC 242-03-090, proposed by the growth management hearings board in WSR 11-05-087 appearing in issue 11-05 of the State Register, which was distributed on March 2, 2011, is withdrawn by the code reviser's office under RCW

**WSR 11-18-033**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
 [Filed August 30, 2011, 1:20 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 246-826-100 amending the scope of practice for health care assistants to limit the administration of drugs listed in RCW 18.135.130 to health care assistants certified in categories C or E.

Hearing Location(s): Department of Health, Point Plaza East, Room 152, 310 Israel Road S.E., Tumwater, WA 98501, on October 14, 2011, at 9:00 a.m.

Date of Intended Adoption: October 19, 2011.

Submit Written Comments to: Erin Obenland, P.O. Box 47852, Olympia, WA 98504-7852, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by October 14, 2011.

Assistance for Persons with Disabilities: Contact Erin Obenland by October 7, 2011, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SHB 1304 (chapter 43, Laws of 2011) allows only health care assistants certified in categories C or E to administer certain over-the-counter and prescription drugs. The rules need to be amended to reflect the change in the law.

Reasons Supporting Proposal: SHB 1304 amends the scope of practice for health care assistants so that only health care assistants certified in categories C or E can administer the drugs that are listed in RCW 18.135.130. The current rule needs to be amended to specify that no other categories but those health care assistants certified in C or E can administer the drugs outlined in the law.

Statutory Authority for Adoption: Chapter 18.135 RCW, SHB 1304 (chapter 43, Laws of 2011).

Statute Being Implemented: Chapter 18.135 RCW, SHB 1304 (chapter 43, Laws of 2011).

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

Name of Proponent: Department of health, health care assistant program, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Erin Obenland, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4945.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference without material change federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

August 30, 2011  
 Mary C. Selecky  
 Secretary

AMENDATORY SECTION (Amending WSR 10-19-044, filed 9/13/10, effective 10/14/10)

**WAC 246-826-100 Health care assistant classification.** (1) There are seven categories of health care assistants. The table in this subsection outlines the tasks authorized for each category of health care assistant. ~~((The administration of drugs under RCW 18.135.130 expires on July 1, 2013.))~~

Categories	A	B	C	D	E	F	G
May perform:	Venous and apillary invasive procedures for blood withdrawal	Arterial <del>((invasion))</del> <u>invasive</u> procedures for blood withdrawal	Intradermal, subcutaneous and intramuscular injections for diagnostic agents and administer skin tests	Intravenous injections for diagnostic agents	Intradermal, subcutaneous and intramuscular injections for therapeutic agents and administer skin tests	Intravenous injections for therapeutic agents	Hemodialysis
Injection	Not authorized	Not authorized	V, I	I	V, I	I	***
Oral	V	V	D, V	V	D, V	V	V
Topical	<del>((D;))</del> V	<del>((D;))</del> V	D, V	<del>((D;))</del> V	D, V	<del>((D;))</del> V	<del>((D;))</del> V, ***
Nasal	<del>((D;))</del> V	<del>((D;))</del> V	D, V	<del>((D;))</del> V	D, V	<del>((D;))</del> V	<del>((D;))</del> V, ****
Rectal	<del>((D))</del> Not authorized	<del>((D))</del> Not authorized	D	<del>((D))</del> Not authorized	D	<del>((D))</del> Not authorized	<del>((D))</del> Not authorized
Otic	<del>((D))</del> Not authorized	<del>((D))</del> Not authorized	D	<del>((D))</del> Not authorized	D	<del>((D))</del> Not authorized	<del>((D))</del> Not authorized
Ophthalmic	<del>((D))</del> Not authorized	<del>((D))</del> Not authorized	D	<del>((D))</del> Not authorized	D	<del>((D))</del> Not authorized	<del>((D))</del> Not authorized
Inhaled	<del>((D))</del> Not authorized	<del>((D))</del> Not authorized	D	<del>((D))</del> Not authorized	D	<del>((D))</del> Not authorized	<del>((D))</del> ****

D - Drugs administered under RCW 18.135.130.  
 I - Drugs by injection under WAC 246-826-200.  
 V - Vaccines administered under RCW 18.135.120.  
 \*\*\* - Drugs by injection listed under WAC 246-826-303 (2)(c).  
 \*\*\*\* - Oxygen administration listed under WAC 246-826-303 (3)(a).

~~(2) ((A written order from a supervising health care practitioner authorizing the administration of drugs listed in RCW 18.135.130 must be provided to the health care assistant.))~~  
The administration of drugs under RCW 18.135.130 expires on July 1, 2013, and only applies to a health care assistant certified in category C or E.

(3) A health care assistant certified in category C or E must have a written order from a supervising health care practitioner authorizing the administration of drugs listed in RCW 18.135.130.

(4) A health care assistant((s)) may perform supervised delegated functions as provided under WAC 246-826-020 and 246-826-030.

~~((4))~~ (5) A health care assistant((s)) certified in category C or E must be able to demonstrate initial and ongoing competency to the supervisor or delegator on the administration of authorized drugs listed in RCW 18.135.130. Competency may be demonstrated by:

(a) Practicing techniques in a simulated situation; or

(b) Observing and performing procedures on patients until the health care assistant demonstrates proficiency to administer authorized drugs identified in the table in subsection (1) of this section; or

(c) Documenting all training on a checklist appropriate to the facility of the administration of drugs by the health care assistant. The health care assistant must complete and sign the form, have the form signed by the supervisor and the delegator, and have the form placed in their employee personnel file; or

(d) Other methods determined by the delegator.

~~((5))~~ (6) The supervisor or delegator is responsible for the patient's care. The tasks delegated to any category of health care assistant must be based on the health care assistant's individual education and training.

#### WSR 11-18-044

#### WITHDRAWAL OF PROPOSED RULES OFFICE OF INSURANCE COMMISSIONER

[Filed August 31, 2011, 10:03 a.m.]

The insurance commissioner is withdrawing the CR-102 proposed rule for R 2011-08 Long-term care partnership filed on July 20, 2011, and published by the code reviser in WSR 11-15-082.

Mike Kreidler

#### WSR 11-18-085

#### PROPOSED RULES OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2011-08—Filed September 7, 2011, 8:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-10-069.

Title of Rule and Other Identifying Information: Long-term care partnership.

Hearing Location(s): OIC Tumwater Office, Training Room 120, 5000 Capitol Boulevard, Tumwater, WA, <http://www.insurance.wa.gov/about/directions.shtml>, on October 11, 2011, at 9:00 a.m.

Date of Intended Adoption: October 17, 2011.

Submit Written Comments to: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, e-mail [kacys@oic.wa.gov](mailto:kacys@oic.wa.gov), fax (360) 586-0139, by October 10, 2011.

Assistance for Persons with Disabilities: Contact Lorrie [Lorie] Villaflores by October 7, 2011, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 48.85.030 was amended during the 2011 legislative session to allow long-term care partnership policies to be marketed in Washington state. These proposed rules amend chapter 284-83 WAC to align with the amended statute and to implement the long-term care partnership program.

Reasons Supporting Proposal: These proposed rules make necessary changes to allow long-term care partnership policies to be issued in Washington state.

Statutory Authority for Adoption: RCW 48.02.060 and 48.85.030.

Statute Being Implemented: RCW 48.85.030.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0248 [98504-0258], (360) 725-7041; Implementation: Beth Berendt, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7117; and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The only businesses affected by this proposed rule are long-term care product insurers. None of the active, licensed long-term care product insurers in Washington state are domestic small businesses. Therefore a small business economic impact statement is not required for this proposed rule.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Kacy Scott, P.O. Box 40255, Olympia, WA 98504-0255, phone (360) 725-7041, fax (360) 586-3109, e-mail [kacys@oic.wa.gov](mailto:kacys@oic.wa.gov).

September 7, 2011

Mike Kreidler

Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2008-09, filed 11/24/08, effective 12/25/08)

**WAC 284-83-140 Qualified long-term care insurance policies—Additional standards for benefit triggers.** (1) For purposes of this section the following definitions apply:

(a) "Qualified long-term care services" means services that meet the requirements of Section 7702B(c)(1) of the

Internal Revenue Code of 1986, as amended, including: Necessary diagnostic, preventive, therapeutic, curative, treatment, mitigation and rehabilitative services, and maintenance or personal care services which are required by a chronically ill individual, and are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

(b)(i) "Chronically ill individual" has the meaning of Section 7702B (c)(2) of the Internal Revenue Code of 1986, as amended. Under this provision, a chronically ill individual means any individual who has been certified by a licensed health care practitioner as:

(A) Being unable to perform (without substantial assistance from another individual) at least two activities of daily living for a period of at least ninety days due to a loss of functional capacity; or

(B) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

(ii) The term "chronically ill individual" does not include an individual otherwise meeting these requirements unless within the preceding twelve-month period a licensed health care practitioner certified that the individual meets these requirements.

(c) "Licensed health care practitioner" means a physician, as defined in Section 1861 (r)(1) of the Social Security Act, a registered professional nurse, licensed social worker or other individual who meets requirements prescribed by the federal Secretary of the Treasury.

(d) "Maintenance or personal care services" means any care the primary purpose of which is the provision of needed assistance with any of the disabilities as a result of which the individual is a chronically ill individual (including the protection from threats to health and safety due to severe cognitive impairment).

(2) A qualified long-term care insurance policy must pay only for qualified long-term care services received by a chronically ill individual provided pursuant to a plan of care prescribed by a licensed health care practitioner.

(3) A qualified long-term care insurance policy must condition the payment of benefits on a determination ~~((of)) that the ((insured's inability to perform activities of daily living for an expected period of at least ninety days due to a loss of functional capacity or to severe cognitive impairment)) insured is a chronically ill individual as defined in subsection (1)(b)(i) of this section.~~

(4) Certifications regarding activities of daily living and cognitive impairment required pursuant to subsection (3) of this section must be performed by a licensed or certified physician, registered professional nurse, licensed social worker, or other individual who meet requirements prescribed by the federal Secretary of the Treasury.

(5) Certifications required pursuant to subsection (3) of this section may be performed by a licensed health care professional at the direction of the issuer as is reasonably necessary with respect to a specific claim; except that when a licensed health care practitioner has certified that the insured is unable to perform activities of daily living for an expected period of at least ninety days due to a loss of functional capacity and the insured is in claim status, the certification

may not be rescinded and additional certifications may not be performed until after the expiration of the ninety-day period.

(6) Qualified long-term care insurance policies must include a clear description of the process for appealing and resolving disputes with respect to benefit determinations.

## LONG-TERM CARE PARTNERSHIP PROGRAM

### NEW SECTION

**WAC 284-83-400 Purpose and authority.** WAC 284-83-400 through 284-83-420 is adopted pursuant to RCW 48.85.030 and 48.85.040. The purpose of these sections is to effectuate chapter 48.85 RCW, the Washington Long-Term Care Partnership Act. Pursuant to RCW 48.85.030, these sections establish minimum standards and disclosure requirements to be met by insurers, health care service contractors, health maintenance organizations, and fraternal benefit societies with respect to long-term care partnership insurance policies to include: Contracts, certificates, riders, and endorsements.

### NEW SECTION

**WAC 284-83-405 Applicability and scope.** (1) WAC 284-83-400 through 284-83-420 applies to any qualified long-term care insurance partnership policy, as defined by federal law and this chapter.

(2) These sections do not apply to medicare supplement policies regulated under chapters 48.66 RCW and 284-55 or 284-66 WAC; policies or contracts between a continuing care retirement community and its residents; or to long-term care insurance policies that are not intended to provide asset protection under chapter 48.85 RCW.

(3) Policies that do not meet the requirements of the Washington Long-Term Care Partnership Act and the requirements of this chapter may not be advertised, issued or delivered in this state as partnership policies.

### NEW SECTION

**WAC 284-83-410 Minimum standards for long-term care partnership policies.** Every long-term care partnership policy must meet the standards for long-term care policies or contracts in chapters 48.83 and 48.85 RCW and this chapter, unless specifically provided otherwise.

(1) As used in WAC 284-83-400 through 284-83-420, "qualified long-term care partnership policy" or "partnership policy" means a long-term care policy that meets all of the following additional requirements:

(a) The policy was issued on or after January 1, 2012, or exchanged as provided in WAC 284-83-415 on or after January 1, 2012, and covers an insured who was a resident of this state or of another state that has entered into a reciprocal agreement with this state when coverage first became effective under the policy.

(b) The policy is a tax qualified long-term care insurance policy as defined in Section 7702B(b) of the Internal Revenue Code of 1986 (26 U.S.C. 7702B(b)).

(c) The policy provides the following inflation protection:



(i) If the policy is sold to an individual who has not attained age sixty-one as of the date of purchase, the policy must provide automatic annual compounded inflation increases at a rate not less than three percent or automatic simple inflation increases at a rate based on changes in the consumer price index, not to be less than zero percent.

(ii) If the policy is sold to an individual who has attained age sixty-one but has not attained age seventy-six as of the date of purchase, the policy must provide automatic simple inflation increases at a rate not less than three percent or automatic simple inflation increases at a rate based on changes in the consumer price index, not to be less than zero percent.

(iii) If the policy is sold to an individual who has attained age seventy-six as of the date of purchase, the policy may, but is not required to, provide automatic simple inflation increases at a rate based on changes in the consumer price index, not to be less than zero percent.

(iv) In addition to the inflation protection requirements set forth in (c)(i), (ii) and (iii) of this subsection, issuers may offer an applicant of any age the option to purchase a policy which provides automatic compounded inflation increases at the fixed rate of five percent.

(v) For purposes of this section, "consumer price index" means the consumer price index for all urban consumers, U.S. city average, all items, as determined by the Bureau of Labor Statistics of the United States Department of Labor.

(2) Issuers must file a long-term care insurance policy for approval for use as a partnership policy. The long-term care Partnership Policy Certification Form must be completed and accompany the request for approval. The form is available on the commissioner's web site: [www.insurance.wa.gov](http://www.insurance.wa.gov).

(3) Issuers requesting to make use of a previously approved policy form as a qualified state long-term care partnership policy must:

(a) Submit to the commissioner a Partnership Policy Certification Form signed by an officer of the company; and

(b) File for approval an amendatory rider or endorsement indicating the policy is partnership qualified.

(4) An issuer or its agent, soliciting or offering to sell a policy that is intended to qualify as a partnership policy, must provide to each prospective applicant a Partnership Program Notice found on the commissioner's web site: [www.insurance.wa.gov](http://www.insurance.wa.gov), outlining the requirements and benefits of a partnership policy. The Partnership Program Notice must be provided with the required outline of coverage.

(5) A partnership policy issued for delivery in Washington must be accompanied by a Partnership Status Disclosure Notice found on the commissioner's web site: [www.insurance.wa.gov](http://www.insurance.wa.gov), explaining the benefits associated with a partnership policy and indicating that at the time issued, the policy is a qualified Washington state long-term care insurance partnership policy. The Partnership Disclosure Notice must also include a statement indicating that by purchasing this partnership policy, the insured does not automatically qualify for medicaid.

#### NEW SECTION

**WAC 284-83-415 Long-term care partnership policy exchange or replacement.** (1) Within one year of the date that an issuer begins to advertise, market, offer, or sell policies that qualify under the Washington state long-term care partnership program, the issuer must offer to all of its current policyholders and certificate holders the opportunity to exchange their existing long-term policy for a policy that is intended to qualify under the state's long-term care partnership program provided that:

(a) The existing long-term care policy was issued on or after February 8, 2006; and

(b) The existing long-term care policy is the type certified by the issuer for purposes of the state long-term care partnership program.

(2) In making an offer to exchange, an issuer must comply with the following requirements:

(a) The offer must be made on a nondiscriminatory basis without regard to the age or health status of the insured; and

(b) The offer must remain open for a minimum of ninety days from the date of mailing by the issuer.

(3) An exchange occurs when an issuer offers a policyholder or certificate holder (hereinafter "insured") the option to replace an existing long-term care insurance policy with a policy that qualifies as a long-term care partnership policy, and the insured accepts the offer to terminate the existing policy and accepts the new policy.

(4) Notwithstanding subsections (1), (2), and (3) of this section:

(a) An offer to exchange may be deferred for any insured who is currently eligible for benefits under an existing policy or who is subject to an elimination period on a claim, but such deferral shall continue only as long as such eligibility or elimination period exists; and

(b) An offer to exchange does not have to be made if the insured would be required to purchase additional benefits to qualify for the state long-term care partnership program and the insured is not eligible to purchase the additional benefits under the issuer's long-term care underwriting guidelines.

(5) If the partnership policy has an actuarial value of benefits equal to or lesser than the actuarial value of benefits of the existing policy, then the following requirements apply:

(a) The partnership policy must not be underwritten; and

(b) The rate charged for the partnership policy shall be determined using the original issue age and risk class of the insured that was used to determine the rate of the existing policy.

(6) If the partnership policy has an actuarial value of benefits exceeding the actuarial value of the benefits of the existing policy, then the following requirements apply:

(a) The issuer must apply its long-term care underwriting guidelines to the increased benefits only; and

(b) The rate charged for the partnership policy must be determined using the method set forth in subsection (5)(b) of this section for the existing benefits, increased by the rate for the increased benefits using the then current attained age and risk class of the insured for the increased benefits only.

(7) The partnership policy offered in an exchange must be on a form that is currently offered for sale by the issuer in the general market.

(8) In the event of an exchange, the insured must not lose any rights, benefits, or built-up value that has accrued under the original policy with respect to the benefits provided under the original policy including, but not limited to, rights established because of the lapse of time related to preexisting condition exclusions, elimination periods, or incontestability clauses.

(9) Issuers may complete an exchange by either issuing a new policy or by amending an existing policy with an endorsement or rider. An issuer must file such endorsement or rider for approval prior to issue.

(10) For those insureds with long-term care policies issued before February 8, 2006, an issuer may offer an insured the option to exchange an existing policy for a policy that qualifies as a Washington state long-term partnership policy. The requirements set forth in subsections (2) through (9) of this section apply to any such exchange.

(11) Policies issued pursuant to this section shall be considered exchanges and not replacements and are not subject to WAC 284-83-060 through 284-83-070.

#### NEW SECTION

**WAC 284-83-420 Reporting.** All issuers of qualified long-term care partnership policies must provide regular reports to the United States Secretary of Health and Human Services in accordance with regulations of the secretary. These reports include notification regarding when benefits provided under the policy have been paid and the amount of such benefits paid, notification regarding when the policy otherwise terminates, and such other information as the secretary determines may be appropriate to the administration of partnership policies.

#### NEW SECTION

**WAC 284-83-425 Producer education.** Prior to selling, soliciting, or negotiating, or continuing to sell, solicit, or negotiate long-term care partnership policies in this state, all licensed producers must meet the education requirements in RCW 48.83.130(2).

**WSR 11-18-092**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed September 7, 2011, 9:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-15-094.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-460-0035 When is a protective payee assigned for mismanagement of funds?

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at

<http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on October 11, 2011, at 10:00 a.m.

Date of Intended Adoption: Not earlier than October 12, 2011.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on October 11, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by October 6, 2011, TTY (360) 664-6178 or (360) 664-6094, or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-460-0035 to assign a protective payee to a person receiving public assistance if the recipient violates electronic benefit transfer (EBT) restrictions two or more times.

Reasons Supporting Proposal: These changes are necessary to conform to ESSB 5921, section 14.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08.580.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08.580.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Allen Shanafelt, P.O. Box 45470, Olympia, WA 98504-5470, (360) 725-4631.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not have an economic impact on small businesses. The proposed amendments allow the department to assign a protective payee to a person receiving public assistance if the recipient violates EBT restrictions two or more times.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

August 31, 2011

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 02-14-083, filed 6/28/02, effective 7/1/02)

**WAC 388-460-0035 When is a protective payee assigned for mismanagement of funds?** (1) The decision to assign a person to a protective payee because of mismanagement of funds must be based on law or with proof the client is unable to manage their cash benefits. The proof must be current and show how this threatens the well being of a child or client on ((TANF/SFA, GA or WCCC)) public assistance. Examples of proof are:

(a) Department employees or others observe that the client or client's children are hungry, ill, or not adequately clothed;

(b) Repeated requests from the client for extra money for basic essentials such as food, utilities, clothing, and housing;

(c) A series of evictions or utility shut off notices within the last twelve months;

(d) Medical or psychological evaluations showing an inability to handle money;

(e) Persons having had ~~((an ADATSA))~~ a chemical dependency assessment and who are participating in ~~((ADATSA-funded))~~ chemical dependency treatment;

~~((f))~~ ~~((Not paying an in-home child care provider for services when payment has been issued to the client by the department for that purpose;~~

~~((g))~~ A complaint from businesses showing a pattern of failure to pay bills or rent;

~~((h))~~ ~~((g))~~ ~~((Using public assistance electronic benefits transfer (EBT) card or cash obtained through EBT to purchase or pay for lottery tickets, pari-mutuel wagering, or any of the activities authorized under chapter 9.46 RCW))~~ Notice from the office of fraud and accountability that a client illegally used a public assistance electronic benefits transfer (EBT) card or cash obtained with an EBT card two or more times. Illegal use includes infractions, felonies, or violations referenced in WAC 388-412-0046 or WAC 388-446-0020.

(2) A lack of money or a temporary shortage of money because of an emergency does not constitute mismanagement.

(3) When a client has a history of mismanaging money, benefits can be paid through a protective payee or directly to a vendor.

### WSR 11-18-093

#### PROPOSED RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed September 7, 2011, 10:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-13-095.

Title of Rule and Other Identifying Information: The department is amending a section of chapter 388-111 WAC, Residential habilitation centers—Compliance standards. The department is amending WAC 388-111-0001 Definitions.

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

Date of Intended Adoption: Not earlier than October 12, 2011.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail

DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on October 11, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by October 6, 2011, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [jennisha.johnson@dshs.wa.gov](mailto:jennisha.johnson@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of amending these rules is to comply with changes to state law made by the 2011 legislature in SSB 5042.

Highlights of proposed changes:

- Expands the definition of "financial exploitation" to include improper control over or withholding of a vulnerable adult's resources by another person or entity.
- Refers to examples of "financial exploitation" found in chapter 74.34 RCW.
- In addition, the proposed rules amends the definition of "sexual abuse" to include examples of interactions that do not involve physical touching.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: Chapter 74.34 RCW, RCW 74.08.090 and 71A.12.030.

Statute Being Implemented: Chapters 74.34 and 74.39A RCW.

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

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

Name of Agency Personnel Responsible for Drafting: John Gaskell, P.O. Box 45600, Olympia, WA 98513, (360) 725-3210; Implementation and Enforcement: Joyce Stockwell, P.O. Box 45600, Olympia, WA 98513, (360) 725-2401.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3), a small business economic impact statement is not required for rules adopting or incorporating, by reference without material change Washington state statutes or federal statutes or regulations.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b), a cost-benefit analysis is not required for rules adopting or incorporating, by reference without material change Washington state statutes or regulations.

August 31, 2011

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-07-025, filed 3/10/11, effective 4/10/11)

**WAC 388-111-0001 Definitions. "Abandonment"** means action or inaction by an individual or entity with a duty of care for a vulnerable adult that leaves the vulnerable individual without the means or ability to obtain necessary food, clothing, shelter, or health care.

**"Abuse"** means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain or mental anguish, the abuse is presumed

to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

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

(2) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical or physical restraints unless the restraint is consistent with certification requirements.

(3) **"Sexual abuse"** means any form of nonconsensual sexual contact, including, but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual contact may include interactions that do not involve touching, including but not limited to sending sexually explicit messages, or cuing or encouraging a resident/client to perform sexual acts. Sexual abuse includes any sexual contact between a staff person and a resident, whether or not it is consensual.

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

**"Administrative hearing"** is a formal hearing proceeding before a state administrative law judge that gives an individual an opportunity to appeal a finding of abandonment, abuse, neglect or financial exploitation of a resident.

**"Administrative law judge (ALJ)"** means an impartial decision maker who presides over an administrative hearing. ALJs are employed by the office of administrative hearings (OAH), which is a separate state agency. ALJs are not DSHS employees or DSHS representatives.

**"Department"** means the department of social and health services (DSHS).

**"Facility":**

(1) Except as defined in subsection (2) of this definition, the term "facility" means an intermediate care facility for persons with intellectual disabilities (ICF/ID).

(2) When used in the definition of "mandated reporter", the term "facility" means a residence licensed or required to be licensed under chapter 18.20 RCW, boarding homes; chapter 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36 RCW, soldiers' homes; or chapter 71A.20 RCW, residential habilitation centers; or any other facility licensed by the department.

**"Financial exploitation"** means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any individual or entity for ((his or her)) any individual's or entity's profit or advantage other than the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020(6).

**"Individual"** means anyone used by the facility to provide services to residents, who is alleged to have abandoned, abused, neglected, misappropriated property of, or financially exploited a resident. "Individual" includes, but is not limited to, employees, contractors and volunteers. "Individual" also includes a person used by the certified nursing facility portion of a residential habilitation center operated under chapter 71A.20 RCW.

**"Intermediate care facility for persons with intellectual disabilities (ICF/ID)"** means an institution certified under chapter 42 C.F.R., Part 483, Subpart I, unless the facility is licensed as a nursing home under chapter 18.51 RCW or as a boarding home under chapter 18.20 RCW.

**"Mandated reporter"** is an employee of the department; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian Science practitioner; or health care provider subject to chapter 18.130 RCW.

**"Neglect"** means that an individual or entity with a duty to care for residents has:

(1) By an act or omission, demonstrated a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the resident's health, welfare or safety; or

(2) Through conduct or inaction, or a pattern of conduct or inaction, failed to provide a resident with the goods and services that maintain physical or mental health of a vulnerable adult, or that failed to avoid or prevent physical harm, pain, mental anguish, or mental illness.

**"Resident"** means an individual residing in a facility or in the certified nursing facility portion of a residential habilitation center operated under chapter 71A.20 RCW.

**"Willful"** means the deliberate, or nonaccidental, action or inaction by an individual that he or she knew or reasonably should have known could cause a negative outcome, including harm, injury, pain or anguish.

## WSR 11-18-095

### PROPOSED RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

[Filed September 7, 2011, 10:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-08-069.

Title of Rule and Other Identifying Information: The department is proposing changes to WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?, 388-450-0190 How does the department figure my shelter cost income deduction for Basic Food?, 388-450-0195 Does the department use my utility costs when calculating my Basic Food or WASHCAP bene-

fits?, and 388-478-0060 What are the income limits and maximum benefit amounts for Basic Food?

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

Date of Intended Adoption: Not earlier than October 12, 2011.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax (360) 664-6185, by 5 p.m. on October 11, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by October 6, 2011, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [jennisha.johnson@dshs.wa.gov](mailto:jennisha.johnson@dshs.wa.gov).

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

- The standard deduction for Basic Food 1, 2, and 3 persons from \$142 to \$147 - 4 persons from \$153 to \$155 - 6 or more persons from \$205 to \$208.
- The standard utility allowance (SUA) for Basic Food from \$385 to \$394.
- The maximum shelter cost for Basic Food from \$458 to \$459.
- The Basic Food maximum gross monthly income - maximum net monthly income - and 165 percent of poverty level.

Reasons Supporting Proposal: The proposed amendments update Basic Food standards for federal fiscal year 2012 in order to comply with requirements of the United States Department of Agriculture, Food and Nutrition Service (FNS), per SNAP memos:

- December 2, 2010, subject: SNAP standard utility (SUA) annual review and adjustment waiver for certain states - modification and extension.
- August 2, 2011, subject: SNAP fiscal year 2012 cost of living adjustments (COLAS).

These standards must be adjusted annually in order to determine a client's eligibility and benefit level for the Washington Basic Food program.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. 273.9.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Holly St. John, P.O. Box 45470, Olympia, WA, (360) 725-4895.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this section

does not apply to ...rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

August 31, 2011

Katherine I. Vasquez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-23-114, filed 11/17/10, effective 12/18/10)

**WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?**

We determine if your assistance unit (AU) is eligible for Basic Food and calculate your monthly benefits according to requirements of the Food and Nutrition Act of 2008 and federal regulations related to the supplemental nutrition assistance program (SNAP).

These federal laws allow us to subtract **only** the following amounts from your AU's total monthly income to determine your countable monthly income under WAC 388-450-0162:

- (1) A standard deduction based on the number of eligible people in your AU under WAC 388-408-0035:

Eligible AU members	Standard deduction
1	\$((142)) <u>147</u>
2	\$((142)) <u>147</u>
3	\$((142)) <u>147</u>
4	\$((153)) <u>155</u>
5	\$((179)) <u>181</u>
6 or more	\$((205)) <u>208</u>

- (2) Twenty percent of your AU's gross earned income (earned income deduction);

- (3) Your AU's expected monthly dependent care expense needed for an AU member to:

(a) Keep work, look for work, or accept work;

(b) Attend training or education to prepare for employment; or

(c) Meet employment and training requirements under chapter 388-444 WAC.

- (4) Medical expenses over thirty-five dollars a month owed or anticipated by an elderly or disabled person in your AU as allowed under WAC 388-450-0200.

- (5) A portion of your shelter costs as described in WAC 388-450-0190.

AMENDATORY SECTION (Amending WSR 10-23-114, filed 11/17/10, effective 12/18/10)

**WAC 388-450-0190 How does the department figure my shelter cost income deduction for Basic Food? The department calculates your shelter cost income deduction as follows:**

- (1) First, we add up the amounts your assistance unit (AU) must pay each month for shelter. We do not count any overdue amounts, late fees, penalties or mortgage payments

you make ahead of time as an allowable cost. We count the following expenses as an allowable shelter cost in the month the expense is due:

- (a) Monthly rent, lease, and mortgage payments;
  - (b) Property taxes;
  - (c) Homeowner's association or condo fees;
  - (d) Homeowner's insurance for the building only;
  - (e) Utility allowance your AU is eligible for under WAC 388-450-0195;
  - (f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;
  - (g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:
    - (i) AU intends to return to the home;
    - (ii) AU has current occupants who are not claiming the shelter costs for Basic Food purposes; and
    - (iii) AU's home is not being leased or rented during your AU's absence.
- (2) Second, we subtract all deductions your AU is eligible for under WAC 388-450-0185 (1) through (5) from your AU's gross income. The result is your AU's net income.

(3) Finally, we subtract one-half of your AU's net income from your AU's total shelter costs. The result is your excess shelter costs. Your AU's shelter cost deduction is the excess shelter costs:

- (a) Up to a maximum of four hundred ~~((fifty-eight))~~ fifty-nine dollars if no one in your AU is elderly or disabled; or
- (b) The entire amount if an eligible person in your AU is elderly or disabled, even if the amount is over four hundred ~~((fifty-eight))~~ fifty-nine dollars.

AMENDATORY SECTION (Amending WSR 10-18-050, filed 8/26/10, effective 10/1/10)

**WAC 388-450-0195 Does the department use my utility costs when calculating my Basic Food or WASH-CAP benefits?** (1) We use a standard utility allowance (SUA) of three hundred ~~((eighty-five))~~ ninety-four dollars instead of your actual utility costs when we determine your assistance unit's:

- (a) Monthly benefits under WAC 388-492-0070 if you receive WASHCAP; or
  - (b) Shelter cost income deduction under WAC 388-450-0190 for Basic Food.
- (2) We considered the average cost of the following utilities to determine the value of the SUA:
- (a) Heating and cooling fuel such as electricity, oil, or gas;
  - (b) Electricity;
  - (c) Water and sewer;
  - (d) Well or septic tank installation/maintenance;
  - (e) Garbage/trash collection; and
  - (f) Telephone service.
- (3) The department uses the SUA if you have utility costs separate from your rent or mortgage payment or if you receive a low income home energy assistance program (LIHEAP) benefit during the year.

AMENDATORY SECTION (Amending WSR 09-24-001, filed 11/18/09, effective 12/19/09)

**WAC 388-478-0060 What are the income limits and maximum benefit amounts for Basic Food?** If your assistance unit (AU) meets all other eligibility requirements for Basic Food, your AU must have income at or below the limits in column B and C to get Basic Food, unless you meet one of the exceptions listed below. The maximum monthly food assistance benefit your AU could receive is listed in column D.

EFFECTIVE ~~((10-1-2009))~~ 10-1-2011

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
1	<del>\$(1,174))</del> <u>1,180</u>	<del>\$(903))</del> <u>908</u>	\$200	<del>\$(1,490))</del> <u>1,498</u>
2	<del>((1,579))</del> <u>1,594</u>	<del>((1,215))</del> <u>1,226</u>	367	<del>((2,004))</del> <u>2,023</u>
3	<del>((1,984))</del> <u>2,008</u>	<del>((1,526))</del> <u>1,545</u>	526	<del>((2,518))</del> <u>2,548</u>
4	<del>((2,389))</del> <u>2,422</u>	<del>((1,838))</del> <u>1,863</u>	668	<del>((3,032))</del> <u>3,074</u>
5	<del>((2,794))</del> <u>2,836</u>	<del>((2,150))</del> <u>2,181</u>	793	<del>((3,547))</del> <u>3,599</u>
6	<del>((3,200))</del> <u>3,249</u>	<del>((2,461))</del> <u>2,500</u>	952	<del>((4,061))</del> <u>4,124</u>
7	<del>((3,605))</del> <u>3,663</u>	<del>((2,773))</del> <u>2,818</u>	1,052	<del>((4,575))</del> <u>4,649</u>

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
8	<del>((4,010))</del> <u>4,077</u>	<del>((3,085))</del> <u>3,136</u>	1,202	<del>((5,089))</del> <u>5,175</u>
9	<del>((4,416))</del> <u>4,491</u>	<del>((3,397))</del> <u>3,455</u>	1,352	<del>((5,604))</del> <u>5,701</u>
10	<del>((4,822))</del> <u>4,905</u>	<del>((3,709))</del> <u>3,744</u>	1,502	<del>((6,119))</del> <u>6,227</u>
Each Additional Mem- ber	<del>+((406))</del> <u>414</u>	<del>+((312))</del> <u>319</u>	+150	<del>+((515))</del> <u>526</u>

Exceptions:

(1) If your AU is categorically eligible as under WAC 388-414-0001, your AU does not have to meet the gross or net income standards in columns B and C. We do budget your AU's income to decide the amount of Basic Food your AU will receive.

(2) If your AU includes a member who is sixty years of age or older or has a disability, your income must be at or below the limit in column C only.

(3) If you are sixty years of age or older and cannot buy and cook your own meals because of a permanent disability, we will use column E to decide if you can be a separate AU.

(4) If your AU has zero income, your benefits are the maximum allotment in column D, based on the number of eligible members in your AU.

death, 388-76-10915 Department staff access—Willful interference prohibited, 388-76-10945 Remedies—Imposition of remedies—Serious risk—Recurring violations—Uncorrected violations, 388-76-10960 Remedies—Department may impose remedies, and 388-76-10975 Remedies—Specific—Civil penalties, and other related rules as appropriate.

The department intends to repeal WAC 388-76-10162 Background check—National fingerprint checks—Who is required to have.

The department intends to add new sections WAC 388-76-10037 Multiple adult family homes—Additional homes, 388-76-10561 Resident rights—Resident security deposit account, 388-76-10911 Inspection-Multiple adult family home providers, 388-76-10946 Remedies—Increasing severity for certain violations, 388-76-10947 Remedies—Criteria considered, and 388-76-10976 Remedies—Civil fine grid.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on October 25, 2011, at 10:00 a.m.

Date of Intended Adoption: Not earlier than October 26, 2011.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax (360) 664-6185, by 5 p.m. on October 25, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by October 6, 2011, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsjl4@dshs.wa.gov](mailto:johnsjl4@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending these rules as a result of legislative activity during session and to be consistent with newly passed state laws: ESHB 1548 Implementation of long-term care worker requirements regarding background checks and training, ESHB 1277 Oversight of licensed or certified long-term care settings for vulnerable adults, SSB 5042 Vulnerable adults protection, and 2E2SHB 1738 Changing the designation of the medicaid single state agency.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 70.128.040.

Statute Being Implemented: Chapter 70.128 RCW.

**WSR 11-18-096**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services)

[Filed September 7, 2011, 10:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-13-091.

Title of Rule and Other Identifying Information: The department intends to amend WAC 388-76-10000 Definitions, 388-76-10015 License—Adult family home—Compliance required, 388-76-10025 License annual fee, 388-76-10035 License requirements—Multiple home providers, 388-76-10064 Application—Forty-eight hour class training requirements, 388-76-10070 Application—Fees required, 388-76-10073 Application—Processing fees required, WAC 388-76-10080 Application—Coprovider, 388-76-10105 Application—Change of ownership, 388-76-10120 License—Must be denied, 388-76-10130 Qualifications—Provider, entity representative and resident manager, 388-76-10146 Qualifications—Training and home care aide certification requirements, 388-76-10160 Background check—General, 388-76-10174 Background check—Disclosure of information by health care facilities, 388-76-10395 Emergency admissions, 388-76-10540 Resident rights—Disclosure of fees and notice requirements—Deposits, 388-76-10570 Resident rights—Financial affairs related to resident

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

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

Name of Agency Personnel Responsible for Drafting: Mike Tornquist, P.O. Box 45600, Olympia, WA 98513, (360) 725-3204; Implementation and Enforcement: Lori Melchiori, P.O. Box 45600, Olympia, WA 98513, (360) 725-2404.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3), a small business economic impact statement is not required for rules adopting or incorporating, by reference without material change, Washington state statutes or federal statutes or regulations.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b), a cost-benefit analysis is not required for rules adopting or incorporating, by reference without material change, Washington state statutes or federal statutes or regulations.

August 31, 2011  
Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 11-19 issue of the Register.

**WSR 11-18-097**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed September 7, 2011, 10:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-15-094.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-310-1600 WorkFirst—Sanctions and 388-400-0005 Who is eligible for temporary assistance for needy families?

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

Date of Intended Adoption: Not earlier than October 12, 2011.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax (360) 664-6185, by 5 p.m. on October 11, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by September 27, 2011, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsjl4@dshs.wa.gov](mailto:johnsjl4@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to permanently disqualify adults from receiving TANF/SFA benefits if they have been terminated due to non-compliance sanction at least three times since March 1, 2007.

Reasons Supporting Proposal: These changes are necessary to conform to ESSB 5921, section 7(4).

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08.025, and chapters 74.08A and 74.12 RCW.

Statute Being Implemented: RCW 74.04.050, 74.04.-055, 74.04.057, 74.08.090, 74.08.025, and chapters 74.08A and 74.12 RCW.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Stephanie Nielsen, P.O. Box 45470, Olympia, WA 98504-5470, (360) 725-4699.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not have an economic impact on small businesses. The proposed amendment permanently disqualifies adults from receiving TANF/SFA cash benefits who have been terminated for noncompliance sanction three or more times since March 1, 2007.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents." The proposed amendment permanently disqualifies adults from receiving TANF/SFA cash benefits who have been terminated for noncompliance sanction three or more times since March 1, 2007.

August 25, 2011  
Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 10-24-069, filed 11/30/10, effective 12/31/10)

**WAC 388-310-1600 WorkFirst—Sanctions.** Effective July 1, 2010.

(1) **What WorkFirst requirements do I have to meet?**

You must do the following when you are a mandatory WorkFirst participant:

(a) Give the department the information we need to develop your individual responsibility plan (IRP) (see WAC 388-310-0500);

(b) Show that you are participating fully to meet all of the requirements listed on your individual responsibility plan;

(c) Go to scheduled appointments listed in your individual responsibility plan;

(d) Follow the participation and attendance rules of the people who provide your assigned WorkFirst services or activities; and



(e) Accept available paid employment when it meets the criteria in WAC 388-310-1500.

**(2) What happens if I don't meet WorkFirst requirements?**

(a) If you do not meet WorkFirst requirements, we will send you a letter telling you what you did not do, and inviting you to a noncompliance sanction case staffing.

(i) A noncompliance case staffing is a meeting with you, your case manager, and other people who are working with your family, such as representatives from tribes, community or technical colleges, employment security, the children's administration, family violence advocacy providers or limited-English proficient (LEP) pathway providers to review your situation and compliance with your participation requirements.

(ii) You will be notified when your noncompliance sanction case staffing is scheduled so you can attend.

(iii) You may invite anyone you want to come with you to your case staffing.

(b) You will have ten days to contact us so we can talk with you about your situation. You can contact us in writing, by phone, by going to the noncompliance sanction case staffing appointment described in the letter, or by asking for an individual appointment.

(c) If you do not contact us within ten days, we will make sure you have been screened for family violence and other barriers to participation. We will use existing information to decide whether:

(i) You were unable to do what was required; or

(ii) You were able, but refused, to do what was required.

(d) If you had a good reason not to do a required activity we will work with you and may change the requirements in your individual responsibility plan if a different WorkFirst activity would help you move towards independence and employment sooner. If you have been unable to meet your WorkFirst requirements because of family violence, you and your case manager will develop an IRP to help you with your situation, including referrals to appropriate services.

**(3) What is considered a good reason for not doing what WorkFirst requires?**

You have a good reason if you were not able to do what WorkFirst requires (or get an excused absence, described in WAC 388-310-0500(5)) due to a significant problem or event outside your control. Some examples of good reasons include, but are not limited to:

(a) You had an emergent or severe physical, mental or emotional condition, confirmed by a licensed health care professional that interfered with your ability to participate;

(b) You were threatened with or subjected to family violence;

(c) You could not locate child care for your children under thirteen years that was:

(i) Affordable (did not cost you more than your copayment would under the working connections child care program in chapter 170-290 WAC);

(ii) Appropriate (licensed, certified or approved under federal, state or tribal law and regulations for the type of care you use and you were able to choose, within locally available options, who would provide it); and

(iii) Within a reasonable distance (within reach without traveling farther than is normally expected in your community).

(iv) You could not locate other care services for an incapacitated person who lives with you and your children.

(d) You had an immediate legal problem, such as an eviction notice; or

(e) You are a person who gets necessary supplemental accommodation (NSA) services under chapter 388-472 WAC and your limitation kept you from participating. If you have a good reason because you need NSA services, we will review your accommodation plan.

**(4) What happens in my noncompliance sanction case staffing?**

(a) At your noncompliance case staffing we will ensure you were offered the opportunity to participate and discuss with you:

(i) What happens if you are sanctioned and stay in sanction;

(ii) How you can participate and get out of sanction;

(iii) How you and your family benefit when you participate in WorkFirst activities;

(iv) That if you continue to refuse to participate, without good cause, your case may be closed after you have been in sanction status for four months in a row;

(v) How you plan to care for and support your children if your case is closed. We will also discuss the safety of your family, as needed, using the guidelines under RCW 26.44.030; ~~((and))~~

(vi) How to reapply if your case is closed; and

(vii) That upon your third noncompliance sanction case closure after March 1, 2007, you may be permanently disqualified from receiving TANF/SFA. If you are permanently disqualified, your entire household is ineligible for TANF/SFA.

(b) If you do not come to your noncompliance sanction case staffing, we will make a decision based on the information we have.

**(5) What if we decide that you did not have a good reason for not meeting WorkFirst requirements?**

(a) Before you are placed in sanction, a supervisor will review your case to make sure:

(i) You knew what was required;

(ii) You were told how to end your sanction;

(iii) We tried to talk to you and encourage you to participate; and

(iv) You were given a chance to tell us if you were unable to do what we required.

(b) If we decide that you did not have a good reason for not meeting WorkFirst requirements, and a supervisor approves the sanction, we will send you a letter that tells you:

(i) What you failed to do;

(ii) That you are in sanction status;

(iii) Penalties that will be applied to your grant;

(iv) When the penalties will be applied;

(v) How to request a fair hearing if you disagree with this decision; and

(vi) How to end the penalties and get out of sanction status.

(c) We will also provide you with information about resources you may need if your case is closed. If you are sanctioned, then we will actively attempt to contact you another way so we can talk to you about the benefits of participation and how to end your sanction.

**(6) What is sanction status?**

When you are a mandatory WorkFirst participant, you must follow WorkFirst requirements to qualify for your full grant. If you or someone else on your grant doesn't do what is required and you can't prove that you had a good reason, you do not qualify for your full grant. This is called being in WorkFirst sanction status.

**(7) Are there penalties when you or someone in your household goes into sanction status?**

(a) When someone in your household is in sanction status, we impose penalties. The penalties last until you or the household member meet WorkFirst requirements.

(b) Your grant is reduced by one person's share or forty percent, whichever is more.

**(8) How do I end the penalties and get out of sanction status?**

To stop the penalties and get out of sanction status:

(a) You must provide the information we requested to develop your individual responsibility plan; and/or

(b) Start and continue to do your required WorkFirst activities for four weeks in a row (that is, twenty-eight calendar days).

(c) When you leave sanction status, your grant will be restored to the level you are eligible for beginning the first of the month following your four weeks of participation. For example, if you finished your four weeks of participation on June 15, your grant would be restored on July 1.

**(9) What if I reapply for TANF or SFA and I was in sanction status when my case closed?**

If your case closes while you are in sanction status and is reopened, you will start out where you left off in sanction.

That is, if you were in month two of sanction when your case closed, you will be in month three of sanction when you are approved for TANF or SFA.

**(10) What happens if I stay in sanction status?**

(a) We will send information to a supervisor or designee with a recommendation to close your case.

(b) A supervisor or designee will make the final decision.

(c) If the supervisor or designee approves case closure, your case will be closed after you have been in sanction for four months in a row.

**(11) What happens when a supervisor or designee approves closure of my case?**

When a supervisor or designee approves closure of your case, we will send you a letter to tell you:

(a) What you failed to do;

(b) When your case will be closed;

(c) How to request a fair hearing if you disagree with this decision;

(d) How to end your penalties and keep your case open (if you are able to participate for four weeks in a row before we close your case); and

(e) How your participation before your case is closed can be used to meet the participation requirement in subsection (12).

**(12) What if I reapply for TANF or SFA after a supervisor or designee approved case closure and my case was closed?**

If a supervisor or designee approves case closure and we close your case, you must participate for four weeks in a row before you can receive cash. Once you have met your four week participation requirement, your cash benefits will start, going back to the date we had all the other information we needed to make an eligibility decision.

**(13) What happens if a supervisor or designee approves case closure for the third time?**

If we close your case at least three times after March 1, 2007, you will be permanently disqualified from receiving TANF/SFA. If you are permanently disqualified, any household you are in will also be ineligible for TANF/SFA.

AMENDATORY SECTION (Amending WSR 06-13-043, filed 6/15/06, effective 7/17/06)

**WAC 388-400-0005 Who is eligible for temporary assistance for needy families?** (1) You can get temporary assistance for needy families (TANF), if you:

(a) Can be in a TANF/SFA assistance unit as allowed under WAC 388-408-0015 through 388-408-0030;

(b) Meet the citizenship/alien status requirements of WAC 388-424-0010;

(c) Live in the state of Washington. A child must live with a caretaker relative, guardian, or custodian who meets the state residency requirements of WAC 388-468-0005;

(d) Do not live in a public institution unless specifically allowed under RCW 74.08.025;

(e) Meet TANF/SFA:

(i) Income requirements under chapter 388-450 WAC;

(ii) Resource requirements under chapter 388-470 WAC;

and

(iii) Transfer of property requirements under chapter 388-488 WAC.

(f) Assign your rights to child support as required under WAC 388-422-0005;

(g) Cooperate with the division of child support (DCS) as required under WAC 388-422-0010 by helping them:

(i) Prove who is the father of children applying for or getting TANF or SFA; and

(ii) Collect child support.

(h) Tell us your Social Security number as required under WAC 388-476-0005;

(i) Cooperate in a review of your eligibility as required under WAC 388-434-0005;

(j) Cooperate in a quality assurance review as required under WAC 388-464-0001;

(k) Participate in the WorkFirst program as required under chapter 388-310 WAC;

(l) Report changes of circumstances as required under WAC 388-418-0005; and

(m) Complete a mid-certification review and provide proof of any changes as required under WAC 388-418-0011.

(2) If you are an adult, you must have an eligible child living with you or you must be pregnant and meet the requirements of WAC 388-462-0010.

(3) If you are an unmarried pregnant teen or teen parent:

(a) Your living arrangements must meet the requirements of WAC 388-486-0005; and

(b) You must attend school as required under WAC 388-486-0010.

(4) In addition to rules listed in subsection (1) of this section, a child must meet the following rules to get TANF:

(a) Meet the age requirements under WAC 388-404-0005; and

(b) Live in the home of a relative, court-ordered guardian, court-ordered custodian, or other adult acting *in loco parentis* as required under WAC 388-454-0005; or

(c) If the child lives with a parent or other adult relative that provides care for the child, that adult cannot have used up their sixty-month lifetime limit of TANF or SFA cash benefits as defined in WAC 388-484-0005; or

(d) If the child lives with a parent who provides care for the child, that adult cannot have been permanently disqualified from receiving TANF/SFA due to noncompliance sanction as defined in WAC 388-310-1600.

(5) You cannot get TANF if you have been:

(a) Convicted of certain felonies and other crimes under WAC 388-442-0010; or

(b) Convicted of unlawful practices to get public assistance under WAC 388-446-0005 or 388-446-0010.

(6) If you are a client in a household which is eligible for a tribal TANF program, you cannot receive state and tribal TANF in the same month.

### WSR 11-18-098

#### PROPOSED RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

(Division of Child Support)

[Filed September 7, 2011, 10:08 a.m.]

Supplemental Notice to WSR 11-13-108.

Preproposal statement of inquiry was filed as WSR 11-09-030.

Title of Rule and Other Identifying Information: Division of child support (DCS) proposes to adopt new sections and amend other sections in chapter 388-14A WAC to implement changes in the federal regulations concerning establishing and enforcing intergovernmental child support obligations. Note: This supplemental notice makes significant changes to the rules proposed under WSR 11-13-108.

New sections WAC 388-14A-2081 Under what circumstances can DCS close a case when the application for services was made directly to DCS? and 388-14A-2083 Under what circumstances can DCS close an intergovernmental case, otherwise known as a case where the application for services was originally made to another state, tribe, territory or country?; and amending WAC 388-14A-2080 Once DCS opens a support enforcement case, under what circumstances can it be closed?, 388-14A-2085 Under what circumstances may DCS ~~((deny))~~ keep a support enforcement case open despite a request to close ((a support enforcement case)) it?, 388-14A-2090 Who ~~((is mailed))~~ receives notice ((of DCS'

~~intent to close))~~ when DCS closes a case?, 388-14A-2097 What happens to payments that come in after a case is closed?, 388-14A-2160 ~~((If my information is confidential, can))~~ On what authority does DCS ((report me to)) share my confidential information with a credit bureau?, 388-14A-3130 What happens if a ~~((parent))~~ party makes a timely request for hearing on a support establishment notice?, 388-14A-3302 How does the division of child support decide what notice to serve when there is already an existing order for child support?, 388-14A-3304 The division of child support may serve a notice of support debt and demand for payment when it is enforcing a support order issued in Washington state, a foreign court order or a foreign administrative order for support, 388-14A-3305 What can I do if I disagree with a notice of support debt and demand for payment?, 388-14A-3306 Does a notice of support debt and demand for payment result in a final determination of support arrears?, 388-14A-3307 How does the division of child support proceed when there are multiple child support orders for the same obligor and children?, 388-14A-3310 What notice does the division of child support serve to establish a fixed dollar amount under an existing child support order?, 388-14A-7100 The division of child support may register an order from another state for enforcement or modification, 388-14A-7110 The division of child support may ~~((assess and collect))~~ enforce interest on amounts owed under support orders entered or established in a jurisdiction other than Washington state, 388-14A-7115 Are there special rules for a hearing on a notice seeking to ~~((assess and collect))~~ enforce interest on a support order?, 388-14A-7120 When does DCS update the interest ~~((assessed))~~ on a case for enforcement?, 388-14A-7305 How ~~((do I))~~ does a party, IV-D agency or jurisdiction ask ((DCS to do)) for a determination of controlling order?, 388-14A-7325 How does DCS notify the parties ~~((of its))~~ that a determination of the controlling order ((has been)) is going to be made?, and 388-14A-7335 What happens if someone objects to ~~((DCS' proposed))~~ a notice of support debt and registration which contains a determination of the presumed controlling order?

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on October 25, 2011, at 10:00 a.m.

Date of Intended Adoption: Not earlier than October 26, 2011.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on October 25, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by October 11, 2011, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsjl4@dshs.wa.gov](mailto:johnsjl4@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New sections and amended other sections in chapter 388-14A WAC to implement changes in the federal regulations concerning establish-

ing and enforcing intergovernmental child support obligations.

For a list of section numbers and titles, see above.

Reasons Supporting Proposal: As part of its state plan under Title IV-D of the federal Social Security Act, DCS must adopt rules to implement changes in the Code [of] Federal Regulations regarding intergovernmental establishment and enforcement of child support obligations. Failure to adopt the rules could lead to a violation of the state plan requirements, which would jeopardize funding for the child support program and the TANF block grant. The federal rules being implemented in this rule-making order are 45 C.F.R. Parts 301.1, 302.36, 303.7, 303.11, 305.63, and 308.2.

Note: After the initial notice of proposed rule making was filed, DCS determined that additional changes in chapter 388-14A WAC were necessary to implement the federal rules. This supplemental notice makes significant changes to the rules proposed under WSR 11-13-108.

Statutory Authority for Adoption: RCW 26.23.120, 34.05.350 (1)(b), 43.20A.550, 74.04.055, 74.08.090, 74.20.-040(9), 74.20A.310.

Statute Being Implemented: RCW 74.20A.310.

Rule is necessary because of federal law, 45 C.F.R. Parts 301.1, 302.36, 303.7, 303.11, 305.63, and 308.2.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nancy Koptur, DCS Headquarters, P.O. Box 9162, Olympia, WA 98507-9162, (360) 664-5065.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not have an economic impact on small businesses. It only affects individuals who have support obligations or individuals who are owed child support.

A cost-benefit analysis is not required under RCW 34.05.328. The rule does meet the definition of a significant legislative rule but DSHS/DCS rules relating to the care of dependent children are exempt from preparing further analysis under RCW 34.05.328 (5)(b)(vii).

August 29, 2011  
Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 11-19 issue of the Register.

**WSR 11-18-101**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Disability Services Administration)  
[Filed September 7, 2011, 10:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-15-105.

Title of Rule and Other Identifying Information: Amending WAC 388-71-05832 and 388-71-05835 and creat-

ing new sections WAC 388-71-05833, 388-71-05834, 388-71-05836, and 388-71-05837 related to the implementation of long-term care worker safety training requirements.

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

Date of Intended Adoption: October 12, 2011.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m., October 11, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by September 27, 2011, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Due to recent legislation (ESHB 1548) signed by the governor (which delays implementation of the Initiative 1029 long-term care worker training requirements until January 1, 2014), the department must revert to the long-term care worker training requirements that were in effect on December 31, 2010. The department is submitting one change to these rules that were in effect on December 31, 2010:

Adding rules to chapter 388-71 regarding safety training requirements for long-term care workers. Chapter 388-71 WAC refers to WAC 257-020 [257-05-020] through 257-040 [257-05-040] for specifying the safety training requirements (those requirements were part of the home care quality authority rules). Due to the elimination of funding for the home care quality authority, the home care referral registry is moved to the home and community services division effective July 1, 2010. The department is proposing moving requirements for safety training (that were in WAC 257-020 [257-05-020] through 257-040 [257-05-040]) into chapter 388-71 WAC.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 43.20A.710 and 74.08.090, chapter 43.43 RCW.

Statute Being Implemented: RCW 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting: Nancy Brubaker, P.O. Box 45600, Olympia, 98504-5600, (360) 725-2540; Implementation and Enforcement: Lorrie Mahar, P.O. Box 45600, Olympia, 98504-5600, (360) 725-2549.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These changes do not impact small businesses.

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

August 31, 2011  
Katherine I. Vasquez  
Rules Coordinator

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

**WAC 388-71-05832 What is safety training and is there a challenge test for safety training?** Safety training ~~((and applicable requirements are defined in WAC 257-05-020 through 257-05-240))~~ provides basic injury, illness and accident prevention information appropriate to the in-home setting and individuals served. No competency test is required.

There is no challenge test for safety training.

NEW SECTION

**WAC 388-71-05833 What content must be included in safety training?** Safety training may include the use of video tapes, audio tapes and other print or electronic media. Safety training consists of introductory information in the following areas:

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

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

NEW SECTION

**WAC 388-71-05834 When does a safety training attestation process need to be completed?** All individual providers must contact the training partnership and follow their procedures to confirm that they have completed the training, once it is completed.

AMENDATORY SECTION (Amending WSR 04-02-001, filed 12/24/03, effective 1/24/04)

**WAC 388-71-05835 ~~((What is competency testing)) Who is required to complete safety training, when, and how often must it be completed?~~ ~~((Competency testing, including challenge testing, is evaluating a trainee to determine if they can demonstrate the required level of skill, knowledge, and/or behavior with respect to the identified learning outcomes of a particular course))~~ (1) All individual providers must complete safety training within fourteen calendar days after beginning to work with their first DSHS consumer. Safety training must be provided by the training partnership.**

(2) There is no requirement for periodic refresher safety training.

NEW SECTION

**WAC 388-71-05836 Will DSHS deny payment of an individual provider who does not complete safety training?** DSHS will deny payment of an individual provider who does not confirm through the training partnership that they completed safety training within fourteen calendar days after beginning to work with their first DSHS consumer.

NEW SECTION

**WAC 388-71-05837 What is competency testing:** Competency testing, including challenge testing, is evaluating a trainee to determine if they can demonstrate the required level of skill, knowledge, and/or behavior with respect to the identified learning outcomes of a particular course.